

Durga Devi Vs. S. Kumar

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Court : Delhi

Decided On : Jan-07-1992

Reported in : 46(1992)DLT356

Judge : S.C. Jain, J.

Acts : [Delhi Rent Control Act, 1958](#) - Sections 14(1)

Appeal No. : Civil Revision Appeal No. 253 of 1991

Appellant : Durga Devi

Respondent : S. Kumar

Advocate for Pet/Ap. : J.K. Seth,; Shalini Kapoor and; K.P. Kapoor, Advs

Judgement :

S.C. Jain, J.

(1) The facts giving rise to this petition are that Smt. Durga Devi, petitioner herein filed an eviction petition under Section 14 read with Section 25B of the Delhi Rent Control Act with respect to the suit premises in property No. D-8, Ndse Part li against S. Kumar, respondent herein. Summons specified in Third Schedule in accordance with the provisions of the Delhi Rent Control Act were issued. Personal service on the respondent tenant was not effected. However, service on respondent was shown at D-8, Ndse Part I by refusal by the process server on

18.7.84 and 20.7.84 and by the postman on 18.7.84 and 3.9.84. Finding that no application seeking leave to defend has been filed within 15 days from the date of service by refusal, the Addl. Rent Controller passed an ex-parte eviction decree against the tenant respondent herein.

(2) Aggrieved, the judgment debtor S. Kumar respondent herein filed an application under Order 9 Rule 13 Civil Procedure Code . for setting aside the ex-parte eviction order passed on 11.9.84 praying that the ex-parte order be set aside and the possession of the premises be restored to him. Shri Dinesh Dayal, Addl. Rent Controller, vide order dated 16.3.1991 set aside the eviction order dated 11.9.84 and ordered that the possession of the suit premises should be restored to the tenant immediately.

(3) Aggrieved the landlady Durga Devi has filed this revision petition.

(4) Section 25B provides that procedure incorporated in the Section shall be followed. The outlines of that procedure are that the Controller shall issue summons in the prescribed form to the tenant. Sub-Section 3(a) lays down that the tenant can be served by registered post and by publication in a newspaper if the circumstances so warrant and in addition to and simultaneously with the ordinary mode of service. Section 3(b) provides that the acknowledgement purporting to be signed by the tenant or his agent or 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, that will be valid service of summons. Sub-Section (4) provides that 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 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.

(5) In this case, a perusal of the record shows that this petition was put up before the Addl. Rent Controller for the first time on 25.5.84, when summons in the form specified in Third Schedule were ordered to be issued in the ordinary way as well as by registered post for 26-7-1984. On 26-7-1984, there was a report that the summons were refused and were pasted. Initially the Ad receipt was not placed on record but later on, it was shown to bear the endorsement of refusal. The Addl. Rent Controller ordered on 26.7.1984 that the respondent has not been served and ordered fresh summons for 11.9.1984 by registered post. On 11.9.84, the Court found that the respondent refused to accept the service by registered post and on that ground the Court found it a sufficient service and passed an eviction order.

(6) As per the record, the error which is apparent is that though the service by refusal has been effected on 3.9.84, the eviction order was passed on 11.9.84, i.e. before the expiry of fifteen days. As per the provision of Section 25 of the Act, an application seeking leave to defend can be filed within 15 days of the date of service. up to 18.9.1984 the respondent was within his light to file an application seeking leave to defend, but, unfortunately, in this case the Addl. Rent Controller did not wait for 15 days and pasted the eviction order on 11.9.1984. in this respect, he has erred in passing the decree of eviction, which is against law. Two modes of services are provided under Section 25B of the Act and if the respondent is served by both the modes, limitation would be calculated from the latter date on which service was effected. Besides, this jurisdictional error which the Addl. Rent Controller has committed in passing the impugned order, he has also acted without jurisdiction in ordering the issue of summons only by registered post on 26.7.1984. He should have ordered the issue of summons by both ways i.e. in the ordinary way as well as by registered post. The Addl. Rent Controller has also to see whether in a particular case, when service is not effected personally either on the tenant or his duly authorised agent, and there is report of refusal, he should direct the service by publication. He has not followed this procedure in this case. Service of summons in this case cannot be said to be in conformity with the provisions of Section 25B of the Act. The Addl. Rent Controller while setting aside the eviction order has correctly appreciated the facts and law and I find no infirmity or illegality as far as this part of the order is concerned, I confirm the finding of the

Addl. Rent Controller in setting aside the eviction order passed on 11.9.1984.

(7) Regarding the other part of the order of the Addl. Rent Controller whereby he granted leave to the respondent tenant to defend the proceedings, the Addl. Rent Controller has gone wrong. There was no application seeking leave to defend filed on behalf of the respondent tenant. Section 25B provides that the tenant on whom summons is duly served in the ordinary way as well as by registered post in the form specified in Third Schedule shall not contest the prayer for eviction unless he has filed an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller and in default of his appearance or his obtaining such leave to contest, the statement made by the landlord in his application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order of eviction.

(8) In this case, before the leave to defend could have been granted to the respondent the Addl. Rent Controller had to decide the matter on the basis of affidavit stating the grounds on which he sought to contest the eviction petition. Without such an application in the shape of an affidavit no permission could be granted to the tenant.

(9) I therefore, set aside this part of the order of the Addl. Rent Controller and accept the revision petition only regarding this part of the order and it is ordered that the respondent tenant can file an application seeking leave to defend in view of the provisions of Section 25B of the Act within 15 days from today before the Addl. Rent Controller concerned who shall decide that application in accordance with law and facts available on record. To this extent only the revision petition is accepted and the order of eviction is set aside. The landlady, the petitioner herein, shall restore the possession of the suit premises to the respondent tenant immediately if she has not restored the premises so far.

(10) Revision petition accepted in part. Revision allowed in part.