

Savitri Devi Vs. Nathu Ram

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Court : Delhi

Decided On : Jan-25-1982

Reported in : 21(1982)DLT360; 1982RLR464

Judge : Sultan Singh, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 25B and 25B(3); [Code of Civil Procedure \(CPC\), 1908](#) - Order 5, Rule 19A; [General Clauses Act, 1897](#) - Sections 27; [Evidence Act, 1872](#) - Sections 114

Appeal No. : Civil Revision Appeal No. 358 of 1981

Appellant : Savitri Devi

Respondent : Nathu Ram

Advocate for Pet/Ap. : B.J. Nayar,; B.B. Kishore and; D. Paul Khurana, Advs

Judgement :

Sultan Singh, J.

(1) This revision under Section 25B(8) of the [Delhi Rent Control Act, 1958](#) (hereinafter referred to as 'the-Act') challenges the order of the Additional Rent Controller dated 5.3.1981 dismissing the petitioner's application for leave to defend and consequently passing an order of eviction against her under Section 14(1)(e) of the Act.

(2) The respondent-landlord filed an application for eviction of the petitioner-tenant under Section 14(1)(e) of the Act on 11.12.1979. Summons in the ordinary manner as well as by registered A.D. post were ordered to be issued. Summons sent to the petitioner through process server upon her on 4.1.1980. Another summons was sent by registered A.D. post under postal receipt No.5304 dated 4.1.1980. The petitioner filed an application for leave to defend on 12.5.1980 and another application under Section 4 of the Limitation Act for condensation of delay in filing the application for leave to defend on 3.12.1980. The petitioner had also filed another application on 30.4.1980 under Order 9 Rule 13 of the Code of Civil Procedure presuming that there was already an ex-parte order of eviction against her. The Controller after hearing the parties held that the petitioner-tenant was served on 4.1.1980 personally, that the application for leave to defend having been filed after the expiry of more than 15 days was barred by time and therefore, dismissed the same.

(3) The learned counsel for the petitioner submits that the petitioner was not served on 4.1.1980. He submits that on 4.1.1980 a fraud was played by the respondent on her who is an illiterate household lady aged 70 years and generally remains sick due to weakness, age and short of eye-sight, that the respondent came to the petitioner along with one process server and got her signatures on the back of summons on the pretext that the process server was an officer from the Corporation and wanted to install a water meter in the connection from which she was getting water as the same was unmetered and for that purpose she would have to sign the paper. She further alleges that the respondent after getting her signatures took away the summons as well as the copy of the eviction petition, and that she came to know for the first time about the eviction proceedings on 28.4.1980. Her story is that one S. Sadhu Singh who was in need of residential accommodation met the respondent for taking suit premises for his newly married son and that the respondent told him that an eviction order was going to be passed and after that he would take possession immediately and let out the same to S. Sadhu Singh. The petitioner further says that the Court record was examined immediately thereafter and the leave to defend application was filed on 12.5.1980.

(4) The learned counsel for the respondent on the other hand submits that summons of the eviction application was sent in the ordinary manner as well as by registered A.D. post, that personal service was effected on her on 4.1.1980 while service by registered post was effected on 7.1.1980. He submits that the petitioner's allegations were false, that there was no allegation of non service by registered post on 7.1.1980 in any application either for leave to defend filed on 12.5.1980 or for condensation of delay filed on 3.12.1980. He further says that there was no averment even in the application purporting to be under Order 9 Rule 1 3 of the Code filed on 30.4.1980. His contention is that the tenant was duly served under Order 5 Rule 19A of the Code and therefore, there was no ground for the petitioner not to apply for leave to defend within a period of 15 days as prescribed under the statute. Section 25B(3) of the [Delhi Rent Control Act, 1958](#) reads as under :

'(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 worked for gain. (b) When an acknowledgment 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.'

Order 5 Rule 19A of the Code of Civil Procedure reads as under :

'(1)The Court shall, in addition to, and simultaneously with the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post, acknowledgment due, addressed to the

defendant, or his agent empowered to accept the service, at the place where the defendant, or his agent actually and voluntarily resides or carries on business or personally works for gain : Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary. (2) When an acknowledgment purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him the Court issuing the summons shall declare that the summons had been duly served on the defendant : Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the declaration referred to in this sub-rule shall be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of the summons.'

