**IN THE HIGH COURT OF DELHI AT NEW DELHI**

SUBJECT : DELHI RENT CONTROL ACT

Judgment reserved on: 02.03.2012

Judgment delivered on:06.03.2012

RC.REV. 406/2011 & CM No.18722/2011

RAM KISHAN & SONS ..... Petitioner
Through Mr. A.S. Chandhiok, Sr. Advocate with Mr. Abhijat, Mr. Amit Mahajan and Mr. Bhagat Singh, Advs.

Versus

MOHD HAROON JAPANWALA & ORS ..... Respondents
Through Mr. Sandeep Sethi, Sr. Advocate with Mr. K.R. Chawla and Mr.Arvind Verma, Advs.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. Order impugned before this Court is the judgment dated 12.07.2011 whereby the eviction petition filed by Mohd. Haroon Japanwal (hereinafter referred to as the 'landlord') against Ram Kishan & Sons through its partner Sh. P.K. Khanna (hereinafter referred to as the 'tenant') had been decreed; the application seeking leave to defend had been dismissed. The Court had returned a finding that there is a delay of one day in filing the application for leave to defend and the Rent Controller has no power to condone the delay; the application seeking leave to defend could not be taken on record.

2. The petitioner is aggrieved by this Order. His submission is that in fact service of summons had not been served upon the tenant in the prescribed form. Attention has been drawn to the provisions of Section 25-B (2)(3) & (4) of the Delhi Rent Control Act (DRCA); submission being that

the service has to be effected upon the tenant in strict compliance of the aforenoted procedure; this is as per the form prescribed in the IIIrd Schedule of the DRCA; it is submitted that admittedly in this case there is no service by registered A.D. and the summons which have allegedly been served upon the tenant in the ordinary manner also bears the signatures of one Mr. Rajender Prasad who although an employee of the company was not duly authorized to receive the summons on behalf of the tenant; attention has been drawn to the report of the process server dated 22.07.2008 as also the subsequent report dated 28.07.2008 which report had noted a valid service of summons upon the tenant.

3. The application for leave to defend had been filed on 13.08.2008. On 12.07.2011, an application had been filed by the tenant through his Advocate (same Advocate who had filed the application seeking leave to defend) wherein he had stated that even presuming that there is a delay of one day, without prejudice to his rights, he had sought condonation of delay of the aforenoted one day. It is in this background that the impugned judgment had been passed.

4. The ARC has returned a fact finding that the summons had been served upon the tenant on 28.07.2008; leave to defend has to be filed within the stipulated period of 15 days which admittedly expired on 12.08.2008; leave to defend having been filed on 13.08.2008 suffers from a delay of one day; the fact that there was a delay was also noted in the averments made in the application filed by the tenant seeking condonation of delay (dated 12.07.2011); submission having been noted that the tenant in this case had himself admitted that there was a delay of one day in filing the leave to defend. The ARC relying upon the judgment of Prithpal Singh Vs. Satpal Singh (Dead) through its LRs. I (2010) SLT 116 had noted that the ARC has no power to condone the delay even of one day and since the application seeking leave to defend has not been filed within the stipulated period of 15 days, it could not be taken on record; the necessary corollary being that the eviction decree followed in the hands of the landlord.

5. Vehement submission of the learned senior counsel for the petitioner is that Rajender Prasad was not the duly authorized agent (as is contemplated under Section 25-B (iii) of the DRCA) to receive the summons on behalf of the tenant. Admittedly the tenant is a partnership firm who is represented through his partner Mr. P.K. Khanna; service has not been effected on Mr. P.K.Khanna; record also does not show as to how the

