
(1999) 02 BOM CK 0073

In the Bombay High Court

Case No : Civ. Rev. Application No. 717 of 1990

Ramdhanlal Moharajdin Jaiswal

APPELLANT

Vs

M/s Pralhad Agency, Aurangabad

RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 17

Citation : (2000) 2 BomCR 125 : (1999) 3 MhLj 923

Hon'ble Judges : S. B. Mhase, J

Bench : Single Bench

Advocate : R. R. Jethlia, for the Appellant; P. F. Patni, for the Respondent

Judgement

S. B. Mhase, J.—This Civil Revision Application is directed against the order of the District Judge, Aurangabad dated 20-8-1990, passed in MARII No. 138 of 1990, whereby the prayer made by the petitioner for condonation of delay has been rejected, which ultimately resulted into rejection of appeal filed against the Rent Case No. 89/RC/CR/ARC/7, decided on 20-1-1990 by the Rent Controller, Aurangabad.

2. The ground for the condonation of delay is that the summons by the Rent Controller was not served in accordance with law and, therefore, the petitioner could not participate in those rent proceedings. It is submitted that the summons should have been served in accordance with Order 5, Rule 17 read with Rule 19 of the CPC and as the Rent Controller has failed to comply with those provisions, it cannot be said that the Rent Controller has decided the matter after a due service to the petitioner.

3. It appears that the District Judge has remanded the matter and asked the parties to remain present before the Rent Controller on 2-6-1989. However, it appears that both the parties were not present before the Rent Controller on 2-8-1989. It is just possible that the order must have been known to the Counsel, but must not be known to the parties and, therefore, the parties

remained absent on that day. However, case came to be adjourned on 10-11-1989. Meanwhile, it appears that the order of the District Judge was challenged in the High Court. However, the High Court disposed of those proceedings with a direction that the proceedings shall be disposed of by the Rent Controller within a period of six months and that the order was put up before the Rent Controller on 11-12-1989. Therefore, the order was passed that the matter be fixed on 18-12-1989 and it was directed that the parties should be informed accordingly. Therefore, the summons appears to have been issued to the present petitioner, which is at page 59 of the Rent Controller's file. By this summons, date 3-1-1990 was informed. The said summons bears an endorsement on the back side of the Process Server Abdul Rauf, who has informed that the petitioner Ramdhanlal has refused to accept the notice in the presence of the panchas and, therefore, the notice is pasted on disputed premises. There are signatures of one Rajendra Patil and Pankajkumar Amrutal. There is one more signature. The name is not stated there, but it may be a signature of Abdul Rauf. On the basis of this, it is treated that the summons is served on petitioner and the matter proceeded ex parte as against the petitioner/ landlord and in the result, the application filed by the tenant for tenantable repairs came to be allowed. That order of the Rent Controller was challenged before the District Judge as stated earlier and, therefore, when it is rejected, the present revision is filed. The above stated facts about the service of the summons shows that the service is not duly effected. It is abundantly clear that this report of the Bailiff is not supported by the affidavit of the Bailiff process server. Section 24 of the Hyderabad Rent Act requires that the Rent Controller shall follow the procedure as provided under the CPC and even though it is stated that he shall follow the procedure as nearly as possible with the Code of Civil Procedure, that means at least, in substance, there must be a compliance of the procedure as stated in the Code of Civil Procedure. Order 5, Rule 19 of the CPC requires that if the summons is returned under Rule 17 and has not been verified by the affidavit of the serving Officer, then the Court shall examine the process server and make further inquiry to satisfy that the summons has been properly served and thereafter declare that the summons has been served. If the Court is not satisfied, then in that circumstances the Court may further direct a service of summons. The importance of Rule 19 is that the Court has to be satisfied with a report submitted by the process server and if the Court finds that the service is proper on the basis of the report, then only the Court: has to declare that the service is proper and then proceed in accordance with law. Here, in the present matter, there is only a report of the process server without his affidavit on record and, therefore, it was necessary for the Rent Controller to record the statement of the process server on oath, so as to satisfy the Rent Controller that the service of the summons under Order 5, Rule 17 of the CPC was proper so as to proceed with the matter and thereafter he shall make a declaration to that effect that the service has been effected. What is pertinent to note in the present matter is that the Rent Controller has failed to record the statement of the process server and he has further not made any declaration

that he is duly satisfied with respect to the service and declaration to that effect. In the result, therefore, the act of the Rent Controller to proceed ex parte as against the petitioner treating him to be served in the matter, is not in accordance with law and, therefore, the orders which have been passed in a rent proceedings are not proper and legal. In fact, therefore, the District Judge ought to have condoned the delay and entertained the appeal. However, the ground for condonation of a delay and a ground for remanding the appeals will be one and the same, because the fact still remains that the present petitioner/landlord has not participated in the proceedings before the Rent Controller, which is a necessity in the present matter. Hence, looking to this aspect, instead of remanding the matter to the District Court to number the appeal and thereafter in turn to remand the matter to the Rent Controller, it is thought proper that directly this Court should remand the matter to the Rent Controller. This will avoid the multiplicity of the proceedings in the same matter and save the time. In the result, the Civil Revision Application is allowed. The matter is remitted back to the Rent Controller. The parties are directed to appear before the Rent Controller on 15th June, 1999. The Advocates undertake to communicate the parties the date given by this Court by Registered Post A.D. and no grievance of the party will be entertained that the date was not known to them.

The order of the Rent Controller dated 20-1-1990 in Rent proceedings No. 89/RC/CR/ARC/7 and the order of the District Judge, Aurangabad dated 20-8-1990 in MARJI No. 138 of 1990 are hereby set aside. The Rent Controller is hereby directed to dispose of the application within a period of two months from 15th June, 1999. Rule made absolute in above terms.