
(1996) 01 CAL CK 0019
In the Calcutta High Court
Case No : Suit No. 745 of 1984

United Commercial Bank

APPELLANT

Vs

Mrs. Raka Sen (Nandi)

RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 1

Citation : AIR 1996 Cal 242

Hon'ble Judges : Baboo Lal Jain, J

Bench : Single Bench

Judgement

1. This is an application made by Mrs. Raka Sen (Nandi). This application was affirmed on 29th November, 1995 and was filed in Court on 8th December, 1995.

2. The prayers are, inter alia, to the effect that the ex parte decree dated 12th July, 1993 passed by this Court in Suit No. 745 of 1984 be set aside and/or recalled and for other consequential reliefs.

3. The said decree was for a sum of Rs. 4,31,083/- with interim interest and interest on judgment at the rate of 12% per annum on the decretal amount and for costs.

4. The only ground that has been made out on behalf of the applicant is non-service of the writ of summons. The principal allegations made in support of the petition are as hereunder:--

"12. It appears that an affidavit of service in the instant suit was affirmed by one Amar Knmar Sengupta alleging that the acknowledgment due card addressed to your petitioner was duly received from G.P.O. on 11-12-84 and on the back of the said Acknowledgment Due Card it appears that the same was received by one Kartick Roychowdury on behalf of your petitioner on 30-11-1984. A report was also filed by one Panchanan Das of the Bailiff's office alleging that when he went to your petitioner's premises to serve the writ of summons together with copy of the plaint on 5-12-1984 at about 8 a.m. your petitioner after going

through the contents of the same refused to sign in acknowledgment of receipt of the same. It was further alleged therein that thereafter the said representative from the Bailiffs office affixed copies of the same at the outer door of your petitioner's premises but the local people present there at that time refused to sign on the same as witnesses thereof.

13. Your petitioner states that at no point of time your petitioner received the writ of summons or copy of the plaint either by Registered Post or from the Bailiff of this Hon'ble Court. Furthermore there is no such person by the name of Kartick Roy Chowdhury known to your petitioner and as such the question of his accepting the copy of the plaint together with the writ of summons on behalf of your petitioner does not and can not arise."

5. From the records of this case as also the affidavit of service it appears that the service by registered post was forwarded to the defendant at the address of the defendant which is C/o "Papiya Films", Balaka, 64 Lake Road, Calcutta. Mrs. Raka Sen (Nandy) has partly been examined as a judgment-debtor and it has been submitted before me by the learned Advocate for the bank that she stated that she is the sole proprietor of the said firm. The learned Advocate for the petitioner submitted that this is the residential place of the petitioner, from where she also carried on the said business in the name of "Papiya films" as a sole proprietress thereof.

6. I have seen the acknowledgment receipt on record which has been signed on 30th November, 1984 in acknowledgment of the service of the writ of summons by registered post. The said acknowledgment receipt has been signed in the manner as follows:

"Kartik Razu for Raka Sen (Nandi) this 30-11-84."

7. During the course of the submissions, I asked the learned Advocate for the petitioner to get the signature read by the petitioner who was present in Court. The petitioner read said signature as "Kartik Raju" or alternatively as "Kartik Razu". Reading the said signature on acknowledgment receipt of the service by registered post she did not read it as "Kartick Roychowdhury". The said paragraph No. 12 is verified as true to her information derived from her Advocate-on-record Sri Sanjeeb Kumar Mal. There is no affidavit by Sri Sanjeeb Kumar Mal. It is quite clear that the petitioner before making the petition did not even care to go through the acknowledgment receipt which forms part of the record of this Court and inspection whereof was taken on her behalf. By saying that "there is no such person by the name Kartick Roychowdhury known to the petitioner and such question of such Kartick Roychowdhury accepting the copy of the plaint together with the writ of summons on behalf of the petitioner does not and cannot arise" it cannot be said that the presumption of service by registered post is effectively rebutted. Even according to the petitioner's reading of the signature in Court the signature was not of any person purporting to be Kartick Roychowdhury. The purported denial of the petitioner as to the service by

registered post is of no consequence, since no one by the name Kartick Roy Chowdhury has purported to sign the acknowledgment receipt.