summons which were first taken by process server on 22.07.2008 wherein the process server had met Rajender Prasad, (he had not served the summons on Rajender Prasad on that date) but on subsequent date i.e. on 28.07.2008, the same Rajender Prasad had accepted the summons on behalf of the tenant firm. This was not a valid service. There is also no explanation as to why the ARC has not recorded as a fact that the summons had been validly served upon the tenant; this was his incumbent duty to do so; he has failed in its duty; for this reason also, the eviction decree is liable to be set aside as the ARC has failed to return a fact finding that the summons of eviction petition had been duly served upon the tenant. To support his submission, learned senior counsel has placed reliance upon a judgment of this Court rendered in RCR No. 136/2011 dated 26.09.2011 Kanta Thapar Vs.Brij Nandan where the summons not having been served personally upon the tenant and having been served upon the daughter in law was rendered to be not a valid service. Reliance has also been placed upon 27 (1985) DLT 269 Subhash Anand Vs. Krishan Lal and Another; submission being that in this case the summons has not been served upon the tenant; summons were accepted by his wife; it was held that it was not a valid service; contention being that the service effected on Rajender Prasad was not a valid service. Further submission of the learned senior counsel for the petitioner is that even otherwise, the Rent Controller is a 'Court' within the meaning of Code of Civil Procedure (hereinafter referred to as the 'Code') and he has ample power to condone the delay even presuming that there was a delay.

6. Arguments have been negatived.

7. Record has been perused. Section 25-B of the DRCA is a summary procedure which had been inserted in the Statute by the amendment of 1976. It is undisputed proposition that Section 25-B is a complete Code in itself and the procedure contained therein has to be strictly adhered to while dealing with such an eviction petition; in the absence of strict compliance of this procedure a valuable right of one or the other party would be effected. Section 25-B (2)(3)(4) of the DRCA are reproduced herein a under:-

"(2) The Controller shall issue summons, in relation to every application referred to in sub-section (1), in the form specified in the Third Schedule.
(3) (a) The Controller shall, in addition to, an simultaneously with, the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or

his agent actually and voluntarily resides or carries on business or personally works for gain and may, if the circumstances of the case so require, also direct the publication of the summons in a newspaper circulating in the locality in which the tenant is last known to have resided or carried on business or personally worked for gain.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent had refused to take delivery of the registered article, the Controller may declare that there has been a valid service of summons.

(4) The tenant on whom the summons is duly served (whether in the ordinary way or by registered post) in the form specified in the Third Schedule shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the application shall be entitled to an order for eviction on the ground aforesaid."

7. A reading of the aforenoted provisions of law shows that the mode of service prescribed is three fold. This Section postulates that the summons can be sent either by ordinary way as provided in sub-Section 2; it is also required that the summons may be sent by registered post as provided in sub Clause 3 (a) as also by publication in a newspaper. It is only when the summons are sent by a registered post that the "acknowledgement" should be signed by the tenant or by his agent. The word "acknowledgement" as occurring in Section 25-B (3)(b) has reference to the words "acknowledgement due" occurred in the previous sub-clause i.e. sub-clause (3) (a). This "acknowledgement" referred to in sub-clause 3 (b) is an acknowledgement which is sent along with the registered post; the word "acknowledgement" referred in sub-clause 3 (b) is not the acknowledgment of summons issued under sub-Section 2. Sub-section 4 of Section 25-B in fact settles the matter beyond all doubt; use of the words 'in the ordinary way' clearly implies the manner in which service is to be effected.

8. It is thus clear that the service can be effected upon the tenant either by ordinary way or by registered post; either of two modes of service would

be a complete service and whereupon the tenant would then be required to file his application for leave to defend within the stipulated period of 15 days.

9. This confusion had in fact been set at rest by a Bench of this Court in the judgment reported in AIR 1983 Delhi 288 H.S. Gandhi Vs. Abha Arora. In this case a similar question had arisen for decision. In this case the service of the eviction petition filed under Section 14 (1)(e) of the DRCA had been effected upon the son of the tenant; this was by ordinary mode; there was also nothing on record to show that the summons had been issued by registered A.D; the Court had noted that when the summons are sent in the ordinary way, service can be served in the manner provided under Order 5 Rule 15 of the Code. In this case the tenant on the relevant date was on a deputation out of country and the court had noted that even if the summons had been forwarded by the son of the tenant on the same very day on which he received the same, there is little livelihood of the tenant being able to get the requisite valid service and to send back an affidavit seeking leave to defend within stipulated period of 15 days. In this scenario mater had been remanded back for reconsideration before the ARC. The Court had inter alia noted as under:-

"The Controller is obliged, as I read the section, to order the issuance of summons in ordinary way as well as by registered post. If the tenant is served by either of the two ways then the service is deemed to be complete which would thereupon unable the tenant to apply for leave to contest the eviction petition. If the service is not affected by registered post then summons which are issued in the ordinary way may be served in the manner provided under Order 5 Rule 15 thereof."

