

Kalawati Devi vs.kasturi Devi

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Court : Delhi

Decided On : Jan-31-2017

Appellant : Kalawati Devi

Respondent : Kasturi Devi

Judgement :

\$~17 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision:

31. 01.2017 + RC.REV. 110/2016 & CM No.5695/2016 KALAWATI DEVI

... Petitioner

Through Ms.Prabha Sharma, Advocate versus KASTURI DEVI Respondent
Through Mr.Biswajeet & Mr.Sumit Mangla, Advocates CORAM: HON'BLE MR.
JUSTICE JAYANT NATH JAYANT NATH, J.(ORAL) By the present petition filed
under Section 25-B(8) of the Delhi Rent 1. Control Act, 1958 (hereinafter referred
to as the DRC Act), the petitioner seeks to challenge the order dated 29.10.2015
by which an application filed by the respondent under Order 9 Rule 13 CPC to set
aside the ex-parte eviction order dated 16.10.2012 was allowed.

2. The brief facts of the case are that the petitioner filed an eviction petition under
Section 14(1)(e) of the DRC Act seeking eviction of the respondent in respect of
the tenanted premises being Khasra No.7, Rajpur Khurd, Extension, New Delhi. It
was claimed by the petitioner that the respondent was a tenant since 2005 at a
monthly rent of Rs.2,500/-. It was stated that the petitioner required the tenanted

premises for her residential as well as for her family who are dependent upon her. She is said to have 12 family members residing with her at house being No.172/1, Railway RC.REV. 110/2016 Page 1 Colony, Kishan Ganj, Delhi.

3. On 08.05.2012, summons were issued as per Schedule- III of the DRC Act returnable for 25.07.2012 to the respondent. On 25.07.2012, the ARC recorded that the summons has been received back unserved with the report that address is incomplete. Hence, fresh summons was directed to be issued. The petitioner was directed to file complete address of the respondent. The petitioner instead of filing fresh process fee, registered AD cover, sought dasti service on the respondent. This application was allowed on 24.08.2012. On 16.10.2012, the ARC noted that the summons has been received back with service on 03.09.2012. It accepted the report of the process server and as the respondent had failed to move an application seeking leave to defend the case within the stipulated period, the ARC passed an eviction order against the respondent straightway. On 21.11.2013, the petitioner executed the eviction order and took back the possession from the respondent.

4. The respondent has then moved the application Order 9 Rule 13 CPC for setting aside ex-parte order and application under Order 21 Rule 26 CPC for restoration of the property to the respondent. The ARC by the impugned order concluded that no proper service has been effected on the respondent. It noted that the predecessor court had in a casual manner allowed the dasti service. In fact, it had been noted earlier that the address given was incomplete. It also noted that the respondent is an illiterate and rustic woman having no formal understanding of the court proceedings. It also concluded that dasti summons was received back duly served with the signature of one Ms.Madhu on the same. It noted that dasti summons has always been considered by the higher courts as not approved form of service, much less RC.REV. 110/2016 Page 2 in sensitive matters in the nature of eviction, wherein leave to defend is required to be filed within 15 days. It also concluded that there is nothing on record to show that said Ms.Madhu, the alleged granddaughter of the respondent was empowered to accept the service of summons. Noting the provision of Section 25-B of the DRC Act are to be strictly adhered to the ARC concluded that summons were not

served in accordance with law on the respondent and recalled the ex-parte order dated 16.10.2012 and also directed that the respondent be put back in possession.

5. 6. I have heard the learned counsel for the parties. Relevant part of Section 25-B of the DRC Act reads as follows: 25B - Special procedure for the disposal of applications for eviction on the ground of bona fide requirement.-. (1) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (e) of the proviso to sub-section (1) of section 14, or under section 14A [or under section 14B or under section 14C or under section 14D]. shall be dealt with in accordance with the procedure specified in this section. (2) The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in the Third Schedule. (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 RC.REV. 110/2016 Page 3 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.

7. The Supreme Court in *Prithipal Singh v. Satpal Singh*, 2010 1AD (SC) 370, held as follows: A reading of sub-section (3)(a) of Section 25B would clearly indicate that in a proceeding under Section 14(1)(e), how the tenant can be served intimating institution of the eviction proceeding and date fixed for hearing of the same. Sub-section (3)(b) of Section 25B says when the 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 RC.REV. 110/2016 Page 4 summons. Hence, a tenant is deemed to be served when under Section 25-B (3)(b) of the DRC Act if the acknowledgement purported to be signed by the tenant or his agent is received by the controller. In that circumstances, the controller may declare that there has been a valid service of summons.

