

\$~56

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ RC.REV. 358/2017 & CM No.27623/2017 (for stay)  
M/S AGGARWAL BROTHERS ..... Petitioner

Through: Mr. Lav Kumar Agrawal, Adv.

Versus

SHAMA GUPTA ..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **04.08.2017**

1. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 25<sup>th</sup> May, 2017 in Case No.E-308/2017 of the Pilot Court (Central), Tis Hazari Courts, Delhi] of eviction of the petitioner / tenant owing to the petitioner / tenant having not filed the application for leave to defend within the prescribed time from the date of service of summons of the petition for eviction. The petition filed by the respondent / landlady for eviction of the petitioner / tenant from shop on the ground floor of property No.2065, Indara Kuan, behind Jubilee Cinema, Chandni Chowk, Delhi, in which the petitioner was a tenant since last more than 40 years at a rent of Rs.500/- per month.
2. The learned Additional Rent Controller (ARC), in the impugned order, has held that the petitioner / tenant was duly served with the summons of the petition for eviction on 8<sup>th</sup> May, 2017 and though was required to file leave to defend by 23<sup>rd</sup> May, 2017, had by 25<sup>th</sup> May, 2017, not filed the leave to defend.
3. This petition has been preferred disputing the service of summons on the petitioner / tenant on 8<sup>th</sup> May, 2017.

4. Having not found any plea in the memorandum of this petition as to how the petitioner / tenant, if had not been served with the summons of the petition for eviction came to know of the eviction order, to file this petition on 25<sup>th</sup> July, 2017, it has been so enquired from the counsel for the petitioner.
5. The counsel for the petitioner / tenant first states that it is so stated in the memorandum of this petition but was unable to point out the paragraph where it is so pleaded.
6. The counsel for the petitioner / tenant next generally stated that the petitioner / tenant came to know of the order of eviction “from the market”.
7. Such pleas cannot be accepted.
8. The inference, from the petitioner / tenant within two months of the order of eviction filing this petition and even before the order of eviction is executable, is that the denial by the petitioner / tenant of the service of summons on 8<sup>th</sup> May, 2017 is false.
9. Once the petitioner / tenant has approached this Court with a false plea, the petitioner / tenant is to be thrown out at the threshold and cannot be granted any indulgence.
10. In fact, a perusal of the certified copies of the trial Court record filed before this Court shows that the certified copies were prepared on 2<sup>nd</sup> June, 2017 and leading to the inference that the certified copies must have been applied for even earlier. The counsel for the petitioner / tenant on enquiry as to the date on which the petitioner / tenant applied for the certified copies of the trial Court record states that he applied for the certified copies after inspection of the trial Court record.

11. It has further been enquired from the counsel for the petitioner / tenant as to on which date he inspected the trial Court record.
12. The counsel for the petitioner / tenant, though is unable to give a date, states that the same was soon after 25<sup>th</sup> May, 2017.
13. On further enquiry as to how the petitioner / tenant or his counsel came to know which file in Court of which Rent Controller to inspect, no answer is forthcoming.
14. It is thus quite evident that the petitioner / tenant was indeed served with the summons of the petition for eviction on 8<sup>th</sup> May, 2017 and keeping a watch on the proceedings before the ARC and took a chance, by avoiding service of summons of the petition for eviction sent to the petitioner / tenant by other modes and after failing in the said chance, immediately set the process for filing this revision petition in motion. Perhaps it was thought that this way the proceedings will be first delayed, for several years, in this Court and thereafter remanded to the ARC.
15. Without the petitioner / tenant being served with the summons, the petitioner / tenant could not know of the Court where the petition for eviction had been filed and the date therein, to be able to, the very next day or two, apply for inspection of the Court file and to apply for certified copies.
16. Falsehood, concealment, dishonesty and abuse of process of Court cannot be tolerated.
17. Though this Court is otherwise considerate to ensure that the orders are not granted *ex parte* but where the conduct of the petitioner is found to be dilatory and the petitioner indulges in falsehood, concealment and dishonesty, no consideration also can be shown.

18. The counsel for the petitioner / tenant next contends that the summons have to be served personally and in the present case summons served on 8<sup>th</sup> May, 2017 as per the report of the process server also, were served on one Balkishan. It is stated that no Balkishan is known to the petitioner / tenant.

19. The counsel for the petitioner / tenant has in this regard sought to read Section 25B(3) but the same itself provides for service of summons on the tenant or on the agent of the tenant. The petitioner / tenant in the present case is M/s Aggarwal Brothers and the tenancy premises are a shop. The other addresses given of the tenant by the respondent / landlord are also of commercial premises. The process-server, who served the summons on 8<sup>th</sup> May, 2017, has noted that the said Balkishan was found at the premises and claimed himself to be the employee of the petitioner / tenant.

20. Even otherwise, from the factum of the counsel for the petitioner / tenant immediately after 25<sup>th</sup> May, 2017 inspecting the Court file and applying for certified copies as claimed, it is evident that the summons were indeed served on 8<sup>th</sup> May, 2017 and the petitioner / tenant chose not to file the application for leave to defend and wanted to prolong the petition by avoiding service.

21. The counsel for the petitioner / tenant while this order is being dictated, states that besides the aforesaid grounds, he has also taken other grounds in this petition viz. of the petition being not triable under Section 25B of the Act as being for eviction under Section 14(1)(e) of the Act but also under Section 14(1)(a) of the Act.

22. A perusal of the petition for eviction, the format whereof is prescribed by the Delhi Rent Control Rules, 1959, in the title thereof requires the

ground of eviction to be mentioned. In the petition for eviction filed by respondent / landlord, the ground under Section 14(1)(e) of the Act is mentioned therein. Similarly, the petition for eviction, in para 18(a) thereof requires the landlord to “specify the ground on which eviction of the tenant is sought.” Therein also, the respondent / landlord has pleaded the ground under Section 14(1)(e) of the Act only. Mention of the factum in the said paragraph of the petitioner / tenant having paid rent upto 31<sup>st</sup> March, 2011 only, cannot convert the petition for eviction as one on the ground under Section 14(1)(a) of the Act also i.e. of non-payment of rent, which also requires it to be pleaded that notice of demand for arrears was issued and within two months thereof the arrears of rent had not been paid and all of which has not been pleaded in para 18(a) of the petition for eviction. In fact, against para 18(b), requiring the landlord to state “whether notice required has been given and if so, the particulars thereof, copies of such notice and tenant’s reply, if any, should be furnished”, the respondent / landlord has stated that “no notice is required for the grounds under which eviction is sought”.

23. There is thus no merit in the said plea as well.

24. The counsel for the petitioner / tenant has next contended that the summons which were stated to have been served on 8<sup>th</sup> May, 2017 are not as per the Third Schedule to the Act.

25. I have compared the format of the summons given in the Third Schedule to the Act and the summons served on 8<sup>th</sup> May, 2017 and do not find any difference. Moreover, no prejudice is stated to have been caused to the petitioner / tenant therefrom. In fact the said arguments run contrary to the earlier argument, of the summons having not been served at all. If

according to the petitioner / tenant, the summons served were not in accordance with law, then the plea of non-service of summons is false.

26. No other argument has been urged.

27. There is no merit whatsoever in this petition, which comprises as aforesaid of nothing but falsehood, concealment, dishonesty and abuse of process of Court.

28. The petition is dismissed.

I refrain from imposing costs.

**RAJIV SAHAI ENDLAW, J**

**AUGUST 04, 2017**  
**‘gsr’**