2025 INSC 859

NON-REPORTABLE

SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9518 OF 2025
(Arising out of SLP(C)No.26340/2017)

KRISHNA SWAROOP AGARWAL
(DEAD) THR. LR. … APPELLANT

VERSUS

ARVIND KUMAR … RESPONDENT

J U D G M E N T

SANJAY KAROL J.

Leave Granted.

2. The present appeal arises from the final judgment and order dated 7th October 2016, passed by the High Court of Judicature at Allahabad in Civil Revision No.22 of 2012, whereby the judgment and order dated 26th November 2011 passed in S.C.C. Suit No.23 of 2000 by the Additional District Judge, Hathras, was set aside.

3. The principle question of law that falls for consideration of this Court in the present litigation is whether the High Court was justified in setting aside the ejectment decree passed by the Trial Court in favour of the appellant on the sole ground that the notice under Section 106 of Transfer of Property Act, 1882, was not served upon the respondent, as the postal letter was returned with endorsement "ND" which denotes "Not Delivered".

4. Brief facts giving rise to the appeal are:

4.1. Appellant is the landlord of a property situated at Sadabad Gate, Agra Road in Hathras[1]. The respondent took the suit property on rent at Rs.3,000/- per month, including the water tax and house tax. The said tenancy begins from the first date of the English month and ends on the last date of the same month. The tenant failed to deposit the rent for the period from 1st June 1999 to 11th September 2000, totaling to a sum of Rs.38,416/- along with Rs.3,841/- towards water tax and Rs.3,841/- towards house tax.

4.2 On the default of the respondent herein in paying the rent and other occupational charges, the appellant issued legal notices dated 12th September 2000 and 1st November 2000 through Registered A.D. Post asking the respondent to make good the default; to deposit the outstanding amount along with interest @ 10% per

1 hereinafter referred to as "Suit Property"

annum thereon; to pay expenses towards legal notice; and also to hand over the vacant possession of the suit property.

5. The proceedings before the Civil Judge, Hathras, began on 06th December 2000. Summons were issued to the respondent on 12th February 2001. No appearance was entered. On 13th April 2001, it was recorded that the service through the Registry was deemed sufficient and the proceedings against the respondent would continue *ex-parte*. For the next so many dates, no progress was made in the matter. Parties to the *lis* filed various applications, which did not lead to any constructive outcome. The order sheet of 27th October 2004 records that the defendant had not filed his written statement and, therefore, the suit would proceed *ex-parte*. On 17th February 2005, both parties were present. An application under Order IX Rule 7 was filed stating that on the day his right to file a written statement was closed, he had to, on account of a medical emergency, rush to Agra. The Court, however, refused to accept this contention on the ground that the service of notice was completed on 13th April 2001, yet, as on 27th October 2004, he had not filed his counterclaim nor had he filed a written statement under Order VIII Rule 1 and Rule 10 of the Civil Procedure Code, 1908[2]. The order dated 25th March 2006 records the opposing

2 Hereinafter referred to as "CPC"

submissions of the learned Advocates for the parties, with the landlord saying that no rent had been deposited till the said date; on the other hand, the tenant submitted that an 'Out of Court Compromise' had been entered into between the parties and in accordance with which the amounts due uptil October 2005, stood paid. The only amount outstanding was in respect of five months, for which period the tenant was ready and willing to deposit the rent in the Court. The Court recorded that the tenant could save himself from eviction and also submit his written statement, should he pay Rs.300/- as costs to the landlord and also deposit the remaining amount in the Court.

6. On the next date, an adjournment was sought by the tenant on account of the fact that the revision petition has been preferred against the order dated 25th March 2006. Adjournment, however, was rejected, and the date was fixed for depositing the amount and filing a written statement.

7. The Revision Petition, being Civil Revision No.212 of 2006, was dismissed by order dated 19th May 2006 by the High Court as meritless. On 17th May 2007, an interim application was filed by the tenant before the Trial Court objecting to the evaluation of the suit and court fees paid in respect thereto. It was also recorded that no compromise had been arrived at. Such application was rejected with a direction to put up the case next on 29th May 2007 for cross-examining PW-1. On such date no

one was present on behalf of the tenant and, as such, their right to cross-examine was closed. On 8th February 2008, the landlord filed an application under Order XV Rule 5 of CPC. It was prayed that despite the passage of seven years, neither has the amount claimed been deposited nor disputed by the tenant and, therefore, the opportunity of defence to lead evidence should be struck off. This contention was accepted. Aggrieved thereby, the tenant filed an application under Order VII Rule 11 for rejection of plaint which was dismissed by the Trial Court for the reason that prior orders of the Court were not being complied with *qua* depositing of costs etc. The case continued with the tenant neither having deposited the rent nor handed over the possession of the suit property to the landlord.