8. The learned Advocate for the petitioner had cited several authorities before me i.e. Radhakishan Vs. State of U.P., and Meghji Kanji Patel Vs. Kundanman Chamanlal Mehtani, By referring to the said decisions stress was laid that a service by registered post with acknowledgment due is though a good service yet the same is re-butable. He had submitted that in view of the statements of his client that she does not know such person by the name Kartick Roychowdhury and as such there was no question of his accepting service on her behalf, the statements amount to rebuttal of the due service of the writ summons by registered post. I am unable to accept this. The learned Advocate of the petitioner who inspected the records of this Court has not affirmed any affidavit to say that he know the signatures of the person who acknowledged or that the signature was that of Kaitik Roychowdhury. The petitioner did not even take care to accompany the learned Advocate to see the signature for herself. If at all the signature was not legible to the learned Advocate, he could take out other steps which might have been necessary or proper in the facts of the case. The learned Advocate for the respondent decree-holder bank relied on the judgment reported in AIR 1918 PC 102 (Harihar Banerji v. Ram"shashi Roy). The Privy Council in the said case held as follows:

"The latest, clearest, and most conclusive authority upon the question of the sufficiency of the service or delivery of a notice to quit by post is probably the case of Gresham House Estate Co. v. Rossa Grande Gold Mining Co. There the defendants, who were sued for rent, contended that they had, before the rent accrued due, terminated their tenancy by a notice to quit -- enclosed in a letter which they had put into the post correctly addressed to the plaintiff, and which, is delivered in due course, would have been received in time to determine the tenancy. The plaintiffs called evidence to show the letter had never been received. The learned Judgs presiding at the trial directed the Jury that a notice to quit enclosed in a letter sent through the post was prima facie evidence that it had been received, and left to the Jury the question whether it had, in fact, been received or not. The Jury found it had been received. On a motion for new trial on the ground of misdirection, the Court, consisting of Cockburn, C.J., Blackburn Mellor and Hannen, JJ. held that if a letter properly directed, containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would appear to their Lordships to apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted out strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself."

9. The Bank also relied on the judgment reported in Kriti Basu Vs. Peary Mohan

Sarkar and Another, where the Division Bench of this Hon''ble Court held as follows:

"2. The learned Advocate for the appellant has submitted that the plaintiff-landlord has failed to prove that the notice of suit u/s 13(6) of the West Bengal Premises Tenancy Act had been duly served upon the defendant-appellant. Accordingly the instant suit for eviction was not maintainable in law. Having given our anxious consideration to the above submission we hold that the Court below has rightly found that the said notice u/s 13(6) of the West Bengal Premises Tenancy Act has been served in accordance with law upon the defendant tenant. One copy of the said notice was sent to the defendant on behalf of the plaintiff under registered post with acknowledgment due. The plaintiff exhibited the said postal acknowledgement due. The plaintiff exhibited the said postal acknowledgement and the registration receipts, exhibits 2 and 4. It is not disputed that the said registered cover containing the notice u/s 13(6) of the West Bengal Premises Tenancy Act was correctly addressed in the name of the defendant tenant. The acknowledgement receipt contained not the signature of the defendant himself but some writing in Dev-nagri/Oriya. According to the Court below one Raghimandan Misra had purported to sign the said receipt. The plaintiff did not prove that the said Radhunandan Misra liad authority to receive on behalf of the defedant the said registered cover containing the notice of suit. In our view, the said fact alone cannot displace the presumption of the service arising from the fact, that the plaintiff had sent the registered cover properly addressed in the name of the defendant. In this connection our attention has been drawn to the decision of the Privy Council in Harihar Banerjee v. Ramsashi Roy reported in 23 Cal WN 77 : (AIR 1918 PC 102. In the said case also the receipt for the letter was signed on behalf of some of the addressees by a person whose authority was not established. Lord Atkinson delivering the opinion had, inter alia, observed that -

"A notice to quit, is proved to have been out into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person in whom it was addressed. That presumption would appear to their Lordships to apply with all greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself."

