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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RC.REV. 78/2016 & C.M. No.4332/2016

MANOJ

..... Petitioner

Through Mr.D.Kyati, Advocate.

versus

RANJEET SINGH

..... Respondent

Through Mr.Sanjay Sharawat, Mr. Ashok
Kumar, Mr.Ratish Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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19.05.2016

Impugned order is dated 21.3.2015. Vide the impugned order eviction petition had been decreed in favour of the landlord Ranjeet Singh. This was in a pending proceeding under Section 14(1)(e) of the DRCA. The Court had noted that valid service had been effected upon the tenant and since an application seeking leave to defend had not been filed, the Court had decreed the eviction petition in favour of the landlord.

The petitioner before this Court is the tenant (respondent in the Trial Court). His submission is that a fraud had been played upon him by the landlord and in fact no service has been effected upon him.

The service report of the process server dated 12.12.2014 has been perused. The tenant in this case is one Manoj. Admittedly, Manoj was not found at the place of service. Process Server had met

one person by the name of Rakesh who had claimed himself to be the brother of Manoj. The vehement contention of the learned counsel for the petitioner is that Rakesh was not an agent of the petitioner and was not empowered to accept the summons on behalf of the tenant within the mandate of Section 25B(3) of the DRCA. Submission being that a person impersonated by the landlord had been placed at the site in order to get the service effected for the benefit of the landlord.

Per contra, learned counsel for the landlord has disputed this position. He submits that the service has been effected through not only the ordinary process i.e. through the branch of the process serving agency but also through registered A.D. post.

The report of the process server has been noted supra. The registered A.D. Covers had been sent to Manoj on which the postal employee had noted that Manoj was not available at the site; on the second visit there appears to be a refusal but the report is conspicuously silent as to who had refused the summons. The report of the process serving agency had also noted that one Rakesh had received the summons on behalf of the tenant Manoj but the submission of the tenant that Rakesh is neither his brother and nor was he empowered to receive summons on his behalf is an argument worthy of merit. Service is clearly doubtful.

Impugned order is set aside. Permission to file application seeking leave to defend is accordingly granted to the petitioner (tenant); who shall file the said application within 15 days from today with advance copy to the landlord who may file reply before next

date.

At this stage, learned counsel for the petitioner submits that the petitioner has not come to the court with clean hands and such a litigant deserves no sympathy. Learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court reported as (2010) 14 SCC 38 Ramjas Foundation and Anr. Vs. Union of India.

Per contra, learned counsel for the petitioner submits that it is the landlord who had played a fraud upon the tenant by getting a false service report prepared. This Court need not to delve any further into the submissions and counter submissions as the conduct of the landlord in obtaining an almost verbatim service report in all the ten connected petitions does create a suspicion in the mind of the Court. The submission of the landlord that the tenant has not come to Court with honesty as in his application seeking a stay of the decree he had not disclosed to the Court that possession of the property had already handed over to the landlord on 03.3.2016 is belied by the contents of the said application. There is no such positive assertion in the application which could persuade this Court at this stage to lean in favour of the landlord. These submissions thus need not be delved into any further.

Parties are directed to appear before ARC on 08.7.2016.

Petition disposed of in the above terms.

INDERMEET KAUR, J

MAY 19, 2016

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