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IN THE HIGH COURT OF DELHI AT NEW DELHI

RC.REV. 614/2015 & C.M. No.28280/2015 (stay)

SATISH KUMAR BHARTI

..... Petitioner

Through Mr. R.K. Bharti, Adv.

versus

GURDEEP KAUR

..... Respondent

Through Mr. K.N. Singh and Mr. S.N. Chaudhari, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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02.03.2016

The petitioner is aggrieved by the impugned judgment dated 10.09.2015. His application seeking leave to defend in a pending eviction proceedings under Section 14 (1)(e) of the Delhi Rent Control Act (DRCA) stood dismissed. This was on the premise that the application seeking leave to defend had not been filed within the stipulated period of 15 days. The impugned judgment had noted that the service had been effected upon one Kunal who was an authorized agent of the tenant Satish Kumar Bharti and having been served at the address of the tenant himself, his service was a valid service. The application seeking leave to defend having been filed after more 15 days (on 03.09.2015) could not be read as it was not filed within the statutory period of 15 days. The application seeking leave to defend

was accordingly dismissed.

The petitioner is aggrieved by this finding.

Learned counsel for the petitioner submits that he had been served only on 23.08.2015; Kunal was no person who was authorized to receive summons on his behalf and since the procedure contained in Section 25-B of the DRCA is a strict procedure, strict adherence also has to be made to the same and unless and until it has been established that the tenant has been served or any other person who is authorized to receive summons on his behalf, it cannot be treated as valid service. Kunal is a person not known to the tenant. Service having been effected upon Kunal is an invalid service. The impugned judgment is liable to be set aside.

Per contra, learned counsel for the landlady submits that service effected upon Kunal was a valid service as admittedly this service had been effected upon the address of the tenant. Attention has been drawn to the report of the process server to substantiate this argument. Additional submission being that even on merits, in the application seeking leave to defend which has been filed by the tenant, no triable issue has arisen.

Arguments have been heard and record has been perused.

This Court will first answer the issue of limitation which is the subject matter of the impugned order. There is no doubt that there is a strict procedure contained in Section 25-B which is applicable to an eviction proceeding under Section 14 (1)(e) of the DRCA. Since this

is a summary procedure, the Legislature has engrafted that service has to be effected of the summons in the prescribed manner and as per the schedule prescribed either to the tenant himself or to his agent empowered to accept service at the place where the tenant or his agent actually and voluntarily resides. This summons has to be effected in the form specified in the third Schedule; service may also be effected through registered post with an acknowledgement due. This is contained in sub section (ii) and (iii) of Section 25-B of the DRCA.

A perusal of the summons sent in the present case shows that the summons have been served in the prescribed format i.e. as per the third Schedule wherein a direction is given that the tenant that within 15 days of service of notice he has to contest the application and no further time will be granted for the said purpose. The procedure contained in Section 25-B (5) has also been enlisted in this summon which is the formatted form. The report of the process server on this summon is that he had gone to the address of the tenant at 1/56, Kirti Nagar to serve the summons upon the tenant Satish Kumar Bhatia where at the spot, he met one person by the name of Kunal who initially described himself as the son of the tenant and later on described himself as his nephew. In the presence of the process server, he made a phone call and thereafter summons had been accepted by him. This summon report shows the receipt of the summons along with its copy by Kunal is dated 06.08.2015. Further perusal of the Trial Court record shows that the counsel for the tenant

i.e. Mr. R.K Bharti had signed his power of attorney on 24.08.2015; this power of attorney although dated and signed on 24.08.2015 was filed in the Court on 03.09.2015. The application seeking leave to defend was also filed only on 03.09.2015. The service report qua the registered A.D. summons sent to the tenant has also been perused. It shows that the postman has visited the residence of the tenant i.e. 1/56, Kirti Nagar, on 06.08.2015, 10.08.2015 and thereafter on 12.08.2015 but inspite of repeated efforts, the summons could not be served upon the tenant.