"We respectfully apply the above principle of law and hold that the defendant has failed to rebut the presumption of due service of the said registered cover containing the notice to quit. The presumption in the instant case was one of the fact and the authorities upon which Mr. Ghosh relied, in our view, do not lay down as an inflexible principle of law that whenever the addressee denies receipt of a letter sent under registered post the presumption of due service is automatically rebutted and this in every case the sender is bound to examine the

postal peon to prove that the registered cover was actually delivered to the addressee. After giving reasons the Court below rightly rejected the interested testimony of the defendant and believed that the registered cover had been served properly. The Court below has also correctly emphasised the fact that a previous suit for defendant's eviction had also failed on the ground of defective service of notice of suit."

"3. The plaintiff has proved that the notice of suit was served in two other modes. One copy of the notice was sent under certificate of posting correctly addressed to the defendant. Although such a certificate of posting raises a somewhat weak presumption nonetheless taken along with other facts we are inclined to believe that the said letter sent under certificate of posting had also reached the defendant's address. The evidence about the third mode of service was also very strong. A copy of the ejectment notice was served in the presence of the plaintiff by the Pleader's clerk Buddhadev Chakraborty. Both the plaintiff and Buddhadev P.Ws. 1 and 2 have given convincing evidence. Judhistir who was a barber working on the pavement has also corroborated the said affixation of the notice of the suit on the outer door of the defendant's premises. The return itself had been exhibited and marked as Exhibit 1(a). We agree with the trial Court that the premises number in the said return hxm"bit 1 (a) had been apparently interpolated. It may be noted that such alteration of the premises number would be to the benefit of the defendant tenant and, therefore, it is not believable that the plaintiff was responsible for altering the premises - number. We agree with the trial Court that the said notice of affixation was made at --premises No. 40, Harituki Bagan Lane. The contrary evidence given on the defendant's side is not believable. In the result, we affirm the finding that the notice of the suit was duly and properly sent upon the defendant tenant."

10. Looking at the reasonings given in the aforesaid two judgments and in view of the fact that there is no denial of the signature on oath after inspection and in view of the fact that the petitioner's own reading of the signature and submission in Court that the signature is different and not of Kartick Roychowdhury as alleged in the petition, I am satisfied that there is no rebuttal of the service by registered post and in the fact of the case the Court rightly proceeded on the basis of the presumption that arises in respect of--service by registered post. It is to be remembered that the acknowledgement purports to be signed on behalf of the petitioner herself and there is no denial that the above address was not proper and it is admitted that she resides at and carries on business at the address given.

11. I am also impressed by the fact, that in this case the service of the writ of summons was effected through the appropriate Court, i.e. Alipore Court. The bailiffs endorsement with regard to the service is there and it has, inter alia, been stated in the bailiffs endorsement time the bailiff went to the premises to serve the writ of summons together with copy of the plaint on 5th December, 1984 at about 8 a.m. and the petitioner after going through the contents of the same

refused to sign any acknowledgement of the receipt of the same. It has further been stated by bailiff in his report that thereafter the bailiff affixed the copies of the writ of summons and the copy of the plaint at the outer door of the petitioner's premises. Here also the denial of the petitioner seems to be very cryptic. She says that at no point of time the petitioner received the writ of summons or copy of the plaint from the bailiff of this Hon'ble Court. First of all the bailiff was not of this Hon'ble Court and secondly she does not deny that the bailiff came and saw her and that she refused to receive the summons and the plaint nor does she say that there was no occasion for the bailiff to affix the copy of summons and the plaint at the outer door of the petitioner's premises. The petitioner has not even cared to see or to go through the contents of the mode of service by the bailiff. I have no reasons even to disbelieve the declaration made by the process server of the Alipore Court. It to be noted that I asked the learned Advocate appearing for the petitioner whether his client was willing to furnish security of a sum which should not be less than Rs. 2 lakhs and it was submitted on behalf of the petitioner that she is not in a position to furnish any security whatsoever. However, if any order is made as to costs of the suit then she will comply with the same.

12. Looking at the facts of the case. I am not satisfied with the case made out by the petitioner and I am not satisfied that there was no due or proper service on the petitioner in accordance with law.

13. The application is thus dismissed.

14. No order as to costs.

15. All parties to act on a xerox certified copy of this judgment and order on the usual undertaking.

16. Application dismissed.