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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 06th February, 2019

Pronounced on: 12th February, 2019

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RC.REV. 205/2018 & CM APPL No.19249/2018

RAMESH MISHRA

..... Petitioner

Through : Mr.Satish Sahai, Mr.Jai Sahai
Endlaw, Mr.Shivansh Soni and
Ms.Deepika Mishra, Advocates.

versus

USHA RANI VERMA & ORS

..... Respondents

Through : Mr.Kamal Mehta and Mr.Deepak
Sahni, Advocates for respondents
with respondents No.1 & 2 in
person.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This revision challenges the impugned order dated 15.01.2018 passed by the learned Additional Rent Controller/Pilot Court (Central District), Tis Hazari Courts, Delhi (hereinafter 'Trial Court') in Eviction Petition E-908/2017 CIS No.1050/2017 titled "*Smt Usha Rani Verma & Another Vs Shri Mahesh Mishra and Another* filed by the landlord/respondents herein against the tenant/petitioner under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 (DRC Act).

2. The learned Trial Court vide impugned order dismissed the application dated 11.01.2018 filed for leave to defend by the petitioner herein and also passed an eviction order in respect of one shop bearing

No.4054, Facing Gali Satte Wali (behind Nai Sarak) on Ground Floor, without terrace rights and also without having any right in loft/mezzanine, having area of 5'10" x 6', having height upto 10'9", approximately, fitted with electric connection, situated at Ward No. VI, Nai Sarak, Delhi-1 10006, (hereinafter 'tenanted shop').

3. Before coming to the grounds of challenge to the impugned order, it would be appropriate to state the relevant facts. Smt.Usha Rani Verma and her husband Sh.Satpal Verma, respondents No.1 & 2 herein had filed an eviction petition against the joint tenants viz, two brothers namely Sh.Mahesh Mishra/respondent No.3 herein and Sh. Ramesh Mishra, the petitioner herein. Initially, the mother of both these brothers was the tenant in respect of tenanted premises but after her death the petitioner along with his brother Mahesh Mishra - Respondent no. 3 inherited the tenancy rights hence became the joint tenants in respect of the tenanted premises. As per petition filed by the respondents No.1 & 2 herein, a portion of tenanted premises/Shop No.4054, there exist a Kolki/Store, upto the height of 2'3", approximately, from ground level of the tenanted premises/Shop, which is now being used by the petitioner herein, for storing his stock of Soft Drinks, Water Bottles, etc. and whereas the petitioner is selling Soft Drinks, Water Bottles, etc. by occupying/using a space on footpath, adjacent to Property No. 4057/58, situated at Nai Sarak, Delhi-110006. Another portion of tenanted premises/shop No.4054, over and above 2'3", approximately, from the ground level and upto height of 10'9", which would be at the height of 8'6", approximately, is being used by Respondent No. 1 for running his business of wedding cards, birthday cards, Visiting Cards, envelopes etc., in the name and style

of "Radhika Card". The said two portions, mentioned hereinabove, are the tenanted premises, which are now presently being used jointly by the petitioner herein and respondent no. 3 as sons of the erstwhile tenant namely Late Smt. Radha Devi. The entire tenanted premises is shown in red colour in the site plan annexed herewith. The portion over and above the height of 10' 9" of the tenanted premises, from the Ground Level, is a Loft/ Mezzanine, having the height of 3'3", which is not in the possession of these joint tenants.

4. Admittedly, the application for leave to defend was filed by the petitioner herein on 11.01.2018 along with an application for condonation of delay under Section 5 of the Limitation Act, such application being beyond the expiry of statutory period. As per the record so filed, both the brothers were duly served through the process server on 19.12.2017 and whereas the petitioner herein was additionally served with registered post on 15.12.2017 as the AD card bears his signatures. The said application for leave to defend filed by the petitioner was not taken on the record by the learned trial court in view of *Prithpal Singh Vs. Satpal Singh (Dead) through his LR's*, (2010) 2 SCC 15 which held the statutory time period of 15 days for filing the leave to defend is sacrosanct and inflexible and whatever has to be stated in the said application with respect to the facts and events, must be stated in the leave to defend application itself and not by way of subsequent affidavit or documents.

5. Admittedly the eviction order has not been challenged by respondent no. 3, viz the brother of the petitioner herein. The learned counsel for the petitioner has stated petitioner is not on the talking terms

with his brother/ respondent No.3 and hence the respondent No.3 had no right to accept the summons sent to the petitioner and the respondent No.3 was never authorised by the petitioner herein as his agent in this regard. Further it is also argued such AD Card does not bear the signatures of the petitioner herein. It is also the submission that both these brothers, despite they being joint tenants, were made parties as respondents No.1 & 2 in the eviction petition before the learned Trial Court, thus ought to have been served *separately* in terms of Section 25B of the DRC Act, which calls for personal service upon each of the tenant.

6. Sub-section (3) and (4) to Section 25B of the DRC Act runs:-

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

(1) xxx

(2) xxx

(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 .

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files and 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.

