

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

% *Judgment Reserved on: October 12, 2015*
Judgment Delivered on: October 19, 2015

+ **CM(M) 674/2015**

NARESH KUMAR BANSAL Petitioner
Through: Mr.Vishal Bhatnagar and Mr.Nitin
Sharma, Advocates.

versus

DEVENDER KUMAR SHARMA Respondent
Through: Ms.Rajani Chauhan, Advocate.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. The petitioner has invoked the power vested in this Court under Article 227 of the Constitution of India with a prayer that the eviction order dated 15th January, 2015 being passed by learned ARC-1 (Central) without service of notice on the petitioner may be set aside. Prayer has also been made to set aside order dated 08th July, 2015 whereby the application seeking recalling of order dated 15th January, 2015 has been dismissed.
2. Before dealing with the grounds of challenge, the sequence of events leading to passing of impugned orders has to be recorded.
3. Eviction petition No.248/14 under Section 14(1)(e) Delhi Rent Control Act, 1958 was filed by Sh. Devender Kumar Sharma the landlord/respondent herein against Sh. Naresh Kumar Bansal, petitioner/tenant seeking eviction

from shop bearing no.365 to 372, Ground Floor, Naya Bans, Khari Baoli, Delhi.

4. The eviction petition was received by learned ARC-1 (Central) on 07.11.2014, on which date following order was passed:-

“07.11.2014

Fresh eviction petition u/s 14 (1) (e) of the DRC act received by way of assignment. It be checked and registered.

Present: Petitioner with counsel.

Heard. Issue notice to this petition to the respondent on filing of PF & RC within seven days returnable on 07.01.2015.”

5. On 07.01.2015, learned ARC-01 (Central) ordered for fresh service. The proceedings dated 07.01.2015 are as under:-

“07.01.2015

Present: Petitioner with counsel.

None for the respondent.

Report on summons upon the respondent through ordinary process received back as duly served on 03.12.2014. However, report on registered post not received back.

In these circumstances, issue fresh notice upon the respondent on filing of PF & RC within seven days returnable for 04.02.2015.”

6. Although, the matter was listed before learned ARC-1 (Central) on 04.02.2015, on 15.01.2015 an application under Section 25-B (4) DRC Act was filed by landlord/respondent with the report from postal authorities about the

article No.RD462903580IN being delivered on 28.11.2014, thus praying for passing of the eviction order.

7. The file was taken up by learned ARC-1 (Central) and on the same date on the basis of certificate obtained by landlord/ respondent from post office, District Courts, Tis Hazari Court, the learned Trial Court recorded that the service through registered post has been effected on 28.11.2014. No application seeking leave to defend has been filed within the statutory period of 15 days from the date of service. Thus, in terms of provision of Section 25-B (4) of DRC Act, observing that statement made by landlord in the eviction petition being deemed to be admitted by the tenant, eviction order was passed in respect of suit property.

8. When the tenant/ petitioner came to know about the eviction order dated 15.01.2015, he filed an application under Section 25-B (9) of DRC Act for recalling/review of the eviction order alongwith application seeking leave to defend alleging it to be a case of forgery in connivance of process server and postman. The petitioner/tenant also denied having ever being served either through process server or by registered post. While the petitioner denied his signature on the notice sent to him through ordinary process, he also denied having ever received the notice through registered post.

9. Learned trial Court after considering the reply to the application filed by landlord/respondent noted that summons were first served on the respondents on 28.11.2014 through registered AD and on 03.12.2014 through ordinary process. Despite that the petitioner/tenant failed to file the application seeking leave to defend within statutory period of 15 days from the date of service. The

respondent/tenant signed on the summons on which it is mentioned that documents numbering 160 have been annexed. Even the registered slip shows that landlord has paid ₹270 to send the said petition with the annexures.

10. Learned ARC-1 (Central) also noted that there was no need to examine the process server as on the process his report is on oath and he could not appear in each case to state before the Court on oath that process has been duly served. Thereafter learned ARC-1 (Central) noted that since application seeking leave to defend has not been filed within prescribed time, there was no ground to recall or review the eviction order. Hence the application was dismissed.

11. I have perused the lower Court record which contains the original process which was allegedly served on 3rd December, 2014 on the petitioner/tenant through Ravinder Yadav, process server. Learned ARC has observed that the petitioner/tenant has personally received the notice of the eviction petition along with 160 pages of the petition and its annexures.

12. The above observation by learned ARC is not in accordance with the report of the process server or any endorsement to this effect by the tenant. At the top of the notice the following details are mentioned in very small font size:-

“SUMMON FOR TENANT

ORDINARY/URGENT/DASTI
AHLMAD
DATE OF ORDER
DATE OF FILING OF P.F.
DATE OF ISSUE
NO. OF DOCUMENTS ANNEXED
NEXT DATE OF HEARING

.....
.....
.....
24/11/14
160/12
07 Jan., 2015”

At the bottom of the notice it is written as under:-

Khud Taamil



Naresh
Bansal
3/12/14

13. At the back of the notice the report of the process server is to the effect that on 3rd December, 2014 he reached the spot and enquired about Naresh Kumar Bansal for service of notice. One person found present at the spot disclosing his name as Naresh Kumar and after reading the notice, received the same. Enquiry from the neighbours was made who orally informed that the person present at the spot was Naresh Kumar Bansal whom the process server personally did not know. Thereafter he signed the report affirming the same to be correct.

