

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RC.REV. 66/2015 and CM Nos.2395/2015 (stay) & 4435/2015**
(modification)

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Reserved on: 05th May, 2015

Decided on: 29th May, 2015

SANTOSH JAIN

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with
Ms.Savita Malhotra, Ms. Suman and
Ms.Sahiba Pantel, Advocates.

versus

PRAVEEN KUMAR GUPTA & ANR

..... Respondents

Through: Mr. Sanjeev Sindhvani, Sr. Advocate
with Mr. Sidharth Aggarwal,
Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. An eviction petition was filed by Smt.Santosh Jain, the Petitioner under Section 14(1) (e) read with Section 25B of the Delhi Rent Control Act, 1958 (in short 'the DRC Act') on 28th September, 2010 for eviction of the tenanted premises in occupation of the Respondents Praveen Kumar Gupta and Manbhav Gupta on the ground that the tenanted premises was required bona fidely for her son who after having established as a lawyer requires the same to set up his law office.

2. In the Eviction Petition No.139/2010 the learned ARC issued notice on 28th September, 2010. Respondent No.1, Praveen Kumar Gupta was served by the Process Server through his employee on 13th October, 2010. Respondent No.1 was also served through the Registered Post but the date was not legible. Since no leave to defend was filed within 15 days of the service of the process on 13th October, 2010 vide order dated 23rd December,

2010, the eviction petition of Santosh Jain was allowed and an eviction order was passed against Praveen Kumar Gupta and Manbhav Gupta directing them to vacate Shop Nos.4750-51, Plot No.8, Deputy Ganj, Sadar Bazar, Delhi-110006, that is, the tenanted premises.

3. A review petition was filed by Praveen Kumar and Manbhav contending that the service of summons to the Respondents through Registered AD Post was never tendered to the Respondents at the tenanted premises. Sanjay Gupta, on whom summons were served, through ordinary process, was never their employee. Manbhav was not carrying on any business from the tenanted premises at the time when the service was effected but was working as Management Trainee with Phoenix and was not present in the tenanted premises on 13th October, 2010. Sanjay Gupta was not an employee of Praveen Kumar. Since no process came to be served on Praveen and Manbhav on 13th October, 2010 the order is required to be reviewed.

4. In the review petition it was further stated that on 28th May, 2011 Sudhir Kumar Jain, a shopkeeper of the locality, known to the husband of Smt. Santosh Jain informed Praveen Kumar that during talks between him and husband of Smt. Santosh Jain, he was informed that the premises was got vacated from three tenants and he is going to get the premises vacated from Praveen Kumar shortly. On hearing this Praveen Kumar got suspicious and thus found out the facts when it was revealed about the eviction petition being instituted and having been decided on 23rd December, 2010 in Room No.286. The file of eviction petition was inspected on 31st May, 2011 and thus the review petition was filed as the order was obtained on false allegations and concealment of facts.

5. After completion of pleadings, evidence was led by both the parties and vide impugned order dated 15th December, 2014 the learned ARC reviewed its order dated 23rd December, 2010 directing eviction of Praveen Kumar and Manbhav from the tenanted premises. The learned ARC held that even the ordinary summons were served on Sanjay Gupta who claimed to be an employee of Praveen Kumar and Manbhav and thus the same was not a proper service. Further the said Sanjay Gupta on whom ordinary summons had been served has not been proved to be an employee of Praveen Kumar and Manbhav and at best he was the cousin brother of Praveen and paternal uncle of Manbhav. In these circumstances Sanjay Gupta cannot be said to be the recognized agent of Praveen and Manbhav and thus there was no proper service on them.

6. Before this Court learned counsel for the Petitioner Smt. Santosh Jain refers to the statement of the postman and PW-3 Narender Kumar, the Process Server. Narender Kumar stated that the summons were received by one person whose signatures were at point 'C' and he prepared the report. However, he further stated that he cannot recognize the person who had signed the summons at point 'C' on Ex.PW-3/1 and 'D' on Ex. PW-3/2 since long time has elapsed. However, when Sanjay Gupta entered the Court room, PW-3 Narender Kumar identified him to be the same person on whom he served the summons and there was valid service of summons on Respondents.