(5) to (10) xxxx”

7. Now, the only question to be decided by this Court is if the petitioner was served in terms of Section 25B of the DRC Act or not. The learned counsel for the petitioner herein has referred to various judgments to press home his point viz his brother - respondent No.3 herein was never an agent empowered by him to accept the summons on his behalf. In *Subhash Anand vs Krishan Lal and Another* 27 (1985) DLT 269 it was held merely because the wife of the tenant has accepted registered AD containing summons sent to her husband would not mean that the summons were addressed to her as an agent empowered in that behalf within the meaning of Section 25B(3)(a) of the DRC Act. Further, in *Devender Nath vs Mohammad Asim* 204 (2013) DLT 141 this Court held an employee of the person cannot be considered as an agent of the tenant in the absence of valid authority to accept the summons. Similarly, in *Jor Singh vs Sanjeev Sharma* 205 (2013) DLT 117, the service upon unidentified person was not treated as a proper service and in *Bishan Swaroop (since deceased) through LR vs Manish Sethi & Others* 208(2014) DLT 481 the law was reiterated that the service must be conducted upon the tenant or his agent by prescribed mode so that tenant must have the knowledge and fair opportunity to contest proceedings and if there is any doubt on service of summons, the tenant ought not to be thrown away.

8. The learned counsel for the petitioner also relied upon *Smt.Karma Wati vs Sh.Rajinder Singh* 1979 (2) AIRCT 1 wherein it was held tenant must be duly served in the form specified in IIIrd Schedule. Thus, the entire thrust of the petitioner herein was upon the due service of *tenant*.

9. Admittedly, a *tenant* can be a ‘*joint-tenant*’ or a ‘*tenant in common*’. If the tenant is a single, then of course, the above decisions as relied upon by the learned counsel for the petitioner would be fully applicable and any service upon the wife of the tenant, or upon an employee or upon unidentified person, if those are not authorised in such behalf, cannot be treated as a valid service. However, the facts are entirely different in the present case. Admittedly, both the petitioner herein and respondent No.3 *inherited* the tenancy rights from their mother – as joint tenants. Admittedly, both these brothers filed their applications for leave to defend on the same date. Though, it was urged that they filed the application(s) for leave to defend through different advocates, but interestingly, Mr.Laxman Bharti, the same clerk had made endorsements on both the applications filed by both the brothers, meaning thereby, though the counsels were different, but were from the very same office of the lawyer’s firm/chamber.

10. Though, it is alleged by the learned counsel for the petitioner herein that he is not in talking terms with respondent No.3 but admittedly both are working from the very same premises; such premises is still not separated by a partition amongst them. Moreover, both give the rent jointly to the respondent. These facts are essential to determine if these joint tenants had an authority to accept the summons on each other’s behalf.

11. In *Suresh Kumar Kohli vs Rakesh Jain & Another* 2018 (6) SCC 708 this Court noted:-

“10) The issue at hand is what would be the status of the succeeding legal representatives after the death of the statutory tenant. In this regard, it would be worthy to discuss the two capacities, viz., tenancy-in-common and joint tenancy, and the rights that one holds in these two different capacities. Fundamentally, the concepts of joint tenancy and

tenancy-in-common are different and distinct in form and substance. The incidents regarding the co-tenancy and joint tenancy are different: joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship.

11) Tenancy-in-common is a different concept. There is unity of possession but no unity of title, i.e. the interests are differently held and each co-tenant has different shares over the estate. Thus, the tenancy rights, being proprietary rights, by applying the principle of inheritance, the shares of heirs are different and ownership of leasehold rights would be confined to the respective shares of each heir and none will have title to the entire leasehold property. Therefore, the estate shall be divided among the co-tenants and each tenant in common has an estate in the whole of single tenancy. Consequently, the privity exists between the landlord and the tenant in common in respect of such estate."

12. In *Inder Pal Khanna vs Bhupinder Singh Rekhi* 2008 (8) Apex Decisions (Delhi) 328, which has identical facts, the Court held in joint tenancy, notice to a joint tenant would be sufficient and even the suit against one of the joint tenants; the non-impleading of rest of the joint tenants was good enough and the other legal heirs of the joint tenants were not required to be served personally. The Court held as follows:-

"4. The respondent No.2, brother of the petitioner was served personally on 23.09.2005 through process server. Respondent No.2 had also filed an application for leave to defend on 24.10.2005 much beyond the period provided under the Act. Since respondent No.2 has not challenged the order of ARC, the facts relating to him are not relevant except that the Trial Court had come to conclusion that respondent No.2 was served personally through process server on 23.09.2005.

5. The Trial Court came to conclusion that petitioner (respondent No.1 below) was served through respondent No.2 on 23.09.2005. This was a valid service of summons on respondent No.1. He was supposed to file an application for leave to defend within 15 days of service of summons. The application was filed much beyond the stipulated period. The provisions of the Limitation Act were not applicable to DRC Act therefore there was no question of condonation of delay in filing the application and rejected the application for contest to leave and passed a decree of eviction."

13. Thus, considering the circumstances enumerated above and looking at the decisions in relation to joint tenancies, since the petitioner was served through his brother viz respondent No.3; the AD Card bear

the signatures of petitioner (though now he is denying the same), would be considered as sufficient service under the Act.

14. The act of both these brothers viz petitioner and respondent No.3 in filing their application(s) for leave to defend on the same day; from the same lawyer's office (since contain endorsement of the same clerk); and carrying on their businesses from the same premises; paying rent jointly to the landlord do show implied authority each other had to accept such summons. Even otherwise, per *Inder Pal Khanna*(supra) the service upon one joint tenant would be sufficient service upon another joint tenant.

15. The petition, thus, has no merit. The impugned order does not suffer from any infirmity or perversity. Accordingly, the petition and pending application(s), if any, is dismissed. No order as to costs.

YOGESH KHANNA, J.

FEBRUARY 12, 2019

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