8. In the present case, the summons has been taken dasti by the petitioner. The endorsement of the process server reads as follows: We reached at the address given on the summons along with the plaintiff and enquired about Smt.Kasturi Devi for the purpose of service. Kasturi Devi was found present at the place who got the summons served through her granddaughter namely Madhu. The statement of the plaintiff got recorded on the spot and the report is submitted. Hence, as per the process server, summons were offered to the respondent. She directed her granddaughter Ms.Madhu to accept the summons who has thereafter acknowledged receiving of the summons. Hence, can it be said that Ms.Madhu was authorised to accept the service of summons on behalf of the respondent?.

9. In the above context, a reference may be had to the judgment of this court in the case of *Shyam Sunder Wadhawan v. Vivek Arya*, 214 (2014) DLT616 where the court held as follows: 17. The conclusions are: (i) Merely because summons are addressed to the tenant but received by somebody else does not mean that in each and every such case the service is not a valid service whether there is or is not service/refusal depends upon the facts of each case. (ii) If the summons is

addressed to the tenant, and if the same is received by a person other than the tenant, but with consent/or RC.REV. 110/2016 Page 5 knowledge or direction of the tenant, then the service is as effective as the service on the tenant. To clarify further, if summons are addressed to an agent of a tenant, then surely instead of the agent even the tenant himself can receive the same, then, why not a summons addressed to a tenant cannot be received by a person with consent or knowledge or direction of the tenant. A caveat: when a person other than the tenant receives the summons, the tenant must at that stage be in a place/state when he can file the leave to defend application within the prescribed period. (iii) If the tenant uses subterfuges, including those cases where he is found to have endeavoured to conceal his personality, a Court can, depending upon facts of a particular case hold that there is service/refusal of the summons. (iv) Service effected directly by affixation is not a valid service but affixation done following the refusal to receive summons is a valid service. (v) Summons sent by registered post, when are avoided to be received by the tenant, then in such circumstances where it is clear that the tenant has the knowledge that he must receive the registered post article, but yet he does not, it can as per facts of a case, be held that there is service/refusal by the tenant. 10. In the present case the issue is as to whether the respondent was properly served or not. In case, the respondent was served, the question of setting aside the ex-parte decree would not arise as the respondent in terms of the judgment of the Prithipal Singh v. Satpal Singh(supra) was obliged to move an application for leave to defend within 15 days of service of summons. The respondent having failed to do the same, the eviction order would have to automatically follow.

11. However, on the issue as to whether summons was served on the RC.REV. 110/2016 Page 6 respondent, in my opinion, the ARC would have power to go into the issue in case a challenge is made that the summons had not been served.

12. I may note that in the present case one of submissions made by the respondent is that the signatures of Ms.Madhu, her granddaughter have been forged. Further, the respondent had tried to claim title to the suit property by stating that she was in close relations to the original owner Sh. Shiv Prasad and had been in live-in-relations with him. She has also claimed that Sh.Shiv Prasad

executed a Will dated 15.06.2005 whereby he bequeathed his property in favour of the respondent. Sh. Shiv Prasad is said to have died on 14.11.2005.

13. In my opinion, the ARC has needlessly doubted the directions passed by the predecessor court directing the issue of summon dasti. The ARC having on the facts of the case, permitted dasti summon, the validity of the order cannot be doubted by the successor court. The ARC further held that there is nothing on record to show that Ms.Madhu, the alleged granddaughter of the respondent was empowered to effect the service of summons. This conclusion ignores the above report of the process server which clearly shows that the respondent has told the process server that said Ms.Madhu, her granddaughter is authorised to accept the summons. This could be possible as she is admittedly an illiterate lady and may not have been able to affix her signatures on the summons. Respondent of course denies that she authorised Ms.Madhu to accept summons. She denies that the signatures on the summons are of Ms.Madhu. These are the disputed questions of fact and cannot be decided without permitting parties to lead evidence. The ARC should have permitted the parties to lead evidence. The examination and cross-examination of the process server would have been RC.REV. 110/2016 Page 7 vital evidence to conclude as to whether the service has been effected or not on the respondent.

14. Accordingly, the impugned order suffers from material irregularities and illegalities. The impugned order is set aside. The matter i.e. the applications filed by the respondent are relegated to the ARC who will provide an opportunity to the parties to lead evidence before deciding the matter afresh.

15. Parties to appear before the ARC on 12.04.2017.

16. With the above, the present petition and all the pending applications stand disposed of. JAYANT NATH, J.

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