7. With regard to the service of summons by Registered AD, PW-5 Satish Chander, the postman deposed that he delivered the registered envelop on which AD card was annexed, exhibited as Ex.PW-5/1, to Praveen Kumar who was present in Court at the address mentioned in the AD card.

Thus in view of the evidence of these two witnesses there was proper service of summons on Praveen Kumar and Manbhav and the impugned order suffers from grave illegality. Reliance is placed on S.P. Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by LRs., AIR 1994 SC 854 and Meghmala and others vs. G.Narasimha Reddy and others, 2010 (8) SCC 384 to contend that where the order is vitiated by fraud and the Respondent acted with the postman in collusion and defrauded no order could have been passed in favour of the Respondent by the learned ARC. Relying on Indu Bhushan vs. Munna Lal and another, AIR 2007 SC 1114 it is contended that where summons was properly addressed, pre-paid and duly sent by registered post acknowledgement due, the Court issuing the summons shall declare that the summons had been duly served on the defendant.

8. Learned counsel for the Respondents on the other hand contends that special provisions have been made under Section 25B (3) and (4) of the DRC Act for service of summons for an eviction petition under Section 14 (1) (e) of the DRC Act. Service of summons on tenant is required to be effected personally or in the name of agent who is duly authorized. Sanjay Gupta was never an employee of Praveen Kumar and Manbhav and in any case Sanjay Gupta was not able to show any authorization that he had from Praveen Kumar and Manbhav and no summons were issued in the name of Sanjay Gupta as the agent of Praveen Kumar and Manbhav. Sanjay Gupta has clearly denied himself to be the agent of Praveen Kumar and Manbhav. Admittedly, Manbhav has never been served and in the absence of service to one of the co-tenants, the order of eviction was bad in law. Reliance is placed on Subhash Anand vs. Krishan Lal, 27 (1985) DLT 269; Kanta

Thapar vs. Brij Nandan, MANU/DE/3810/2011 and Jor Singh vs. Sanjeev Sharma, 2013 (205) DLT 117.

9. I have heard learned counsel for the parties. The question whether service was effected on Praveen Kumar or not has to be determined from the evidence of the witnesses, that, is the postman and the process server.

10. Respondents Praveen Kumar and Manbhav examined themselves as RW-1 and RW-3 respectively. Sudhir Kumar Jain, who informed about the eviction of the premises to Praveen Kumar, was examined as RW-2. Anil Kumar Jain, husband of Smt. Santosh Jain was examined as PW-1, Rajiv Sharda, the Nodal Officer, Reliance Communication Ltd. as PW-2, Narender Kumar, the Process Server as PW-3, Sanjay Gupta as PW-4, Satish Chander, the Postman as PW-5 and Suresh Chand Jain as PW-6.

11. The Petitioner's witnesses, that is, Anil Kumar Jain PW-1 reiterated the version of Santosh Jain in the eviction petition. Narender Kumar, the Process Server, PW-3 exhibited the copies of summons as Ex.PW-3/1 and Ex.PW-3/2. He also pointed out at the address mentioned in the summons. He stated that the summons were received by one person who signed at points 'C' and 'D' and he gave his report as Ex.PW-3/1. He also said that he could recognize the person on whom he served the summons. In the meantime, Sanjay Gupta entered the Court room and he identified Sanjay Gupta as the person on whom he effected the service of summons on behalf of the Respondents. Sanjay Gupta who appeared as PW-4 stated that he knew Praveen Kumar who was his cousin. He had gone to the shop of Praveen Kumar lastly about 15-20 days back. He had no business dealings with Praveen Kumar nor his wife has any business dealing with Praveen Kumar. He stated that on 13th October, 2010 he was not present in the shop

of Praveen Kumar. He reiterated that he never visited the shop of Praveen Kumar Gupta. Sanjay Gupta has been produced by the Petitioner and from his evidence it is clear that he was not even agent of Praveen much less a recognized agent and any service affected on Sanjay Gupta by the Petitioner in the Eviction Petition No.139/2010 was invalid.

