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

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Date of decision: 01.03.2017

+ RC.REV. 78/2017

UNION OF INDIA THR POSTAL DEPARTMENT
OF DELHI

..... Petitioner

Through Mr.Sanjeev Sabharwal and Mr.Hem
Kumar, Advocates

versus

ARUNA GUPTA & ANR

..... Respondent

Through Mr.Rajesh Kumar, Advocate

JAYANT NATH, J.(ORAL)

CAVEAT 155/2017

Since the learned counsel for the respondent has entered appearance,
the caveat stands discharged.

CM No.6478/2017 (*exemption*)

Allowed subject to all just exceptions.

RC REV.78/2017 & CM No.6477/2017 (*stay*)

1. By the present 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 13.10.2016 passed against the petitioner/postal department.
2. The petitioner states that it is the tenant of the property since 1953. It is urged that the said post office which is situated at Chawri Bazar is an iconic location for the entire area and is a landmark in the area.
3. It is further urged that the respondents have filed the present eviction petition under section 14(1)(e) of the DRC Act. However, in the eviction

petition instead of giving the address of the premises from where the petitioners are operating in Chawri Bazar, service has been effected through postal department of Delhi through its Chief Post Master General, Meghdoot Building, Third Floor, Link Road, Jhandewalan, New Delhi. The services of the summons were effected on the petitioner on 14.3.2016. On account of co-ordination problems in the department and also in view of the fact that some of the officials dealing with the summons were not legally trained, the petitioner did not take steps within 15 days as required in terms of Section 25B of the DRC Act. Accordingly, the ARC passed the impugned order of eviction.

4. I have heard learned counsel for the parties.

5. Learned counsel appearing for the petitioner relies upon judgment of this Court in *Jor Singh vs. Sanjeev Sharma, 205 (2013) DLT 117* to contend that the petitioners were obliged to serve the respondent at the address in Chawri Bazar from where the business is being carried on.

6. The Supreme Court in the case of *Prithipal Singh v. Satpal Singh, (2010) 2 SCC 15* held as follows:-

“13. Next comes the very important provision in Section 25B of the Rent Act, i.e., Sub-section (4) of the same. It clearly provides that a tenant on whom the summons is duly served in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller, as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.

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15. At this stage, we may also note that in Sub-section (4) of Section 25B of the Rent Act read with Third Schedule, it has been made clear by the Legislature that if the summons of the proceeding is received by the tenant, he has to appear and ask for leave to contest the eviction proceeding within 15 days from the date of service of notice upon the tenant and if he fails to do so, automatically, an order of eviction in favour of the landlord on the ground of bona fide requirement shall be made.”

7. In view of the said legal position, the ARC has passed the eviction order as the petitioner failed to file his application for leave to defend within fifteen days.

8. I may now look at the statutory provision pertaining to service on a respondent.

9. Section 25B 3(a) of the DRC Act reads as follows:-

“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, acknowledgement 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.”

10. Hence, the landlord/respondent was obliged to serve summons on the tenant through Registered Post Acknowledgement Due and through Ordinary Process at the place where the tenant actually and voluntarily carries on business or works for gain.

11. It may be noted that the Supreme Court in *Prithipal Singh vs. Satpal Singh*(supra) has held that Section 25B of the Act is a complete code by

which the entire process to be adopted for eviction of a tenant on the ground of bonafide requirement filed by the landlord in respect of a premises shall be followed. The Supreme Court held as follows:

“22. Apart from that, as we have noted herein earlier, Section 25B itself is a special code and therefore, Rent Controller, while dealing with an application for eviction of a tenant on the ground of bona fide requirement, has to follow strictly in compliance with Section 25B of the Act. Therefore, after insertion of Section 25B of the Act, any application for granting eviction for a special kind of landlord, shall be dealt with strictly in compliance with Section 25B and question of relying on Rule 23 of the Code, which also does not give full right to apply the provisions of the Code, could be applied.”

12. Regarding effective service in compliance of the provision of Section 25 B of the Act, this court in ***Jor Singh vs. Sanjeev Sharma (supra)*** held as follows:-

“28. One of the essential requirements of the special process of service provided under Section 25 B of the Act is that the summons must be served and addressed to tenant or his duly authorized agent empowered to accept service. The said requirement is a precondition for a valid service which is evident from the wordings of the Section 25 B (3) (a) wherein it is stated “addressed to the tenant or his agent empowered to accept the service”. Thus, the service which shall be done to a tenant should address to the tenant or the one which is done to the agent must be addressed to the agent who is empowered to accept the service. The provisions of Section 25 B(3)(a) are to be strictly adhered to as the service of the tenant sets in to motion a limitation period which is itself very short and the expiration of which results in the serious consequences of deprivation of his right to contest the proceedings which may ultimate result in to eviction. Therefore, no departure is permissible under the provisions of Section 25B and the service has to be conducted in accordance with the mode and

procedure prescribed therein. The learned Rent Controller has to thus ensure prior to making any order on the expiration of the limitation period that the service is effected upon the tenant or his agent in the prescribed manner else he has to order the issuance of the fresh summons in the matter. In the present case, the respondent is not able to satisfy this Court about the valid service of summons upon the petitioner/tenant.

