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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 21.09.2023

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RC.REV. 499/2018 & CM APPL. 43714/2018

OM PRAKASH

..... Petitioner

Through: Ms. Sonali Malhotra, Adv.

versus

SOM PRAKASH GUPTA

..... Respondent

Through: Mr. Pankaj Kr. Verma, Mr. Sandeep Kumar, Mr. Amit Gautam, Mr. Ankit Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

:

JASMEET SINGH, J (ORAL)

1. This is a petition seeking setting aside of the eviction order dated 22.02.2018 passed in E-15/2018, wherein a decree for eviction was passed in respect of property bearing No. VI/6442, First Floor, Gali Kumharan Katra Baryan, Delhi-110006.
2. The order of eviction was passed as the petitioner had failed to file his leave to defend within the statutory period.
3. This Court on 06.02.2020 directed as under:-

"1. Petitioner impugns order dated 22.02.2018 whereby eviction petition filed by the respondent on the ground of bonafide necessity under Section 14 (1) (e) of the Delhi Rent Control Act, 1958 has been allowed and an eviction order passed. Eviction order was passed on the ground that despite service, the petitioner did not file any leave to defend



application.

2. *Learned Amicus Curiae appearing for the petitioner submits that petitioner was never served with the summons and as such the leave to defend application was not filed. Learned counsel submits that on 08.01.2018, the Rent Controller had directed that summons to be issued, on the eviction petition filed by registered AD as well as ordinary process and directed that at least three attempts would be made for service of the process and thereafter affixation of summons would take place at a conspicuous place.*

3. *Learned counsel submits that the Rent Controller has noticed the returned envelope which shows that attempt was made to serve the petitioner on 25.01.2018, 29.01.2018 and again on 29.01.2018 and thereafter there is alleged refusal.*

4. *Learned counsel submits that the envelope clearly shows that there was overwriting on the envelope, a date 26.01.2018 has been changed to 29.01.2018. Learned counsel submits that the envelope clearly indicates that there is a manipulation in terms of attempted service. Further it is contended that the report of the process server also appeared to have been procured as the report makes incorrect averments and the report per se does not amount to sufficient service.*

5. *Learned counsel for the respondent submits that the respondent has already obtained possession in execution proceedings and respondent is presently occupying the subject premises for own personal use.*



6. Since the allegations have been made with the regard to procurement of service report and there appears to be some overwriting on the returned envelope with regard to the date of attempting service, in my view, it would be expedient to direct the concerned Rent Controller to record the statement of the Postman who had attempted service as also the process server with an opportunity to the petitioner to conduct the cross-examination of both; process server as well as postman and thereafter submit a report alongwith the testimony of the process server and the postman.
7. Parties shall appear on 20.02.2020 before the concerned Rent Controller for fixing a date for recording of the statements.
8. List this petition for directions/hearing on 14.05.2020.
9. Rent Controller shall endeavour to conclude the statements and submit a report at least one week before the next date of hearing.
10. Keeping in view the peculiar facts and circumstances that an Amicus Curiae was appointed by this Court, Mr. Jaspreet Singh, Advocate (Mobile No. 9899641617) is appointed as Amicus Curiae for the petitioner to appear before the Rent Controller.
11. In the meantime, respondent shall maintain status quo with regard to the title and possession of the subject premises.”
4. Pursuant to the aforesaid directions, the evidence of the postman was recorded, which reads as under:-



CIS No. E-18/2020
CNR No. DLCT03-001328/2020
SOM PRAKASH GUPTA Vs OM PRAKASH

15.11.2021

Statement of AW-2 Sh. Kailash Kumar, S/o Sh. Khazanchi Lal,
Aged about 59 years, R/o 46 A, Shyam Nagar, Delhi-110051.

ON SA

I am in the job since 1987 and I became postman in the year 1992 and since then, I have been posted in GPO Kashmeri Gate, Delhi. I was dealing with the letters / registered post of area Katta Baryan, Delhi-110006.

At this stage, registered envelope attached with the file is shown to the witness and he admits his handwriting thereon. The word 'HIL' / '25/1/18' is not written in my handwriting. The first date i.e 29/1/18 which is encircled with blue pen and marked as **Mark C** with the red pen is not written in my handwriting. The word 'Refused' written on the back side of the envelope was written in my handwriting and the same contains the date of 29.01.2018. On the back side of the envelope, two similar dates are written i.e 29/1/18 and 29/1/18. The date written as 29/1/18 above the second one is not written in my handwriting. However, the second date 29/1/18 is in my handwriting and the same is marked as **Mark B** in red colour.

