

Court No. - 18

Case :- CIVIL MISC REVIEW APPLICATION No. - 86 of 2024

Applicant :- Mohd. Furqan (Dead) Thru. Legal Representative Smt. Ramzano And Others

Opposite Party :- A.D.J. (Ayodhya Prakaran) Dist. Lko And 2 Others

Counsel for Applicant :- Ausaf Ahmad Khan

Hon'ble Manish Mathur,J.

1. Heard Mr. Ausaf Ahmad Khan learned counsel for review applicant.
2. Application has been filed for review of judgment and order dated 31st May, 2024 passed in writ petition (Rent) no. 31 of 2009 whereby petition filed by review applicant challenging order dated 31st January, 2009 passed in SCC Revision No. 29 of 2006 was dismissed.
3. Learned counsel for applicant has raised five primary grounds for pressing the review application.
4. The first ground raised by learned counsel is that the aspect of land-lord tenant relationship has been misappreciated inasmuch as there is no finding either by the trial court or the revisional court of issuance of any rent receipts in favour of the tenant due to which land-lord tenant relationship could not have been assumed.
5. The second ground raised pertains to misappreciation of pleadings pertaining to service of notice of the tenant/writ petitioner. It is submitted that the provisions of Section 106 of the Transfer of Property Act pertaining to substituted service would prevail only after the earlier procedure as indicated in aforesaid Section stood failed. It is further submitted that since the notice under Section 106 of the Transfer of Property Act forms the basic cause of action for initiating eviction

proceedings against tenant, such notice having remained unproved in the face of rebuttal by the tenant, no cause of action at all existed for maintainability or entertainability of the eviction proceedings. It is also submitted that once the general presumption under Section 27 of the General Clauses Act stood rebutted by the tenant, it was incumbent upon the land-lord to have proved the effective service of notice under Section 106 of the Transfer of Property Act by production of post man as a witness and in the impugned judgment, the burden has incorrectly been placed upon the tenant for proving the rebuttal.

6. Learned counsel has thirdly submitted that Section 29-A of the Act No.13 of 1972 has been wrongly appreciated in the impugned judgment inasmuch as the first floor of the property in question has not been taken to be land whereas it would constitute land as indicated in the aforesaid Section.

7. It has also fourthly submitted that once the trial court failed to frame any issue with regard to Section 29-A of the Act of 1972 and such a proposition was adjudicated for the first time by the revisional court, it should have remitted the matter for fresh evidence on that aspect in terms of Section 25 of the Provincial Small Causes Courts Act and the revisional court could not have inhaled to itself finding on the aforesaid aspect by taking fresh evidence.

8. Learned counsel has fifthly submitted that aspect of Section 25 of Provincial Small Causes Courts has therefore been misappreciated by this Court in impugned judgment.

9. On the aforesaid factors, it is submitted that there is error apparent on the face of record which would require interference in the present review proceedings.

10. So far as the aspect of land-lord tenant relationship is concerned, the aforesaid aspect has been dealt with in the

impugned judgment as point of determination No.1 which has been held against the tenant-writ petitioner primarily on the ground that in his written statement, the tenant had made a statement that he had been admitted as tenant over the premises in question by the erstwhile owner Smt. Zaibul Nisha predecessor in interest of current land lord who was substituted whereafter it was stated that he had purchased the demised premises from her on adequate consideration being paid and on that basis the erstwhile owner had agreed to execute a sale deed, which was never executed.

11. The judgment impugned clearly indicates in paragraph 14 a concurrent finding of fact being recorded regarding admission of tenant regarding title of Smt. Zaibul Nisha over the premises in question as well as his admission that he was admitted as tenant in the aforesaid judgment. The judgment thereafter adverts to Section 3(g) and (j) of Act of 1972.

12. In the considered opinion of this Court, once ownership and Smt. Zaibul Nisha being the land-lord over demised premises had already been admitted by the tenant, the issuance of any rent receipts loses its importance. The judgment clearly has negatived point No.1 against the tenant primarily on the issue of admission on the part of tenant.

13. In the present review application, the aforesaid admission has not been resiled from.

14. The issue pertaining to notice under Section 106 of the Transfer of property Act has been dealt with as point of determination No.2 in the impugned judgment placing reliance on judgment rendered by Hon'ble Supreme Court in the case of M/s Madan and Company versus Wazir Jaivir Chand,(1989) 1 SCC 264. Relevant portion of the judgment has been quoted in the impugned judgment with the finding that in case of any

contradiction between Section 106 of Transfer of Property Act and Section 27 of the General Clauses Act, it would be provisions of Section 27 of the General Clauses Act, which would prevail.

15. With regard to such point of determination, learned counsel for review applicant has submitted that presumption of notice under Section 27 of the General Clauses Act by its very nature is general and subject to rebuttal and once the tenant had rebutted service of notice, it was incumbent upon the land-lord to have established the same by production of the post man.

16. Learned counsel for review applicant has placed reliance on judgment rendered by Supreme Court in the case of C.C.Alavi Haji versus Palapetty Muhammed and another, (2007) 6 SCC 555 to buttress his submission. However a perusal of paragraph 14 of the aforesaid judgment clearly does not aid the submissions of learned counsel for review applicant. The aforesaid paragraph is as follows:-

*"14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. **Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.** This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed. (Vide Jagdish Singh v. Natthu Singh [(1992) 1 SCC 647 : AIR 1992 SC 1604] ; State of M.P. v. Hiralal [(1996) 7 SCC 523] and V. Raja Kumari v. P. Subbarama Naidu [(2004) 8 SCC 774 : 2005 SCC (Cri) 393] .) It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved." (emphasis supplied)*

17. The aforesaid judgment clearly therefore is a proposition that unless and until the contrary is proved by the addressee,

service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

18. In view of such judgment by the Hon'ble Supreme Court, it is evident that once a tenant is rebutting the general proposition of Section 27 of the General Clauses Act, the burden will be upon such tenant to corroborate his rebuttal.

19. In the judgment under challenge, the aforesaid aspect has clearly been determined in consideration of the aforesaid judgment in the case of C.C.Alavi Haji (supra) as well as other judgments.

20. The aspect of remand of the issue decided by revisional court under Section 29-A as addressed by learned counsel for review applicant has also been determined as point of determination No.3 and 4 by the impugned judgment.

21. In paragraphs 37 and 38 of the judgment, the provisions of Section 29-A of the Act of 1972 has been examined while holding that no material was brought on record to indicate that the original defendant/tenant was ever able to prove consent of original land-lord, Smt. Zaibul Nisha with regard to erection of permanent structure.

22. In the present memorandum of review application, there is no aspect to the contrary indicated.

23. In view of discussions made herein above, there is no error apparent on the face of record evident as per submissions of learned counsel for applicant or even by material on record.

24. The review petition therefore fails and is dismissed.

Order Date :- 22.8.2024

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