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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd January, 2018

+ CM(M) 596/2014

SHRI RAJIV KATYAL

..... Petitioner

Through: Mr. Subhash Chand, Advocate

versus

SHRI ARUN KUMAR PASWAN

..... Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The eviction case (E-08/2011) was instituted by the petitioner (indisputably the landlord) on 21.04.2011 seeking order of eviction against the respondent herein (concededly the tenant) on the ground of non-payment of rent invoking Section 14(1)(a) of the Delhi Rent Control Act, 1958 in respect of premises described as ground floor of property No.D-217, Ganesh Nagar, Pandav Nagar Complex, Delhi-110092, *inter alia*, on the ground that the tenant had neither paid nor tendered the arrears of rent at the rate of Rs.2400/- per month w.e.f November, 2005 in spite of notice of demand dated 07.10.2010 (Ex.PW-1/J) within a period of two months from the date of its receipt. It appears that in the pleadings the landlord had also referred to an earlier notice of demand dated 15.03.2008 (Ex.PW-1/A). It

further appears that the tenant denied having been served with either of the said two demand notices and put up contest.

2. On the basis of evidence adduced, the Additional Rent Controller (ARC), by his judgment dated 09.01.2013, upheld the case of the landlord, returned findings including about the due service of the demand notice, particularly the demand notice dated 07.10.2010 and held the tenant to be in breach of payment of rent and passed the final order under Section 15(1) of the Delhi Rent Control Act, 1958, giving time to him to tender the arrears in terms of the directions or suffer eviction order. By subsequent order dated 22.01.2013 the ARC held the tenant to be in breach and, therefore, declined the protection under Section 14(2) of the Delhi Rent Control Act, 1958 granting an eviction order.

3. The said eviction order was challenged in appeal (RCA No.10/2013) by the respondent which was allowed by the Additional Rent Control Tribunal (ARCT) by judgment dated 14.05.2013.

4. The prime reason why the landlord failed in the appeal before ARCT was because the said forum was not satisfied with the evidence about due service of the demand notice. It declined to draw presumption of due service in terms of Section 27 of General Clauses Act, 1897 or Section 114 of the Indian Evidence Act, 1872 on the basis of postal receipt (Ex.PW-1/K) indicating its dispatch in postal transit on 07.10.2010. The ARCT, thus, set aside the order of eviction, the net result being that the eviction case stood dismissed.

5. The view taken by the ARCT in appeal is under challenge by the petition at hand.

6. The contention of the petitioner is that the respondent has been in the habit of forgery and fabrication, reference sought to be made in this context to some criminal cases. This contention by itself cannot lead the petitioner/landlord anywhere. The maintainability of eviction case under Section 14 (1) (a) of the Delhi Rent Control Act, 1958 is contingent upon proof of service of demand notice, for which search will have to be made in the evidence adduced by both sides.

7. It was then contended by the petitioner landlord that though receipt of both the demand notices, one of 15.03.2008 and other of 07.10.2010, were denied, in the evidence the respondent appearing as his own witness (RW-1) admitted on 03.10.2012 that he had been served with the first demand notice (PW-1/A). This may reflect evasive conduct of the respondent. But then, it has to be borne in mind that the eviction case was brought on the cause of action arising not from the notice dated 15.03.2008 but from the second notice dated 07.10.2010.

8. A perusal of the pleadings in the eviction case would show that the petitioner landlord had simply stated that the notice dated 07.10.2010 had been sent by registered AD/UPC, adding that it had been “duly served” upon the respondent. This is how he also testified while tendering in his affidavit in evidence. The respondent joined issue during cross-examination by suggesting to him that notice in question had neither been sent nor served.

9. It does appear that the ARCT while construing the evidence was misled in observing that the postal receipt (Ex.PW-1/K) was not sufficient proof to raise the presumption because the address of the

noticee in full was not mentioned. Concededly, the petitioner landlord had no control over the postal clerk so as to insist that in the receipt of dispatch he would note the address in entirety. It may be assumed that the postal article actually handed over to the postal department against the said receipt carried the full address. But then, question would arise as to whether in the above facts and circumstances, the assumption of service can be legitimately drawn.

10. As noted above, in the pleadings, and in the evidence, the petitioner landlord simply stated that the notice had been duly served. Ordinarily, the language employed would imply that the person making assertion to that effect had in his possession proof of service. Such proof of service would be in the form of proof of delivery either by return of the acknowledgment card bearing the signatures of the addressee or someone who may have received at his instance at the given address at the time of tender by the postal official or by way of some confirmation from the postal department obtained separately. The petitioner herein did not muster any such proof. He kept his pleadings and the evidence as vague as they could be. It is on the basis of mere dispatch of the postal article that at the trial he prayed for presumption to be drawn in terms of Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act which is not correct. For such presumption to be drawn, he also had to plead and prove that the postal article thus sent had never returned to him.

11. In the above facts and circumstances, the case of *Samittri Devi and Another vs. Sampuran Singh & Another*, (2011) 3 SCC 556 would not help the petitioner.

12. The impugned order does not call for any interference.
13. The petition is, thus, dismissed.

R.K.GAUBA, J.

JANUARY 22, 2018

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