

Sh. Shoki Chaudhary Vs. Sh. Mukesh

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Court : Delhi

Decided On : Dec-03-2014

Judge : Valmiki J. Mehta

Appellant : Sh. Shoki Chaudhary

Respondent : Sh. Mukesh

Advocate for Def. : Mr. Jitender Kumar, Mr. Keshav Yadav

Advocate for Pet/Ap. : Ms. Seema Gupta

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CM(M) No.121/2014 3rd December , 2014 % SH. SHOKI CHAUDHARY Through: Petitioner Ms. Seema Gupta, Adv. VERSUS SH. MUKESH Through: Respondent Mr. Jitender Kumar and Mr. Keshav Yadav, Advocates. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This petition under Article 227 of the Constitution of India is filed by the tenant impugning the judgments of the courts below; of the Rent Controller dated 16.5.2013 and the Additional Rent Control Tribunal dated 5.12.2013; by which the eviction petition of the landlord filed under Section 14(1) (a) of the Delhi Rent Control Act, 1958 (in short DRC Act) has been decreed and now the case is fixed for further proceedings to find out as to whether the petitioner/tenant has complied with the order of deposit of rent under Section 15(1)

of the DRC Act. It must be noted that in case of first default, and the present is the case of first default, tenant is not evicted by virtue of the benefit of Section 14(2) of the DRC Act in case the tenant pays/deposits the rent in terms of the order passed under Section 15(1) of the DRC Act.

2. At the outset I must state that the powers under Article 227 of the Constitution of India are extraordinary and discretionary powers. While exercising these powers this Court does not sit as an appellate court. This Court does not interfere with the findings and conclusions of the courts below, once out of the two possible and plausible views, the courts below takes one possible and plausible view. The one possible and plausible view in this case is with respect to whether rate of rent was Rs.1000/- per month as stated by the petitioner/tenant or was Rs.2500/-. Courts below have held that the rate of rent was Rs.2500/- per month by appraising evidence noting the fact that the petitioner/tenant did not cross-examine the landlord or the other witness PW-2 with respect to the rate of rent, and therefore rate of rent would stand admitted.

3. The only issue argued before me by the counsel for the petitioner however is different and which is that the demand notice dated 18.10.2007 was not served upon the tenant and therefore the petition under Section 14(1)(a) of the DRC Act was bound to be dismissed. This aspect has been considered by the Additional Rent Control Tribunal/first appellate court in para 12 of the impugned judgment and which para reads as under:

12. To prove the rate of rent and period of default in making payment of rent, the "landlord" while examining himself as PW-1 on 12.10.2010, inter-alia, deposed in his affidavit tendered in evidence Ex.P1 that he has let out his premises to the tenant in the month of May 2006 at a monthly rent of Rs.2,500/- excluding electricity and water charges and the tenant has not paid him the rent since June 2006 till date despite his requests. He deposed that a legal notice of demand dated 22.10.2007 has been served upon the tenant through his counsel and despite notice, he has not paid him arrears of rent within 60 days of receipt of notice. He also deposed that the tenant is a habitual defaulter in making payment of rent. He proved the copy of legal notice dated 18.10.2007 Ex.PW1/A which was

sent to the tenant vide postal receipt no.3599 dated 22.10.2007 Ex.PW1/B and UPC dated 22.10.2007 Ex.PW1/C. The registered AD envelope Ex.PW1/D sent on 22.10.2007 vide postal receipt no.3599 returned with the report of the postman dated 29.10.2007 that BAR BAR JANE PAR PRAPTKARTA NAHI MILTA. As the receipt of this notice is admitted by the tenant in preliminary objection no.9 of his written statement, it appears that he has received the copy of notice sent to him through UPC on 22.10.2007. Even otherwise, the tenant has avoided receiving of the notice by registered AD post despite several visits of the postman which is deemed to have been served upon him and in this regard, the judgment of our Hon'ble High Court of Delhi in Prime Industries vs. Rafeeq Ahmad 1997 (1) RCR661 can be referred to. The witness PW1 (landlord) was cross examined by the "tenant" on 23.11.2010 and on 23.09.2011 but there is no cross examination by the tenant either on the point of rate of rent of Rs.2,500/- per month or on the point of arrears of rent since June 2006 and this testimony of the "landlord" went un rebutted and unchallenged. The tenant has also not put his defence in the cross examination of PW-1 that rate of rent has been Rs.1,000/- per month or Rs.500/- per month or he has paid the rent upto December 2007 or advancing of loan of Rs.75,000/ to the landlord. Similarly, the tenant has not cross examined PW2 Sh. Ramesh on these points and the tenant has also not put his case in cross examination of PW-2. While relying upon the judgment of Calcutta High Court in A.E.G. Carapiet vs. A.Y. Derderian AIR1961 Cal 359, the Hon'ble Supreme Court has recently held in M.B. Ramesh (D) by LRs vs. K.M. Veerage Urs (D) by LRs and others 2013 (7) SCC490 that whenever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross examination, it must follow that he believed that the testimony given could not be disputed at all. It is a rule of essential justice. Reference can also be given to the judgment of Hon'ble High Court of Calcutta in Traders Syndicate vs. Union of India, AIR1983 Calcutta 337. In view of non cross examination of PW-1 Sh. Mukesh (landlord) and PW2 Sh. Ramesh by the tenant on rate of rent and period of default, and not putting his defence about rate of rent to be Rs.1,000/- per month or Rs.500/- per month and payment of rent upto December 2007, the tenant is deemed to have admitted the rate of rent to be Rs.2,500/- per month of the said premises and he has not paid rent since June 2006 and therefore, Id. trial court

has arrived at a just conclusion that the rate of rent of the said premises was Rs.2,500/ per month and the tenant has not paid such rent since June 2006 to the landlord.

(underlining added) 4. A reading of the aforesaid para shows that legal notice dated 18.10.2007 was proved as Ex.PW1/A, registered postal receipt dated 22.10.2007 was proved and exhibited as Ex.PW1/B and UPC dated 22.10.2007 was proved as Ex.PW1/C. The issue is that whether this service is in accordance with law.

5. This aspect as to whether the duty of the landlord is complete by sending of the notice has been considered by the Supreme Court with reference to the presumption under Section 27 of the General Clauses Act, 1897 in the judgment in the case of M/s Madan & Co. Vs. Wazir Jaivir Chand (1989) 1 SCC264 and the Supreme Court has held that once there is a proper tender at the correct address of the demand notice, then there is service of the demand notice in view of the presumption as per Section 27 of the General Clauses Act and para 6 of which reads as under:

6. We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to Clause (i) of Section 11(1) and the proviso to Section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee Under Section 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address

mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the addressee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order V of the CPC. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the

word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant. (emphasis is mine) 6. Counsel for the petitioner is therefore not right in contending that the demand notice was not served upon the petitioner once the postman repeatedly visited the address but the addressee/petitioner was not found.

7. Learned counsel for the petitioner argues that respondent/landlord should have called into the witness box the officer from the post office to show delivery, however, this argument is totally misconceived because once presumption is raised in favour of the respondent/landlord under Section 27 of the General Clauses Act, onus of proof shifted upon the petitioner/tenant to show that why he should not be taken to be served of the demand notice, however, the petitioner/tenant did not summon anyone from the postal department to show that no notice was tendered to him in spite of he being available at the tenanted premises.

8. To complete the narration I must observe that it is not disputed that the demand notice was addressed to the correct address of the petitioner/tenant.

9. In view of the above, I do not find any merit in the petition and the same is therefore dismissed, leaving the parties to bear their own costs. DECEMBER03 2014 ib CM(M) No.121/2014

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