Before this Court, it has been pleaded that the tenant learnt about the summons only on 23.08.2015. This Court finds this difficult to believe. How the tenant learnt about these summons on 23.08.2015 is not clear. Admittedly the tenant had signed a power of attorney in favour of his Advocate on 24.08.2015. This is clearly from the document i.e. the power of attorney which is a part of the record. This shows that the tenant was aware on 24.08.2015 that there was a proceeding pending qua him in the Court of the ARC (Smt. Rachna Tiwari) and the details of the said petition and the title of the case have all been depicted in this power of attorney. It is obvious that the counsel would have inspected the record to find out the fate of his case as admittedly he knew the details of the case on 24.08.2015 when this power of attorney was prepared. He could not have known them otherwise.

The application seeking leave to defend was filed on

03.09.2015. It was beyond the period of 15 days if service is to be counted from 06.08.2015 i.e. the date when Kunal had been served with the summons. The fact that these summons had been addressed at the address of the tenant is an admitted fact. These summons had been sent on 1/56, Kirti Nagar which is the address of the tenant.

In this context, a Bench of this Court while dealing with such like difficult situation where one party disputes the service of summons in this context in R.C. Rev. No.211/2014 titled Gulshan Kumar Vs. Pomey Plastic Works delivered on 02.12.2014 noted 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) *(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) *(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) *(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."*

Thus if summons are addressed to a tenant at his address and the summons are received with the consent and knowledge or at the direction of the tenant, such a service would be deemed to be an effective service.

Admittedly in this case, the summons had been addressed to the tenant and at the correct address i.e. the address where the tenanted premises are located i.e. 1/56, Kirti Nagar. The fact that they were received by one Kunal is the report of the Process Server on 06.08.2015 and the Process Server had in this report clearly stated that Kunal had described himself earlier as his son and then as nephew of the tenant; he had made a telephone call and only

thereafter he had agreed to receive summons along with copy of the petition. The Trial Court had examined these facts in the correct perspective. The Trial Court also had an occasion to question the tenant on this score and the impugned order has noted that on a direct query put to the tenant on this count, he had admitted that he knows Kunal but had described Kunal as a neighbour. It was not his case before the Trial Court that Kunal was not known to him which is the plea taken before this Court. This submission was noted by the Trial Court while passing the impugned order.

The record of the Trial Court also shows that the application seeking leave to defend had been prepared and signed on 24.08.2015. It had however been filed only on 03.09.2015. On a repeated query put to the learned counsel for the petitioner on this count as to why he waited for 10 days to file this application, again he has no answer. In fact contrary stands had been taken by the tenant on this score. As per him, he learnt about these proceedings only on 23.08.2015; his submission is that he had prepared the application seeking leave to defend within 24 hours i.e. on 24.08.2015 itself; his additional submission on this count is that upto 23.08.2015, the tenant was out of station. If this application seeking leave to defend had been prepared on 24.08.2015 as is clear from the record, why the tenant waited up to 03.09.2015 to file the same is not explained. His conflicting stands about the relationship with Kunal also persuades this Court to hold that the pleas taken up by the tenant appear to be

shifting pleas to ward off and delay the proceedings.

In view of the above factual matrix, this Court is of the view that the impugned order noting that the summons were duly served upon the tenant through his agent Kunal on 06.08.2015 and the application seeking leave to defend having been filed on 03.09.2015 could not be taken into account as it was beyond the period of 15 days and this order, in view of this Court, suffers from no infirmity.

Even on merits, this Court notes that the application seeking leave to defend filed by the tenant in the Trial Court on no count raises any triable issue. Presuming that the Trial Court had examined this application seeking leave to defend (filed by the tenant), the counsel on this count has been queried as to what would be the triable issue which would arise. Learned counsel for the petitioner is unable to make out any such case. His submission is that an earlier petition under Section 14 (1)(a) (b) & 14-D of the DRCA had been filed by the landlady; the same had been dismissed and the site plan filed in that eviction petition is contrary to the site plan filed in this petition. This argument has been noted and examined.

