

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ RC.REV. 119/2015 & CM 4511/2015 (stay)**

**% Decided on: 21<sup>st</sup> May, 2015**

SAMPAT KUMAR ..... Petitioner  
Through Mr. Shashindra Tripathi, Adv.

versus

SMT RAMA KAPOOR & ANR ..... Respondent  
Through Mr. B.B. Gupta, Mr. Sanyam  
Khetarpal, Advs.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**MUKTA GUPTA, J. (ORAL)**

1. Aggrieved by the order dated 12<sup>th</sup> January, 2015 whereby the application for leave to defend filed by the petitioner Sampat Kumar in an eviction petition filed by the respondent Smt. Rama Kapoor and Mr. Rajeev Kapoor was dismissed being time barred, the petitioner prefers the present petition.

2. Rama Kapoor and Rajeev Kapoor filed an eviction petition in respect of a shop and a kolki situated on the ground floor of property bearing No.64/1(Part), near House No.269, Katra Pedan, Tilak Bazar, Delhi-110006 on the ground that the same was required bonafidely for the wife of Rajeev Kapoor who wants to settle a business of general merchandise and stationery from the tenanted premises to add to the income of the eviction petitioners.

3. Summons in the eviction petition in form prescribed under Schedule III of the DRC Act were issued vide order dated 15<sup>th</sup> May, 2013. Vide order dated 17<sup>th</sup> September, 2013 the Court noted that summons as per prescribed form sent to the respondent by ordinary process at address were received unserved with the remarks “*shop is lying closed for long time*” and by registered post were received back unserved with the remarks “*premises found locked*”. On the second address summons sent in the prescribed form by way of ordinary process were received back unserved with the remarks “*no such person resides*”. The Court noted that the application for leave to defend was filed by the petitioner on 3<sup>rd</sup> July, 2013, however in the said application there is no mention when service was effected on the petitioner. Thus, the petitioner was directed to file envelope i.e. registered post to show when service was effected on the petitioner.

4. Despite opportunities petitioner refrained from filing the envelope when on 19<sup>th</sup> December, 2014 one final opportunity was given to the petitioner to furnish proof of service of summons duly affirmed on affidavit. In compliance of the order dated 19<sup>th</sup> December, 2014 passed by the learned ARC the petitioner filed an affidavit dated 3<sup>rd</sup> January, 2015 stating that the petitioner received the summons on 19<sup>th</sup> June, 2013 in the eviction petition pending before this Court through post and the application for leave to defend along with affidavit was filed on 3<sup>rd</sup> July, 2013 i.e. within 15 days. The petitioner, however, deposed that he was not in a position to place on record the envelope as the same was not in a good position and was in a torn condition.

5. Thus, the learned Trial Court heard the parties on this aspect and vide the impugned order came to the conclusion that in view of the Order V Rule

9(5) proviso to the CPC enjoins the Court to declare that the summons were duly served upon the defendant if the acknowledgement is lost or mislaid or for any other reason, it is not received by the Court within 30 days from the date of issuance of summons and held that it would be deemed that the petitioner had been served on or before 20<sup>th</sup> June, 2013 as per Order V Rule 9(5) proviso CPC and the leave to defend having been filed after the lapse of statutory period of 15 days the eviction petition was allowed and an eviction order was passed vide the impugned order on 12<sup>th</sup> January, 2015.

6. Both the learned counsel for the parties do not dispute the position that this finding of the learned Trial Court calculating the period between the 20<sup>th</sup> June, 2013 to 3<sup>rd</sup> July, 2013 being beyond 15 days is erroneous.

7. Learned counsel for the petitioner contends that in the absence of acknowledgement due letter having been received back after a period of 30 days it would be deemed to be served thus the summons having been issued on 19<sup>th</sup> May, 2013 and sent by post on 20<sup>th</sup> May 2013 they would be deemed to be served on or before 20<sup>th</sup> June, 2013 and leave to defend application having been filed on 3<sup>rd</sup> July, 2013 i.e. within 15 days could not have been dismissed being beyond period of 15 days.

8. Learned counsel for the respondent on the other hand contends that Order V Rule 9(5) proviso has no application to the facts of the case. Chapter 25B is a complete code in itself as held by the Supreme Court in Prithipal Singh (Dead) through LRs, vs. Satpal Singh, 2010 (2) SCC 15 and for the said purpose reference cannot be made to the provisions of CPC. Even otherwise the Division Bench of this Court has already taken a view that if the notice posted by registered post is not received back it will be deemed to be served in the period of 7 days. The service being deemed to be

within 7 days of the date of posting i.e. 20<sup>th</sup> May, 2013 leave to defend filed was clearly beyond period of limitation. Reference is made to Roger Enterprises Pvt. Ltd. Vs. Renu Vaish 1998 (44) DRJ (DB) 322. Hence even if the calculation of the learned ARC was wrong on the facts of the case as noted above, the leave to defend application was filed beyond period of 15 days, hence was required to be dismissed.

9. Heard learned counsel for the parties. Admittedly summons to the petitioner have not been served by ordinary process at both the addresses and by registered process at the first address. As regards service of summons through registered acknowledgement at the first address, the registered AD was posted on 20<sup>th</sup> May, 2013. The AD card has not been returned back and thus it will have to be considered as to when the petitioner would be deemed to be served. Section 25B (3)(a)&(b) & (4) 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.”

10. Supreme Court in *Prithipal Singh (supra)* laid down that the provision of Section 25B DRC Act have an overriding effect and the provision 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. Order V Rule 9(5) proviso 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.”

11. Thus a perusal of Order V Rule 9(5) 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 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 (supra) and the Court held that if the notice was posted by registered post on 5<sup>th</sup> February, 1996 and the addressee is local there is no reason to believe that the notice would have been served beyond 14<sup>th</sup> 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. As noted above the petitioner does not refute the service affected on him by Registered AD at the second address.

12. After prolonging the litigation and taking time for filing the envelope of the registered AD, on 5<sup>th</sup> January, 2015 for the first time the petitioner filed the affidavit that he has received the summons on 19<sup>th</sup> June, 2013. It is nowhere explained as to how the summons were received and who received

the summons. This fact was not mentioned in the leave to defend application. The affidavit of the petitioner being clearly an afterthought cannot be relied upon and hence in view of the general principles under the postal regulations the summons having been sent to the petitioner through registered AD on 20<sup>th</sup> May, 2013 would be deemed to be served by 27<sup>th</sup> May, 2013. Thus the leave to defend application filed by the petitioner is beyond the period of 15 days.

13. Though the reasoning of the learned ARC to come to the conclusion is wrong. In view of the aforesaid discussion it is held that leave to defend application was filed belatedly and since time period for filing the leave to defend cannot be extended the order directing eviction of the premises cannot be set aside.

14. Petition and application are dismissed accordingly.

**(MUKTA GUPTA)**  
**JUDGE**

**MAY 21, 2015**  
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