

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

+ **RC.REV. 182/2014 and CM No. 9253/2014 (Stay)**

% Decided on: 15th January, 2015

SH. DEEPAK SAPRA

..... Petitioner

Through: Mr. Zishaan Iskandari and Mr. Pranay
Jha, Advocates.

versus

SH. ARUN GUPTA & ORS

..... Respondents

Through: Mr. S.N.Gupta, Mr. Pushti Gupta and
Mr. Nishtha Garg, Advocates.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The Petitioner is aggrieved by the order dated 28th February, 2014 whereby the eviction petition of the Respondents was allowed and order of eviction was passed against the Petitioner under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act').

2. The impugned order was passed for the reason that despite service of summons in the prescribed form under Schedule-III of the DRC Act being served on the Petitioner by way of ordinary process on 17th January, 2014 and also by Registered Post no application for leave to defend was filed within the prescribed period. It is trite law as laid down in *Prithpal Singh vs. Satpal Singh, 2010 (2) SCC 15* that no extension of time can be granted in filing the leave to defend application.

3. The contention of the learned counsel for the Petitioner before this Court is that summons by ordinary process were not served on the Petitioner and hence the same was not a valid service. Therefore, the time for filing of leave to defend application had not expired. A perusal of the service report as annexed as Annexure-P3 to the petition would show that on 17th January, 2014 the Process Server reached the tenanted premises where he found one Sunil Kumar Sharma, who informed himself to be the servant of Deepak Sapra, the Petitioner herein and stated that Deepak Sapra came to the said premises off and on and thereafter on talking on phone with Deepak Sapra the summon and copy of the eviction petition was served on Sunil Kumar Sharma on behalf of Deepak Sapra. Thus there was service on the petitioner. In fact in the petition the petitioner states that he enquired from Sunil Kumar Sharma as to why he did not communicate about the service of summons to which he reluctantly told that he had forgotten and thus the leave to defend application could not be filed in time. In the petition there is no challenge whatsoever to the service of summons through the Registered AD Post.

4. Learned counsel for the Petitioner relies on the decision of this Court in Devender Nath vs. Mohd. Asim, 2013 (204) DLT 141. In the said decision the Registered Post service was returned on the ground that the Petitioner was out of station and the service through ordinary process could not be conducted upon the tenant therein and thus the Process Server went to some other address wherein he was introduced to some Ajeet who was stated to be the Manager of the company. Further in Devender Nath admittedly no service was effected through Registered AD as the same was received back

with the endorsement, 'out of station'. In this context this Court held that there was no proper service of summons to the tenant.

5. Rule 22 of Delhi Rent Control Rules, 1959 provides as under:

“22. Service of notice, etc.-Unless otherwise provided by the Act, any notice or intimation required or authorized by the Act to be served on any person shall be served,-

(a) by delivering it to the person; or

(b) by forwarding it to the person by registered post with acknowledgment due.”

6. In the present case as noted above there is no challenge to the service of notice through Registered AD. As regards the service in person as contemplated by Rule 22 (a) DRC Rules are concerned, the same was done at the tenanted premises where it was stated that the petitioner was not regularly visiting the premises and after talking to the petitioner who stated that the service could be handed over to his servant, Sunil Kumar Sharma, service was effected. Indubitably, Rule 22 must be complied with in letter and spirit before an eviction order is passed but an interpretation which permits an unscrupulous tenant to get away by avoiding service of summons cannot be the requirement of the provision.

7. The next contention urged before this Court is that there were two tenants, that is, Ansi Lal and Deepak Sapra and summons ought to have been sent to Ansi Lal and Deepak Sapra separately. However in the petition it is stated that Ansi Lal was father of Deepak Sapra who died on 31st December 2011. Admittedly, the Petitioner Deepak Sapra is son of Ansi Lal, who has

passed away and as per the eviction petition the tenancy was a single tenancy in joint name of Ansi Lal Deepak Sapra and thus it was served as such.

8. Thus a valid service having been effected and leave to defend application having not been filed in the prescribed period of 15 days, the eviction petition was rightly allowed. Consequently, I find no infirmity in the impugned judgment. Petition and application are dismissed accordingly.

(MUKTA GUPTA)
JUDGE

JANUARY 15, 2015
‘vn’