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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 05.03.2024
Judgment pronounced on: 14.03.2024

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RC.REV. 90/2015 & CM APPL. 3491/2015

SURINDER KUMAR PAWAN KUMAR THROUGH SHRI
SURINDER KUMAR (SINCE DECEASED) THROUGH LR_s

..... Petitioner

Through: Mr. J.K. Bhola, Mr. Shashank Kumar,
Mr. Mohit Mittal and Ms. Muskan
Bhola, Advocates for Petitioner

versus

SHRI LAXMAN DAS DHANWARIA

..... Respondent

Through: Mr. Anand Singh, Advocate

CORAM:

JUSTICE GIRISH KATHPALIA

GIRISH KATHPALIA, J.:

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed order dated 21.01.2015 of the learned Additional Rent Controller, Tis Hazari Courts, Delhi whereby the eviction petition filed by the respondent/landlord under Section 14(1)(e) of the Act was allowed since despite service of summons in the prescribed format, the petitioner/tenant opted not to file application seeking leave to contest the proceedings. On service of notice of the present proceedings, the respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

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2. Briefly stated, relevant circumstances extracted from pleadings and records are as follows. The present respondent, claiming himself to be the owner and landlord in respect of the shop bearing private No. A (hereinafter referred to as “the subject premises”) in the larger premises bearing No. 3506, Beadon Pura, Hardhyan Singh Road, Karol Bagh, New Delhi filed eviction petition against the present petitioner on the ground that he *bona fide* required the subject premises for his residential use and occupation. The learned Additional Rent Controller issued summons in the prescribed format against the present petitioner through ordinary process as well as by registered post. The summons sent through ordinary process returned with the reports dated 29.09.2014, 15.10.2014 and 21.10.2014 of the process server that on 29.09.2014 the premises were found locked and on the next two dates, the present petitioner was not found in the premises. The summons sent through registered post returned with the report of refusal. Treating the refusal report as deemed service of summons, followed by failure on the part of the present petitioner to file application for leave to contest, the learned Additional Rent Controller passed the impugned eviction order after hearing learned counsel for both sides. Hence, the present petition by the tenant.

3. During arguments, learned counsel for petitioner/tenant took me through records and contended that the impugned eviction order was obtained by the respondent/landlord playing fraud on court. It was submitted that the petitioner/tenant was never served with the summons and it is only on 20.01.2015 that from one Chander Mohan, he came to know



about some case listed on 21.01.2015, so he approached the court and apprised the court of facts; and that it is the son in law of the present respondent who had informed Chander Mohan that on 21.01.2015 an eviction order would be passed. On the other hand, learned counsel for respondent/landlord strongly opposed the petition, contending that the petitioner/tenant was deliberately evading service of summons, so he was correctly deemed to be served with the summons on the basis of postal report of refusal. Learned counsel for respondent/landlord also contended that the story of the petitioner/tenant having been informed about the eviction proceedings by the person named Chander Mohan is completely unbelievable, especially because no such story was placed before the learned Additional Rent Controller. In rebuttal arguments, learned counsel for petitioner/tenant referred to the judgments in the cases title ***Bishan Swaroop (since deceased) through LRs vs Manish Sethi & Ors***, 2014 SCC OnLine Del 899; ***Devender Nath vs Mohd Asim***, 2013 SCC OnLine Del 4014; ***Jor Singh vs Sanjeev Sharma***, 2013 SCC OnLine 4883; ***Dharma Pal & Anr vs Meena Sharma***, 2012 SCC OnLine Del 1215; ***M/s Gajanand Hari Shankar vs Col. (Retd) Ajai Singh Virk***, 2012 SCC OnLine Del 4825 ***Sonal Mansingh vs Beena Om Prakash***, 2011 SCC OnLine Del 3818; ***Rakesh Kumar vs M/s Shri Ram Palace***, 2011 SCC OnLine 1377; and ***Apabhai Motibhai Patel vs Laxmichand Zaverchand & Co.***, 1953 SCC OnLine Bom 62.

