

(2004) 09 DEL CK 0152
In the Delhi High Court
Case No : CM (M) 131 of 2004

Issar Nenu Mal Ajbani @ I.N. Ajbarni APPELLANT
Vs
Narain Dass P. Godwani RESPONDENT

Date of Decision : 24-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 227
Delhi Rent Control Act, 1958 — Section 26, 6A
Punjab Relief of Indebtedness Act, 1934 — Section 31

Citation : (2004) 114 DLT 789 : (2005) 139 PLR 14

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : J.C. Mahindroo, for the Appellant; Pramod Ahuja, for the Respondent

Judgement

R.S. Sodhi, J.—This petition is directed against the judgment and order dated 22nd November, 2003 of the Additional Rent Control Tribunal (for short "the Tribunal") in RCA No.436/2002, whereby the learned Tribunal has reversed the order of the Additional Rent Controller and has allowed the application under Order 9 Rule 13 CPC.

2. The brief facts of the case as has been noted by the learned Tribunal are as under :

"The brief facts giving rise to the present appeal are that a petition for eviction U/s 14(1)(a) r/w Section 6A and 26 of the Delhi Rent Control Act was preferred by the respondent against the appellant. In the said proceedings the summons were sent to the appellant at the address of the premises in question and also at the address A-6, West End Colony, New Delhi. The said summons were not served upon the appellant. Service was effected by publication in the National Herald dated 26.5.97. Appellant thereafter was proceeded ex parte and ultimately an eviction order dated 7.11.97 was passed against the appellant.

Appellant preferred a petition under Order 9 Rule 13 CPC on 3.2.98 alleging that

the appellant was never served with the summons of the case nor the appellant ever refused the summons sent by the court. Appellant neither received the summons by ordinary process nor by registered cover. Appellant is not the subscriber of the newspaper namely "National Herald". False reports have been obtained from the process server. A fraud as perpetrated upon the court by the respondent by not disclosing that the appellant had shifted his address in September'96 to A-2 Ashola, Chattarpur, Mehrauli, New Delhi. The fact was within the knowledge of the attorney of the respondent Sh.A.J.Ajbani. The decree holder's son had obtained false report from the process server on 12.2.97 at the address of A-6, Westend when the said property was already let out to Zimbabwe Embassy. Since September'96 Zimbabwe Embassy's High Commissioner is residing in the said property. Appellant was not in actual, physical possession of the property. A false report was obtained from the address of Lajpat Nagar. Appellant and his son were regularly visiting the said premises. Appellant never refused the summons nor the registered cover. There are several cases pending between the parties. Two such cases are before the Additional Rent Controller. One pending in the court of Sh.Suraj Bhan CJ and one in the court of Sh.O.P.Sain, one petition in the court of Senior Civil Judge where the petition U/s 31 of the Punjab Relief and Indebtness Act were moved. A petition between the parties on the ground of subletting was also pending consideration for 18.2.98 in the court of Sh.P.K.Saxena. In the case pending before Sh.K.S.Mohi respondent had filed a written statement. It is in the said written statement which was filed on 4.3.97 the fact that an eviction petition has been filed was mentioned. On 4.3.97 the proxy counsel for the parties appeared when the written statement was filed. It was pleaded that the appellant came to know of the fact mentioned in the said written statement on 23.1.98 when replication to be filed was being prepared. Then enquiry was made of the case and the application was filed.

The application was contested by the respondent. Respondent denied that any fraud was committed upon the court. Respondent claimed that the respondent had informed the appellant of the pendency of the petition while filing the written statement in the court of Sh.K.S.Mohi on 4.3.97. Appellant was seeking adjournment for filing the written statement. Ultimately the written statement was filed on 27.1.98. Respondent submitted that the appellant was duly served.

The court below after recording the evidence as directed in the order of the appellate court dated 26.11.2001 has dismissed the petition."

3. It is contended by counsel for the petitioner that the service of summons was effected by registered post, ordinary post and also by publication. As far as service through registered post and ordinary service is concerned, they were returned with the remarks addressee left without address. While in the case of service through publication, a copy of the newspaper was sent under UPC at the address of the respondent. In that view of the matter, it cannot be said that the service of summons was not effected, Therefore, there was no reason for the learned Tribunal to allow the appeal and set aside the ex parte order of eviction.

4. Counsel for the respondent on the other hand contends that there are at least 8 cases pending between the parties and that in the premises bearing No. 2D/41-B, Lajpat Nagar, the basement is in the possession of the tenant, while the first floor is in the possession of the daughter of the landlord and in the second floor the landlord resides himself, yet the landlord insisted on manipulating service of summons on the tenant at an address which he knew was not the correct one. It is also submitted that the respondent has neither refused summons nor the registered cover but that the same was never delivered/served on him.

5. Heard counsel for the parties and with their assistance I have gone through the judgment under challenge as also the material on record. In the order under challenge, the learned Tribunal has given adequate reasons while discussing the nature of service reports as also the other attending circumstances and came to the conclusion that there was no proper service of summons. Specially when eight cases are pending between the parties and this particular one is for eviction on account of non-payment of rent. From the reasoning in the judgment under challenge, it cannot be said that the same is in any manner perverse or that any grave mis-carriage of justice has occurred. Merely because an alternative view may be possible is no reason why this court should interfere under Article 227 of the Constitution of India. In any event of the matter service could very well have been effected on the tenant at the tenanted premises. It was certainly not the case of the landlord that the tenanted premises had been abandoned. In that view of the matter, I find no infirmity in the judgment under challenge. CM(M) 131/2004 is accordingly dismissed.