



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 24 November 2023**
Judgment pronounced on : 18 December 2023
+ **RC.REV. 292/2018 & CM APPL. 26348/2018**

AMRIT LAL WADHERA & ANR. Petitioners
Through: **Mr. Sunil Dutt Dixit and Mr. Sajal Dutt Dixit, Advs.**

versus

SAROJ SUNEJA Respondent
Through: **Mr. S. K. Chawla, Adv.**

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This Revision Petition is preferred under Section 25B (8)¹ of the Delhi Rent Control Act, 1958² read with Article 227³ of the Constitution of India by the petitioner, who was the tenant, against the impugned order dated 02.11.2017 passed in favour of the respondent i.e., the landlady, by learned Additional Rent Controller, Pilot Court (Central), Tis Hazari Courts, Delhi⁴ in the Eviction Petition titled as 'Saroj Suneja v. Sh. Amrit Lal Wadhera', bearing no. E-752/17 (Old

¹ Section 25B (8) - No appeal or second appeal shall lie against an order for the recovery of possession of any premises made by the Controller in accordance with the procedure specified in this section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

² DRC Act

³ Article 227 - Power of Superintendence over all courts by the High Court.

⁴ ARC



No. 643-A/17) under Section 14(1)(e)⁵ of the DRC Act.

FACTUAL BACKGROUND:

2. The petitioners, vide rent deed dated 15.02.1985 had taken the private shop No. 798, Chhota Bazar, Kashmere Gate, Delhi-110006⁶ on rent from Shri Anand Prakash at a monthly rent of Rs. 100/-. It is the case of the petitioners that they were carrying out their business activities from the tenanted premises, however, it was closed for sometime since petitioner No.1 was unable to do any business activity as he is an old man of more than 78 years of age who was suffering from various old age ailments. The petitioners used to pay rent to Shri Dilbagh Rai Suneja but after his demise, Smt. Saroj Suneja collected the rent on a monthly basis. The petitioners alleged that the respondent then pressurized them to pay the rent in advance post which rent was paid in advance for 3 to 6 months. Furthermore, petitioners stated that the respondent stopped issuing any receipt after payment of the rent.

3. The respondents filed an eviction petition under Section 14(1)(e) read with Section 25B of the DRC Act against the petitioners in respect of the tenanted premises on 17.08.2017. The ensuing proceedings resulted in passing of the impugned order dated 02.11.2017, which reads as under:-

⁵ Section 14 (1)(e) - That the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation.

Explanation.- For the purposes of this clause, "premises let for residential purposes" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes;

⁶ tenanted premises



“This is a petition for eviction on the ground provided under Section 14(1)(e) of the DRC Act. The respondents were served through affixation on 26.08.2017 as well as by way of publication in the local news paper "Veer Arjun" published on 17.10.2017. However, neither the respondents had marked their appearance nor opted to file application for leave to defend to contest the present petition within the statutory time period.

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. In such circumstances, further inquiry to conclude as to whether grounds of eviction are made out, is not required by law. In this regard, reliance can be placed on following case-laws:-

a). Krishan Kumar Vs. Vinod Kumar & Ann, reported as 148 (2008) DLT 668.

b). Shri Bachan Singh VS. Shri Khem chand, reported as 1987 (1) RCR 556.

c). Smt. Bhuvneshwarl Devi Vs. Coi. Kaiyan Singh, reported as 1993 (3) RLR 133.

For the reasons recorded above, an eviction order is passed and the respondents are directed to vacate the tenanted premises, i.e., one shop bearing Pvt. No. 798, Chhota Bazar, Kashmeri Gate, Delhi-110006, as shown in colour red in the site plan annexed alongwith the petition. However, the petitioner would not be entitled for recovery of possession of the tenanted premises before expiration of six months from today in view of provisions given in Section 14 (7) of the Act. No order as to costs.”

4. This order is assailed by the petitioners primarily on the ground that they were never served with the summons of the eviction petition in the manner prescribed under Section 25B(4) of the DRC Act and that the respondent deliberately did not provide the alternative address of the petitioners in the eviction petition despite being aware of the petitioners place of residence. Hence, a fraud was played upon the Court and it is prayed that the impugned order is liable to be set-aside.



