

(2015) 07 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6942/2015 and Stay Application No. 6085 of 2015

Surendra Singh

APPELLANT

Vs

Gurpreet Singh and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 9(5)
Evidence Act, 1872 — Section 101, 103, 114
General Clauses Act, 1897 — Section 27

Citation : (2015) 07 RAJ CK 0007

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Bihari Lal Agarwal, Counsel, for the Appellant; T.C. Sharma for S.S. Hora, Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J—This writ petition has been preferred by tenant-petitioner Surendra Singh (for short, "the tenant"), assailing the order dated 30.03.2015 passed by the Appellate Rent Tribunal, Jaipur Metropolitan, thereby dismissing the appeal filed by tenant and upholding the order dated 27.07.2012 passed by Rent Tribunal. Rent Tribunal by order dated 27.07.2012 allowed the eviction petition filed by landlord and directed eviction of the tenant. Landlord filed eviction petition under Section 9 of the Rajasthan Rent Control Act, 2001 on the premise that rented shop fully described in para 3 of the application is in the tenancy of tenant. Rented shop was taken on rent at the monthly rent of Rs. 400/-. This shop was purchased by landlord on 14.11.2005 from Shri Pritam Lal, Smt. Jyoti Arora and Shri Gaurav Arora. Landlord sent notice on 13.12.2005 and 14.12.2005 to tenant informing about this fact. Tenant did not pay rent to landlord since November, 2005. Landlord sent a legal notice on 15.07.2006 through advocate to tenant with regard to arrears of rent. The said notice was received by tenant on 18.07.2006, yet rent was not deposited within 30 days of

receipt of the notice.

2. Tenant contested the eviction petition and denied all averments. He filed reply thereto. It was alleged that the address of rented premise, which is in possession tenant, is "Dasmesh Golden Transport Company Limited, A-5-A, Truck Stand, Transport Nagar, Jaipur". Alleged notice was not sent at the correct address in the name of Dasmesh Golden Transport Company Limited. Rented premise was taken on rent by tenant from Smt. Pramila Rani on monthly rent of Rs. 100/- along-with terrace in the year 1981. Rented premise was purchased by one Teerath Singh from Smt. Pramila Rani. Tenant started to pay rent to Shri Teerath Singh. Thereafter, rented premise was purchased by Shri Pritam Lal. Rent was enhanced and fixed at Rs. 400/- per month. Landlord did not give any information with regard to this transaction to tenant. Shri Pritam Lal and Smt. Jyoti Arora continued to collect rent of rented premise on yearly basis and therefore tenant could not know about sell of rented premise. Tenant denied having received any notice and therefore he has not committed any default in payment of rent. Rent Tribunal allowed the eviction petition filed by landlord. Aggrieved thereby, tenant filed appeal before the Appellate Rent Tribunal, which has dismissed by the Appellate Rent Tribunal, hence this writ petition.

3. Shri Bihari Lal Agarwal, learned counsel for tenant, has argued that the courts below have miserably failed to consider the fact that landlord had given the correct address of the shop (rented premise) of tenant in the eviction petition but alleged notice dated 15.07.2006 has not been sent at that address. It was neither received by tenant nor by his employee, therefore, both the courts below have erred in law in presuming service under Section 114 of the Evidence Act. The courts below failed to consider the significant aspect that the address given in the acknowledge due did not contain the name of Dasmesh Golden Transport, which was correctly given in the eviction petition. It cannot therefore be said that the notice was sent at the correct address. The presumption of service under Section 114 of the Evidence Act and Section 27 of the General Clauses Act could not be drawn against tenant. Besides, the acknowledgment due (Exhibit-9) has not been legally proved in evidence. It has merely been exhibited. Mere exhibition of document is not enough. There is neither any signature of tenant nor of any member of staff on A.D. (Exhibit-9). It appears that landlord manipulated the initials on the alleged A.D. (Exhibit-9) in connivance of the postman.

