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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RC.REV. 103/2014 & C.M.No.4201/2014
INDERJIT SINGH

..... Petitioner

Through Mr. Harshbir Singh Kohli, Adv.
versus

RANJIT KAUR

..... Respondent

Through Mr. Manoranjan, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **01.02.2016**

The petitioner is aggrieved by the two impugned orders i.e. the order dated 05.06.2012 passed by the Additional Rent Controller (ARC) wherein the eviction petition filed by the non-applicant/landlord (E No.07/2012) stood decreed in favour of the landlord. The second order impugned before this Court is the order dated 16.09.2013 vide which the application filed by him under Order XXXVII Rule 4 read with Order 9 Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) as also Section 44 of the Indian Evidence Act stood dismissed; as a consequence thereof, the order of eviction already passed in favour of the landlord/non-applicant stood endorsed.

As on date, the suit premises have been taken over by the landlord. This was subsequent to the execution proceedings filed by the landlord. The petitioner stood evicted from the suit property on 22.03.2013. His submission is that that he was never served in the eviction petition; summons had not been received by the petitioner/tenant; even as per the

service report filed before the Trial Judge, service has been effected upon one Jagjit Singh who is stranger to the petitioner and not known to the petitioner. Such a service was a service not valid in the eye of law. The eviction petition had been decreed as no leave to defend was filed by the contesting tenant as (at the cost of repetition) service had not been effected upon the tenant. This was a malafide which has been played by the landlord/non-applicant. Further submission is that it was at the time when the warrants of possession had been ordered against the petitioner/tenant that he learnt about the fate of the case. He forthwith (on 04.04.2013) moved an application under Order 9 Rule 13 of the CPC seeking setting aside of the ex-parte decree which had been passed against him.

This application filed by the tenant under Order 9 Rule 13 of the CPC is a relevant pleading. Record shows that this was filed in the Court of Rent Controller on 04.04.2014. This application sought setting aside of the decree dated 05.06.2012 which had been passed by the ARC decreeing the eviction petition of the landlord. In the entire body of this petition, there is not a single whisper that the service effected on Jagjit Singh was not a correct service and Jagjit Singh was not authorized or an agent to empowered to receive summons on behalf of the tenant and such a service being in-valid, the eviction order is liable to be set aside. The entire body of this application running into more than four pages which had been accompanied by an application seeking condonation of delay and duly supported by the affidavit of the petitioner/tenant nowhere spells out a word about Jagjit Singh not having been competent or duly

authorized to receive summons on behalf of the petitioner namely Inderjit Singh. These proceedings continued for sometime before the ARC. Reply was filed to this application. This application was subsequently withdrawn.

During the pendency of these proceedings, the petitioner/tenant chose to file an application under Order XXXVII Rule 4 read with Order 9 Rule 13 of the CPC and Section 44 of the Evidence Act. This was on 17.05.2013. It was in this application that it was for the first time stated that Jagjit Singh is stranger to the petitioner and he is neither an employee of the petitioner and nor related to him and the summons received by Jagjit Singh was in collusion with the landlord.

Reply to the said application was filed by the landlord. He denied these averments. It was denied that Jagjit Singh is stranger and not an agent/employee of the petitioner. It was categorically stated that Jagjit Singh was the employee of Inderjit Singh.

No rejoinder was filed to the present application.

The second impugned order dated 16.09.2013 was passed on this application.

Learned counsel for the petitioner to advance his submissions has placed reliance upon a judgment of a Bench of this Court reported as 45 (1991) DLT 678 Sudershana Rani Vs. Kamla Bhutani. His submission is that an application under Order XXXVII Rule 4 of the CPC was maintainable. This submission of the learned counsel for the petitioner which is based on the ratio of this judgment is unfounded. The Court in this judgment had noted that the eviction order passed in the absence of

an application seeking leave to defend can be challenged on the analogy of Order XXXVII Rule 4 of the CPC which provides that after the decree has been passed, the Court may under special circumstances grant leave to the tenant to defend his suit; provisions of Section 25-B (9) of the DRCA had been noted which give powers to the ARC to review an order which has been passed by him.

Per contra, learned counsel for the respondent has placed reliance upon a Bench of this Court reported as 2015 (1) RCR (Rent) 225 Shyam Sunder Wadhawan Vs. Shri Vivek Arya; submission being that merely because summons are addressed to the tenant but received by somebody else does not mean that in each and every case the service is not a valid service and each depends upon the factual matrix of each case.

The judgments relied upon by the respective counsel for the parties both had noted the factual matrix of that case; it did not lay any legal ratio which can be applicable to the facts of the instant case. The record of the instant case is peculiar on its own factual matrix. Even presuming that the submission of the learned counsel for the petitioner is correct and he was not served with the summons through his duly authorized agent and Jagjit Singh was not his employee or agent (although not specifically denied to the specific averment of the landlord that Jagjit Singh was an employee of the petitioner) even otherwise, the first legal step taken by the petitioner/tenant (after the eviction decree had been passed on 22.03.2013) was by his filing an application under Order 9 Rule 13 of the CPC which was filed on 04.04.2013 wherein in the entire body of the

application (running into more than four pages), there is not a whisper about Jagjit Singh not being authorized to receive summons on behalf of petitioner Jagjit Singh. This application as noted supra was subsequently withdrawn. A fresh application under Order XXXVII Rule 4 of the CPC had been filed was on 17.05.2013. The petitioner had become wiser through legal advice. It was in the body of this application that it was for the first time stated that Jagjit Singh was not the employee of Inderjit Singh. At the cost of repetition, it has nowhere categorically been denied by the petitioner that Jagjit Singh was not his employee. His submission was that Jagjit Singh was a stranger. What a stranger was doing in the premises of the petitioner Inderjit Singh has not been answered as admittedly the registered A.D. cover had been received at the address of Inderjit Singh. It is not the case of the petitioner/Inderjit Singh that this is not his address. Why he did not set up this plea of invalid service at the time when he had first filed his application under Order 9 Rule 13 of the CPC is neither justified and nor explained. His submission taken for the first time in his second application (under Order XXXVII Rule 4 of the CPC) on 17.05.2013 i.e. after a gap of 1 month and 13 days was obviously under advice of a legal professional; this was to cover up the lapse and the fault on the part of the petitioner in not having preferred his defence within the mandatory period of 15 days.

The factual narrations have been noted in both the impugned orders in the correct perspective. On no count, does the impugned order call for any interference. This petition is an abuse of the process of the

Court. It is a wasteful expenditure of its time. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

FEBRUARY 01, 2016

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