14. It is clear from the report that neither 160 pages i.e. copy of the petition and annexures were served upon the tenant nor the notice along with 160 pages has been received. The endorsement is only in respect of date and time of receiving the notice and not about copy of the petition and annexures (160 pages).

15. On 7th January, 2015 when the matter was listed before the learned ARC, after noting that process has been duly served on the tenant on 3rd December, 2014, as report on registered AD was not received back, learned ARC ordered for fresh service with direction to file PF and RC within 7 days returnable on

4th February, 2015. The respondent-landlord did not comply with the said order and of his own, on the next day i.e. 8th January, 2015 an application was filed which is annexure 'A' in LCR for seeking confirmation from the Post Master, Tis Hazari about the delivery of article No.RD462903580IN. This application has been filed by one Sh.Rajeev Kumar, Chamber No.385, Civil Wing, Tis Hazari, who is stranger to this case for the reason that vakalatnama placed at page No.160 of LCR mentions only Rajani Chauhan and associates as counsel in this case. Another signature appearing on the vakalatnama though not legible pertains to some advocate having enrolment No.D-1650/98 and not of Rajeev Kumar, Advocate who has filed this application before the Post Master. The reply received from Post Master from Department of Post is to the following effect:-

“COMPLAINT – SETTLED REPLY

No.111808-07512

12/01/2015

To

*RAJEEV KUMAR, CH. 385,
CIVILWING, TIS HAZARI COURTS,
DELHI, 110054.*

Dear Sir/ Madam,

In continuation of our letter regarding the Complainant No. 111808-07512, it is to inform you that the complaint of Non Receipt of Ack./Proof of Delivery of Registered Letters with Acknowledgment with Transaction No. RD462903580IN on 27/11/2014 of district courts s.o (north delhi)-110054 is settled on

*10/01/2015 with the following information that 'DELHI
GPOA/UR HAS BEEN DELIVERED TO ITS ADDRESSEE ON
28-11-2014 AS PER THIS OFFICE RECORD.*

Thanking you.

Yours faithfully,

*SPM
DISTT. Courts S.O”*

16. No AD card has been received in this case either by the Court or otherwise brought on record by the Postal Authority or landlord as to who has received the notice sent through registered AD Post.

17. There is specific denial by the petitioner about any service being effected to him through any mode.

18. Since the consequences upon a tenant of not filing the leave to defend application within 15 days statutory period is drastic, it is the duty of the RC/ARC to ensure such right meticulously. Here in the given case, learned ARC did not proceed on the service allegedly effected through ordinary process and ordered for fresh service nor kept the case awaited for service through registered post. AD card was never received by the Court as a proof of service on the respondent. There was no direction to the landlord to obtain the report of service through registered post from the postal authority.

19. One of the essential requirement of special process under Section 25-B of DRC Act is that summons must be addressed to the tenant or his authorized agent empowered to exercise the service. The provisions of Section 25-B(3)(a)

has to be strictly complied with for the reason that the date of service on the tenant sets into motion a period of limitation to seek leave to defend failing which he has to face eviction order. Therefore, it is the duty of the learned Rent Controller to ensure that service has been properly effected on the tenant or his agent in a prescribed manner before making an order that period of limitation to file leave to defend has expired. In the instant case, learned ARC was not satisfied about the service on 7th January, 2015 hence ordered for fresh service. However, on 15th January, 2015 on the basis of report obtained from the postal authority by Mr. Rajeev Kumar, Advocate who is stranger to the proceedings and is not counsel for the landlord, recorded the service being effected through registered AD on 28th November, 2014 which was much prior to 3rd December, 2014 the date of alleged service through process server.

20. If the service on the tenant is considered under the provisions of Section 25-B (3) of DRC Act it can be seen that the service through registered post is doubtful. The conduct of the respondent-landlord apparently appears to be such that he wanted to get possession of the tenanted shop by any means without proper service on the tenant which is not permissible under law. Learned ARC has failed to apply its mind and notice the conduct of the landlord while passing the eviction order only on the basis of report obtained from postal authority by some Rajeev Kumar without noticing that respondent has not cared to comply with the order of fresh service passed by the Court on 7th January, 2015.

21. In view of the above reasons the impugned orders dated 15th January, 2015 and 08th July, 2015 are set aside.

22. While filing application on 16th April, 2015 seeking recall/review of the eviction petition the petitioner had also filed application seeking leave to defend. Learned ARC shall decide the application seeking leave to defend on merits after giving an opportunity to the respondent-landlord to file reply to the said application.

23. Parties are directed to appear before the concerned Court on 16th November, 2015.

24. A copy of this order be sent to the concerned Court and be also given dasti to learned counsel for the parties.

CM Nos.12973/2015 & 22689/2015

Dismissed.

**(PRATIBHA RANI)
JUDGE**

OCTOBER 19, 2015

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