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

% *Date of decision:* February 28, 2017

+ RC.REV. 81/2017 and CM No. 6756/2017 (stay)

DAL CHAND

..... Petitioner

Through Mr.Subhashish Mohanty, Advocate

Versus

BHUPINDER SINGH & ANR

..... Respondents

Through Mr.S.Satyanarayan, Advocate with
respondents-in-person.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present revision petition filed under Section 25 B(8) of the Delhi Rent Control Act, 1958 (hereinafter referred to as the DRC Act), the petitioner seeks to impugn the eviction order dated 01.07.2016 passed by the trial court.
2. The respondents filed an eviction petition under Section 14(1)(e) of the DRC Act regarding premises being a shop on Rohtak Road, Delhi.
3. The summons were served on the petitioner on 28.01.2016. The petitioner was obliged to file an application for leave to defend within 15 days of service of summons. However, leave to defend application was filed on 18.02.2016 beyond the period of 15 days. As the period for filing leave to

defend had expired on 12.02.2016, the trial court relying upon the judgment of the Supreme Court in the case of *Prithipal Singh vs. Satpal Singh (dead) through LRs, (2010) 2 SCC 15* dismissed the application for leave to defend and passed an eviction order against the petitioner.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner has vehemently argued that in the present case, in terms of Section 25B (3) (a) of the DRC, the trial court was obliged to direct summons to be served on the petitioner/tenant by registered post and by ordinary process. He submits that contrary to the provisions of Section 25 B, the respondents have affected service on the petitioner only by ordinary process. Hence, it is urged that the procedure adopted by the ARC was contrary to the statutory provisions and the impugned order is liable to be set aside. It is strongly urged that no registered AD covers were filed contrary to the provisions of Section 25B (3) of the DRC Act.

6. I have perused the trial court record.

7. The ARC on receipt of the eviction petition on 14.12.2015 directed issuance of notice to the petitioner on filing of PF/RC i.e. process fee/registered covers. On 22.01.2016, the next date of hearing, the ARC noted that steps had not been taken and a direction was passed that the previous order be complied with for 15.03.2016. Complying with the same the process fee was filed by the respondents and the petitioner was served through ordinary process on 28.01.2016. A perusal of the record does not show as to whether the summons were sent through registered AD covers also. Relying upon this fact, the petitioner has argued that there is a breach of the mandatory condition of provisions of Section 25B of the DRC Act. Section 25B(3) reads as follows:-

“25B - Special procedure for the disposal of applications for eviction on the ground of bona fide requirement. –

(1)

(2)

(3) (a) The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.”

8. In compliance of the above provisions, the ARC on the first date of hearing itself, directed service of notice on the petitioner through both means, namely, ordinary process and registered covers. Hence, there was compliance of the provisions of Section 25 B(3) of the DRC Act. There is no report available on the trial court regarding service through registered AD covers. However, the petitioner admits that he was served through ordinary process.

9. In view of the above factual scenario, reference may be had to the judgment of the Division Bench of this court in the case of ***Ashok Kumar vs. Purshotam Lal Verma, 2016 SCC OnLine Del. 5358*** in which the Division Bench held as follows:-

“13. In view of the above discussion, the reference is answered in the following terms:

1. Both modes of service are mandated and have to be resorted to simultaneously by the Controller. However, if service through one mode is completed or successful, that is deemed sufficient, irrespective of whether the other mode is successful or not.

2. In case the tenant is served by both the modes, the period of 15 days for filing the leave to defend has to be counted from the first date of service. Time, for the purpose of filing leave to defend, does not depend on the second service of summons."

10. Hence, where service through only one mode is complete or successful, it is deemed to be sufficient irrespective of the fact that the service through other mode is successful or not. In the present case, the ARC has directed service through registered AD cover also. Merely, because no report about the service allegedly affected through registered AD cover is available on record does not make the service, admittedly affected through ordinary process, as void and ineffective. As noted by the Division Bench, the object of service of notice on the petitioner is to inform the petitioner about the institution of an eviction petition. As noted by the Division Bench, the object is to ensure speedy service of summons on the tenant. Hence, the legislature thought it appropriate to ensure that two modes are simultaneously resorted to. The object was to intimate to the petitioner the initiation of an eviction petition against him. That object has been completed. The only purpose of having two different modes was that there is no delay in affecting service on the tenant.

11. In view of the above legal position, the fact that the petitioner was duly served through ordinary process is sufficient compliance of the

provisions of Section 25B of the DRC Act. There are no grounds to interfere in the impugned order of eviction passed against the petition.

12. The petition is accordingly dismissed. All pending applications also stand dismissed.

13. TCR be sent back to the trial court.

(JAYANT NATH)
JUDGE

FEBRUARY 28, 2017
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