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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 02.05.2024
Judgment pronounced on: 07.05.2024

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RC.REV. 454/2016

SHRAWAN SULTANIA

..... Petitioner

Through: Mr Roshan Santhalia, Adv.

versus

AVNEET GOYAL

..... Respondent

Through: Mr Jai Sahai Endlaw, Mr Gaurav Aggarwal, Ms Sagarika Kaul, Ms Mahima Mishra and Rishabh Chaudhary, Advocates.

CORAM: JUSTICE GIRISH KATHPALIA**J U D G M E N T**

1. By way of this petition, brought under proviso to Section 25B(8) of the Delhi Rent Control Act, the petitioner/tenant has assailed the eviction order passed under Section 14(1)(e) of the Act by the learned Rent Controller, Central District, Delhi. On service of notice, respondent/landlord entered appearance through counsel. I heard learned counsel for both sides.

2. Briefly stated, circumstances leading to the present petition are as follows.



2.1 The present respondent claiming himself to be co-owner of premises No. 2619/1, Zera Fazil, Lahori Gate, Naya Bazar, Delhi (hereinafter referred to as “the subject premises”) filed an eviction petition against the present petitioner under Section 14(1)(e) of the Act, pleading therein that the subject premises was purchased by him and two more persons by way of registered sale deed dated 26.05.2010 and at that time, the present petitioner was already occupying the subject premises as a tenant for commercial purposes; that his family consists of his wife, one married son and one married daughter; that his son, who has been assisting him in food grain business for past 4-5 years now wants to start an independent shop/showroom of pulses and for that purpose, he is in *bona fide* requirement of the subject premises since they do not have available with them any reasonably suitable alternate accommodation.

2.2 Since despite service of summons in the prescribed format, the present petitioner opted not to file any application for leave to contest, the learned Rent Controller allowed the eviction petition by way of the impugned order dated 23.11.2015. Thereafter on 28.05.2016 after expiry of statutory protection period, the present respondent instituted execution proceedings which culminated into restoration of possession to the present respondent on 11.07.2016. The present petitioner filed before the learned Rent Controller an application under Order IX Rule 13 CPC on 16.08.2016 and the same was dismissed on 17.08.2016.



2.3 Thereafter, the present petitioner filed the present petition seeking to set aside the impugned eviction order dated 23.11.2015 and all subsequent proceedings as well as for restoration of possession.

3. During initial arguments, the matter was adjourned at request of learned counsel for petitioner as he required time to examine the legal position *qua* survival of the present petition in the light of restoration of possession of the subject premises to the present respondent and consequences of failure to challenge the order of dismissal of application under Order IX Rule 13CPC. But subsequently, learned counsel for the present respondent gave up on both these counts in the interest of expeditious disposal of the main petition, treating the said two issues as only academic ones. With this backdrop I heard learned counsel for both sides.

3.1 Learned counsel for petitioner/tenant argued that there was no proper service of summons in the prescribed format, so the impugned order is not sustainable in the eyes of law. It was argued on behalf of petitioner/tenant that the report of the postman on the envelope containing the summons was procured by the respondent in collusion, so the same cannot be relied upon. Learned counsel for petitioner/tenant took me through documents on record pertaining to the proceedings in civil suit between the parties, which was pending during the relevant period and contended that nothing prevented



the respondent/landlord from serving the summons before the civil court. In this regard, learned counsel for petitioner/tenant referred to the order sheet dated 05.10.2015 of the learned ASCJ (Central) Delhi and submitted that prior to moving application dated 06.10.2015 under Order V Rule 20 CPC, the present respondent should have tried to serve summons on the present petitioner before the said civil court. It was further contended that on 02.06.2015, the petitioner was personally present before the civil court but even that day, no efforts were done to serve summons on him in court. Therefore, according to learned counsel for petitioner, the impugned order is liable to be set aside.

3.2 On the other hand, learned counsel for respondent/landlord supported the impugned order and contended that since service of summons in prescribed format was carried out through as many as four modes, there was no error in the view taken by the learned Rent Controller. As regards service of summons through civil court, learned counsel for respondent contended that the same is beyond the scope of specific procedure prescribed in Chapter IIIA of the Act for service of summons. Learned counsel for respondent also took me through record to point out the multiple efforts of the petitioner/tenant to avoid service of summons.