4. It is argued that both the courts below have failed to consider the averments in para 9(A) of the eviction petition wherein it has been alleged that landlord had purchased rented premise on 14.11.2005 through registered sale-deed from its previous owner and in para 9(B) it was alleged that a registered notice was sent through advocate to tenant on 15.07.2006, which was delivered to him on 18.07.2006. Tenant, in reply to those paras, categorically stated that he has been regularly paying rent and that he did not receive any notice and further that the endorsement by postman and the initials on the AD have been

fabricated in connivance with the postman.

5. Shri Bihari Lal Agarwal, learned counsel further argued that presumption of service by registered post under Section 27 of the General Clauses Act is rebuttable. If the addressee refuses to receive the notice, the burden shifts on landlord to prove that alleged notice was delivered to the same addressee. This has not been done because landlord in the present case have not produced the postman before the court. Unless postman is examined, statement on oath by tenant that he did not receive notice shall prevail over endorsement of the postman.

6. It is argued that when landlord purchased rented premise on 14.11.2005, how could they claim monthly rent of the month of November, 2005. The alleged notice was thus defective and invalid. The notice (Exhibit-7) was not delivered to tenant. Both the courts below thus erred in law in holding that tenant committed default in making payment of rent from the month of November, 2005 to August, 2006. In support of the arguments, learned counsel for tenant has relied on judgment of the Supreme Court in A. Rama Rao and Others Vs. Raghu Nath Patnaik and Others, AIR 2007 SC 3036 : (2007) 6 JT 202 : (2008) 149 PLR 591 : (2007) 6 SCALE 148 : (2007) 9 SCC 521 : (2007) 5 SCR 527 : (2007) AIRSCW 5500 : (2007) 3 Supreme 928 .

7. Per contra, Shri T.C. Sharma, brief holder of Shri S.S. Hora, learned counsel for landlord, opposed the writ petition and submitted that both the courts below have concurrently decided the question of default against tenant. Legal notice of 30 days for payment of due amount of rent was sent to tenant by registered post AD. Acknowledge Due has been received back in ordinary course of business. Presumption of service has therefore rightly been drawn. Address of tenant was given in the eviction petition and the same has been clearly mentioned on the AD inasmuch as the Shop No. A-5-A (Kha) has been correctly mentioned. The address has been described as "Truck Stand Transport Nagar Jaipur", which is also correct. The notice has not been received back as undelivered, rather it was served on the addressee, which is evident from the AD receipt. Presumption of service has thus rightly been drawn particularly when the AD receipt contains signature and seal, and the address of the receiver mentioned on the AD.

8. I have given my anxious consideration to rival submissions and perused the material on record.

9. The Supreme Court in A. Rama Rao, supra, on which reliance has been placed by learned counsel for tenant, has remanded the matter to the High Court to record its findings on the question of service of notice and also about the effect of the absence of any definite and specific plea regarding dispatch of notice by post and/or its refusal, after granting opportunity to the parties to place their respective stand. Though the head note of the judgment as given in the report, is that the postal remark of refusal, unless the postman is examined, cannot be accepted in the face of the statement on oath by the party that he did not

receive the notice and that such remarks shall prevail over the postal endorsement. A careful reading of the judgment of the Supreme Court indicates that it has merely noted the aforesaid argument of the petitioner in para 8 of the judgment, which is that the stand of the defendant on oath that he did not receive the notice allegedly sent by post, the same would prevail over the postal remarks that it was "refused" unless the postman was examined. This cannot be said to be ratio of the judgment. It was merely an argument, which was taken note of. The text of the judgment has to be seen in its entirety for the purpose of deciding its ratio and not just the head notes. The head notes even of reputed law journals, may be sometimes misleading.

