

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

+ **RC.REV. 547/2012 & CM 18928/2012 (Stay)**

% Reserved on: 20th April, 2015
Decided on: 19th May, 2015

VIMLA SONI

..... Petitioner

Through: Mr. S.C. Arora, Advocate.

versus

RAJEEV GARG

..... Respondent

Through: Mr. Ranjit Malhotra, Advocate.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 4th September, 2012 whereby the leave to defend application filed by the Petitioner Smt. Vimla Soni was not considered by the learned Trial Court in an eviction petition filed by Rajeev Garg, the Respondent under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act'), the Petitioner prefers the present petition.
2. The learned ARC vide the impugned order held that the leave to defend application was not filed within the period of 15 days as prescribed by law, hence denied leave to defend.
3. The controversy in the present petition revolves from the service of summons to Vimla Soni. A perusal of the Trial Court record would reveal that in an eviction petition filed by Rajeev Garg under Section 14 (1) (e) of the DRC Act notice was issued to Vimla Soni by the learned ARC on 16th September, 2011 returnable for 19th January, 2012. The report qua service through Registered AD was that the premises was found locked but intimation was given and by ordinary process that the premises was found

locked and on inquiry no information could be obtained. Thus on 19th January, 2012 the learned ARC directed the appearance of the Process Server for 1st March, 2012 whereafter on the same date at 11.45 a.m. a Memo of Appearance was filed on behalf of Smt. Vimla Soni by one Shri Ashok Singh, Advocate. The Memo of Appearance was taken on record and the file was put up for the date fixed, that is, 1st March, 2012. On 1st March, 2012 when the Process Server Jasmer was present in person, one Shri Kahorngam Zimik, Advocate appeared as proxy counsel for Smt. Vimla Soni and sought time to file the vakalatnama. No explanation was rendered by the proxy counsel as to why the leave to defend application was not filed and the matter was listed for orders/further consideration on 10th April, 2012. On 2nd April, 2012 an application for leave to defend under Section 25B (4) and (5) of the DRC Act was filed for which notice was issued to Rajeev Garg. Arguments were heard in the matter. On the next date, that is, 10th April, 2012 and subsequent dates counsel for Vimla Soni sought time to file the judgments and thereafter on 28th July, 2012 filed two applications. Finally vide order dated 4th September, 2012 leave to defend application was dismissed being time barred and an eviction order was passed in favour of Rajeev Garg.

4. The sole issue for consideration before this Court urged is whether there was a proper service on Vimla Soni or not and when? Section 25B (3) of the DRC Act provides for service to the tenant as under:

“25B.(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.”

5. Thus the requirement of law is that the summons should be served on the tenant or his duly empowered agent by ordinary service or through Registered AD. As noted above the service through Registered AD was “premises found locked IP”, that is, house locked intimation provided. As per the report through ordinary process it was noted that the house was found locked and on inquiry from the neighbourhood no information was provided.

6. In the leave to defend application filed on 2nd April, 2012 before the learned ARC the petitioner stated that some time in the end of September, 2011 or beginning of October, 2011 the local postman informed Vimla Soni that a registered letter had come for her a couple of days back but was returned back as she was not available at her quarter. On further inquiry the applicant/Vimla Soni was informed that the said letter appeared to come from some Court in Tis Hazari. Thus Vimla Soni contacted her counsel Shri N.D. Pancholi who stated that in the absence of full particulars it was difficult to know about the status of the said letter or case if any. However,

Shri N.D. Pancholi, Advocate instructed his junior colleague Shri Rajiv Jha to make inquiries, if any case relating to Vimla Soni having been filed in Tis Hazari. Sometime in the last week of February, 2012 Shri Rajiv Jha, Advocate found that one case against Vimla Soni was pending in the Court and was listed on 1st March, 2012. After telling this fact Shri Rajiv Jha, Advocate left for his village and Shri N.D. Pancholi instructed his junior counsel Shri K. Zimik to be present in the Court on 1st March, 2012 and watch the proceedings and to inquire whether the present case was related to the Respondent/Vimla Devi and if so, vakalatnama could be filed on behalf of Vimla Soni. Thus Shri Zimik, Advocate appeared before the Court on 1st March, 2012 and requested for a pass-over so that he could file the vakalatnama however, to his surprise one vakalatnama was already filed on behalf of Smt. Vimla Soni. The request of pass-over of Shri Zimik was turned down by the learned Trial Court and the matter was adjourned and he informed Shri N.D. Pancholi, Advocate that the next date in the matter was fixed as 10th April, 2012. On 14th March, 2012 Shri N.D. Pancholi inspected the Court file and found that there was no service of notice and one Ashok, Advocate had filed Memo of Appearance on 19th January, 2012. It was further stated that the correct name of the Petitioner was 'Bimla Soni' and not 'Vimla Soni'. As no copy of the petition was received Shri N.D. Pancholi, Advocate filed an application for certified copy on 16th March, 2012 which was delivered on 24th March, 2012 and hence the leave to defend application was filed on 2nd April, 2012.

