

DL. June 6,
46. 2022

S.A. 65 of 2022

Sri Rajendra Prasad Jaiswal

Vs.

Sri Sayan Ghosh

Ms. Sabita Mukherjee (Roy Chowdhury),
...for the appellant.

The present appeal has arisen out of a judgment and decree of affirmance passed by the learned Judge, Tenth Bench, City Civil Court at Calcutta, in Title Appeal No. 43 of 2017 arising out of judgment and decree dated March 21, 2017 passed by the learned Judge, Third Bench, Small Causes Court at Calcutta, in Ejectment Suit No. 41 of 2013.

The learned advocate for the appellant submits that the present appeal against the judgment of affirmance is required to be admitted on the ground that service of notice of eviction has not been properly served on the defendant/appellant. It is submitted that both the courts below have committed substantial error of law in failing to appreciate that service of notice of eviction could not be proved by the plaintiff/respondent. It is further submitted that initiation of the eviction proceeding starts with the service of notice of eviction, as required under Section 6(4) of the West Bengal Premises Tenancy Act, 1997, and that in absence of proof by the plaintiff that the notice of eviction has been served on the defendant, the court does not assume jurisdiction to proceed with the eviction suit.

We have heard the learned advocate appearing on

behalf of the appellant and have carefully gone through the judgements of the trial court as well as the first appellate court.

With regard to service of notice of eviction, it appears that eviction notice dated November 23, 2012 has been proved by the communication issued by the department of post office dated December 26, 2020 confirming the receipt of eviction notice by the defendant/appellant. The notice was never returned to the sender unserved. Section 16, illustration (b) of the Indian Evidence Act, 1872 read with Section 27 of General Clauses Act, 1897 is a clear answer to the argument made on behalf of the appellant. Whether a particular letter has been received or not, once it is established that the letter addressed to the addressee was posted in due course and was not returned through the “Dead Letter Office”, it should be presumed that the letter has been received by the addressee. Section 27 reiterates that when the notice was sent to the respondent but neither the unserved notice nor the acknowledgment due card is received, the notice must be deemed to have been served and that the addressee has to prove that the letter was not delivered to him.

In the instant case, having regard to clear findings of both the court below and keeping in mind the confirmation letter dated December 26, 2020 issued by the department of post office, it cannot be inferred that the notice of eviction was not served at all on the defendant/appellant. The plaintiff was able to discharge his burden.

The contention raised on behalf of the appellant that the notice of eviction was addressed to R. P. Jaiswal and not to Rajendra Prasad Jaiswal could not be proved as he had the ample

opportunity to show that the appellant, namely, Rajendra Prasad Jaiswal, has not received the notice of eviction. There is no evidence to show that in the suit premises another person by the name of R. P. Jaiswal resides, who alleged to have received the notice of eviction. Such absence of evidence clearly creates a presumption of service under Section 16 of the Indian Evidence Act, 1872 read with Section 27 of the General Clauses Act, 1897.

The findings arrived at by both the courts below does not call for any interference in the second appeal. Moreover, we do not find any substantial question of law involved in this appeal for which the same is required to be admitted.

The second appeal is, therefore, summarily dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

There will be no order as to costs.

(Soumen Sen, J.)

dns

(Siddhartha Roy Chowdhury, J.)