29. If the provisions of Section 25B(3) are applied to the instant case, it can be seen that the registered post service was doubtful and not specific. Even if the conduct of the respondent in the present case is examined it is apparent that the respondent was trying to get the possession of tenanted shop by any means and without due process of law which are not permitted by law. The learned Trial Court has totally failed to apply its mind and notice the conduct of the respondent which is of dubious nature. The learned Rent Controller believed the doubtful report of the process server which does not clearly mentions the identity of the person who refused to accept summons. That is not the scheme of the provision of Section 25 of the Act.”

13. In view of the above judgment and provisions of Section 25 B(3) of the Act, the petitioner was obliged to effect service on the respondents at a place where the tenant actually and voluntarily resides or carries on business or personally works for gain. This provision would not mean or imply that the landlord has liberty to serve an entity like postal department at any of the places from where the postal department is working. The provision of Section 25B(3)(a) of the Act had to be construed to mean that service had to be effected on an authorised officer of the petitioner who was duly authorised to accept notice. Keeping into account the stringent provisions provided, service has to be effected strictly as per the said provisions.

14. The issue arises as to who would be the correct person on whom service can be affected when a government entity is to be served. Reference

in this context may be had to the judgment of this court in the case of *M/s. C.Lyall and Company vs. Union of India, ILR (1973) 1 Delhi 905* where this court held as follows:-

“12. This contention of the Union of India must prevail. Order Xxvii of the Code of Civil Procedure provides for suits by or against the Government or public officers in their official capacity. Rule 2 A of this order provides that persons being ex-officio or otherwise authorised to act for the Government in respect of any judicial proceedings shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government. Rule 3 provides that in suits by or against the Government instead of inserting in the plaint the name and description and place of residence; of the plaintiff or defendant, it shall be sufficient to insert the appropriate name as provided in section 79 of the Code. Section 79 provides that in suit by or against the Government, the authority to be named as plaintiff or defendant, in the case of a suit by or against the Central Government shall be the Union of India. Rule 4 of the Order Xxvii provides that the Government pleader in any Court shall be the agent of the Government for the purpose of receiving processes against the Government issued by such Court. Rule 2(B) of the said order defines the term "Government pleader" in relation to any suit by or against the Central Government as the pleader as Government may appoint whether generally or specially for the purposes of the said order. Section 80 of the Code provides that no suit shall be instituted against the Government or against the public servant in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months next after notice in writing has been delivered or left at the office of, in the case of a suit against the Central Government, the Secretary to that Government.

(13) It, therefore, follows that a notice of any proceeding to the Central Government would be valid only if it was either sent to the Sec- retary to the Government or to any other officer who

may be authorised to act for the Government in respect of judicial proceedings or to the pleader as defined in Rule 8(B) of the said Order. It is difficult to hold that any public servant who dealt with any proceedings which may have led to the institution of the suit against the Union of India would be competent to accept notice on behalf of the Union of India. It is equally difficult to hold that Union of India would be bound by notice received by various officers at different levels. In any event, in the absence of any provision of law or any rule of business or any statutory rule to the contrary it is not possible to hold that the Executive Engineer was empowered to accept notice on behalf of the Union of India and that the receipt of notice in his office constituted sufficient notice to the Union of India of the filing of the award in the present case.”

15. In the above case, the issue revolved around service of notice of filing of the award. The concerned party was described in the petition as Union of India through Executive Engineer Patna Aviation Division, CPWD, Patna Bihar. The notice had been sent to the said Executive Engineer and was received by someone in his office in his absence. This court in view of the above position held that Union of India was never served with the formal notice.

16. In the present case, the petitioner has effected service on the tenant on the postal department of Delhi through Chief Post Master General, Meghdoot Building, Third Floor, Link Road, Jhandewalan, New Delhi. There is no attempt to explain as to whether the Chief Post Master General having its office at Jhandewalan, New Delhi is authorised on behalf of the tenant/petitioner to accept service of summons. No such submission was even made before this court. In fact service was not even affected on the concerned officer-in-charge of the tenanted premises. Hence, in my opinion, no effective service has been effected on the petitioner/tenant. The service

done is contrary to the provisions of Section 25B(3)(a) of the DRC Act.

17. Accordingly, the impugned order suffers from material irregularity and illegality. I quash the impugned order. I grant to the petitioner 15 days' time to file an application seeking leave to defend starting from the date of receipt of a copy of this order. It is made clear that in case the application for leave to defend is not filed within 15 days with an advance copy to the respondents, the impugned order of eviction dated 13.10.2016 shall continue to operate.

18. Petition stands disposed of. All pending applications, if any, also stand disposed of accordingly

19. Parties to appear before the concerned ARC on 12.4.2017.

20. A copy of this order be given *dasti* under signatures of the Court Master to learned counsel for the petitioner.

JAYANT NATH, J.

MARCH 01, 2017/n