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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 19th December, 2018

Pronounced on: 14th January, 2019

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RC.REV. 591/2018, CM APPL.No.51306/2018

**THE ARORA CO OPERATIVE URBAN
THRIFT & CREDIT SOCIETY LTD**

..... Petitioner

Through : Mr.Deepak Anand, Ms.Hemlata
Rawat and Mr.Ayushman,
Advocates.

versus

NAMITA YADAV

..... Respondent

Through : Mr.A.K.Singla, Sr. Advocate with
Mr.Sheetesh Khanna, Advocate.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges the order dated 06.06.2018 passed in eviction petition No. E-369/2018 titled Smt. Namita Yadav vs. The Arora Co-Operative Urban Thrift and Credit Society Ltd.

2. The learned counsel for the petitioner/tenant submits the petition for eviction under Section 14(1)(e) was filed by the respondent herein against the petitioner which was first listed on 02.05.2018 when the Court passed the following order:

“Fresh eviction petition under Section 14(1)(e) read with Section 25B of DRC Act was received by way of assignment on 26.04.2018. It be checked and registered.

Heard. Perused.

Summons be issued upon the respondent as per Section 25-B (2) of DRC Act, on filing of PF. Further, summons be also served by registered post, acknowledgment due, for 06.06.2018. Petitioner is directed to file PF/RC for issuance of notice upon the respondent by tomorrow and thereafter Ahlmad is directed to issue notice to the respondent soon after.

In-charge, Nazarat Branch is hereby directed to ensure that the process issued shall be executed and served preferably in 3 days. In case the respondent refused to accept the service or is not found available process server shall affix the summons at a conspicuous place of the respondent and leave the copy of the petition and annexure as per procedure and will file his report alongwith affidavit of service. Copy of the order-sheet be annexed alongwith the process.”

3. The learned counsel for the petitioner then referred to the process server's report wherein he had stated since the impugned shop was closed and no one was available hence he affixed the notice/summons on the conspicuous part of the subject premises. It is alleged by the petitioner that on 19.05.2018 in the evening when the applicant had visited the office of the respondent society he saw a paper pasted on the door of the office, which was in a torn condition but it looked like a Court paper. The applicant took a photo of the same and showed it to the counsel on 21.05.2018. The matter was then searched on e-court and it was found to be a petition, registered under Section 14(1)(e) read with section 25(B) of the DRC Act. Since the applicant was neither having a copy of the petition nor was aware of the reason for filing such petition, so on 21.05.2018 he filed an application under Section 151 CPC to provide him with the copy of the petition and documents so that the petitioner could

file leave to defend. This application was kept pending on 06.06.2018 when the impugned eviction order was passed.

4. The learned counsel for the petitioner now has challenged the eviction on the ground the notice of the eviction petition was never served upon him, per Section 25B of the DRC Act. The learned counsel for the petitioner has referred to various judgments viz. *B.K.Bali vs. Sant Lal and Ors.* 20(1981) DLT 410, *H.S.Ganshi vs. Abha Arora* AIR 1983 Delhi 288, *Jor Singh vs. Sanjeev Sharma* 205(2013) DLT 117, *Om Prakash vs. Brij Nath Sharma* 18(1980) DLT 313, *Pushpa Soni vs. Sarbati Devi* 30 (2001) DLT 634, *The Punjab Oil Expellers Company vs. Madan Lal Nanda & Sons* 3(1967) DLT 56, *Rambir Singh vs. Balwant Kaur Chaudhary* 169 (2010) DLT 433, *Sudarshana Rani vs. Kamla Bhutani* 45(1991) DLT 678, *Devener Nath vs. Mohd.Asim* 204 (2013) DLT 141 and *Savitri Devi vs. Nathu Ram* MANU/DE/0356/1982 to say Section 25(B) is a Special code in itself and the service through affixation/publication can be ordered only after the learned ARC has declared the summons could not be served upon the tenant through registered post or ordinarily.

5. The crux of the argument is the ordinary service and the publication cannot be ordered simultaneously and since affixation is akin to publication hence was wrongly ordered and hence the petitioner was never served per Section 25(B) of the DRC Act.

