

03.01.2023
SL No.3
Court No.8
(gc)

SAT 3644 of 2000
CAN 1 of 2002 (Old No: CAN 7390 of 2002)

Mustak Ali
Vs.
Bela Rani Sarkar

This matter was appearing in the Warning List of 29th November, 2022 and thereafter transferred to the Regular Cause List on 5th December, 2022. On 14th December, 2022, Mr. Soumik Dey, learned Advocate appeared on behalf of the appellant and prayed for an adjournment. On such prayer, the matter was adjourned till 2nd January, 2023. Today, when the matter was called, the appellant is not represented. This is an appeal of 2000 filed on November 3, 2000.

The appellate judgment and decree dated 28.4.2000 and 5.5.2000 respectively, affirming the judgment and decree of the Trial Court dated 6.2.1999 and 15.2.1999 in a suit for eviction is a subject matter of challenge in this second appeal. The appeal is defective. The Stamp Reporter notified various defects in its report dated 15.7.2003 and no attempt was made to remove the defects. In fact, a Coordinate Bench on 14th June, 2001 passed an order directing removal of defects and in default the appeal would be dismissed. The said order was passed in presence of the learned Advocate representing the appellant. However, we have considered

the judgment of the Appellate Court. The appellant challenged the order of the Trial Court on the ground that the notice of eviction has not been duly served upon the respondent. The ownership of the plaintiff was not in dispute. The contention of the plaintiff appears to be that the appellant/defendant paid the rent of the suit premises upto the month of Kartick 1402 B.S. and thereafter the defendant defaulted himself in making payment of rent. The plaintiff also made out a case for reasonable requirement. The notice terminating the tenancy was sent by a registered post with A.D. on 21.01.1997. The defendant although had received a notice on 24.01.1997 but did not quit and vacate the suit premises for which the suit for eviction was filed. It is an admitted position that the tenancy is terminable upon service of notice under Section 106 of the Transfer of Property Act. It was contended before the Trial Court that in absence of the plaintiff deposing to prove her case, the Trial Court could not have passed a judgment. Section 118 of the Evidence Act clearly states that all persons shall be competent as witness unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years, extreme old age, and disease whether of body or mind or any other cause of the same kind. A person who is conversant with the facts is competent to depose on behalf of the plaintiff with regard to the facts stated in the plaint. In the instant case, the son of the

plaintiff deposed to prove the service of notice and also the reasonable requirement. The son of the plaintiff has stated that he looks after all the matters concerning the tenancy.

The learned Trial Judge as well as the First Appellate Court has relied upon Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act and has taken into consideration that the notice was correctly addressed, prepaid and registered, it, thus, creates a presumption that the notice has been duly served upon the defendant. The First Appellate Court has relied upon the decision of the Hon'ble Supreme Court in ***M/s. Madan & Co. Vs. Wazir Jaivir Chand*** reported at ***AIR 1989 SC 630*** in order to arrive at a conclusion that a presumption arises when a letter is handed over to the postal authorities with proper address and the postal authorities act as an agent of the sender and it has to be presumed in law that it has been delivered to the addressee. In paragraphs 6 and 9 of ***M/s. Madan & Co.*** (supra) it has clearly held that it is not simply possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant.

In view of the aforesaid evidence, there was no absolute requirement to examine the postal peon. (***See Sm. Munni Devi Vs. Sm. Puspallata Mondal & Anr.*** reported at ***71 CWN 282 Paragraph 4*** and ***Bhusan***

Chandra Pal & Ors. Vs. M/s. Bengal Coal Company Ltd. reported at AIR 1966 Cal 63 Paragraph 12)

In the instant case, it appears from the evidence that the defendant had received the notice by putting his signature. Once the service of notice is proved and the suit is filed after expiry of the notice period, the appellant cannot have any case to resist the decree.

The findings of facts recorded by the Trial Court as well as the First Appellate Court with regard to the service of notice are based on cogent evidence. The concurrent findings of facts in the instant case are not required to be interfered with. In any event, the second appeal does not involve any substantial questions of law.

The second appeal, accordingly, stands dismissed at the admission stage.

In view of dismissal of the second appeal, the application also stands dismissed.

However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)