4. To begin with, all the judgments referred to by learned counsel for petitioner/tenant are based on individual factual matrix of each case and the



only extent to which these judgments can be relied upon is the undisputed legal position that time to file application for leave to contest would commence from the date of service of summons and that the court must ensure that the summons were served on the tenant. It would be significant to note that in the judgments relied upon by learned counsel for petitioner/tenant, one of the distinguishing features was that the tenant brought before the learned Rent Controller by way of review applications or otherwise, his version to establish falsity of the process service reports. In the present case, the abovementioned version of the petitioner/tenant about the manner in which he came to know about pendency of the eviction proceedings was set up before this court for the first time, so cannot be ruled out to be afterthought. In the judgments relied upon by the learned counsel for petitioner/tenant, it is after detailed examination of records that the concerned courts arrived at a conclusion suspecting the genuineness of service report on the summons. That being so, in the present case also, this court has to examine as to whether there is any ground to suspect any foul play at the hands of the respondent/landlord.

5. In the case of **Devender Nath** (supra) relied upon by learned counsel for petitioner/tenant, circumstances were completely distinguishable in the sense that the summons sent through registered post returned with the report that the tenant was out of station while the summons sent through ordinary process returned with the report that the tenant could not be contacted at the given address, so the process server served the summons on an employee of the tenant, that too at some other address not mentioned in the summons. In



the case of *M/s Gajanand Hari Shankar* (supra), a coordinate bench of this court opined that though there is no such requirement, but in view of vital material on record, the Rent Controller ought to have examined the postman to prove the postal report of refusal. In the case of *Jor Singh* (supra), the issue before a coordinate bench of this court was service of summons on an unidentified person, and the same was held not a valid service. In the case of *Sonal Mansingh* (supra), the coordinate bench of this court rejected the view of the trial court to the effect that it had no jurisdiction to go into plea of the tenant as regards suspicious circumstances related to service of summons, which was not in the present case; and moreover, in the said case the circumstances in which the tenant came to know about the eviction order were when the bailiff came to execute the same, whereas in the present case as discussed hereafter, the circumstances in that regard do not inspire confidence. Similarly, the remaining judgments relied upon the learned counsel for petitioner/tenant also are completely distinguishable.

6. There cannot be any dispute that the summons in the prescribed format must be addressed to the tenant only or to his agent duly authorized to accept the same; and that service of summons, being a vital step, has to be carefully examined by the Rent Controller so that the tenant does not suffer eviction order without being heard.

7. It is not unheard that the landlord in an effort to hoodwink the system may collude with the concerned authorities and obtain false reports of service of summons, in order to keep the tenant in dark till eviction order is



obtained. It is equally not unheard that many tenants (*or for that matter many defendants in other legal proceedings*) evade service of summons sent from court with the sole objective of protracting the proceedings and to ultimately frustrate the petitioner/plaintiff. But the court cannot go on the basis of suppositions and must minutely scrutinize each case on its merits. For, not every litigant would try to play fraud with the system.

8. The question in the present case is as to whether the reports of process server and postman on the summons are genuine, as claimed by the respondent/landlord or the same were falsely procured, as claimed by the petitioner/tenant.

9. As mentioned above, according to the petitioner/tenant, he came to know about the eviction proceedings on 20.01.2015 i.e. just a day before the date of hearing from Chander Mohan who had been informed by son in law of the respondent/landlord that on the next day, 21.01.2015 an eviction order would be passed.

10. The question as to when and in what circumstances, the stranger Chander Mohan was told by son in law of the respondent/landlord about the eviction proceedings and with such a certainty that on the next day eviction order would be passed, remains shrouded in mystery. It also remains a mystery as to why Chander Mohan would remain silent till 20.01.2015 and not convey to the petitioner/tenant about the alleged statement of son in law of the respondent/landlord.