6. However the learned senior counsel for the respondent has alleged the premises is lying vacant since January 2016 as the petitioner has shifted its business to Daryaganj. The last rent paid was in December

2015 and there has been no electricity in the premises since last two years but the petitioner despite his shifting intends to retain the shop and do not wish to vacate it for ulterior reasons.

7. It is argued on 15.05.2018 when the process server had visited the premises, admittedly, it was lying closed. It is also not denied there were no employees working in the premises in dispute. Rather the applicant in its application dated 21.05.2018 itself stated the representative had visited the premises only in the evening of 19.05.2018, i.e., after about four days of affixation.

8. The respondent has also argued once the petitioner had come to know on 21.05.2018 about the petition being filed under Section 14(1)(e) DRC, the petitioner ought to have inspected the Court file and ought to have moved an application for leave to defend. Rather the petitioner allowed the court to pass a decree on 06.06.2018 and after enjoying the six months period granted by the learned ARC has now come before this Court alleging the service was not proper. Rather an application for review filed by the petitioner against the order dated 06.06.2018 was also dismissed. Yet again the petitioner has challenged the eviction order dated 06.06.2018 and seeks setting aside of the same.

9. Heard.

10. Let us now see as to how the learned ARC has dealt with this issue.

“Considering the report of the process server, which report is duly mentioned in order dated 06.06.2018 that the respondent was served through affixation on the address on 06.06.2018 and that an application has been filed on behalf

of the respondent for supply of copy of petition with documents on 21.05.2018, meaning thereby that the respondent is well aware about the pendency of this case, however, the respondent has failed to file any leave to defend application within the statutory time period of 15 days from the date of service, which is inflexible. Reliance in this regard is placed upon the case law titled as Prithipal Singh v. Satpal Singh (Dead) through his LR's, (2010) 2 see 15, wherein the Hon'ble Apex Court has held that the statutory time period of 15 days for filing of leave to defend application is inflexible and whatever has to be stated in the leave to defend application with respect to the facts and events, which have happened prior to 15 days period, must be stated in the leave to defend application itself and not by way of subsequent affidavit or documents. In view of the above cited case law, since the respondent has failed to file any leave to defend application within the statutory time period, eviction order is liable to be passed against him. Thus, in terms of provisions of Section 25 B (4) of Act, the statement made by the landlord in the petition for eviction shall be deemed to be admitted by the tenant and petitioner shall be entitled for an order of eviction.

Here reliance is placed on the case-law titled as Shyam Sunder Wadhwan v. Sh. Vivek Arya, R.C. Rev. No. 294/2014 & CM No. 14886/2014 and 14887/2014 decided on 09.09.2014 by the Hon'ble Delhi High Court, wherein law regarding service of summons has been discussed in detail. In the above mentioned case, the Hon'ble Delhi High Court referred to the ratio of the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of Padma Sundara Rao v. State of Tamil Nadu, (2002) 3 SCC533, wherein it has been held that "a ratio of a case is not to be read generally as applying to all facts and situations, but, the ratio of a case is to be read applying to the specific facts which have been decided in a particular case. Emphasis on the observation of the Constitution Bench in the case of Padma Sundara Rao (supra) are required because the facts of the present case are considerably different than the facts of the cases before the learned Single Judges of this Court in the cases of Dharampal (supra) and Jor Singh (supra), and, it is because of the peculiar facts in the cases of Dharampal (supra) and Jor Singh (supra) that the learned Single Judges of this Court held that there was no proper service

and consequential non-commencement of the statutory period of 15 days for filing of the leave to defend application, "...it depends on the facts of each case as to whether Courts should arrive at a conclusion on the basis of reports of process server and postal articles delivered/offered by the postman or should consider it a disputed question of fact requiring trial, however, considering that the purpose of bonafide necessity eviction petition would be defeated if Courts are forced to collaterally go into aspects of service by leading evidence with respect to service of summons for filing of a leave to defend application".

It is pertinent to mention that the respondent has not furnished any reason for premises being locked nor has contradicted the fact of locking of the premises. Even though registered AD has not been received back, but as per Section 27 of General Clauses Act, 1897, presumption of service by way of post arises. Reliance in this regard is placed on the case law relied upon by the applicant tenant himself in Ajay Saxena v. Smt. Geeta Devi 2015 v AD (Delhi) 720.