10. Applying this test to the aforenoted factual scenario, it is clear that the service upon the Rajender Prasad who was admittedly an employee of the tenant was a valid service. In fact the service report dated 22.07.2008 states that Rajender Prasad had met the process server but he did not take the service as he had to take instructions from his employer; on the second visit which was on 28.07.2008, the employee Rajender Prasad had accepted the summons and the copy (the eviction petition) which the Court had correctly noted was a valid service upon the tenant; he obviously had taken instructions in this intervening period.

11 Relevant would it be to state that even in the application seeking leave to defend which was filed by the tenant on 13.08.2008, there is not a whisper

that the service had not been effected upon the tenant as per procedure; this also does not find mention in the application filed by the tenant through his Advocate on 12.07.2011 wherein he had sought condonation of delay of one day in filing the application seeking leave to defend; although this application had stated that this application was being filed without prejudice to his rights yet the pleadings contained in the application seeking leave to defend coupled with this application dated 12.07.2011 leave no manner of doubt in the mind of the Court that the tenant was satisfied with the mode of service which had been effected upon him; he was never aggrieved that the service has not been effected in the prescribed mode and that is why the leave to defend was being filed belatedly. This was never his contention in the trial Court and which is now the main thrust of his argument propounded before this Court.

12 Strict compliance of the procedure contained in Section 25-B of the DRCA had been made. This question is accordingly answered against the tenant. Reliance by the learned counsel for petitioner upon the judgment of Subhash Anand (supra) is misplaced; in this case while receiving the registered A.D. card the wife had specifically appended a note therein that her husband is on a business tour and will be back only by the end of March 1982 and the summons will be delivered on his arrival and till that time, time may be granted; this request had been declined; in this scenario the court had noted that the service of summons upon the wife is not a valid service.

13 The Apex Court in the case of Prithpal Singh (supra) had noted that the ARC had no power to condone the delay of eight days in filing the application seeking leave to defend.

14 In (2010) 9 SCC 183 Om Prakash Vs. Ashwani Kumar Bassi, the Apex Court has reiterated that the ARC has no power to condone the delay in the filing of an application for leave to defend. Relevant extract of the observations of the Apex Court in this case are reproduced herein as follows:-

The views expressed by the High Court also formed the subject matter of the decision in Prithipal Singh's case (supra), though in the context of the Delhi Rent Control Act, 1958, and the rules framed thereunder. This Court was of the view that Section 25-B of the Delhi Rent Control Act was a complete Code by itself and other provisions could not, therefore, be brought into play in such proceedings. In the instant case, the same principle would apply having

regard to the fact that the Rent Controller had not been conferred with power under Order 9 Rule 13 C.P.C.to recall an ex-parte order passed earlier.

14. Apart from the above is the view taken by this Court in Prakash H. Jain vs. Marie Fernandes [(2003) 8 SCC 431], where it was specifically held that since the Competent Authority under Section 40 of the Maharashtra Rent Control Act, 1999, was not a court but a statutory authority with no power to condone the delay in filing an affidavit and application for leave to contest, the Competent Authority had no other option but to pass an order of eviction in the manner envisaged under the Act.

15 In the present case, there was a valid service upon the tenant on 28.07.2008; the application seeking leave to defend having been filed on 13.08.2008 suffers from a delay of one day. The ARC has no power to condone this delay; even of one day. The application seeking leave to defend not having been filed within the stipulated period of 15 days, the ARC had rightly noted that the application for leave to defend could not have been taken on record; as a necessary corollary, the eviction decree followed in favour of the landlord.

16 The impugned judgment in no manner suffers from any infirmity. Petition is without any merit. Dismissed.

Sd/-
INDERMEET KAUR, J