8. The suit was decreed *vide* order dated 27th May 2011. It was concluded with the observations that -

> "Therefore, keeping in view of the totality of facts as above, it is clear that the Respondent had admitted the rental property of petitioner and also admitted that the same was carrying the rent of Rs.2500/- per month. Respondent's this statement can not be withdrawn. Hence this modification is not acceptable. While on the other hand Respondent has earlier admitted the petitioner as the owner of the property. Case is pending since year 2000. As such the application filed at this stage, carries no justification. The application for amendment is not filed with bonafide nature. Hence the application is dismissed. The case be listed for 2.7.2011."

9. The corresponding decree dated 26th November 2011 reads as under :

> "Case called out for argument. Judgment pronounced on separate sheet. The suit is decreed partly with cost suit regarding ejectment and arrears of rent from 1.6.99. Mesne profit @ Rs.2500/- per month is decreed with cost. The suit regarding recovery of arrears at house tax, water tax and for the damages per use area, occupation of the roof of dispute property is rejected.
>
> It is directed to vacate the disputed property and hand over the peaceful possession to the plaintiff within one month from today and also to deposit the entire amount of rent due from 1.6.99 and mesne profit @ Rs.2500 /- per month with 9 % per annum interest upto the date of delivery of the vacant possession of the disputed property.
>
> In the event of default of any of the said conditions, the plaintiff land lord will be at liberty to proceed enforcing the above order through court."

10. It is against this order and decree passed by the Trial Court that the revisional jurisdiction of the High Court was invoked by the tenant. The arguments raised by the tenant were that the notice terminating tenancy under Section 106 of Transfer of Property Act, 1882 was not served upon him and, therefore, the findings returned by the Trial Court were perverse, having observed that service through the registered notice was sufficient even when the same was returned by the postal department with the endorsement 'ND'.

11. The High Court, by way of short order, held as follows :

> "5. In my view, decisions relied by courts below have been mis-appreciated and misapplied and view taken by

> court below with regard to service of notice is also illegal and perverse. It was admitted position that sealed letter was returned by Postal Department with the endorsement 'ND' and these documents are Exhibits Ka-14, Ka-15 and Ka-16. Plaintiff read 'ND' as 'Not Claimed'. The words 'ND' cannot be read as 'Not Claimed'. Though it is not mentioned what 'ND' would mean but during course of argument, it is admitted that it is not delivered.
> 6. Hence learned counsels agree that postal authorities mention the words 'ND' and it denotes 'Not Delivered'
> 7. When a document was not delivered by the Postal Department and it was not on account of revisionist or that he avoided service, it could not have been said that notice was served upon defendant-revisionist. Hence, issue regarding service of notice decided against defendant- revisionist and in favour of plaintiff-respondent is patently illegal. In these circumstances, the decree of eviction could not have been passed and cannot be sustained".

12. The effect of the Trial Court order finding service to be sufficient is '*deemed service*'.

13. Section 27 of the General Clauses Act, 1887[3] deals with service by post :

> "27. **Meaning of Service by post.-** Where any [Central Act] or Regulation made after the commencement of this Act authorizes 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, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected

3 Hereinafter referred to as "GC Act"

at the time at which the letter would be delivered in the ordinary course of post".

14. The concept of deemed service has been discussed by this Court on various occasions. It shall be useful to refer to some instances:

14.1 In ***M/s. Madan and Co. v. Wazir Jaivir Chand***[4] which was a case concerned with the payment of arrears of rent under the J&K Houses and Shops Rent Control Act, 1966. The proviso to Section 11 which is titled as "Protection of a Tenant against Eviction" states that unless the landlord serves notice upon the rent becoming due, through the Post Office under a registered cover, no amount shall be deemed to be in arrears. Regarding service of notice by post, it was observed that in order to comply with the proviso, all that is within the landlord's domain to do is to post a pre-paid registered letter containing the correct address and nothing further. It is then presumed to be delivered under Section 27 of the GC Act. Irrespective of whether the addressee accepts or rejects "*there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by the addressee.*"

