

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

+ **CM(M) 1040/2010 & CM 14488/2010 (stay)**

% Reserved on: 11th March, 2015
Decided on: 15th April, 2015

ADIL HUSSAIN

..... Petitioner

Through

Mr. Wills Mathews with Mr. Jitto
Joseph, Advs.

versus

AMTUL SHAMIM

..... Respondent

Through

Mr. Dharam Vir Singh, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The respondent filed an eviction petition against the petitioner under Section 14(1)(a) of the Delhi Rent Control Act, 1958 (in short the DRC Act) claiming himself to be the landlord/owner of property bearing No. 343, Gali No.18, Jafrabad, New Seelampur, Delhi. The petitioner is a tenant in respect of one shop measuring 10 feet x 7 ½ feet situated on the ground floor of the property. The tenancy was created in the year 1990 and the rate of rent at the time of filing of the petition was ₹1000/- per month apart from ₹300/- towards electricity charges which were provided to the petitioner from electricity connection in the name of the husband of the respondent. It is stated that the petitioner has neither paid any rent nor electricity charges since May 2003 and hence a notice dated 29th May, 2004 was sent by the respondent to the petitioner through registered post as well as UPC, however

despite service of notice the petitioner neither paid the rent nor replied. The notice sent through registered post was received back unserved with remarks “intimation delivered”.

2. In the written statement filed by the petitioner service of notice was denied. It was stated that rent of tenanted premises was ₹100/- per month excluding electricity charges. Since the inception of tenancy, the husband of the respondent represented himself as the landlord and the rent was paid to the husband of the respondent every month @ ₹100/- per month from inception of the tenancy up to 31st March, 2004. Later it was revealed that the husband of the respondent was not the landlord and thus the petitioner approached the respondent to tender the arrears of rent with effect from 1st April, 2004 to 30th June, 2005 @ ₹100/- per month which she refused to accept. Thus, the petitioner deposited the same before the learned ARC.

3. The learned ARC decided the relationship of landlord tenant in favour of the respondent and determined that the rate of rent of the premises in question @ ₹1000/- per month along with electricity charges @ ₹300/- per month with effect from May 2003 till date and directed to deposit the same within one month from the date of order with liberty to adjust the rent already deposited in the Court vide order dated 4th July, 2009. The appeal filed by the petitioner was also dismissed vide impugned order dated 2nd July, 2010.

4. The only issue urged before this Court by learned counsel for the petitioner is that in the absence of a valid notice being served on the petitioner the impugned order could not be passed. Learned counsel for the

petitioner submits that for returning a finding that arrears of rent not being paid despite service, the service of notice is essential. Rule 22 DRC Rules is a special provision and is required to be followed in principle. Since it is a special provision recourse could not have been taken to Section 27 of the General Clauses Act to raise the presumption that notice was deemed to be served. Reliance is placed on Fakir Mohd. (Dead) by Lrs. Vs. Sita Ram (2002) 1 SCC 741; Shiv Kumar & Ors. Vs. State of Haryana & Ors. (1994) 4 SCC 445; L.M.S. Ummu Saleema Vs. B.B. Gujaral & Anr. (1981) 3 SCC 317; Prime Industries & Ors. Vs. Rafeeq Ahmad 67 (1997) DLT 121; Kanwal Raj Sadana Vs. D.D. Saigal 58 (1995) DLT 814 and HDFC Bank Ltd. Vs. Amit Kumar Singh 2009 (4) Crimes 772 (Del.).

5. Learned counsel for the respondent on the other hand contends that since demand notice dated 29th May, 2004 was sent both by registered post as well as UPC and even accepting that registered post was returned back with the endorsement “intimation delivered”, the demand notice by way of UPC having been delivered, the requirement of Section 14(1)(a) stood complied with, thus there is no fallacy in the impugned order. Reliance is placed on M/s. Madan and Co. Vs. Wazir Jaivir Chand AIR 1989 SC 630; Vinod Khanna & Ors. Vs. Bk. Sachdev 1995 RLR 431; Kamal Raj Sadana Vs. D.D. Saigal 1995 RLR 406; Narain Dass P. Godhwani Vs. Nenu Mal (Now Decd.) 2014 (4) CLJ 488 Del. And Shoki Chaudhary Vs. Mukesh 2015 (1) CLJ 137 Del.

6. Heard learned counsel for the parties. Section 14(1)(a) DRC Act provides that service of notice of demand for the arrears of rent by the landlord to the tenant should be done in the manner provided in Section 106

of the Transfer of Property Act, 1982 (in short the TP Act). Section 106 sub-Section 4 provides that every notice under sub-Section 1 of Section 106 must be in writing, signed by on or behalf of the person giving it, and be sent either by post to the party who is intended to be bound by it or delivered personally to such party, or to one of his family members or servants, at his residence (if such tender or delivery is not practicable) to affix at a conspicuous part of the property. Further Rule 22 of the DRC Rules 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 acknowledgement due.”