10. The Supreme Court in *Parimal Vs. Veena @ Bharti*, AIR 2011 SC 1150 : (2011) 112 CLT 120 : (2011) 2 CTC 329 : (2011) 2 RCR(Civil) 155 : (2011) 2 SCALE 302 : (2011) 3 SCC 545 : (2011) 2 SCR 648 : (2011) AIRSCW 1233 : (2011) 1 Supreme 731 , held that the provisions of Section 101 of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. Section 103 provides that the burden of proof as to any particular fact lies on that person, who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. Section 103 amplifies the general rule of Section 101 that the burden of proof lies on the person, who asserts the affirmative of the facts in issue. It was held that there is a presumption that the addressee has received the letter sent by registered post. However, this presumption is rebuttable on a consideration of evidence of impeccable character.

11. Similar view has been taken by the Supreme Court in *C.C. Alavi Haji Vs. Palapetty Muhammed and Another*, (2007) 2 BC 533 : (2007) 137 CompCas 692 : (2007) CriLJ 3214 : (2007) 7 JT 498 : (2007) 147 PLR 813 : (2007) 7 SCALE 380 : (2007) 6 SCC 555 : (2007) 77 SCL 117 : (2007) 7 SCR 326 : (2007) 2 UJ 675 , that Section 27 of the General Clauses Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

12. In *Subodh S. Salaskar Vs. Jayprakash M. Shah and Another*, AIR 2008 SC 3086 : (2008) CLT 1135 : (2008) 145 CompCas 121 : (2008) 4 CompLJ 278 : (2008) CriLJ 3953 : (2008) 8 JT 637 : (2008) 11 SCALE 42 : (2008) 13 SCC 689 : (2009) AIRSCW 1148 : (2008) AIRSCW 5176 : (2008) 6 Supreme 182 , it was held by the Supreme Court that under Order 5 Rule 9(5) of the Code of Civil Procedure, summon is presumed to be served if it does not come back within thirty days. Presumption of service, under the statute, would arise not only when it is sent by registered post in terms of Section 27 of the General Clauses Act but such a presumption may be raised also under Section 114 of the Evidence Act. Even when a notice is received back with an endorsement that the party has

refused to accept, still then a presumption can be raised as regards the valid service of notice. In terms of Section 27 of the General Clauses Act, a notice must be deemed to have been served in the ordinary course if it is properly addressed, prepaid and sent by registered post unless a different intention appears or the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

13. The Supreme Court in *Harcharan Singh Vs. Smt. Shivrani and Others*, AIR 1981 SC 1284(1) : (1981) 1 SCALE 401 : (1981) 2 SCC 535 : (1981) 2 SCR 962, has on this aspect of the matter, held thus:--

"7. Section 27 of the General Clauses Act, 1897 deals with the topic-"Meaning of service by post" and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus arises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, pre-paying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under Illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the Court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by pre-paying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise. In the instant case, additionally, there was positive evidence of the postman to the effect that the registered envelope was actually tendered by him to the appellant on November 10, 1966 but the appellant refused to accept. In other words, there was due service effected upon the appellant by refusal. In such circumstances, we are clearly of the view, that the High Court was right in coming to the conclusion that the appellant must be imputed with the knowledge of the contents of the notice which he refused to accept. It is impossible to accept the contention that when factually there was refusal to accept the notice on the part of the appellant he could not be visited with the knowledge of the contents of the registered notice because, in our view, the presumption raised under Section 27 of the General Clauses Act as well as under Section 114 of the Indian Evidence Act is one of proper or effective service which must mean service of everything that is contained in the notice. It is

impossible to countenance the suggestion that before knowledge of the contents of the notice could be imputed the sealed envelope must be opened and read by the addressee or when the addressee happens to be an illiterate person the contents should be read over to him by the postman or someone else. Such things do not occur when the addressee is determined to decline to accept the sealed envelope. It would, therefore, be reasonable to hold that when service is effected by refusal of a postal communication the addressee must be imputed, with the knowledge of the contents thereof and in our view, this follows upon the presumptions that are raised under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act."