4 (1989) 1 SCC 264

14.2 In the context of Section 138 of the Negotiable Instruments Act, 1881[5] it was held that when the payee dispatches the notice by registered post, the requirement under Clause (b) of the proviso of Section 138 of the NI Act stands complied with and the cause of action to file a complaint arises on the expiry of that period prescribed in Clause (c) thereof. [See: ***C.C. Alavi Haji v. Palapetty Mouhammed & Anr.***[6]]

14.3 The findings in ***C.C. Alavi*** (supra) were followed in ***Vishwabandhu v. Srikrishna***[7]. In this case, summons issued by the Registered AD post was received back with endorsement "refusal". In accordance with Sub-Rule (5) of Order V Rule 9 of CPC, refusal to accept delivery of the summons would be deemed to be due service in accordance with law. To substantiate this view, a reference was made to the judgment referred to supra.

14.4 A similar position as in ***C.C. Alavi*** (supra) stands adopted by this Court in various judgments of this Court in ***Greater Mohali Area Development Authority & Ors. v. Manju Jain & Ors.***[8]; ***Gujarat Electricity Board v. Atmaram Sungomal Posani***[9]; ***CIT v. V. K. Gururaj***[10];

5 Hereinafter referred to as "NI Act"
6 (2007) 6 SCC 555
7 (2021) 19 SCC 549
8 (2010) 9 SCC 157
9 (1989) 2 SCC 602
10 (1996) 7 SCC 275

Poonam Verma v. DDA[11]; ***Sarav Investment & Financial Consultancy (P) Ltd. v. Lloyds Register of Shipping Indian Office Staff Provident Fund***[12]; ***Union of India v. S.P. Singh***[13]; ***Municipal Corpn., Ludhiana v. Inderjit Singh***[14]; and ***V.N. Bharat v. DDA***[15].

15. Undisputedly, notice was sent to the respondent by Registered Post in compliance with Section 106 of the Transfer of Property Act. The High Court, as we have observed, held that since the endorsement on the notice read "ND", the notice was not delivered and, therefore, any and all proceedings arising therefrom would be bad in law and, hence, the decree of ejectment was set aside. We are of the view that the High Court was plainly in error in coming to this conclusion. The impugned order was passed without consideration of Section 27 of GC Act, which provides that if services are made through Registered Post, it is deemed to have been made in accordance with law.

16. In ***Ram Murti Devi v. Pushpa Devi***[16], this Court discussed the scope of the power of revision in a case arising out of the UP Urban Building (Regulation of Letting, Rent and

11 (2007) 13 SCC 154
12 (2007) 14 SCC 753
13 (2008) 5 SCC 438
14 (2008) 13 SCC 506
15 (2008) 17 SCC 321
16 (2017) 15 SCC 230

Eviction) Act, 1972, with reference to a case titled ***Hari Shankar v. Rao Girdhari Lal Chowdhury***[17], which, in turn, cited a case concerning the Provincial Small Cause Court Act of the Bombay High Court, wherein Beaumont, CJ (as he then was) held as under:

> "*4*. The section does not enumerate the cases in which the Court may interfere in revision, as does, Section 115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

Although, not an exhaustive list, we find that none of the most basic criteria laid down therein, such as lack of jurisdiction; the decision of the lower Court being based on evidence that ought not to have been admitted; lack of proper opportunity of hearing etc., to have been met in this case. The impugned order does not speak of any other reason or

17 AIR 1963 SC 698

circumstance which compelled the Court to exercise its power under the CPC.

17. In that view of the matter, the appeal succeeds, and it is, accordingly, allowed. The ejectment decree passed by the Trial Court in S.C.C. Suit No.23/2000 is restored. The tenant is directed to hand over vacant and peaceful possession of the suit property to the landlord within three months from the date of communication of this judgment. Within the same time frame, he shall also clear all arrears of rent/occupational charges, *mesne profit* as also arrears of tax (water, house or otherwise).

18. The Registry is directed to forward a copy of this judgment to the Registrar General of the High Court of Judicature at Allahabad, who shall ensure a dispatch of a copy of this judgment to the concerned Court at Hathras, Uttar Pradesh, for necessary compliance.

Pending application(s), if any, shall stand disposed of.

…….J.
(Sanjay Karol)

…….J.
(Joymalya Bagchi)

July 16, 2025;
New Delhi.