ANALYSIS AND DECISION:

5. Having heard learned counsel for the parties and upon perusal of the record, this Court at the outset finds that the impugned order cannot be sustained in law. It is evident that the impugned order came to be passed since the petitioners failed to file an application for leave to defend in terms of Section 25B(4) of the DRC Act, which provides as under:-

“**25B(4).** The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as herein-after provided: and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order eviction on the ground aforesaid.”

6. The moot question for consideration is whether the summons were at all served or duly served upon the petitioners so as to culminate in the impugned eviction order. A careful perusal of the Trial Court record shows that that the summons were shown to have been served upon the petitioners by affixation on 26.08.2017 at the tenanted premises. The same was published in the local newspaper ‘Veer Arjun’ on 17.10.2017. However, there is more to the story than what meets the eye. A bare perusal of the eviction petition shows that alternate address of the petitioners was not indicated. Furthermore, it is not denied by respondent that she was aware of the residential address of the petitioners as they were their tenants since 1985.

7. It can be gauged from the perusal of the record that the eviction



petition was taken up for the first time on 18.07.2017, on which date the summons were ordered to be issued to the petitioners in terms of Section 25B(2) of the DRC Act on filing of process fee by way of registered post Acknowledgment Due⁷ and the Court also directed In-charge, Nazarat Branch to ensure that process be executed and served within three days. It was also directed that in case no one is found present at the spot despite three mandatory visits, the process be affixed at any conspicuous place and the report of the process server be filed.

8. The matter then came up on 04.09.2017 on which date none appeared for the parties. However the order-sheet reads that the respondent/tenant had been served through affixation on 26.08.2017. The matter then came up on 19.09.2017 on which date it was found that the registered AD had not been received back. The summons were therefore ordered to be served by publication in local newspaper 'Veer Arjun' and eventually the impugned order dated 02.11.2017 was passed.

9. It is apparent that not only was the requisite legal procedure not followed to effect service of summons but the learned ARC failed to exercise due diligence in the matter. Firstly, learned ARC accepted the affixation report dated 26.08.2017 without examining the process server. There were made not three visits but only one by the process server contrary to order dated 18.07.2017 passed by learned ARC. The report was neither signed by any witness nor there were any photographs attached. There was effected no service of summons by

⁷ RPAD



RPAD. It is said “justice hurried, is justice buried” and suffice to say that is what happened in the instant matter.

10. Secondly, and at the cost of repetition, since the tenanted premises was found to be shut or closed, it was the duty of the learned ARC to call upon the respondent to provide alternate address of the tenant on an affidavit. Such caution was thrown to the wind. It is evident that the respondent deliberately concealed the details of the residential address of the petitioners and no efforts were made to serve summons at such address.

11. Indeed, Chapter IIIA of the DRC Act has an overriding effect and provides for a special procedure for disposal of application for eviction on the ground of *bonafide* requirement of tenancy accommodation by the landlord. It is but also the fundamental mandate of law that the summons of the petition must be shown to have been duly served upon the opposite party/tenant so as to enable him to file an application for leave to defend within the stipulated time. In a case, wherein the tenant is undeniably absent from the particular address of tenanted premises, temporarily or permanently, the Court should make every sincere endeavour to serve summons upon the tenant at an alternate address, and summoning by way of publication should only be resorted to when the circumstances are such that it leaves no scope for any other course of action.

FINAL ORDER:

12. In view of the foregoing discussion, this Court has no hesitation in finding that the impugned order dated 02.11.2017 cannot be sustained in law, therefore, it is set-aside. The matter is remanded



back to learned Trial Court for further proceedings as per law. Since the petitioners now have the copies of the eviction petition and other annexures, they are hereby called upon to file an application for leave to defend in terms of Section 25B(4) of the DRC Act assuming that the service of summons under section 25B(2) of the DRC Act is effected today.

13. Further, the respondent is directed to restore the possession of the tenanted premises to the petitioners within seven days from today, failing which learned ARC shall be competent to pass appropriate directions in this regard. The petitioners shall not be liable to pay the rent from the date of dispossession from the tenanted premises till its restoration.

14. The parties are directed to appear before the learned ARC on 31.01.2024 for further proceedings. The present petition along with pending application stand disposed of accordingly.

DHARMESH SHARMA, J.

DECEMBER 18, 2023

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