

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

SA No. 209 of 2019
with
SA No. 210 of 2019

SRI SUSHIL KUMAR CHATTERJEE @ SUSHIL CHATTERJEE.
VS.
SRI PALASH KONAR.

For the appellant: Mr. Buddhadeb Ghosal,
Ms. Sohini Chakroborty.

For the respondent: Mr. Partha Pratim Roy,
Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das.

Heard on : 11.02.2022, 16.02.2022, 23.02.2022 & 02.03.2022

Judgment on : 22.06.2022

Biswajit Basu, J.

1. These two second appeals are at the instance of the defendant/tenant in two suits for eviction. Both the appeals have been admitted under Order XLI Rule 11 of the Code of Civil Procedure to answer the following common substantial questions of law, as such are taken up for analogous hearing and disposal:-

“1. Whether the Courts below were justified in passing a decree for eviction under the provisions of Transfer of Property Act, when the plaintiff/

respondent had failed to prove the effectuation of service of notice upon the defendant/ appellant?

2. Whether the Courts below were justified in passing a decree for eviction when the registered envelop addressed to the defendant came back with endorsement “addressee out of station”?

3. If the postal article returned with the postal remarks “addressee out of station”, whether any presumption of due service can be raised under Section 27 of the West Bengal General Clauses Act and Section 114 of the Evidence Act?”

2. The appellant was a tenant under the respondent in respect of two tenancies comprised in L.R. Plot No. 213 under Mouza Kamrangoo District. Howrah. The plaintiff filed the said two suits before the 5th Court of learned Civil Judge (Junior Division), Howrah for eviction of the appellant from the said two tenancies. The said suits being Title Suit No. 12 of 2016 and Title Suit No. 13 of 2016 were decreed on May 03, 2018 and May 02, 2018 respectively. The defendant challenged the said two decrees in two appeals being Title Appeal No. 132 of 2018 and Title Appeal No. 131 of 2018. The 3rd Court of learned Additional District Judge, Howrah by the judgments and decrees, both dated February 28, 2019 has dismissed the said two appeals. S.A. 209 of 2019 is directed against the appellate decree passed in the said Title Appeal No. 131 of 2018 and S.A. 210 of 2019 is directed against the appellate decree passed in Title Appeal No. 132 of 2018.

3. The tenancies of the appellant were not protected by the rent control legislation i.e. The West Bengal Premises Tenancy Act, 1997. The appellant though tried to dispute the ownership of the respondent over the suit properties but the learned Trial Judge on evidence found that the jural

relationship of tenant-landlord between the appellant and the respondent is an admitted position. The appeal Court below by the impugned judgments and decrees has affirmed the said findings of the learned Trial Judge. To answer the substantial questions of law formulated in the present second appeals and there being no challenge either to the said concurrent findings of the Courts below, the said issue need not be re-opened.

4. The facts relevant to answer the formulated substantial questions of law are thus, the said two tenancies of the defendant were determined by two separate fifteen days' notice under Section 106 of the Transfer of Property Act, 1882 both dated November 18, 2015 but the said notices returned to the plaintiff with the postal endorsement "even after several dates the addressee is out of station". Identical prior notices dated October 07, 2015 were also returned to the plaintiff with the similar postal endorsement. The plaintiff claiming determination of the said tenancies of the defendant by the said second notices filed the said eviction suits.

5. The defendant in his written statements denied that his tenancies were determined by the said notices dated November 18, 2015. The defendant asserted that no notice of eviction was sent to the defendant in any material point of time, so the suit must fail for proper cause of action and the comments of the postal endorsement is absolutely incorrect, illegal and has not vitiated the actual state of affairs and it is absolutely collusive with the postal Peon as the relative of the plaintiff is a political person holding a powerful chair of the well-known political party and taking said advantage, the plaintiff collusively with the postal Peon allegedly written as

“even after several dates the addressee is out of station”, it is absolutely vague and incorrect statement.

