

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **22.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2484 of 2016

S.Kalirajan : Petitioner

versus

Anandh : Respondent

PRAYER: Revision filed against the order dated 25.1.2016, in M.P.S.R.No.28414 of 2015 in RCOP No.1459 of 2015 on the file of X Small Causes Court, Chennai.

For petitioner :: Mr.R.Priyakumar

For respondent :: No appearance

ORDER

Whether the Rent Controller is empowered to direct the petitioner in a Rent Control Original Petition to take substituted service, by making paper publication, is the core issue that arises for consideration in this civil revision petition.

The relevant facts:-

2. The petitioner filed original petition in RCOP No.1459 of 2015 for eviction. Notice sent to the respondent was returned unserved with postal endorsement, "Door locked". Subsequent notices were also returned

unserved. The petitioner therefore filed an application for substituted service under Rule 22 (d) of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974. The petitioner wanted substituted service by affixture. The learned Rent Controller while permitting the petitioner to serve notice by affixture, issued a further direction to take publication in one issue of Makkal Kural. The said order is under challenge in this civil revision petition on the ground that there is no provision under the Tamil Nadu Lease and Rent Control Act or the Rules, directing substituted service by publication.

Submissions:-

3. The learned counsel for the petitioner by placing reliance on a decision of this Court in ***Thangamani vs. Krishnan, 1992(2) MLJ 165***, and an unreported decision dated 1 August 2016 in ***CRP (PD) No.2140 of 2016, (Kalirajan vs. Chinnaponnu)*** contended that since there is no provision in the Tamil Nadu Buildings and Rent Control Act and Rules, to direct substituted service by publication, the Trial Court was not correct in passing the order directing the petitioner to take publication.

4. None appeared on behalf of the respondent.

Discussion:-

5. There is no dispute that the summons taken by the petitioner to the respondent was returned unserved with an endorsement “door locked”.

Notice sent through Court was also returned with similar endorsement. The petitioner therefore filed a miscellaneous petition for substituted service by affixture.

6. Before the Rent Controller, the petitioner placed reliance on a decision of this Court in ***Thangamani*** (supra) to substantiate his contention that publication is not an accepted mode of service order under the rent control legislation.

7. The learned Rent Controller was of the view that there was no specific bar for directing publication and as such, notice should be served by affixture as well as by paper publication.

The Rule:-

8. Rule 22 of the Tamil Nadu Buildings Lease and Rent Control Rules (hereinafter referred to as “the Rules”), reads thus :-

“A notice under the Act issued by the controller or the Appellate Authority and any order passed by the Appellate Authority, if not pronounced in open Court shall be served on the person concerned.

(a) by giving or tendering it to such person;

or

(b) if such person is not found, by leaving it at his last known place of abode or business or by

giving or tendering it to some adult member of his family; or

(c) if the address of such person is known to the controller or the Appellate Authority by sending it to him by registered post acknowledgement due; or

(d) if none of the means aforesaid is available, by affixing it in some conspicuous part of his last known place of abode or business”.

9. Rule 22 extracted above prescribes the manner and method by which notices should be issued under the Rules. It is true that paper publication is not a mode prescribed under Rule 22. However, that does not mean that in a given case, the Rent Controller is not authorized to direct publication.

10. The idea behind prescribing Rule 22 is to ensure that the addressee is served. In a Rent Control Original Petition, it is incumbent upon the Court to serve notice before taking up the matter for disposal on merits. The Court must ensure that notice is served on the respondent. Though four modes are prescribed under the Rules, there is no specific bar for directing the petitioner to take notice by publication.

11. In ***Thangamani***, without making an attempt to serve notice as per the method provided under Rule 22, the party took paper publication.

The learned Judge found that notice was not served directly. It was also not affixed as provided under sub Rule (b) of Rule 21. Similarly, it was not served by registered post as provided under sub Rule (c) of Rule 22. It was only in the said factual context, this Court observed that service of notice by publication is not contemplated under the rules. The said observation was made only in the context of the contention taken by the counsel for the landlord that though service was not taken directly or by affixture, paper publication was duly taken and therefore it was a valid service. The judgment in ***Thangamani*** would not be an authority for the proposition that Rent Controller is not entitled to direct the party to take paper publication in addition to the mode prescribed under Rule 22 of the Rules.

12. There is no law decided in the unreported decision of this Court in the revision petition in CRP (PD) 2140 of 2016 to the effect that Rent Controllers are not entitled to direct paper publication. In fact, the learned Judge followed the decision of this Court in ***Thangamani*** and made the relevant observation with regard to paper publication. I am therefore of the view that none of the two decisions relied on by the learned counsel for the petitioner would come to his rescue to upset the order passed by the learned Rent Controller.

13. The Rent Controller allowed the application filed by the petitioner for affixture. However, the Rent Controller was of the view that paper publication should also be taken as such a step would cite the attention of

the respondent. The direction for publication was issued by the learned Judge to see that the respondent is served in the alternative manner.

K.K.SASIDHARAN, J.

(tar)

14. The law is therefore clear that it would be within the authority of the rent controller to direct the petitioner to serve notice on the opposite party by various methods including substituted service by publication.

15. I do not find any error or illegality in the order under challenge, warranting interference by this Court.

16. In the upshot, I dismiss the civil revision petition. No costs.

22.11.2016

Index:Yes/no
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To

The X Small Causes Court, Chennai.

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