

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC. REVISION 93/2015 & CM APPL.3501/2015**

Decided on: 27th November, 2015

MOHIT CHOPRA Petitioner

Through: Mr. Vishwa Bhushan, Advocate

versus

ANIL ANAND Respondent

Through: Mr. Jagdev Singh, Advocate

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

V.K. SHALI, J. (ORAL)

1. This is a revision petition filed by the petitioner-tenant against the passing of an eviction order dated 12.08.2014 by Ms. Pooja Talwar, the learned Additional Rent Controller, South-East, Saket Courts, New Delhi.
2. The facts are not in dispute. The present petitioner is a tenant in respect of a shop in premises No.8/2, Double Storey, Jangpura Extension, New Delhi. The respondent-landlord filed an eviction petition under Section 14 (1) (e) of the Delhi Rent Control Act,

1958 (DRC Act) seeking retrieval of the possession on the ground of *bona fide* requirement. He claimed himself to be the owner of the shop on the basis of a Will dated 14.03.1995 purported to have been executed by his father Late Shri O.P. Anand, who had expired on 16.12.1999.

3. The only point on the basis of which eviction order is assailed by the petitioner-tenant is that he has not been served in accordance with law. It may be pertinent to mention here that the following four orders were passed respectively on 15.04.2014, 19.05.2014, 18.07.2014 and 12.08.2014, which read as under:-

“15.04.2014

Present: Petitioner in person.

Process not received back.

Be awaited.

In the meantime, fresh process be issued as per previous terms returnable on 19.05.2014.

Sd/-

(Pooja Talwar)

ACJ/CCJ/ARC-(SE)

Saket Court, New Delhi-15.04.2014.

19.04.2014

Present: Petitioner with counsel.

Service has been effected upon the respondent through his employee on 17.05.2014.

Let objection be filed within the stipulated period.

Renotify on 18.07.2014.

Sd/-

(Pooja Talwar)

ACJ/CCJ/ARC-(SE)

Saket Court, New Delhi-19.04.2014.

18.07.2014

Ld. PO has gone to attend Training at Delhi Judicial Academy, Dwarka.

Present: Petitioner with counsel Sh. Jagdev Singh.

None for defendant.

Renotify on 12.08.2014.

Sd/-

(Reader)

18.07.2014.

12.08.2014

Present: Counsel for the petitioner.

Vide separate order of even date, eviction order is passed in favour of the petitioner and against the respondent in respect of tenanted shop in the premises bearing No.8/2, Double Storey, Jangpura Extension, New Delhi. In terms of Section 14 (7) of the Act, the petitioner shall not be entitled to obtain possession of the tenanted shop in question before expiry of a period of six months from the date of the order. File be consigned to Record Room.

Sd/-

(Pooja Talwar)

ACJ/CCJ/ARC-(SE)

Saket Court, New Delhi-12.08.2014.”

4. The contention of the learned counsel for the petitioner is that he has not been served personally and that he had no person by the name of Deepak employed by him and, therefore, the service of the

summons by the process server on Deepak could not be treated to be a valid service on him. Reliance in this regard is placed by the learned counsel for the petitioner on two judgments of Hon'ble Mr. Justice Manmohan Singh in case titled *Bishan Swaroop (since deceased) through LR v. Manish Sethi & Ors., 2014 (2) Rajdhani Law Reporter 195* and *Devender Nath v. Mohd. Asim, 204 (2013) DLT 141*.

5. In both these judgments the learned Single Judge of this Court has dealt in details the provisions of Section 25-B(2) & (3) (a) & (b) of the Delhi Rent Control Act, 1958 which prescribes the procedure for effecting the service of the summons in Schedule-III in respect of an eviction petition filed on the ground of *bona fide* requirement on the tenant. It has been stated that one of the essential requirements of this special process of service provided under the aforesaid provisions is that the summons must be addressed to the tenant or to his duly authorized agent and it must be served on him. So far as the authorized agent is concerned, it has been observed

that it must be duly authorized to accept the same and in the event of default, it cannot be treated to be as a valid service.

6. The learned Single Judge has also dealt with the legislative intent of making this provision for service on the tenant himself and observed that this is done primarily to give a tenant the knowledge about filing of the eviction petition and also enable him to an opportunity to contest the matter on merits and not permit the case to go by default.
7. I have considered both these judgments. There is no dispute about the fact that in the facts of the said cases the learned Single Judge did not deem it proper to accept the service on the tenant to be a valid service because in one case it was accepted by the employee and in the other case the summons were not served on the tenant himself.
8. The learned counsel for the respondent on the contrary as brought to my notice the judgment given by another learned Single Judge of this Court in case titled *Shyam Sunder Wadhawan v. Vivek Arya*,

214 (2014) DLT 616. It has also dealt with the same issue of service and has concluded as under:-

“17. The conclusions are:-

(i) Merely because summons are addressed to the tenant but received by somebody else does not mean that in each and every such case the service is not a valid service whether there is or is not service/refusal depends upon the facts of each case.

