

Udho Ram Vs. Ishwar Datt

Udho Ram Vs. Ishwar Datt

SooperKanoon Citation : sooperkanoon.com/689792

Court : Delhi

Decided On : Jan-25-1972

Reported in : 8(1972)DLT225

Judge : Dalip K. Kapur, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 3, Rule 4

Appeal No. : Second Appeal No. 115 of 1971

Appellant : Udho Ram

Respondent : ishwar Datt

Advocate for Pet/Ap. : K.G. Sapra and; M.L. Gulabani, Advs

Judgement :

Dalip K. Kapur, J

(1) This is a Second Appeal under the Delhi Rent Control Act, 1958 by the tenant, Udho Ram. The landlord, Ishwar Datt had brought an application for ejectment of the tenant from premises situated at 4-1/55, Lajpat Nagar, New Delhi, on the ground of non-payment of rent as well as bona fide personal requirement. This application was pending before Shri D. C. Aggarwal, Rent Controller, Delhi, but was transferred to Shri P. K. Bahri, Additional Rent Controller. After it had been transferred, the tenant did not appear and consequently, the landlord obtained an

ex-parte eviction order against the tenant on 9th June, 1969. On 21st July, 1969, the tenant moved an application for setting aside the ex-parte order on the ground that the case was pending before Shri D. C. Aggarwal, Additional Rent Controller till 15th October, 1968. When Shri Aggarwal relinquished charge, he claimed he had been told that a notice would be sent intimating him the date of bearing before the transferee court, but no notice had been received by him. He also pleaded that he had only learnt of the ex-parte order on 20th July, 1959. This application was rejected by the Additional Rent Controller and the tenant's appeal to the Rent Control Tribunal has also been rejected. Now he has come to this Court in Second Appeal.

(2) The facts of the case are not very much in dispute. When the case was transferred to the court of Shri P. K. Bahri, Additional Rent Controller, notices were ordered to issue to the tenant through his counsel, and notices were issued three times. On the first occasion, Shri Mohan Singh, the tenant's counsel wrote on the notice; 'I have ceased to be respondent's counsel.' The said notice is Exhibit A-1. He later refused the summons again. On the third occasion, i.e., on 2nd June, 1969, he again returned the notice stating 'I have already stated on an earlier notice that I am no more a counsel in the case and that service be effected on the party direct.' This document is Exhibit A-2. It appears from the statement of S. Mohan Singh, as R. W. I, that he did inform his client that a notice had come which he had refused.

(3) The application for setting aside the ex-parte eviction order was rejected by the Additional Rent Controller on the ground that S. Mohan Singh had not sought the leave of the court to withdraw from the case and, hence the notice was to be deemed to have been duly served on the party because service on the lawyer was a good service of the party concerned. It was also held that the statement of S. Mohan Singh showed that he had informed the tenant and hence there was no sufficient cause for the tenant not being present at the hearing. As regards the date of knowledge, the Controller thought that the tenant must have learnt of the order on 15th July, 1969 when he sought to deposit rent in accordance with an order under Section 15(1) of the Delhi Rent Control Act, 1958. On that application, it was noted that an ex-parte eviction order had already been passed. Thus, the

Controller found that the date of knowledge of the tenant would be 15th July, 1969 and not 20th July, 1969 as claimed by him.

(4) On appeal before the Tribunal, reliance was placed on Order 3, Rule 4(2) of the Code of Civil Procedure and it was held that every appointment of a pleader was to be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the Pleader. Hence, the power of attorney filed by the counsel was deemed to be in force until the proceedings ended. It was, therefore, concluded that as the power of attorney continued to be in force, service on S. Mohan Singh was a valid service on the tenant. It was also held that the statement of S. Mohan Singh, Advocate to the effect that he had informed the tenant could not be disbelieved and, hence there was no unfairness in the passing of the ex-parte eviction order.

(5) At the hearing of this appeal, Mr. Sapra, learned counsel for the appellant has urged 'that on three occasions, S. Mohan Singh had written that the case was not with him. The Rent Controller should, in all fairness, have directed the issue of a notice of the date of hearing to the party directly..He has cited some authorities in support of his argument. On the other hand, Mr. Gulabani, learned counsel for the other side has cited authorities to show that service on the Lawyer is deemed to be service on the client, I have not come across any case, in which a Lawyer has stated that he is no longer a counsel of the party and the Court has held that he is still to be deemed to continue as the Pleader. , It is no doubt true that Order 3, Rule 4(2) of the Code states that every appointment shall be filed in Court, which shall be deemed to be in force until determined with the leave of the Court. In my view, the writing of the Lawyer on the summons stating that he had ceased to be the Lawyer of the party concerned is also a writing which fulfils the requirements of Order 3, Rule 4(2). It is now for the Court to either grant or refuse leave to withdraw. I am not satisfied that the Additional Rent Controller considered the writing which, occurs on three occasions in the present case. I am unable to find any order of the Additional Rent Controller holding that he was refusing leave to S. Mohan Singh, Advocate, to determine his appointment as a Pleader. There are four orders, passed by the Additional Rent Controller, On 17th April, 1969 it is stated that no one is present and notices should issue for 9th May, 1969. On 9th,

