



2025:AHC:180502

HIGH COURT OF JUDICATURE AT ALLAHABAD

S.C.C. REVISION No. - 189 of 2022

Smt. Kamlesh Kumari

.....Revisionist(s)

Versus

Harvinder Singh

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Anand Kumar Srivastava
Counsel for Opposite Party(s)	:	

Court No:- 55

Reserved On:- 20.8.2025

Delivered On:-10.10.2025

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Dr. S.B. Singh, learned counsel, holding the brief of Sri Anand Kumar Srivastava, learned counsel for the revisionist.

2. Nobody has put in appearance on behalf of the opposite party.

3. Brief facts of the case are that revisionist is the landlord of House No.122/235-1, Sarojani Nagar, Kanpur Nagar and the opposite party is the tenant of the aforementioned house, at the rent of Rs.1170/- per month, including taxes. Revisionist-landlord instituted a S.C.C. Suit before the Judge, Small Causes for arrears of rent, damages and eviction of the tenant from the house in question. The aforementioned S.C.C. Suit was registered as S.C.C. Suit No.79/2019. In the aforementioned S.C.C. Suit, defendant/tenant filed his written statement, denying the plaint allegations. In the aforementioned S.C.C. Suit, issues were framed and the parties adduced evidence in support of their cases. The Judge, Small Causes vide impugned judgment dated 5.11.2022, dismissed the S.C.C. Suit. Hence, this revision for the following reliefs:-

"It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to allow the revision and set-aside the judgment and order dated 5.11.2022 passed by Additional District Judge Court No.3, Kanpur Nagar in SCC Case No. 79 of 2019 (Smt. Kamlesh Kumari Vs. Harvinder Singh);

It is further prayed that this Hon'ble Court may be pleased to direct the court below to decide the SCC Case No. 79 of 2019 (Smt. Kamlesh Kumari Vs. Harvinder Singh) in accordance with law afresh within stipulated period;

And/ or to pass such and further order which this Hon'ble Court may deem fit and proper under the facts and circumstances of case, in favour of revisionist, so that justice may be done."

4. This Court entertained the matter on 16.12.2022 and issued notice to the opposite party. In pursuance of the order of this Court dated 16.12.2022, steps were taken by the learned counsel for the revisionist to serve the opposite party but nobody has put in appearance on behalf of the opposite party/tenant, hence, there is no option but to decide the instant revision on merit, on the basis of the averments made in the instant revision.

5. Learned counsel for the revisionist submitted that the Judge, Small Causes has recorded perverse finding while deciding the S.C.C. Suit filed by the revisionist/landlord. He submitted that while deciding the Issue No.3, the Judge, Small Causes recorded finding that no rent is due upon the defendant/tenant. He further submitted that S.C.C. Suit was instituted by the revisionist/landlord under Section 106 of the Transfer of Property Act, satisfying the condition prescribed under Section 106 of the Transfer of Property Act, as such, the suit filed by the landlord cannot be dismissed. He further submitted that the Judge, Small Causes has discarded the evidence lead by the revisionist, as such, the impugned judgment cannot be sustained in the eye of law. He further submitted that the impugned judgment is not in accordance with Section 2(2) of the Civil Procedure Code, as such, the same is not tenable in the eye of law. He placed reliance upon the judgment of the Apex Court reported in **1976 SCR (3) 551, Puwada Venkateswara Rao vs. Chidamana Venkata Ramana.**

6. I have considered the arguments advanced by learned counsel for the revisionist and perused the records.

7. There is no dispute about the fact that the revisionist is landlord and the opposite party is tenant. There is also no dispute about the fact that the S.C.C. Suit filed by the revisionist/landlord has been dismissed under the impugned judgment.

8. In order to appreciate the controversy involved in the matter, perusal of the three issues framed in the aforementioned S.C.C. Suit will be relevant which are as under:-

"आदेश 20 नियम 4 के अन्तर्गत लघुवाद न्यायालय के निर्णयों में अवधार्य प्रश्न और उनके विनिश्चय आज्ञापक रूप से होना चाहिए। अतः उक्त प्राविधान के दृष्टिगत इस न्यायालय के अभिमत में पक्षकारों के अभिवचनों तथा प्रस्तुत साक्ष्य के आधार पर निम्नलिखित अवधार्य प्रश्न उत्पन्न होते हैं, जिनका विनिश्चय किया जाना है:-

1. क्या वादी व प्रतिवादी के मध्य भवन स्वामी व किरायेदार का सम्बन्ध है?