11. If the respondent/landlord had colluded with the concerned process server and the postman, thereby obtaining false service reports, it fails to appeal to reason that his son in law would himself convey, that too through a third person to the petitioner/tenant, the information about pendency of eviction proceedings at the risk of enabling the petitioner/tenant to throw a spanner by succeeding to convince the learned Additional Rent Controller to issue fresh summons.

12. Further, if on 20.01.2015 the petitioner/tenant came to know about the eviction proceedings listed on 21.01.2015, nothing prevented him from filing an appropriate application before the learned Additional Rent Controller or atleast making oral submissions about the manner in which he came to know about the said proceedings.

13. It would be significant to note that this version of information through Chander Mohan has been set up for the first time in this court. Even subsequent to passing of the impugned eviction order, the petitioner/tenant opted not to seek review before the learned Additional Rent Controller, alleging falsity of the service reports on summons. The version set up by the petitioner/tenant as above fails to convince.

14. Admittedly, summons in the prescribed format were addressed to the petitioner/tenant by correct name and at his correct address. Also admittedly, on 21.01.2015, the petitioner/tenant appeared before the learned Additional Rent Controller but did not even whisper as to how he came to know about



the hearing dated 21.01.2015, if summons were not served on him. That being so, the learned Additional Rent Controller had no reason to suspect any foul play. Further admittedly, till date the petitioner/tenant has not filed any complaint before any authority alleging that the process server and/or the postman had submitted false reports on summons.

15. Before the learned Additional Rent Controller, the only submission advanced on behalf of the petitioner/tenant on 21.01.2015 was that since parties are already embroiled in multiple civil litigations, it is not believable that the petitioner/tenant would refuse to accept summons. This argument cuts both ways, in the sense that the parties embroiled in multiple civil litigations also resort to such practices of avoiding service of summons so as to protract the proceedings and frustrate the other party.

16. As reflected from record, it is not that after a solitary visit at the premises of the petitioner/tenant the process server filed his report. As reflected from a copy of summons (*pdf 171-172*), the process server went to the premises of the petitioner/tenant on 29.09.2014 but found the premises locked and on inquiries he could not gather the whereabouts of the petitioner/tenant, though he noticed the signboard of Rajdhani Jewellers on the premises, so he again went to the said premises on 15.10.2014 and on that day, he met one person who, after reading the summons, stated that the petitioner/tenant was not present at the shop and there was no information as to when he would return, but the said person did not disclose his name. Thereafter, on 20.10.2014 the process server again visited the premises of



the petitioner/tenant, but again the person present in the premises, which is a jewellery shop, stated that the petitioner/tenant was not present but refused to divulge his name.

17. Admittedly, the premises of petitioner/tenant is a jewellery shop. So it cannot be believed that while going away the petitioner/tenant would leave the shop unattended. In the present petition, the petitioner/tenant claimed that while leaving the shop he used to make his servant Sandeep sit there to keep a watch. That being so, it cannot be believed that Sandeep would not have told the petitioner/tenant about the repeated visits of the process server, even if it is believed that the petitioner/tenant himself falsely told the process server that the addressee is not available.

18. It being the petitioner's own case that parties are embroiled in multiple civil litigations, the natural turn of events would have been that Sandeep would inform about repeated visits of process server and the petitioner/tenant would track down the present litigation or would atleast file some application before the learned Additional Rent Controller by or on 21.01.2015. As regards postal report also, as mentioned above, the postal envelop admittedly bore correct name and address of the petitioner/tenant and the same returned with the postal report of refusal.

19. I find no infirmity in the decision of the learned Additional Rent Controller to treat it a case of deemed service of summons as the petitioner/tenant deliberately kept avoiding the process.

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20. In view of the aforesaid, since despite service of summons the petitioner/tenant did not file application for leave to contest, the eviction order was correctly passed, so the same is upheld. Consequently, the revision petition is dismissed.

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**GIRISH KATHPALIA
(JUDGE)**

MARCH 14, 2024/as