4. Thence, the question involved in this case is as to whether the summons in the prescribed format were duly served on the petitioner/tenant or not.



5. It would be significant to note that the petitioner/tenant does not allege any collusion between the respondent and the process server of the court. The collusion alleged is between the respondent and the local postman. The *pdf* page 62 of Volume III of pleadings file is the report of the process server, who took the summons to be served on the petitioner/tenant. In his report dated 02.06.2015, the process server recorded that on 02.06.2015 when he reached the given address and inquired about the petitioner/tenant, a lady met and informed him that the petitioner/tenant was inside the house; that on being told that summons of the court have to be served on him, the said lady asked him to wait so that she could obtain instructions and she went inside; that after sometime that lady came out and stated that the petitioner/tenant was not present at the house; that despite his request, that lady did not disclose her name and refused to accept the summons. To repeat, there is no challenge to the genuineness of this report of the process server.

6. Coming to the report of the postman on the envelope containing summons sent to the petitioner/tenant, copy of the returned envelope is at *pdf* page 68 of Volume III of pleadings file. According to the same, the postman visited the given address on 04.11.2015, 05.11.2015 and 06.11.2015 but despite those repeated visits, the addressee could not be found. Admittedly, the address mentioned on the postal envelope is not



incorrect. Mere bald allegation that the said postal report was procured under collusion would not suffice. But nothing more has been shown by the petitioner/tenant in that regard.

7. It is under these circumstances that the learned Rent Controller arrived at a satisfaction that the petitioner/tenant was avoiding service of summons, so service of summons by way of substituted mode through publication and by way of affixation was directed. Accordingly, affixation of the summons at the subject premises was carried out on 30.10.2015 and publication of the summons was carried out in The Statesman newspaper dated 02.11.2015. The *pdf* page 108 of the digitized record of the trial court is a copy of summons bearing report of the process server that on 30.10.2015, the subject premises were found locked, so the process server pasted a copy of summons outside the premises. The *pdf* page 110 of the digitized record of the trial court is the copy of The Statesman newspaper in which the summons were published on 02.11.2015. Despite that, the petitioner/tenant did not file the application seeking leave to contest, which led to the impugned eviction order.

8. Then comes the argument of learned counsel for petitioner/tenant that before filing application under Order V Rule 20 CPC on 06.10.2015, the respondent/landlord could have served summons in the court of learned Additional Senior Civil Judge on 05.10.2015 when the civil suit was listed. Chapter IIIA of the Act, which is a Code in itself specifically lays down in



Section 25B(3)(a) that the Rent 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 thereof 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. In other words, section 25B(3)(a) of the Act contemplates that service of the summons has to be on the tenant or his agent empowered to accept the service. Admittedly, on 05.10.2015 the present petitioner/tenant was not personally present before the learned Additional Senior Civil Judge. Also admittedly, there is nothing on record to show that counsel for petitioner/tenant, who was present before the court of learned Additional Senior Civil Judge on 05.10.2015 was authorized to accept service of summons on behalf of the petitioner. So, the summons could not have been served before the learned Additional Senior Civil Judge on 05.10.2015. Ofcourse, earlier on 02.06.2015, the petitioner was personally present before the learned Additional Senior Civil Judge, but on that day there was no reason for the present respondent/landlord to anticipate that the petitioner/tenant would avoid service of summons issued on the petition filed hardly a week back on 27.05.2015.



9. Thus, when summons through ordinary process and registered post could not be served on the petitioner/tenant, service of the same was effected by way of substituted modes of affixation and publication, the learned Rent Controller having been satisfied that the petitioner/tenant was avoiding service of summons. But despite service of summons in the prescribed format, the petitioner/tenant to his peril opted not to file any application seeking leave to contest, and consequently, the eviction order was passed.

10. I am unable to find any infirmity in the impugned order, so the same is upheld and the petition is dismissed.

**GIRISH KATHPALIA
(JUDGE)**

MAY 07, 2024/as