

* **HIGH COURT OF DELHI AT NEW DELHI**
+ **RC. Revision No.117/2015 & C.M. No.4342/2015**

Decided on : 14th September, 2015

ANIL BAJAJ & ANR. Petitioners

Through: Mr. M.P. Sharma, Advocate.

Versus

KIRAN MEHTA & ANR. Respondents

Through: Mr. S.L. Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioners by virtue of which two orders, that is, order dated 18.3.2013 and 27.10.2014 have been assailed. The first order is an order of eviction passed against the petitioners under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 on the ground of *bona fide* requirement and the second order has been passed by the learned Additional Rent Controller rejecting the application of the present respondents under Section 25-B (9) of the Delhi Rent Control Act for reviewing the earlier order.

2. Brief facts of the case are that the respondents herein filed an eviction petition against the petitioners under Section 14 (1) (e) of the DRC Act. It was stated in the eviction petition that the respondent is the owner and landlord and the present petitioners are occupying two rooms, kitchen situated on the first floor and common toilet on the ground floor, more specifically shown in red in the site plan, in property No.2684, Gali

No.3, Shadipur Main Bazar, New Delhi on a monthly rent of Rs.1,450/-.

The said premises was required by the respondents for residential purpose for his own use and his family members. It was further averred by him that he does not have any other alternative suitable accommodation available to him. Notice of the eviction petition was sent to the petitioners by registered post which was received unserved with the report that the respondents were not found available at the premises in question. Notice was also sent through Process Server, Ganpat Singh, who submitted a similar report. The trial court recorded the statement of Ganpat Singh on 11.12.2012, who stated that the premises was found locked and upon inquiry from the neighbourhood, he learnt that the premises were lying locked for considerable period of time and the occupants rarely visit the said premises. A copy of the notice was also pasted on the main door of the premises and the report was exhibited as Ex. P-1. Since the petitioners could not be served by ordinary means, the respondents filed an application under Order V Rule 20 CPC for effecting substituted service on the petitioners. This application was allowed and a publication was inserted in newspaper '*Veer Arjun*' on 19.2.2013 for appearance of the petitioners. Despite the notice having been inserted in the newspaper and a copy thereof having been sent at the address where the petitioners were living, no appearance was put in by the petitioners nor any application seeking leave to defend was filed by them or on their behalf. Since the eviction petition was not contested by filing the leave to defend, the learned Additional Rent Controller passed an order of

eviction on 18.3.2013 against the petitioners in respect of the premises in question.

3. It was also observed that the decree could not be executed for a period of six months under Section 14 (7) of the DRC Act. The petitioners herein learnt about passing of the decree and took steps by filing an application under Section 25 (9) of the DRC Act. It was averred by the petitioners herein that as his water and electricity was disconnected, therefore, he had filed a case under Section 45 of the DRC Act bearing No.U-21/2011 for restoration of water supply in which the petitioner appeared on various dates regularly. These dates are given in the impugned judgment also. It is the case of the petitioners that in this petition under Section 45 of the DRC Act, the respondent was appearing; however, he never informed him about the pendency of the eviction petition. The petitioner on learning about the eviction order having been passed, filed the application contending that the steps for service of the petitioner by substituted service ought to have been taken by the Additional Rent Controller only after satisfying itself that it was not possible to serve the petitioner by ordinary process and since in the instant case, these things were not done, therefore, the petitioners could not be deemed to have been served by way of substituted service and the order of eviction deserve to be set aside.

4. For the purpose of this proposition, the learned counsel for the petitioners sought to place reliance on *Teharoonchand vs. Messrs.*

Surajmull Nagarmull; AIR 1984 Calcutta 82 wherein it has been observed as under :-

“9. As regards service through registered post, the registered cover shows that the addressee was not met on different occasions. There was thus no tender of the registered cover to the addressee. It is true that under the law service of summons under Order 5, Rule 20 of the Code shall be as effectual as if it had been made on the defendant personally. Before issuing summons under Order 5, Rule 20 of the Code, the Court is to be satisfied that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason summons cannot be served in the ordinary way. Before such satisfaction, the Court has to consider the case carefully having regard to the nature of the earlier attempts made for the service of summons. Mere assertion of the plaintiff in this respect to attract the provisions of Order 5, Rule 20 of the Code will not be enough. Only when the Court is satisfied from the materials on record that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason summons cannot be served in the ordinary way, the Court will be entitled to order service of summons under Order 5, Rule 20 of the Code. In the instant case, all these questions did not appear to have been properly considered before issue of the summons under Order 5, Rule 20 of the Code. The learned trial court has failed to exercise jurisdiction properly. In this matter the learned appellate court has not come to any finding regarding the service of summons.”

5. It has been contended by the learned counsel for the petitioners that as the court was not satisfied by issuance of ordinary process on the very first date, further steps ought to have been taken by the court to ensure

service by ordinary means in the first instance before affecting service through substituted manner and the record does not show, in the instant case, that such an exercise was done, therefore, the decree of eviction could not have been passed and the petitioners should have been permitted to file leave to defend and contest the petition.

6. I have carefully considered the submission made by the learned counsel for the petitioners. I do not agree with the contention of the learned counsel that substituted service could not have been affected on the petitioners or that summons need to be issued to a party repeatedly before steps for service by way of substituted service are taken. In case it is evident on the very first date when the summons are issued that the petitioners are trying to keep away from the proceedings by hook or by crook, then substituted service can be affected even after the first date. In the instant case, it is not disputed that summons were issued to the petitioners which were taken by the Process Server. The Process Server had specifically repeated that there was no one living at the address in question and therefore, was not possible to serve the petitioners in the aforesaid circumstances by ordinary means. This was also corroborated by a resident of the same vicinity, who stated that the occupants of the tenanted premises hardly live at the premises and they rarely visit the tenanted premises. The petitioner has himself admitted in his application for setting aside the service of the petitioner in respect of the suit in question that after his alleged accident, he had shifted to the house of some relative. Obviously in case he had shifted, he would not have been

available, therefore, it was his responsibility to have ensured that summons, letters or notices received from the court are either received by him personally or he ought to have been ensured that somebody should have been available to intimate him about the pendency of the eviction petition. This fact in itself confirms that it was not possible to serve the petitioner by ordinary process and there was thus, nothing wrong in issuing notice under Order V Rule 20 CPC for substituted service.

7. Since the petitioner even failed to appear in response to the substituted service, there was no illegality or impropriety in passing the order rejecting his application under Section 25 (9) of the DRC Act. Since the application itself has been dismissed so far as the main order dated 18.3.2013 is concerned, that also does not suffer from any illegality or irregularity warranting interference by this court.

8. So far as the judgment relied upon by the petitioner is concerned, that is of no help to him because it does not lay down that process under Order V Rule 20 CPC had to be issued only after summons have been issued number of times against a party.

9. In totality of circumstances, I feel that the present petition does not have any merit and accordingly, the same is dismissed.

V.K. SHALI, J.

SEPTEMBER 14, 2015
‘AA’