

Amar Singh Vs. Santi Devi

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Court : Delhi

Decided On : Mar-12-1991

Reported in : 44(1991)DLT510

Judge : Sunanda Bhandare, J.

Acts : [Constitution of India](#) - Article 227; [Delhi Rent Control Act, 1958](#) - Sections 14(1); [Code of Civil Procedure \(CPC\), 1908](#) - Order 9, Rule 13

Appeal No. : Civil Miscellaneous (Main) Appeal No. 384 of 1990 and Civil Miscellaneous Appeal No. 2751 of 1990

Appellant : Amar Singh

Respondent : Santi Devi

Advocate for Pet/Ap. : B.P. Gupta, Adv

Judgement :

Sananda Bhandare, J.

(1) This petition under Article 227 of the [Constitution of India](#) is directed against the order of the Rent Control Tribunal (hereinafter referred to as the Tribunal) dated 30.11.1990 whereby the appeal filed by the petitioner against the order of the Additional Rent Controller (hereinafter referred to as the Controller) dated 24.11.1990 was dismissed.

(2) The brief facts of the case are as follows :-

THE respondent landlady filed a petition for eviction against the petitioner in respect of a shop forming part of house no. 27 Ashok Park Extension, Rohtak Road, Delhi under Section 14(l)(a), (b), (c) and (j) of Delhi Rent Control Act. Summons were issued to the petitioner herein through ordinary process as well as by registered post. The summons sent by registered post came back with the remark that the addressee was not available despite repeated visits, however it is alleged that the summons sent through ordinary process were served on the son of the petitioner. Since the petitioner did not appear before the Controller in response to the said summons, after recording ex-parte evidence, an ex-parte eviction order was passed against the petitioner on 17.10.1989. Thereafter, the petitioner filed an application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as the Code) praying that the ex-parte decree be set aside. It was submitted in the said application that the summons were not personally served on the petitioner.

(3) It was contended by the learned counsel for the petitioner that the petitioner came to know about the eviction petition only when he received notice of the execution for 10.8.1990 which was received by the wife of the petitioner. Learned counsel submitted that even in the execution petition, initially notice was served on the daughter Santosh Sharma on 1.3.90 for appearance on 9.3.90 however the particulars of the case and Court etc. were not given to the daughter and only her signatures were obtained. therefore, the petitioner's counsel wrote a letter to the respondent seeking particulars of the case filed by the respondent against him for eviction. However, the respondent did not respond to this notice sent by the petitioner's counsel and did not furnish the particulars and only when the notice was served on the wife of the petitioner that he came to know about the execution proceedings and immediately on the next day he moved an application after taking inspection for setting aside the ex-parte decree. Learned counsel submitted that the service of summons on the son who is only 16 years old does not meet the requirement of law inasmuch as under Rule 15 of Order 5 of the Code it is only when a defendant is not available at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his

being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female who is residing with him. Thus, when it was found that the petitioner was not available on the day the service was sought to be effected, attempt should have been made once again to have it served on the petitioner personally before serving it on his son. Learned counsel submitted that the son is only 16 years old and he is not an adult member within the meaning of Rule 15 of Order 5 of the Code and thus service of summons on the son cannot be taken into consideration.

(4) On the other hand, it was submitted by the learned counsel for the respondent that 16 years old son is an adult within the meaning of Rule 15 of Order 5 of the Code. It was submitted that it is not necessary to make more than one attempt to have the defendant served personally. Learned counsel submitted that the petitioner had full knowledge of the proceedings pending in the Court and the suit for eviction filed by the respondent and thus the petitioner ought to have appeared in the Court and there is no reason why he did not appear when the case was fixed. Learned counsel submitted that the Controller rightly dismissed the application under Order 9 Rule 13 of the Code.

(5) In my view, there is great force in the contention of the learned counsel for the petitioner. It is not disputed by the respondent that the service of summons was ordered both by registered post as well as by ordinary process. The summons sent by registered post had come back with the report that the addressee was not available on repeated visits, however, the Process Server report does not indicate that he had visited the residence of the petitioner on more than one occasion. On his first visit, he served the summons on the son of the petitioner. Whether the son of the petitioner was an adult member or not has not been considered by the Courts below. According to the petitioner, the son was 16 years old and thus not an adult. The Tribunal has proceeded on the basis that there might have been an irregularity in the service of summons but since the petitioner had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's case, the ex-parte decree cannot be set aside. In my view, this approach is not correct. An irregularity in the service of summons which results in passing of an ex-parte

eviction decree affecting the tenancy right of a person is a very serious matter. There is nothing on record to show that the petitioner had knowledge of the eviction proceedings in the Court. The petitioner's counsel had written a letter by way of a notice to the respondent seeking particulars of the case on 12.3.90. According to the petitioner, this letter was addressed by the petitioner's counsel to the respondent because of service of notice in execution served on the daughter of the petitioner. In this letter, it is specifically stated that no particulars of the case were furnished to the daughter and only her signatures were obtained on some paper by the Process Server. It is not denied that this letter was duly served on the respondent and that the respondent did not furnish the particulars to the petitioner thereafter but a fresh notice was issued by the Court which was subsequently served on the wife of the petitioner and immediately thereafter the petitioner took inspection and moved the application under Order 9 Rule 13 of the Code. Thus, the petitioner got knowledge of the existence of the execution proceeding only after his daughter was served in execution. There is nothing to show that he had knowledge of the eviction proceedings prior to that. It, therefore, appears that the petitioner took immediate steps when he got the particulars after notice was served on the wife and on the next day itself the petitioner filed the application under Order 9 Rule 13 of the Code.

(6) This Court in *The Punjab Oil Expellers Co., Ghaziabad v. M/s Madan Lal Nanda & Sons and Others*, : AIR1967 Delhi28 clearly laid down that reasonable efforts are required to be made to have a party served personally. In the present case, I find that no evidence was led to ascertain whether any effort was made to have the petitioner served personally.

(7) In the circumstances, the petition is allowed. The orders of the Tribunal dated 30.11.90 and of the Controller dated 24.11.90 are set aside. The ex-parte decree dated 17.10.1989 passed against the petitioner without service of the summons on the petitioner is set aside. The case is remanded back to the Controller to proceed with the trial of the case on merits. Records be sent back forthwith. Parties are directed to appear before the Additional Rent Controller on 23rd April, 1991. No costs.