(5) Under both the provisions contained under the Act and the Code, service is required to be effected in the ordinary manner as well as by registered A.D. post. As regards service by registered post, it has been provided that where an acknowledgment purporting to be signed by the tenant is received by the Court, the Court issuing the summons may/shall declare that the summons has been duly served on the defendant. Under the Rent Act the word 'may' while under Order 5 Rule 19A of the Code the word 'shall' has been used. Further it has been provided in the Code that if an acknowledgment is not received, lost or mislead for any reason within a period of 30 days from the date of issue of the summons the Court is empowered to make the declaration of due service. Provision for service contained in the Rent Act is a special procedure and therefore, it would prevail over the procedure prescribed by the Code of Civil Procedure. Order 5 Rule 19A of the Code is therefore, not applicable. The learned counsel for the parties have taken me through the record and I find that there is a postal registration receipts at page 199 of the record bearing No. 5301 dated 4.1.1980. The acknowledgment receipt however is not available on record. Thus the Controller was justified in drawing a presumption of service by post which was sent on 4.1.1980. When the

petitioner filed the revision in this Court the respondent filed on record an attested copy of the receipt relating to the said registered article delivered to the petitioner-tenant on 7.1.1980. Even if the A.D. card was not received in the trial Court the presumption under Section 27 of the General Clauses Act and Section 114 of the Evidence Act would be that summons sent by registered A.D. post was duly served upon the petitioner in the ordinary course. She was thus duly served under Section 25B(3) of the Act. The learned counsel for the petitioner however, submits that the summons purporting to have been served personally on 4.1.1980 was taken back with the copy of the application from the petitioner-tenant. These facts have been disbelieved by the Additional Rent Controller and there is no reason to reverse the said finding. From the record it is clear that the respondent filed a suit for possession against the petitioner on 28.4.1973 which was dismissed on 17.12.1975 by the Subordinate Judge, Delhi. Again a suit for recovery of rent was filed on 28.5.1976 which was decreed on 26.2.1977. Lastly the respondent filed an application under Section 19 of the Slums Areas (Improvement and Clearance) Act, 1956 on 11.8.1977 seeking permission to institute an application for eviction of the tenant. Necessary permission was granted on 1 1.10.1979. The present petition under Section 14(1)(e) read with Section 25B of the Act was filed on 11.12.1979. The parties have been litigating for one reason or the other since April 1973. In view of these circumstances it does not stand to reason that the petitioner would sign the summons on 4.1.1980 and return the same along with the eviction application to the respondent on the alleged pretext. Moreover the registered cover containing the summons was served upon her on 7.1.1980. The application for leave to defend admittedly was filed on 12.5.1980 after inspecting the record. The postal receipt dated 4.1.1980 was available on the record. The petitioner-tenant was in the knowledge of all these facts that she was served by registered post and that postal receipt was available on the record but no objection regarding service by post was raised. Thus I am of the view that the petitioner was served on 4.1.1980 and in any case on 7.1.1980. No Explanationn is forth coming why the application for leave to defend was not filed within 15 days from 7.1.1980. The two Division Benches of this Court namely *Gurdittamal v. Bal Sarup*, Xvi I Dlt (1980) 172 and *Jagdiah Pershod v. Phoolwati Devi.* : 17(1980)DLT446 have laid down that the provision about limitation for applying leave to defend needs strict

construction and that the period of 15 days prescribed in Third Schedule cannot be condoned under Section 5 of the Limitation Act and that the said period cannot be extended as the Limitation Act does not apply to proceedings before the Rent Controller. It has been held by this Court in Subhash Chander v. Rehmat Ullah, I.L.R. 1973 (1) 181 that the Limitation Act applies to Court and that Rent Controller is not a Court and therefore, Limitation Act is inapplicable. The learned counsel relying upon Jagdish Pershad (supra) further submits that this Court may exercise the power to set aside the eviction order and grant leave to defend on the analogy of Order 37 Rule 4 of the Code of Civil Procedure. The facts as already stated do not disclose any sufficient cause for her failure to file an application for leave to defend within time. Nothing has been brought to my notice as to why no action was taken after service by registered post on 7-1-1980. Farther there is no Explanationn why the petitioner-tenant waited up to 12-5-1980. The previous history of litigation between the parties and the petitioner's conduct for the present case leads me to the conclusion that there was no sufficient cause for condoning the delay or setting aside the eviction order on the alleged ground. There is no merit in the revision petition. The order passed by the Additional Rent Controller is according to law. It does not call for interference. The revision petition is dismissed with no order as to costs.