2. क्या वादी द्वारा नोटिस अन्तर्गत धारा 106 सम्पत्ति अन्तरण अधिनियम दिनांकित 09.02.2019 विधिनुसार प्रतिवादी पर तामील कर प्रतिवादी की किरायेदारी समाप्त कर दी है ?

3. क्या प्रतिवादी 1,170/- रुपये प्रतिमाह की दर से वादी का किरायेदार है ?"

9. The finding recorded by the Judge, Small Causes on Issue No.2 will be relevant for perusal which is as under:-

"ऐसे में यह दायित्व वादिनी का था कि वह नोटिस की इंकारी सकारात्मक साक्ष्य के माध्यम से सिद्ध करती। पंजीकृत डाक द्वारा प्रेषित नोटिस के संबंध में साधारण खंड अधिनियम की धारा 27 इस उपधारणा का प्रावधान करती है कि यदि कोई पत्र पंजीकृत डाक के माध्यम से प्रेषित के सही पते पर प्रेषित किया गया है और वह 30 दिवस के उपरांत भी कोई सूचना प्राप्त नहीं होती है तो यह उपधारित किया जाएगा कि वह पत्र प्रेषित को प्राप्त हो गया है। प्रस्तुत वाद में उक्त उपधारणा प्रवृत्त नहीं होती क्योंकि वादिनी द्वारा स्वयं यह कथन किया गया है कि उसके द्वारा प्रेषित नोटिस प्रतिवादी ने लेने से इंकार कर दिया और वह उसे वापस प्राप्त हो गई। ऐसे में इस न्यायालय के अभिमत में उक्त इंकारी के तथ्य को सिद्ध करने के लिए सर्वोत्तम साक्ष्य वह पंजीकृत डाक द्वारा प्रेषित लिफाफा होता जिस पर प्रतिवादी की इंकारी का पृष्ठांकन है। सम्पूर्ण पत्रावली के परिशीलन से यह प्रकट है कि वादिनी द्वारा उक्त लिफाफा पत्रावली पर दाखिल नहीं किया गया है। इस सम्बन्ध में धारा 114 साक्ष्य अधिनियम का प्राविधान सुसंगत है। अतः स्पष्ट है कि न्यायालय यह उपधारित करने के लिए बाध्य है कि यदि वह लिफाफा पत्रावली पर दाखिल किया जाता तो वादिनी का वादपत्र में किया गया कथन कि वैधानिक नोटिस की तामिला प्रतिवादी पर इंकारी के आधार पर हो गयी है, असत्य सिद्ध होता। इसी कारण वादिनी द्वारा उक्त लिफाफा पत्रावली पर दाखिल नहीं किया गया है। अतः इस न्यायालय के अभिमत में उपरोक्त अवधार्य बिन्दु प्रतिवादी के पक्ष में तथा वादिनी के विरुद्ध निर्धारित किया जाता है।"

10. The perusal of the finding of fact recorded on Issue No.2

regarding service of notice issued by the landlord under Section 106 of the Transfer of Property Act upon the defendant, demonstrate that the Judge, Small Causes has recorded perverse finding regarding service of notice issued by the landlord under Section 106 of the Transfer of Property Act to the tenant.

11. Section 27 of the General Clauses Act, 1897 will be relevant for perusal which is as under:-

"Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

12. Paragraph No.27 of the General Clauses Act has been considered by this Court in the case reported in **AIR 2013 All 1969, Smt. Vandana Gulati vs. Gurmeet Singh alias Mangal Singh** and it has been held by this Court that notice sent by registered post to the person concerned at proper address is deemed to be served upon him in due course unless contrary is proved. Relevant portion of the aforesaid judgment rendered in **Smt. Vandana Gulati** (supra) will be relevant for perusal which are as under:-

"In view of the above, it is concluded that a notice under Section 106 of the Act can be sent in two ways i.e. by post or by tendering or delivering it personally. In tendering or delivering it personally it can be served upon a family member or a servant of the person concerned at his place of residence. In contrast, the notice sent by post can be addressed either at office or the residence.

In the above situation, the notice sent to the tenant at her official/business address would not stand vitiated.

Section 114 of the Indian Evidence Act, 1872 provides that the court may presume existence of certain facts, namely, where a letter is shown to have been posted in the common course of business and in the manner provided it may be presumed to have been served in the usual course unless interrupted by disturbance.

Section 27 of the General Clauses Act, 1872 explains the meaning of service by post. It provides that where any document is required to be

served by post, its service shall be deemed to be affected by properly addressing, prepaying and posting it to the person concerned by registered post unless contrary is proved.