(ii) If the summons is addressed to the tenant, and if the same is received by a person other than the tenant, but with consent/or knowledge or direction of the tenant, then the service is as effective as the service on the tenant. To clarify further, if summons are addressed to an agent of a tenant, then surely instead of the agent even the tenant himself can receive the same, then, why not a summons addressed to a tenant cannot be received by a person with consent or knowledge or direction of the tenant. A caveat: when a person other than the tenant receives the summons, the tenant must at that stage be in a place/state when he can file the leave to defend application within the prescribed period.

(iii) If the tenant uses subterfuges, including those cases where he is found to have endeavoured to conceal his personality, a court can, depending upon facts of a particular case hold that there is service/refusal of the summons.

(iv) Service effected directly by affixation is not a valid service but affixation done following the refusal to receive summons is a valid service.

(v) Summons sent by registered post, when are avoided to be received by the tenant, then in such circumstances where it is clear that the tenant has the knowledge that he must receive the registered post article, but yet he does not, it can

as per facts of a case, be held that there is service/refusal by the tenant.”

9. The aforesaid observations passed by the learned Single Judge Mr. Valmiki J. Mehta, J. has taken a contrarian view to the effect merely because the summons are received by somebody else does not mean in each and every case it will be treated to be not as a valid service.
10. I find myself in agreement with the view expressed by Valmiki J. Mehta, J. that merely because service is not effected personally on the tenant does not mean that in every case it will not be treated as a valid service. This I feel is the more pragmatic and practical view taken by the learned Single Judge. The reason for this is that it is common knowledge that in rent matters the tenant in most of these cases avoids service and adopts various tricks to do the same. This gives them opportunity to gain maximum time first exhausting patience time as well as money on the part of the landlord to ensure service on the tenant. It is no doubt correct that the purpose of service is to make the tenant known about the filing of eviction

petition against him on the ground of bona fide requirement and as far as possible the service must be effected on the tenant personally but that does not necessarily mean that the service in each and every case must be effected in person on the tenant as in case such a strict interpretation to the legislative intent is given under Rule 2 and 3 of Section 25-B then it will defeat the very purpose of having a summary procedure in respect of bona fide requirement matters. Moreover, it is dependent on the facts of the each case where the learned ARC has to form a conscious view as to whether the tenant has been served or not.

11. Coming back to the facts of the present case summons have been directed to be issued to the petitioner on 15.04.2014 by the learned ARC in Schedule-III form. It is reflected from the order that summons were issued by registered post as well as by ordinary post. Though the ordinary process is not on record but the registered post letter clearly shows that the postman had visited the house/shop of the tenant number of times and gave the details therein and made endorsement on the envelope itself about record

of the various dates when he had visited the tenant for the purpose of service. But he has also noted that every time he visited the premises the tenant was not found available. Obviously, the tenant wanted to avoid the service. Thereafter, the summons were again directed to be issued to the tenant which in fact were issued. Although the registered cover is placed on record, the summons which were sent through process server clearly indicate that some person by the name of Deepak who had represented himself to be an employee of the tenant and gave his mobile number also which is written on the summons shows that he had spoken to somebody before accepting the summons. Obviously, nobody other than the person who has some connection with the premises would be spoken to and he alone would suggest for acceptance of summons. The process server has further made an endorsement on summon in this regard.

12. Obviously one can draw an inference that if he had accepted the summons of the eviction petition after speaking to somebody, obviously, it could not be a person other than the tenant himself.

This service on the tenant and the report of the process server given by him in the ordinary discharge of his official duty is presumed to be correct and the learned ARC has rightly drawn an inference that the petitioner-tenant has been duly served. Since the notice of the summons clearly contains the endorsement that the leave to defend application must be filed within 15 days, which has not been done, obviously, the court had no other option but to pass an order of eviction.

13. If we test the non service of the summons on the petitioner-tenant then this does not get the support from his conduct. The petitioner-tenant in his petition does not disclose as to how he ultimately learnt about eviction order having been passed against him. If the petitioner would have genuinely not been served or was not aware of the eviction petition proceedings pending against him, he would have given the reasons and the circumstances as to how he learnt about the pendency or the filing of the eviction petition. Curiously, this aspect confirms the actual position which the learned ARC has

drawn that the petitioner-tenant was duly served and he was evading to appear in the Court.

14. Since he has chosen not to file his leave to defend application within a period of 15 days from the date of service which has been taken to be as 22.04.2014, obviously the learned ARC had no other option but to pass a decree of eviction against him on account of non filing of the leave to defend.
15. For the above said reasons, I feel that there is no illegality, impropriety or any jurisdictional error in passing the eviction order. I accordingly dismiss the revision petition filed by the petitioner-tenant.
16. Pending applications also stand disposed of.
17. File be consigned to record room.

V.K. SHALI, J.

NOVEMBER 27, 2015

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