6. In view of such denial of the defendant regarding service of said notices, the learned Trial Judge in both the suits framed a specific issue as to the validity of service of the said eviction notices upon the defendant. The learned Trial Judge answered the said issue in favour of the plaintiff holding that the notices were sent by registered post to the address of the defendant specified in the plaint, as such in terms of Section 27 of the General Clauses Act, 1897 read with Section 114 of the Evidence Act, 1872 the presumption is in favour of due service notwithstanding the postal endorsement “addressee is out of station” on the returned envelopes containing the said notices and the defendant has failed to rebut the said presumption. The learned Trial Judge, in concluding so has relied on the judgment of the Hon’ble Supreme Court in the case of **C.C. ALAVI HAJI Vs. PALAPETTY MUHAMMED AND ANOTHER** reported in **(2007) 14 SCC 750**. The appeal Court below by the judgments and decrees impugned in the present appeals has affirmed the said findings of the learned Trial Judge.

7. Mr. Buddhadeb Ghoshal learned counsel for the appellant submits that the tenancies of the appellant are governed by the Transfer of Property Act, 1882, therefore, in the present second appeals the only question requires to be determined is the validity of the service of the said notices. He submits that unless it is proved that the appellant has wilfully and deliberately avoided service of notice, allegation of “refusal” or “not claimed” cannot be attributed to him and in the present case there was no tender of

the said notice as the appellant was found to be “out of station”. He submits that the presumption as to the valid service of the said notices is erroneous inasmuch as on the denial of such service by the defendant on oath the said presumption, if at all applicable, stands rebutted. Mr. Ghoshal in support of his such submissions refers to the following decisions of the Hon’ble Supreme Court and of this Court.

(i) **PUWADA VENKATESWARA RAO VS. CHIDAMANA VENKATA RAMANA** reported in **(1976) 2 Supreme Court Cases 409**

(ii) **M/S. SURAJMULL GHANSHYAMDAS VS. SAMADARSHAN SUR** reported in **AIR 1969 CALCUTTA 109.**

(iii) **MONO RANJAN DASGUPTA VS. SUCHITRA GANGULY AND OTHERS.** reported in **AIR 1989 Cal 14.**

(iv) **SATYA CHORONE ROQUITTEE VS. SURESH CHANDRA PAL & ORS.** reported in **65 CWN 1239.**

(v) **HARE KRISHNA DAS VS. MESSRS. HAHNEMANN PUBLISHING CO. LTD.** reported in **70 CWN 262.**

(vi) **AMAL KUMAR BANERJEE VS. SMT. SANTI DEVI** reported in **83 CWN 753.**

(vii) **KAMESWAR SINGH VS. SAHADEB SINGH** reported in **86 CWN 438.**

8. Mr. Partha Pratim Roy learned counsel for the respondent refuting the said submission of Mr. Ghoshal contends that once notices, properly addressed, pre-paid and sent by registered post, presumption of due service of the said notices upon the addressee would arise under the relevant

provision of the Central or the State General Clauses Act, notwithstanding returned envelope containing such notice bears the endorsement that “the addressee is out of station”. Mr. Roy cites the following judgments of the Hon’ble Supreme Court and one judgment of the learned Single Judge of the Delhi High Court in support of his such contention:-

(i) ***M/S MADAN AND CO. VS. WAZIR JAIVIR CHAND*** reported in **(1989) 1 Supreme Court Cases 264.**

(ii) ***N. PARAMESWARAN UNNI VS. G. KANNAN AND ANOTHER*** reported in **(2017)5 Supreme Court Cases 737.**

(iii) ***VISHWABANDHU VS. SRI KRISHNA AND ANOTHER*** reported in **(2021) SCC OnLine SC 828.**

(iv) ***DEEPSONS DEPARTMENTAL STORE VS. Y.N. GUPTA*** reported in **2011 SCC OnLine Del 2412.**

9. To answer the formulated substantial questions of law in the present second appeals, an investigation as to the due service of the said notices upon the defendant is necessary. Both the Courts below have concurrently held that the notices of eviction determining the said two tenancies of the appellant were sent to the correct postal address by registered posts, as such, it would be presumed that those notices were duly served upon him under the Section 28 of the Bengal General Clauses Act, 1899 irrespective of the postal endorsements on the returned postal articles. Mr. Ghoshal, learned advocate for the appellant placing reliance on the Division Bench decision of this Court reported in **AIR 1989 Cal 14(supra)** since has argued that the statutory presumption under the relevant provisions of the Central

or State General Clauses Acts is not applicable in the present case, let me first consider the said submission of Mr. Ghosal.