7. Thus admittedly, even as per the version of Vimla Soni she came to know about some proceedings pending in Tis Hazari in the end of September, 2011 or early October, 2011. Finally the counsel on her behalf

appeared on 1st March, 2012. Even ignoring the Memo of Appearance filed by one Ashok Singh, Advocate on 19th January, 2012 an authorised counsel appeared on her behalf on 1st March, 2012 which would be deemed to be the date on which service would be affected on Vimla Soni. No request was made for copy of the petition on the said date from the Court or from learned counsel for Rajeev Garg. After 1st March, 2012 the file was inspected only on 14th March, 2012 and a certified copy of the petition was applied on 16th March, 2012 and was obtained on 24th March, 2012. Thus even as per the admission of Vimla Soni she had sufficient notice of the petition on 1st March, 2012 and the inspection of the record was itself done on 14th March, 2012. It is trite law that after service of notice the leave to defend application has to be filed within 15 days and no extension of time in filing leave to defend application can be granted. Even after 1st March, 2012 the conduct of the Petitioner and the counsel was casual as an application for inspection was filed only after 14 days.

8. In Prithipal Singh vs. Satpal Singh (dead) through LRs, 2010 (2) SCC 15 the Supreme Court held that no application for condonation of delay could be entertained by the Rent Controller as the provisions of Limitation Act do not apply to the provisions of Delhi Rent Control Act, 1958. It was held:

“23. As noted herein earlier, Section 25-B(1) clearly says that any application filed by a landlord for recovery of possession of any premises, inter alia, on the ground of Section 14(1)(e) of the Rent Act, shall be dealt with in accordance with the procedure specified in Section 25-B of the Rent Act. Therefore, Sub-section (1) of Section 25-B makes it clear that if any application for eviction of a tenant is filed by the landlord, the special procedure

indicated in Section 25B has to be followed and Section 25-B(1) clearly stipulates that the application for eviction shall be strictly dealt with in accordance with the procedure specified in this Section. Apart from that, as we have noted herein earlier, Section 25-B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25-B of the Act. Therefore, after insertion of Section 25-B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25-B and question of relying on Rule 23 of the Code, which also does not give full right to apply the provisions of the Code, could be applied.

24. That apart, Rule 23 does not specifically confer any power on the Controller to follow the provisions of the Code in special classes of landlords. It is a general rule, by which the Controller in deciding any question relating to procedure not specifically provided by the Act and these rules shall, as far as possible, be guided by the provisions contained in the Code.

25. In view of our discussions made hereinabove that Section 25-B has been inserted by the Legislature for eviction of a tenant of a certain classes of landlords, in which the entire procedure has been given, it is difficult for us to hold that Rule 23 of the Rules can be applied in the present case in view of the specific provisions provided in Section 25-B of the Rent Act. Accordingly, we are of the view that Rule 23 has no manner of application.”

9. This Court in Salazar Luis Anthony Marques (since deceased) through LRs vs. Mohd. Haroon Japanwala and others, 2015 (217) DLT 261 held:

“22. The object of service is to give notice to the party against whom the suit/petition is instituted so that he might be aware of the same and is able to contest the suit if he so

desires. There is no doubt in saying that the service of summons is a matter of primary importance in order to provide a fair and reasonable notice to the parties to enable them to defend the legal proceedings against them. The underlying object of service of summons stems from a sense of justice and fair play. While this Court agrees that the summary procedure under section 25B ought to be followed mandatorily, the purpose of the section will be defeated if Courts were to hold that the tenant was not served in according with law even when such tenant acquires knowledge about the service and files his leave to defend application on time. It is pertinent to note that Courts proceed on the basis actus curiae neminem gravabit (Latin: An act of Court harms none). Sangram Singh v. Election Tribunal: AIR (1955) SC 425 the Supreme Court has held that the purpose of service of notice is to inform the addressee and once so informed, there can be said to be no infirmity in the process.”

10. In view of the legal position as noted above the leave to defend application ought to have been filed when admittedly intimation was given by the postman on end of September, 2011 or October, 2011 and even within 15 days from the date of 1st March, 2012 when admittedly authorised counsel appeared on behalf of Smt. Vimla Soni. Consequently, I find no merit in the present petition.

11. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 19, 2015
‘vn’