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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 399/2015 & C.M. No.13943/2015 (stay)**
BHAWANI PRASAD

..... Petitioner

Through Mr. S.D. Ansari and Mr. Hameed S.
Shaikh, Advs.

versus

NAWAB SINGH

..... Respondent

Through Mr. Sudhir Nandrajog, Sr. Adv. with
Mr.Durgesh Rao, Mr. Rama Yadav
and Mr. Sheopi, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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26.02.2016

The petitioner before this Court is the tenant in the Trial Court. The eviction petition filed by the landlord had been decreed in his favour. This was vide impugned judgment dated 01.04.2015. Since this petition was under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA), leave to defend not having been filed within the stipulated period of 15 days by the tenant, the Trial Court had decreed the eviction petition in favour of the landlord.

The petitioner is aggrieved by this finding. His submission is that the Trial Court had noted that summons had been served upon the tenant on 16.03.2015 through one Ram Kumar; Ram Kumar although admittedly is the nephew of the tenant but he was not authorized to receive summons on behalf of the tenant. In this petition filed before this Court, it has been averred that the petitioner has learnt about the

decree dated 01.04.2015 having been passed against him only on 03.07.2015; he applied for a certified copy which was received and only thereafter, the present petition could be filed. The summons served upon Ram Kumar was not an adequate serve. The Trial Court having decreed the eviction petition in favour of the landlord has committed an illegality. Learned counsel for the petitioner has placed reliance upon AIR 1983 DELHI 288 Dr. H.S. Gandhi Vs. Smt. Abha Arora as also a judgment of a Bench of this Court in R.C. Rev. No.134/2013 delivered on 03.12.2013 to support his submission that unless summons is served upon the duly authorized agent of the tenant, it cannot qualify as a valid service.

These submissions have been refuted. Learned senior counsel for the respondent submits that Ram Kumar admittedly is the nephew of the tenant Bhawani Prasad and he was the duly authorized agent within the meaning of Rule 22 of the Delhi Rent Control Rules, 1959. He was authorized to receive summons on behalf of Bhawani Prasad. Additional submission being that an eviction petition had been filed by the landlord (Nawab Singh) against Bhawani Prasad and his nephew Ram Kumar as also the brother of Bhawani Prasad namely Ganga Shankar. This was a petition under Section 14 (1)(b) of the DRCA; ground being sub-letting; contention of the landlord being that Bhawani Prasad (the original tenant) had sub-let these premises. Summons in those proceedings had been served upon Ram Kumar at the same address i.e. shop No. 2733-A, Sadar Thana Road, Sadar Bazar, Delhi; attention has been drawn to the receipt of the summons

in that petition; these summons had been received by Ram Kumar. Pursuant to the receipt of these summons, the respondent had also put in appearance in those proceedings under Section 14 (1)(b) of the DRCA and for this attention has been drawn to the order dated 25.03.2015 passed by the Additional Rent Controller (ARC). Additional averment being that before the Trial Court on 01.04.2015, the tenant had put in his appearance and had filed his vakalatnama. He had not taken any time to move an application seeking leave to defend. Eviction petition was accordingly decreed in favour of the landlord in the absence of any such averment having been made.

This Court has noted the decree dated 01.04.2015. This Court also notes that the submission of the learned counsel for the petitioner before this Court that the petitioner/tenant learnt about the decree dated 01.04.2015 only on 03.07.2015 is clearly false as the order dated 01.04.2015 has marked the presence of the petitioner/tenant in the Court of the ARC. To a direct question put to the learned counsel for the petitioner on this score as to why there is a conflict on this score and although admittedly the appearance of the tenant has been marked before the Court of the ARC on 01.04.2015 but the averment made before this Court (in para 3 of the petition) that the tenant learnt about this eviction order only on 03.07.2015 but the learned counsel for the petitioner has no answer to explain this contradiction. This is a clear case where the petitioner is lying before this Court.

In the judgment of 2010 (1) RCR 53 Prthipal Singh Vs. Satpal Singh (dead) through its LRs, the Apex Court has noted that the

procedure contained in Section 25-B qua an eviction petition filed under Section 14 (1)(e) of the DRCA is a special procedure. After summons had been served upon the tenant, the tenant has to file his application seeking leave to defend within the stipulated period of 15 days. The procedure is strict. If leave to defend is not filed within the stipulated period of 15 days, the ARC has little option but to decree the eviction petition.

Although before this Court, the vehement submission of the learned counsel for the petitioner is that he was not served with the summons on 16.03.2015 but on repeated queries put to the learned counsel for the petitioner on this score i.e. as to how he learnt about the pleadings as to how he had put in his appearance on 01.04.2015 before the ARC, he has no explanation; it is obvious that after the summons had been received by his nephew Ram Kumar on 16.03.2015 and that is how on 01.04.2015, appearance had been put in by the tenant before the Court of the ARC. Ram Kumar in this ground has accepted the service validly. Even on that date, the tenant did not seek time to file his application seeking leave to defend. Moreover, the further falsification of the tenant is reflected in his conduct when before this Court he has on affidavit categorically stated that he has learnt about the eviction petition having been decreed against him only on 03.07.2015 whereas the record of the ARC speaks otherwise. It clearly records the appearance of the tenant/petitioner before the ARC on 01.04.2015.

A Bench of this Court while dealing with the eviction petition under Section 14 (1)(e) in 214 (2014) DLT 616 Shyam Sunder Wadhawan Vs. Vivek Arya had in this context noted the following conclusions regarding service of summons. It would be relevant to extract that conclusion in this factual matrix also. It reads herein as under:-

“16. The conclusions are:

(i) Merely because summons are addressed to the tenant but received by somebody else does not mean that in each and every such case the service is not a valid service whether there is or is not service/refusal depends upon the facts of each case.

(ii) If the summons is addressed to the tenant, and if the same is received by a person other than the tenant, but with consent/or knowledge or direction of the tenant, then the service is as effective as the service on the tenant. To clarify further, if summons are addressed to an agent of a tenant, then surely instead of the agent even the tenant himself can receive the same, then, why not a summons addressed to a tenant cannot be received by a person with consent or knowledge or direction of the tenant. A caveat: when a person other than the tenant receives the summons, the tenant must at that stage be in a place/state when he can file the leave to defend application within the prescribed period.

(iii) If the tenant uses subterfuges, including those cases where he is found to have endeavoured to conceal his personality, a Court can, depending upon facts of a particular case hold that there is service/refusal of the summons.

(iv) Service effected directly by affixation is not a valid service but affixation done following the refusal to receive summons is a valid service.

(v) Summons sent by registered post, when are avoided to be received by the tenant, then in such circumstances where it is clear that the tenant has the knowledge that he must receive the registered post article, but yet he does not, it can as per facts of a case, be held that there is service/refusal by the tenant. ”

In this factual narration, the impugned order suffers from no infirmity. The service on the tenant had been duly recorded; Ram Kumar was authorized to receive summons on behalf of Bhawani Prasad. Thus it is further fortified by the fact that in the petition under Section 14 (1)(b) of the DRCA where Bhawani Prasad and Ram Kumar were arrayed as the respondents, service was again effected on Ram Kumar and appearance of the respondent was recorded in the Court thereafter meaning thereby that Ram Kumar was duly authorized to receive summons on behalf of Bhawani Prasad as well. The certified copies of the order-sheets of that petition have been placed on record and are not disputed.

Petition is without any merit. Dismissed.

INDERMEET KAUR, J

FEBRUARY 26, 2016

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