May, 1969 it is stated that the counsel of the applicant is present and notices should be issued to the counsel of the respondent for 26th May, 1969. On 26th May, 1969 the presence of the counsel of the applicant is noted and it is ordered that notice should be issued to S. Mohan Singh, Advocate for 4th June, 1969. On 4th June, 1969 the Additional Rent Controller passed an order stating that the Advocate for the respondent had returned the summons stating that it should be served on the party direct. He, however, held that as the counsel had not applied to withdraw, the service should be deemed to be considered as service on the tenant and hence decided to proceed ex-parte. In my view, this is not the effect of the noting on the summons. It is sufficient information to the Court that the Lawyer has withdrawn from the case. This matter is somewhat academic in this case because, as it happens, the power of attorney in favor of S. Mohan Singh cannot be discovered on the file. The assumption made by both the Controller and the Tribunal is that there was a Vakalatnama on record, which continued to be in force until it was determined with the leave of the Court. As there is no such document on record, this assumption is obviously unjustified.

(6) It is provided in Order 3, Rule 5 of the Code of Civil Procedure as follows:-

'any process served on the pleader .of any party or left at. the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the- party or not, .shall be presumed .to be duly communicated and made known to the party to whom the Pleader represents and unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.'

Thus, it is by virtue of this Rule that a process served on the Pleader of a party is presumed to be duly communicated and made known to the party whom the Pleader represents. This is a rebuttable presumption. Even if the party happens to be represented by a Pleader, it is open to the party to show that he was not informed.or that he had got no information. This presumption, however vanishes completely if the appointment i.e., the appointment mentioned in Order 3, Rule 4 of the Code is not on the record at all. It is provided that no Pleader can act for any person unless there is a document in writing signed by such person. If no such

document can be found, then it must be held that S. Mohan Singh was not acting as the tenant's Pleader. It is, therefore, unnecessary in this case to go into any further questions regarding the presumption of service under Order 3, Rule 5 of the Code.

(7) The legal position seems to be that if a Pleader is engaged in a case, he has to file an appointment commonly called a Vakalatnama showing such an appointment. In order to serve a party represented by such a Pleader, service can be effected on the Pleader. If that Pleader informs the Court that he has ceased to be a counsel or a Pleader of the party concerned in writing, it is for the Court to either reject or accept it. In this case, even if S. Mohan Singh was initially a Pleader of the tenant, it was for the Additional Rent Controller to pass some order permitted him to withdraw as a result of the statement contained in the writing recorded on the summons. As it happens, the Additional Rent Controller thought that another application for withdrawal was necessary. In my view, this is not at all necessary and normally, there should be no reason why the Lawyer's statement that he was no longer a counsel of the party should not be accepted by the Additional Rent Controller. It is as easy to serve a party as his Lawyer. This reasoning applies with even greater force in the present case because the document appointing S. Mohan Singh as a Pleader on behalf of the tenant is not to be found on the record of the case. The provisions of Order 3, Rule 4(2) which deem such an appointment to subsist till the end of the case does not arise in the present case because the appointment which is supposed to subsist though the case does not exist on the record. It may be quite accidental that S. Mohan Singh did not file any document appointing him as a Pleader on behalf of the tenant, but the fact remains that the service made on him cannot be presumed to be service of the tenant because the document which would have shown that service on S. Mohan Singh was service on the tenant is not to be found on the record. Thus, the only fact which remains in support of the order is the statement of S. Mohan Singh that he had informed the tenant of the date of hearing. It is stated by S. Mohan Singh that when he refused to receive the summons, he informed the tenant on each occasion when the case was fixed and that an ex-parte order might be passed against him. The terms of Order 9, Rule 3 of the Code are as follows:-

'in any case in which a decree is passed ex-parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court otherwise as it thinks fit, and shall appoint a day for proceeding with the suit;

provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.'

(8) Thus, there are two grounds on which an ex-parte decree can be set aside-(a) if the Court is satisfied that the summons were not duly served, or, (b) the defendant had sufficient cause for not appearing. As I have already said, in this case it must be held in view of the absence of a document appointing S. Mohan Singh as the Lawyer of the tenant, the first condition is satisfied and it must be held that there was no due service on the tenant.

(9) In these circumstances, I have to conclude that there was a substantial error of Law involved in the refusal to set aside the ex-parte eviction order. It is unnecessary to go into any further question. Thus, this appeal succeeds and the order refusing to set aside the ex-parte eviction order has to be reversed and the ex-parte eviction order has to be set aside. The case is, therefore, remanded back for decision on the merits to the Additional Rent Controller. In view of the delay that has taken place, this case should be decided very expeditiously. In the circumstances. there will be no order as to costs.