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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 19th May, 2015

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RC.REV. 229/2015 and CM No. 8714/2015 (Stay)

NAND LAL

..... Petitioner

Through: Mr. Gurdip Bindra, Advocate.

versus

PADAM SHARMA

..... Respondent

Through: None.

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RC.REV. 232/2015 and CM No.8748/2015 (Stay)

MR NAND LAL

..... Petitioner

Through: Mr. Gurdip Bindra, Advocate.

versus

PADAM SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J (ORAL)

1. Aggrieved by the order dated 27th January, 2014 dismissing the leave to defend application of the Petitioner and the order dated 15th April, 2015, dismissing the review petition filed by the Petitioner in an eviction petition filed by the Respondent under Order 14 (1) (e) of the Delhi Rent Control Act, 1958 (in short 'the DRC Act'), the Petitioner prefers the present petitions.

2. The undisputed facts are that the Petitioner was served through publication in the daily newspaper was carried out on 6th September, 2013. It is the case of the Petitioner that on 7th October, 2013, after the godown

was opened, the publication came into the knowledge of the Petitioner on 7th October, 2013 after his cousin Shri Ved Prakash, who has a shop in Chandni Chowk narrated the facts to the son of the Petitioner Amit Halwasiya. Amit opened the shop on 7th October, 2013 and gathered information from the locality and found that a case had been filed against him. The Petitioner immediately deposited the rent before the learned Trial Court and filed an application for leave to defend within 15 days from 7th October, 2013, that is, on 19th October, 2013.

3. The learned Trial Court dismissed the leave to defend application vide order dated 27th January, 2014 observing that the Petitioner had been served by two modes, that is, by affixation as well as publication in the newspaper on 6th September, 2013 and the leave to defend was filed much beyond the period of 15 days and hence the Respondent was straightway entitled to eviction in his favour in respect of the tenanted premises which was the godown on the ground floor of property bearing No.532-535, Kucha Pati Ram, Bazar Sita Ram, Delhi-110006.

4. In the review petition filed, the Petitioner re-agitated that he came to know about the service of summons by way of publication in the newspaper on 7th October, 2013 when his son opened the shop and thus the leave to defend was filed within 15 days of the said knowledge. The Respondent had given the alternative address and the mobile number of the Petitioner which was mentioned on the envelope containing cheque. Further no copy of the eviction petition was affixed and thus there was no proper service through affixation.

5. Section 25B of the DRC Act provides for the service of summons on the tenant and is noted as under:

“25. B Special procedure for the disposal of applications for eviction on the ground of *bona fide* requirement. –

(1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A [or under section 14B or under section 14C or under section 14D] shall be dealt with in accordance with the procedure specified in this section.

(2) The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in the Third Schedule.

(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.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the

form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

6. In Prithipal Singh vs. Satpal Singh (Dead) Through its LRs, 2010 (2) SCC 15, the Supreme Court noted that the provisions under Section 25B are special provisions and override Rule 22 of the DRC Rules which provide for service of notice unless and otherwise provided in the Act. Thus the mode for issuance of summons under Section 25B of the DRC Act is through ordinary process and registered post Acknowledgement Due and if the circumstances of the case so require also direct the publication of summons in the newspaper circulated in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

7. It is not the case of the Petitioner that the Petitioner did not carry on business or personally worked for gain from the tenanted premises. Since summons by registered post and ordinary service could not be served, the same were served through publication in the newspaper which was duly proved by the Respondent. The fact that the Petitioner was not coming to the shop regularly in view of his ill health is no ground to condone the delay. The Supreme Court in Prithipal Singh (supra) held as under:

“23. As noted hereinafter, 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 25-B 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 hereinafter, Section 25-B itself is a special code and therefore, the 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.”

8. Consequently, the plea of the Petitioner that the eviction petition was not affixed along with the summons holds no ground and there being no illegality in the impugned orders, the petitions and the applications are dismissed.

(MUKTA GUPTA)
JUDGE

MAY 19, 2015/‘vn’