10. The Hon'ble Division Bench of this Court in the aforesaid decision while dealing with the issue of due service of a notice under Section 13(6) of the West Bengal Premises Tenancy Act, 1956 has held that the such notice since is not required to be served by "post", the presumption of due service of it under relevant provisions of Central or State General Clauses Acts would not arise. The said decision in the facts and circumstances of the present case is misplaced inasmuch as the notices herein were under Section 106 of the Transfer of Property Act, 1882, and in terms thereof are required to be given by "post", therefore due service of such notice under the relevant provision of the Central or State General Clauses Acts can be presumed. The decision of the learned Single Judge of this Court in the case reported in **86 CWN 438(supra)** relied on by Mr. Ghosal for the similar reason is not applicable in the present case.

11. Let me now consider whether due service of such notices can be presumed in the facts and circumstances of the present case. The defendant in his written statements took a specific defence that no notice determining his tenancies were issued by the plaintiff, in view of such defence being taken with regard to the said notices, the plaintiff is only obliged to prove issuance of the said notices. The plaintiff has discharged his said obligation by proving the postal receipts under which the said notices were sent to the appellant by registered post, which is sufficient to draw the presumption of due service under Section 28 of The Bengal General Clauses Act, 1899.

Under the said circumstances, the nature of postal endorsement on the returned envelope containing the said notice has little relevance to decide the issue of valid service of the said notices upon the appellant. Therefore, the decisions relied on by Mr. Ghosal of the Hon'ble Supreme Court reported in **(1976) 2 SCC 409 (supra)** and the decisions of the Hon'ble Division Bench of this Court reported in **65 CWN 1239 (supra), 70 CWN 262 (supra), AIR 1969 CALCUTTA 109 (supra) and 83 CWN 753 (supra)** are not applicable in the facts and circumstances of the present case.

12. Besides the facts and circumstances of the present case as discussed above, the Hon'ble Supreme Court at paragraph 15 of the decision reported in **(2017) 5 Supreme Court Cases 737 (supra)** has held, *"This Court in catena of cases has held that when a notice is sent by registered post and is returned with postal endorsement "refused" or "not available in house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed."*

13. The Hon'ble Supreme Court in the decision reported in **(2021) SCC OnLine SC 828 (supra)** in an appeal arising out of a proceeding under Order IX Rule 13 of the Code of Civil Procedure while dealing with an issue regarding validity of the service of summons of the suit has held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed under the relevant provision of the General Clauses Act, 1897. The decision of the Hon'ble Supreme Court reported in **(1989) 1 Supreme Court Cases 264**

(supra) lays down the similar proposition of law. The decision of the learned Single Judge of the Delhi High Court reported in **2011 SCC OnLine Del 2412 (supra)** is apposite to the context wherein it has been held that mere denial of service of notice is not sufficient to rebut the presumption of due service of such notice under Section 27 of the General Clauses Act, 1897.

Summing up the discussion made above, this Court is of the opinion that no such substantial questions of law formulated under Order XLI Rule 11 of the Code of Civil Procedure are involved in the present second appeals, as a consequence, both the appeals being S.A. 209 of 2019 and S.A. 210 of 2019 are dismissed. The appellate decrees both dated February 28, 2019 passed in Title Appeal No. 132 of 2018 and Title Appeal No. 131 of 2018 respectively are hereby affirmed. There shall be no order as to costs.

The Lower Court records be sent down to the Court below by special messenger at the costs of the appellant to be put in within a week from date.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(BISWAJIT BASU, J.)