The above provision of the Indian Evidence Act, 1872 raises a presumption of fact and that of Section 27 of the General Clauses Act, 1897 a presumption of law. The cumulative effect of both the above provisions is that a letter/notice sent by registered post to the person concerned at the proper address shall be deemed to be served upon him in the due course unless contrary is proved."

13. In the instant matter, notice under Section 106 of the Transfer of Property Act (paper no.9-ga-1) was sent by registered post (registered receipt paper no.10-ga-1) was on record before the Judge, Small Causes Court as mentioned in the impugned judgment, as such, dismissal of the suit by Judge, Small Causes, holding that notice under Section 106 of the Transfer of Property Act was not served upon the tenant, is wholly wrong.

14. The perusal of the judgment of the Apex Court passed in **Puwada Venkateswara Rao** (supra) will be relevant in order to demonstrate that the service of notice sent by the registered post in what circumstances will be deemed to be served upon the addressee

"A question raised before us by learned Counsel for the respondent is whether the notice sent by the respondent-landlord could be held not to have been served at all simply because the postman, who had made the endorsement of refusal, had not been produced. The Andhra Pradesh High Court had relied upon [Meghji Kanji Patel v. Kundanmal Chamanlal](#) (a), to hold that the notice was not served. There, a writ of summons, sought to be served by registered post, had been returned with the endorsement "refused". The Bombay High Court held that the presumption of service had been repelled by the defendant's statement on oath that he had not refused it as it was never brought to him. In this state of evidence, it was held that, unless the postman was produced, the statement of the defendant on oath must prevail. An ex-parte decree, passed on the basis of such an alleged service was, therefore, set aside. On facts found, the view expressed could not be held to be incorrect.

In **Nirmalabala Debi v. Provat Kumar Basa**(1), it was held by the Calcutta High Court, that a letter sent by registered post, with the endorsement "refused" on the cover, could be presumed to have been duly served upon the addressee without examining

the postman who had tried to effect service. What was held there was that the mere fact that the latter had come back with the endorsement "refused" could not raise a presumption of failure to serve. On the other hand, the presumption under [section 114](#) of the Evidence Act would be that, in the ordinary course of business, it was received by the addressee and actually refused by him. This is also a correct statement of the law.

The two decisions are reconcilable. The Calcutta High Court applied a rebuttable presumption which had not been repelled by any evidence. In the Bombay case, the presumption had been held to have been rebutted by the evidence of the defendant on oath so that it meant that the plaintiff could not succeed without further evidence. The Andhra Pradesh High Court had applied the ratio disdained of the Bombay case because the defendant-appellant before us had deposed that he had not received the notice. It may be that, on a closer examination of evidence on record, the Court could have reached the conclusion that the defendant had full knowledge of the notice and had actually refused it knowingly. It is not always necessary, in such cases, to produce the postman who tried to effect service. The denial of service by a party may be found to be incorrect from its own admissions or conduct. We do not think it necessary to go into this question any further as we agree with the High Court on the first point argued before us.

Consequently, this appeal is dismissed with costs."

15. The ratio of law laid down by the Apex Court in **Chidamana Venkata Ramana** (supra) clearly demonstrate that if the notice sent by the registered post has been returned with endorsement 'refused', shall be deemed to be sufficient service and the non-production of the postman in the court, will not come in the way to hold that service is sufficient upon the addressee. The aforementioned judgment of the Apex Court has been mentioned by the Judge, Small Causes along with other judgments on the issue but the S.C.C. Suit filed by revisionist/landlord has been dismissed on irrelevant consideration.

16. Considering the entire facts and circumstances of the case, the impugned judgment dated 5.11.2022 passed by the Judge, Small Causes Court in S.C.C. Suit No.79/2019 is liable to be set aside and the same is hereby set aside.

17. The S.C.C. Revision is allowed and the matter is sent back before the Judge, Small Causes to register the S.C.C. Suit No.79/2019 on its original number and decide the same afresh on the basis of three issues already framed in the matter, expeditiously, preferably within a period of 4 months from the date of production of the certified copy of

the order. It is further directed that Issue No.3 shall also be decided afresh in proper manner, after affording opportunity of hearing to the parties. The opposite party/tenant has not put in appearance before this Court, as such, the Judge, Small Causes shall issue proper notice to the opposite party/tenant in the suit proceeding so that the matter can be decided on merit, in accordance with law.

October 10, 2025
C.Prakash

(Chandra Kumar Rai,J.)