7. Since Section 14(1)(a) specifically provide for service of demand notice as provided under Section 106 of the TP Act, Rule 22 of DRC Rules will have no application. In the present case the respondent has exhibited the legal notice of demand Ex.PW-1/B being sent by the registered post, the receipt whereof is Ex.PW-1/C and the return envelope Ex.PW-1/E. He also exhibited the receipt in regard to the notice being sent through UPC vide Ex.PW-1/D. The petitioner in his cross-examination admitted that the address mentioned on the postal certificate Ex.PW-1/D bears the correct address of the petitioner.

8. A Division Bench of this Court in Vinod Khanna & Ors. Vs. Bk Sachdev 1995 RLR 431 reiterated the basic law of presumption of service of

notice under Section 27 of the General Clauses Act and also under Section 114 of the Evidence Act. Relying upon *Hari Har Banerjee Vs. Ram Shashi Roy AIR 1918 Privy Council 102* wherein it was held that if a letter properly directed, containing a notice to quit, is proved to have been put in the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of post office.

9. In the present case even ignoring service through registered AD, proper service would be deemed to have been effected of the legal demand notice on the petitioner in view of the correct address on the notice sent through UPC. The petitioner has failed to rebut the said presumption.

10. In *Fakir Mohd. Case (supra)* tenant had sent notice to the landlord asking the details of his bank account so as to deposit rent in the account. At the first instance tenant had not raised the plea that notice was sent by registered post but belatedly produced a certificate by means of application under Order 13 Rule 2 CPC and the address of addressee/landlord on copy of notice was different from that on the certificate. Thus, in such a case presumption cannot be raised. In the case of *Shiv Kumar & Ors (supra)* service of application to the workman was to be made as per Section 25-N read with Rule 76-A of the Industrial Rules, 1952. Rule 76-A(2) requires that application shall be made in triplicate and to be served to workmen by the employer and along with it “proof” of service shall also be attached. In *L.M.S. Ummu Saleema (supra)* in a writ of habeas corpus for illegal detention the detenue sent a letter through UPC was considered as a letter of retraction. In these circumstances it was held that presumption under Section 114 Indian Evidence Act is only a permissible presumption and not an

inevitable presumption and Court may or may not draw the same. Thus, the decisions relied on by learned counsel for the petitioner have no application to the facts of the case.

11. In *HDFC Bank (supra)* relied upon by the learned counsel for the petitioner, the Court was dealing with Section 144 of the Negotiable Instruments Act (in short the NI Act) and thus held that for a legal notice to be sent under NI Act the procedure as envisaged under Section 144 NI Act has to be followed before a presumption is raised under General Clauses Act. Section 144 of the NI Act provides as under:

“144. Mode of service of summons.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works; for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.”

12. Thus the requirement of Section 144 NI Act is different to the requirement of Section 106 TP Act. Thus decision in *HDFC Bank* will have no application to the facts of the present case.

13. In Kanwal Raj Sadana Vs. D.D. Saigal 58 (1995) DLT 814 relied upon by the learned counsel for the petitioner this Court held that though the envelope sent through registered post was returned unserved the notice sent under postal certificate was never returned and must have been received by the tenant. Thus it was held that a valid service had been effected. In Prime Industries & Ors. (supra) tenant was served notice for payment through UPC and as regards registered post it was held that because tenant was avoiding service by registered post, since notice sent by UPC was correct address of the tenant and the same was not received back, it was presumed that tenant was served with the notice of demand.

14. In Shoki Chaudhary Vs. Mukesh 2015 (1) CLJ 137 Del., this Court repelling the argument of the tenant that the landlord should have called into the witness box the officer from the post office to show delivery held that once presumption was raised in favour of the landlord under Section 27 of the General Clauses Act, onus of proof shifted upon the tenant to show why he should not be taken to be served of the demand notice, however the tenant did not summon anyone from the postal department to show that no notice was tendered to him in spite of he being available at the tenanted premises.

15. The Supreme Court in M/s. Madan & Co. Vs. Wazir Jaivir Chand (1989) 1 SCC 264 while dealing with whether the duty of the landlord was complete by sending of notice with reference to the presumption under Section 27 of the General Clauses Act held that once there is a proper tender of the demand notice at the correct address then there is service of the demand notice in view of the presumption as per Section 27 of the General Clauses Act. It was reported:

“6. We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to clause (i) of Section 11(1) and the proviso to Section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insist that before any amount of rent can be said to be in arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under Section 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a court under Order V of the CPC. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret provision as requiring that

the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as “not found”, “not in station”, “addressee has left” and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word “served” as “sent by post”, correctly and properly addressed to the tenant, and the word “receipt” as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant.”

16. In the present case the Courts below raised presumption under Section 114 of the Evidence Act and Section 27 of the General Clauses Act against tenant in this behalf. The findings of the Courts below on the question of service of notice of demand being essentially a finding of fact and not being perverse this Court will not interfere in the same.

17. Petition and application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

APRIL 15, 2015
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