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

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Date of decision: 16.01.2017

+ CM(M) 1211/2016 & CM Nos.43939-43940/2016

NEELAM SONI

..... Petitioner

Through Mr.M.S.Oberoi and Mr.Gaurav
Rohilla, Advs.

versus

ATIN SINGHAL

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to challenge the order dated 2.7.2015 by which order the appeal filed by the petitioner before the Additional Rent Control Tribunal (hereinafter referred to as The ARCT) was dismissed.

2. The respondent filed an Eviction Petition under section 14(1)(a) of the Delhi Rent Control Act (DRC Act) for property No.L-65, Mahabir Nagar Extension, Nangli Jalab, New Delhi. The petitioner was said to be the tenant of the first floor of the said property as described in the site plan. The property was said to have been let out to the petitioner in August 2013 for residential purpose at a monthly rent of Rs.2,000/-. It was urged that the petitioner was in arrears of rent w.e.f. March 2005 till March 2009. A demand notice was issued on 24.1.2008 but rent was still not been paid. An Eviction Petition was filed u/s. 14(1)(a) of the DRC Act. The petitioners were served but did not appear and were proceeded ex parte. The Additional

Rent Controller (hereinafter referred to as The ARC) by his judgment dated 6.12.2010 noted that the petitioners are in arrears of rent w.e.f. March 2005 to February 2006 and despite notice dated 24.1.2008 rent has not been paid. The petition of the respondent under section 14(1)(a) of the DRC Act was allowed holding the petitioner as a defaulter in payment of rent but benefit under section 14(2) DRC Act was granted. On 31.5.2011 the ARC on an application under section 152 CPC noted that there is a typographical error in the earlier order dated 6.12.2010 and the same was corrected. The arrears were from March 2006 to February 2009. Notice of the order/judgment was directed to be sent for compliance to the petitioners.

3. The petitioners thereafter on receipt of the notice entered appearance before the court on 30.7.2011. It was urged by the petitioner that they inspected the judicial file and learnt about the ex parte judgment dated 6.12.2010. Hence, an application was filed under Order 9 Rule 13 CPC for setting aside the ex parte judgment. In the application it was stated that the petitioners had been proceeded ex parte on 15.5.2009 on the alleged service of the present petition upon Shri Amit Soni the son of the petitioner through process server on 11.5.2009 and through postal service on 8.5.2009. It was urged that neither the petitioner nor Shri Amit Soni ever received any summons and that they came to know about the ex parte judgment only in July, 2011 when they received summons from the court. The ARC dismissed the said application under Order 9 Rule 13 CPC noting that Shri Amit Soni son of the petitioner has been served by process server and by post. There was no defect in the address and the service. It also noted the stand of the petitioner that she is the owner of the premises. It also noted that despite her claim that Shri Amit Soni does not reside with her in the suit property, no

document or proof has been filed to show the same. The court concluded that the petitioner has failed to show any fraud in service effected upon her and dismissed the application of the petitioner.

4. The petitioner filed an appeal before the ARCT. The ARCT held that it is difficult to believe that service by two different modes i.e. Process Server and through postal could have been manipulated by the respondents. It also noted that the petitioner does not dispute that her son Shri Amit Soni has received the notice of the Eviction Petition. The only contention raised was that Shri Amit Soni does not reside with the petitioner. No detail of the address where Shri Amit Soni resides was given nor any document to that effect was given. The ARCT also noted the case of the petitioner that she is the owner of the suit property and that she has filed a suit for declaration and permanent injunction now in 2015. In the said suit she has claimed to be residing at Mahavir Nagar Extension, Nangli Jalab, New Delhi alongwith her children. Further, it was her claim that the LRs of her husband, namely the children had executed a Relinquishment Deed in her favour. The Tribunal relied upon copy of the Relinquishment Deed dated 20.7.2009 which was on record signed by Shri Amit Soni where the address of Shri Amit Soni and the petitioner was shown as L-65, New Mahavir Nagar Extension, Nangli Jalab, New Delhi i.e. the tenanted property/disputed property. Hence, the Tribunal came to a conclusion that the contention of the petitioner that Shri Amit Soni had been disowned by his mother/appellant was a false contention. Relying upon judgment of the Supreme Court in *Syndicate Bank vs. General Secretary, Syndicate Bank Staff Association & Ant. In Appeal (Civil) 4263 of 1999* decided on 25.4.2000 by the Supreme Court and judgment of this

Court in *Dr.H.S.Gandhi vs. Smt.Abha Arora*, A 1982 RLR 273 the ARCT dismissed the appeal.

5. I have heard learned counsel for the petitioner. Essentially he has argued that the petitioner is the owner of the property and that she cannot be ousted from the property by the respondent who is playing a fraud. At the outset, I may mention that the ARC and the ARCT in appeal both have come to a conclusion that Shri Amit Soni has duly received the summons by post and by the process server. The claim of the petitioner that Shri Amit Soni is not residing with her has been rejected on facts. The Tribunal has relied upon the Relinquishment Deed dated 20.7.2009 executed by Shri Amit Soni in favour of his mother, namely, the petitioner, copy of which is on record which shows that both mother and son are residing at the tenanted premises L-65, New Mahavir Nagar Extension, Nangli Jalab, New Delhi. The Tribunal also relied upon the plaint filed by the petitioner claiming title to the property in 2015, where an averment is made that the petitioner and her children are residing in the said property. Hence, on facts it held that the petitioner cannot claim that she was not served with notice of summons. There was sufficient material on record for the conclusions which have been arrived at by the two courts below. There are no reasons to differ with the views expressed by the ARC and the Rent Tribunal.

6. I may mention that the Supreme Court in *Gujrat Electricity Board and Another vs. Atma Ram Sungomal Poshani*, (1989) 2 SCC 602 held that there is a presumption of service of a letter sent under the Registered Cover and the same is returned back with a postal endorsement that the addressee has refused to accept the same. No doubt, the presumption is rebuttable but the onus is on the person who alleges non service of notice. Here the

Registered Cover is sent at the correct address and duly served. The petitioner has failed to discharge the onus on her that there was no service.

7. Clearly, there are no grounds to interfere in the impugned order. Petition is without merits and is dismissed. All pending applications, if any, also stand dismissed.

(JAYANT NATH)
JUDGE

JANUARY 16, 2017

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