Thereafter, I deposited the same envelope in the department i.e GPO Kashmeri Gate on the same day i.e 29/1/18. I do not remember whether there is a rule with regard to the mentioning of timing at which we visit the site of the addressee. I had not mentioned the timing in my report. It is correct that I visited the site of the addressee and thereafter, I prepared my report.

I do not remember the exact floors of the property, however, I can say that it consists of two floors i.e ground floor and



first floor. Sh. Om Prakash resides on the first floor. The ground floor is vacant as per my knowledge. I went to the address and called the addressee by name Sh. Om Prakash from the ground floor only and I never personally met the addressee i.e Om Prakash who resides on the first floor. I called the person by name i.e Om Prakash and informed him that a letter had come from the Court and he was required to receive it. But, I heard the voice of refusal in Hindi i.e 'Hum Nahi Le Rahe'. My statement is correct and true.

XXXXX by Sh. Jaspreet Singh, Ld. Counsel for Amicus Curiae for petitioner / tenant.

It is correct that I visited the addressee on 29/1/18 only once and not on any other date. I do not remember whether the main gate at the ground floor of the property in question was locked or not on 29/1/18. The stairs leading to first floor is from inside the main gate of the ground floor. I did not go to the first floor because I was not healthy and is unable to walk properly due to paralysis attack in the year 2014. It is correct that on 29/1/18 I did not meet Om Prakash or his wife or any of his relative. I can not tell who had made the voice for refusal. It is wrong to suggest that I did not go to deliver the letter on 29/1/18 and I have made the report of refusal on my own. It is wrong to suggest that I am deposing falsely.



RO & AC
True Affidavit
Copy

15/11/21
Reached

Sd/-

(Santosh Kumar Singh)
CCJ-cum-ARC (Central)
THC/DELHI/15.11.2021



CIS No. E-18/2020
CNR No. DLCT03-001328/2020
SOM PRAKASH GUPTA Vs OM PRAKASH

15.11.2021

**Statement of AW-1 Sh. R.N.Thakur, S/o Late Sh. R.P.Thakur,
Aged about 59 years, presently posted at Delhi GPO,
Kashmeri Gate, Delhi.**

ON SA

Presently, I am posted at Delhi GPO, Kashmeri Gate, Delhi-110006 as PRO. Today, I have brought the letter no. F/Misc/Court/Notice/ 2021-22 dated 10.11.2021 containing weeding out letter dated 02.03.2020 with regarding registered postal receipt no. RD874331973IN and the record of the same RD receipt number has been weeded out as per rules. Relevant documents are taken on record (two pages) which are marked as **Mark A (colly)**. Normally, the procedure we follow is that as soon as any document is deposited vide Registered AD or Speed Post in the Post Office, then we prepare its list according to the area and we handed the registered post alongwith the list containing the details of the registered post, addresses of the parties to whom the document is to be delivered or Speed Post / letters. We get the receipt of the concerned postman on the list containing the details for our departmental / office purpose for maintaining the record. Thereafter, the rest is the responsibility of the concerned postman to deliver these registered post / envelope / letters to the concerned addressee. Thereafter, the concerned postman return the detailed document with remarks that the registered post / letters have been delivered to the concerned person or not. In case, any registered document / post is not delivered to



the addressee, then the same is returned back to the concerned post office with the report of the concerned postman as remarks whether the premises was found locked or refused or left. If the remark of the concerned postman is refusal or left on any of the registered post / envelope / letter, then the same letter / registered post is returned to the sender. However, in other cases, i.e, if the door is found locked, then, three visits of the concerned post man of the concerned addressee is mandatory. If the addressee is not found, even after visiting thrice, then, the letter / registered post/ envelope is returned to the sender. We maintain the record of registered envelope / letters for two years. However, in case of speed post we maintain the record for six months. My statement is correct and true.

XXXXX by Sh. Jaspreet Singh, Ld. Counsel for Amicus Curiae for petitioner / tenant.

I have not brought the rules and regulation regarding the weeding out of registered envelopes / posts. It is wrong to suggest that I have intentionally not brought the rules and regulation regarding weeding out as there is no provision for weeding out of the record within two years. It is correct that I have not prepared the report dated 02.03.2020 regarding weeding out of the record. It is wrong to suggest that I have intentionally not brought the original summoned record.