Admittedly, the landlady (widow) had filed an eviction petition against the present tenant in proceedings under Sections 14 (1)(a)(b) & 14-D of the DRCA. That eviction petition had been dismissed by a speaking order on 15.04.2010. Evidence had been led in that petition. A site plan had also been filed in that eviction petition. The said site plan as compared to the site plan filed in the present petition does not

suffer from any contradiction as has been vehemently pointed out by the learned counsel for the petitioner. There is no doubt that the area on the ground floor in the earlier eviction petition had described two shops on the front side and a godown. That eviction petition had been filed in the year 2008. The submission of the landlady is that over the years with the passage of time, since she has grown older, she has shifted her residence to the ground floor and as such the third godown which has been described as a godown (in the earlier eviction petition) has now been converted into a drawing room. This has been mentioned by her in the eviction petition itself. The site plan filed by the landlady in the present eviction petition has now described the godown as a drawing room. The present eviction petition had been filed in the year 2015. There is no gainsaying to the settled legal proposition that the need of a person changes. It cannot remain static and constant. The need of the landlady at that time permitted her to stay on the first floor but over the years with the passage of time, she had grown older and had shifted to ground floor and this godown had accordingly been converted as per her requirement into a drawing room. It is only the use of that area which has now been changed. Her submission in the earlier eviction petition as also in the present eviction petition is that the shop (adjacent and second to the tenanted premises) is in the occupation of her son who is carrying on his business from there; thus contention in the earlier eviction petition as also in the present eviction petition is the same. The triangular portion

is with the tenant.

Her bonafide need has been described as the need of her daughter to get this place in order that it can be enjoined with the adjacent shop which is not more than 5" X 6" feet and by itself is not a sufficient place for her daughter to run a boutique and by joining the present tenanted premises with that shop, it would be a valuable business place for running a boutique and together measures 10" X 6" feet and would have a front opening which would be a viable accommodation for her daughter to run this boutique.

The fact that her daughter is living with her husband at Model Town is not disputed. However, in this eviction petition, it has been pleaded that her daughter needs to set up an independent business of a boutique and garments as she has no space at Model Town where she is living on the second floor with her family which is a joint family; she needs an independent and permanent source of income. This need as depicted in the eviction petition is a justifiable need and the fact that there is no alternate suitable accommodation available with the daughter is also established.

The submission of the learned counsel for the petitioner on this score that a married daughter is not a 'dependent' within the meaning of Section 14 (1)(e) of the DRCA was repelled by a Bench of this Court.

In 1975 RLR 112 Lal Ram Vs. Kalawati in the context of married daughter it was noted that the requirement of the daughter

and her husband would be treated as the requirement of the landlady.

In 1986 (1) RCJ 717 R.K. Bhatnagar versus Sushila Bhargava , the word ‘dependent’ was analysed to include not only a person who is financially dependent upon the landlord/landlady but has under ambit. In this context it was noted as under:

“it is now well settled that the word “dependent” cannot be construed as wholly dependent in the sense of earning nothing at all and the entirely dependent on the parents for lodging and maintenance. It connotes a wider concept and covers a larger field. It takes a person who is not financially dependent upon the landlord but who would in normal course look upto the landlord to provide him/her with the facility of a house/portion possessed by the landlord.”

The impugned order on this score suffers from no infirmity.

A submission had also been recorded in the earlier order of this Court where a Bench of this Court on the first hearing that the only question in this eviction petition whether the petition under Section 14 (1)(e) of the DRCA is maintainable in view of the fact that an earlier eviction petition under Section 14 (1)(a) (b) & 14-D of the DRCA was dismissed on merits. Pursuant to that order, an application seeking modification of that order had been filed which in view of the agreement posed by the parties, this Court had agreed that all other pleas as raised by the tenant would be addressed before this Court which accordingly has been addressed. In a judgment reported as AIR 1991 SC 99 K.L.Malhotra Vs. Smt. Prakash Mehra the Apex Court had noted a reverse situation; the pendency of an eviction petition under Section 14 (1)(e) of the DRCA would be no bar for

filing a subsequent petition under Section 14 (D) and the relevant extracts reads herein as under:-

“The pendency of proceedings under section 14(1)(e) would be no bar to bring a petition under 14-B, 14-C and 14-D.”

The vice-versa situation is wholly applicable. Even otherwise, the earlier eviction petition was not a petition under Section 14-D alone; it was a joint petition under Section 14 (1)(a) (b) & 14-D of the DRCA.

The judgments relied upon by the learned counsel for the petitioner reported as 208 (2014) DLT 481 Bishan Swaroop Vs. Manish Sethi as 205 (2013) DLT 117 Jor Singh Vs. Sanjeev Sharma are not applicable to the factual matrix of the instant case.

On no count, does the impugned judgment call for any interference. Petition is without any merit. Dismissed.

INDERMEET KAUR, J

MARCH 02, 2016

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