12. As regards the Registered AD, PW-5 Satish Chander deposed that he served the registered envelop with AD to Praveen Kumar. In his cross-examination he stated that though he knew Santosh Jain and Anil Jain, he denied the suggestion that he had manipulated the documents in collusion with Santosh Jain. Learned ARC held that the date of service of registered AD was not clear and hence the 15 days time cannot be calculated on the basis of service through Registered AD, however, the learned ARC does not hold that no service was affected on Praveen Kumar through Registered AD. In fact Satish Chander has deposed about service affected on Praveen Kumar. Even if the date of service is not clear, it is presumed that local service would have been affected within seven days from 11th October, 2010 when it was dispatched by Registered Post.

13. Section 25B (3) (a) & (b) & (4) DRC Act provides as under:

“(3) (a) The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgement due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain .

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.”

14. Supreme Court in Prithipal Singh (Dead) through LRs. vs. Satpal Singh, 2010 (2) SCC 15 laid down that Section 25B DRC Act is a special provision for eviction on the ground of landlord pleading bona fide requirement and is a complete code by which the entire procedure to be adopted for eviction on the ground of bona fide requirement has to be followed and thus has an overriding effect and the provisions of CPC would not be applicable. Thus, only to the extent Section 25B DRC Act which is a special provision is silent recourse can be had to the general provisions of CPC. Proviso to Order V Rule 9(5) CPC as relied upon by the learned ARC is reproduced as under:

“9 Delivery of summons by Court.-

(5) When an acknowledgment or any other receipt purporting to be signed by the defendant or his agent is received by the Court or postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons or had refused to accept the summons by any other means specified in sub-rule (3) when tendered or transmitted to him, ‘- the Court issuing the summons shall declare that the summons had been duly served on the defendant:

Provided that where the summons was properly addressed, pre-paid and duly sent by registered post acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of issue of summons.”

15. A perusal of Order V Rule 9(5) CPC would reveal that the Court is empowered to give a declaration of service if till 30 days the acknowledgement due is not returned back. However, this rule does not provide for fixing the date on which the opposite party would be deemed to be served. Section 25B(4) notes that if at the address at which the tenant or his agent actually or voluntarily resides or carries on business, notice is sent by registered AD and an acknowledgement of refusal to take delivery by registered article is received, the Controller may declare that there has been valid service of summons. The date on which summons would be deemed to be served is not provided in Section 25B DRC Act. This issue came up for consideration before the Division Bench of this Court in Roger Enterprises Private Limited vs. Renu Vaish, 1998 (44) DRJ (DB) and it was held that if

the notice was posted by registered post on 5th February, 1996 and the addressee is local there is no reason to believe that the notice would have been served beyond 14th February, 1996. The reasoning for coming to this conclusion is that in case the registered AD is not received back then it is deemed to be served within 7 days.

16. Learned counsel for the Respondent has relied upon the decision of this Court in Subhash Anand (supra). However, in the said decision this Court was faced with the fact that the summons were not addressed to any agent empowered to accept the service on behalf of the tenant, the summons sent through ordinary process were not served at all and the once sent through Registered Post Acknowledgment Due were not served on the tenant but on one Neelam Anand. As noted above, this Court has already discarded the service on Sanjay Gupta through ordinary process however, the issue which is required to be considered is with regard to the process served through Registered Post Acknowledgment due on the Respondent Praveen Kumar himself. In Kanta Thapar (supra) this Court followed the decision in Subhash Anand (Supra) which has no application to the facts of the present case. Even in Jor Singh (supra) this Court discarded the service upon an unidentified person which has already been done by this Court in the present petition.

17. Thus the notice by Registered Post having been sent on 11th October, 2010 as is proved, it would be served latest by 18th October, 2010. However, no leave to defend was filed within 15 days of 18th October, 2010 as well. PW-5 Satish Chander has deposed that he was assigned the area of Deputy Ganj from the last 8-10 years and knew Praveen Kumar because he was delivering letters regularly in that house. He denied the suggestion of

manipulation and apparently no manipulation has been proved by the Respondents. The only finding of the learned Trial Court on this point is that the date of receipt was not legible which in view of the decision of this Court in Roger Enterprises (supra) as noted above would be seven days from the date of posting of Registered Post. The impugned order suffers from gross illegality as it rejects the service by Registered AD merely on the ground that the date was not legible. Consequently, the impugned order is set aside. The order of the learned ARC dated 23rd December, 2010 is restored.

18. The petition and applications are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

MAY 29, 2015
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