RO & AC
True Affidavit copy
N.K.
15/11/21
Reader

sd/-
(Santosh Kumar Singh)
CCJ-cum-ARC (Central)
THC/DELHI/15.11.2021



5. I have heard learned counsels for the parties.
6. Section 25B of the Delhi Rent Control Act, 1958 prescribes special procedure for disposal of eviction petitions on the ground of *bona fide* requirement.
7. Sub-section 3 and 4 of Section 25B of the Delhi Rent Control Act, 1958 reads as under:-

“25B

. . .

(3) (a) *The Controller shall, in addition to, and simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.*

(b) *When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.*



(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 hereinafter 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 for eviction on the ground aforesaid.”

8. Further, Rule 22 of the Delhi Rent Control Rules, 1959 reads as under:-

*“22. **Service of notice, etc.**—Unless otherwise provided by the Act, any notice or intimation required or authorised by the Act to be served on any person shall be served—*

(a) by delivering it to the person;

(b) by forwarding it to the person by registered post with acknowledgment due.”

9. Sub-section 3 of Section 25B of the Delhi Rent Control Act, 1958 mandates that the controller may presume there to be a valid service of summons in case of a refusal by the tenant only on an acknowledgement when the summons are received back with an endorsement made by the postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article. The statement of the postman AW-2 Sh. Kailash Kumar categorically states that he did not meet the petitioner or his wife or any of his relatives and



does not even know as to who had said the words of refusal “*ham nahi le rahe*”. In this scenario, to assume that there is deemed service upon the petitioner is incorrect. I do not think that the petitioner has been served as mandated under the provisions of the Delhi Rent Control Act, 1958 and Delhi Rent Control Rules, 1959.

10. The division bench of this Court in ***Director Directorate of Education & Anr. v. Mohd. Shamim & Ors.*** 2019:DHC:6510-DB has observed as under:

*“24. (...) Section 25B(3)(b) of the Act empowers the Controller to declare that there has been valid service of summons issued under Section 25B(3)(a) of the Act when an acknowledgement “purporting to be signed by the tenant or his agent” is received back by the Controller or when the registered article containing the summons is received back with an endorsement “purporting to have been made by a postal employee” to the effect that the tenant or his agent has refused to take delivery of the registered article. Thereunder the Controller is empowered to declare that there has been a valid service merely when there is an appearance of service or refusal. **However Section 25B(4) empowers the Controller to order eviction on failure of the tenant so served to apply for leave to defend only when the summons is “duly served”. A summon purporting to be served or refused cannot be said to be “duly served” if it is shown that what was purporting to be signed by the tenant was indeed not signed by the tenant and / or what was purporting to be refusal of the tenant was indeed not refusal of the tenant. An order of***



eviction passed on purported service if allowed to stand notwithstanding being shown to be not duly served would be in violation of Section 37(1) prohibiting the Controller from passing any order without giving reasonable opportunity to show cause thereagainst and would also be in violation of the practice and procedure of a Court of Small Causes...”

(emphasis supplied)

11. Hence, the eviction order dated 22.02.2018 is set aside with the direction that the petitioner shall file his leave to defend within 15 days from the date of signing of this order. The respondent shall be at liberty to file a response to the leave to defend within 15 days thereafter.
12. The learned Rent Controller shall hear arguments on the leave to defend in accordance with law.
13. Nothing stated in the order today would be construed as an opinion on merits and the learned Rent Controller will hear and pass orders in accordance with law, uninfluenced by the observations made in this order.
14. Mr. Verma, learned counsel for the respondent has handed over a copy of a letter dated 24.04.2023, wherein the premises in question have been found to be in very dangerous / dilapidated condition by the SHO, PS Lahori Gate, Delhi. In this view of the matter, I am refraining from passing an order restoring possession to the petitioner. The petitioner is at liberty to move an appropriate application before the learned Rent Controller who shall pass appropriate orders, if any, in this regard. The letter dated 24.04.2023 handed over in Court today is taken on record.
15. The documents handed over in Court today by the learned *amicus*



curiae are also taken on record.

16. Mr. Jaspreet Singh, appointed as *amicus curiae* earlier, is requested to assist the petitioner in the proceedings before the learned Rent Controller.
17. The order be immediately communicated to Mr. Jaspreet Singh, Advocate bearing office address Chamber No. B-149, Tis Hazari Court, Delhi (Mobile No. 9899641617).
18. In view of the aforesaid terms, the present revision petition is allowed.

JASMEET SINGH, J

SEPTEMBER 21, 2023 / (MS)

Signed on 10.10.2023

Click here to check corrigendum, if any