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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 26.04.2023

+ CM(M) 673/2023 & CM APPL. 20941/2023

MANJU MALIK

..... Petitioner

versus

ROHINI HEIGHTS RESIDENCE

WELFARE ASSOCIATION

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ratnakar Maltiyar and Mr. S. K. Jha,
Advs.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The petitioner challenges the order dated 18.03.2023 passed in Civil Suit No. 812/2022 titled '*Manju Malik Vs. Rohini Heights Residence Welfare Association*' whereby the learned Trial Court not being satisfied with the service of summons upon the respondent/defendant association has directed the petitioner to serve the summons upon the respondent/defendant association afresh.

2. Learned counsel appearing for the petitioner submits that vide order dated 30.07.2022, learned Trial Court had directed issuance of summons to the defendant on filing PF/RC/Speed Post /AD and posted the matter for 17.10.2022.

3. Learned counsel appearing for the petitioner submits that the

learned P.O. was on leave on 17.10.2022 and the matter was posted for 31.01.2023.

4. Learned counsel submits that upon the process fee being filed by the report dated 13.08.2022, the process server has submitted his report that the summons were served upon one Mr. Gaurav, who, according to the report, was an employee of the respondent-Welfare Association. The Process Server has filed report giving positive assertion of service.

5. Not being satisfied with the said report, learned counsel submits that, though the learned Trial Court had mentioned the report of the process server dated 13.08.2022, yet did not take notice of such service. Moreover, the learned Trial Court also disbelieved the Speed Post tracking report showing that the summons were delivered even otherwise on 06.09.2022.

6. Learned counsel submits that after recording that it is not satisfied with such service, learned Trial Court gave yet another opportunity to serve the summons upon the respondent/defendant association.

7. Learned counsel appearing for the petitioner also submits that in accordance with the order, process fee yet again had been filed. The process server's report dated 15.02.2023 was filed, confirming that the respondent/defendant Welfare Association was served through an employee, Mr. Krishan Kumar Jha who has accepted the said summons after having spoken, with the President Sh. Veer Pal Sharma, over phone.

8. Learned counsel submits that all this was recorded by the Process Server in his report dated 15.02.2023. Learned counsel submits that surprisingly even this service was not taken as the valid service by the

Trial Court and *vide* the impugned order directed the petitioner /plaintiff to serve summons upon the respondent /defendant Welfare Association by filing PF/RC/Speed Post /AD and listed the matter for 01.05.2023.

9. Learned counsel appearing for the petitioner submits that an application under Order XXXIX Rule 1 & 2 CPC, 1908 seeking urgent directions has been pending adjudication for 30.07.2022 and has not been taken up for consideration at all for the purported lack of service upon the respondent/defendant. Learned counsel submits that this process appears to be never ending and would render the application infructuous.

10. This Court proceeds to dispose of the instant petition in accordance with Delhi High Court Circular No. 69/Rules/DHC dated 05.12.2019, which reads as under:-

“5. Appearance on the first date of listing:-

(b) In case any opposite party does not appear before the Court upon advance service of the petition, the Court may not issue any further notice to such opposite party and may pass any order(s) as it may deem fit and proper in the facts and circumstances of the case.”

11. This Court has considered the aforesaid submissions as also perused the documents including the various reports of the process server. According to the procedure prescribed under Order V CPC, 1908, the ordinary process of service is considered to be the best possible and reliable mode of service.

12. The service of process through the process server upon the opposite party is considered as a correct and valid service which recognized by the Code of Civil Procedure. It is intriguing to note that

despite the report dated 13.08.2022 as well as the report dated 15.02.2023, submitted by the process server, wherein the names of the persons who have received the said summons on behalf of the President of the respondent /defendant association was mentioned, the learned Trial Court has been insisting upon fresh service every time.

13. It is also observed that in the report dated 15.02.2023, the name as also the mobile number of the employee, namely, Mr. Krishan Kumar Jha, has been noted and made a part of the said report. Despite this, the learned Trial Court appears to not have been satisfied with the such service.

14. That apart, the Speed Post receipt as also the Tracking Report dated 06.09.2022 generated by the Department of Posts was filed and taken note of by the learned Trial Court and yet for an extraneous reasons has disbelieved such service on the premise that the tracking report that does not show the person to whom the item was delivered.

15. This Court has considered the manner in which the learned Trial Court has been proceeding in the present case and it appears that the learned Trial Court has not considered in the right perspective, either the speed post tracking report dated 06.09.2022, or even the two reports dated 13.08.2022 as well as 15.02.2023 of the process server.

16. On a reading of the two aforesaid reports of the process server as also the tracking report of the department of posts showing that the item was delivered on 06.09.2022, this Court is satisfied that valid service upon the respondent / defendant welfare association has been effected. Even otherwise, the learned Trial has nit picking faults in the tracking report on the premise that the same does not show the name of the

person to whom the item was delivered. This is unacceptable for the reason that ordinarily in a tracking report of Department of Posts, the only endorsement given is as to whether the item has been delivered or returned, and the name of the person who has received or refused the item is never entered.

17. The Civil Courts can take judicial notice of certain manner of functioning of the government departments. The tracking report generated by the Department of Posts is to be taken at its face value. That read with Section 27 of the General Clauses Act, 1897 would lead to the only conclusion that if the address of the addressee is correct, the delivery shall be treated as a valid service.

18. Learned Trial Court has not noted any such issue where it could doubt the genuineness of such delivery.

19. In view of the aforesaid, the impugned order dated 18.03.2023 to the extent that it directs the petitioner/plaintiff to take steps to effect service upon the respondent/defendant stands set aside.

20. Learned Trial Court shall now proceed with the consideration of the application under Order XXXIX Rule 1 & 2 CPC, 1908 and dispose of the same in accordance with law.

21. In view of above, the petition along with pending application is disposed of with no order as to costs.

TUSHAR RAO GEDELA, J .

APRIL 26, 2023/ms