14. The Supreme Court in P.T. Thomas Vs. Thomas Job, AIR 2005 SC 3575 : (2005) 100 CLT 542 : (2005) 4 CTC 30 : (2005) 10 JT 304 : (2006) 142 PLR 397 : (2005) 3 SCR 20 Supp : (2005) 2 UJ 1234 : (2005) AIRSCW 4593 : (2005) 5 Supreme 374 , held that when notice is correctly addressed and despite intimation by post office, not accepted and returned unserved, in such circumstances it should be presumed that notice has been served. In Ram Chandra Verma Vs. Shri Jagat Singh Singhi and Others, (1996) 2 AD 364 : AIR 1996 SC 1809 : (1996) 2 JT 494 : (1996) 2 SCALE 314 : (1996) 8 SCC 47 : (1996) 1 SCR 1056 : (1996) 1 UJ 762 , wherein notice of appeal was issued twice but no acknowledgment was received, the Supreme Court held that the notice must be deemed to have been served. In M/s. Attabira Regulated Market Committee Vs. M/s. Ganesh Rice Mills, AIR 1997 SC 1540 : (1998) 85 CLT 696 : (1996) 6 JT 360 : (1996) 5 SCALE 288 : (1996) 9 SCC 471 : (1996) 2 SCR 846 Supp : (1997) AIRSCW 291 : (1996) 5 Supreme 667 , wherein notice was sent by Registered A.D. post but neither the acknowledgment nor the envelope received back, the Supreme Court held the notice to have been served. In Adavala Sathaiah and Others Vs. Special Dy. Collector, Land Acquisition Unit I and Others, (1996) 9 AD 466 : (1996) 9 SCALE 21 : (1997) 1 SCC 130 : (1996) 9 SCR 209 Supp , where neither unserved envelopes nor A.D. cards were received back, the Supreme Court held that they must be deemed to have been served.

15. Admittedly when notice to the tenant was sent by registered post with Acknowledgment Due and that the Acknowledgment Due has been received back with receipt, presumption of service has to be drawn as per Section 30 of the Rajasthan General Clauses Act, 1955, as also according to Order 5 Rule 9(5) of the Code of Civil Procedure and Section 114 of the Indian Evidence Act.

16. Reference in this connection be made to Section 30 of the Rajasthan General Clauses Act, 1955, which is analogous to Section 27 of the General Clauses Act, 1897. Section 30 is reproduced as under:--

"30. Meaning of service by post.--Where any Rajasthan law authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected

by properly addressing, preparing and posting by registered post a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the latter would be delivered in the ordinary course of post."

17. In the light of provisions of law and various citations noticed above, it must be held that service was rightly presumed to have been effected on landlord because it was sent to him by registered post. Mere omission of the word "Dasmesh Golden Transport Company" in the Acknowledgment Due does not disprove the fact that it was addressed to the petitioner himself with the correct address of the shop being "Shop No. A-5-A (Kha), and Truck Stand Transport Nagar, Jaipur". Such notice was received by the petitioner, as is evident from initials made on the AD. The AD having been received in the ordinary course of business, has to be accepted as genuine. This presumption of service under Section 114 of the Evidence Act as also Section 30 of the Rajasthan General Clauses Act would arise even without production of the postman. Such presumption however is rebuttable. Mere assertion by landlord that tenant be required to prove the receipt of notice by further evidence, does not tantamount to any proof as there is contrary assertion by landlord that such notice was sent by registered post to tenant and was duly received by him. Both the courts below have rightly decided the ground of default against tenant because he, despite service of notice, failed to pay the due amount of rent. Tenant has failed to disclose any perversity or illegality in the findings recorded by the learned Rent Tribunal and the Appellate Rent Tribunal.

18. In the result, the writ petition fails and is accordingly dismissed. The stay application is also dismissed.