As the premises were locked, the process server had affixed the summons on the premises in question as per Court order. No leave to defend application filed by the respondent within the statutory time period. In these circumstances, applicant/ tenant cannot take the ground that he was not served. The procedure as mentioned in Section 25B of the DRC Act has been duly complied with in this case. Reliance may also be placed upon the case law Shri Shyam Sunder Wadhawan v. Shri Vivek Arya dated 09 September 2014 in RC Rev No 294/2014 of the Hon'ble Delhi High Court, wherein the procedure by which summons are to be served to the respondent have been duly discussed."*

11. The learned ARC has himself noted at least on 21.05.2018 the petitioner had the notice of eviction petition under Section 14(1)(e) and instead of filing application for leave to defend had rather filed an application for better particulars. Further even if we ignore any mode of service then also the petitioner was present in the Court on 21.05.2018

when still one week was left to file leave to defend and none stopped him to either request the Court to allow him to inspect the case file or from filing an application for obtaining the certified copies of the entire record of eviction petition, but the petitioner preferred to sleep over after filing an application of his appearance and for seeking documents.

12. Admittedly the premises was lying closed as is apparent from the record. During affixation on 15.05.2018 none of the official of petitioner was present in the premises. Even per its own admission, its official had visited the premises only after four days i.e., on 19.05.2018. The petitioner deliberately slept over the matter and it was only because it was not using the premises, hence was not so interested or vigilant qua its rights. The petitioner, admittedly, was granted six months time to vacate the premises and has come now challenging its eviction only after enjoying such period.

13. In *B.K.Bali vs. Sant Lal and Ors.* 20(1981) DLT 410, the judgment cited by the counsel for the petitioner himself, records *as there was no service by ordinary way or by registered post and the service by publication was also not valid it must follow that the valid service took place only when the petitioner appeared in court on 13.02.1980.*

14. In the present case, admittedly, the petitioner appeared on 21.05.2018 and per *B.K.Bali* (supra), his appearance recorded on 21.05.2018 need be considered to be the date of its valid service and it failed to file leave to defend application in time.

15. In *Dal Chand vs. Bhupinder Singh & Anr.* 2017 (241) DLT 175 this Court has held:

“9. In view of the above factual scenario, reference may be had to the judgment of the Division Bench of this court in the case of Ashok Kumar vs. Purshotam Lal Verma, 2016 SCC OnLine Del. 5358 in which the Division Bench held as follows:-

“13. In view of the above discussion, the reference is answered in the following terms:

1. Both modes of service are mandated and have to be resorted to simultaneously by the Controller. However, if service through one mode is completed or successful, that is deemed sufficient, irrespective of whether the other mode is successful or not.

2. In case the tenant is served by both the modes, the period of 15 days for filing the leave to defend has to be counted from the first date of service. Time, for the purpose of filing leave to defend, does not depend on the second service of summons.”

10. Hence, where service through only one mode is complete or successful, it is deemed to be sufficient irrespective of the fact that the service through other mode is successful or not. In the present case, the ARC has directed service through registered AD cover also. Merely, because no report about the service allegedly affected through registered AD cover is available on record does not make the service, admittedly affected through ordinary process, as void and ineffective. As noted by the Division Bench, the object of service of notice on the petitioner is to inform the petitioner about the institution of an eviction petition. As noted by the Division Bench, the object is to ensure speedy service of summons on the tenant. Hence, the legislature thought it appropriate to ensure that two modes are simultaneously resorted to. The object was to intimate to the petitioner the initiation of an eviction petition against him. That object has been completed. The only purpose of having two different modes was that there is no delay in affecting service on the tenant.”

16. Admittedly, the object of service by two modes is to avoid delay. It is not denied the respondent even sent summons by a registered post.

Though on record there is no report about the service affected through registered post but it doesn't make the service affected through ordinary post/affixation, as void. In any case the service was complete when the petitioner made an appearance on 21.05.2018, hence there is no reason to interfere in the impugned order passed by the learned ARC. The petition is thus dismissed. Pending application also stands disposed of in terms of above.

YOGESH KHANNA, J.

JANUARY 14, 2019

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