(1997) 05 AHC CK 0186

Allahabad High Court

Case No: C.M.W.P. No. 12184 of 1997

Rais Ahmad		APPELLANT
	Vs	
Special/Addl. District Judge and Others		RESPONDENT

Date of Decision: May 29, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Evidence Act, 1872 - Section 114
- General Clauses Act, 1897 - Section 27
- Post Office Rules, 1933 - Rule 62, 63
- Transfer of Property Act, 1882 - Section 106

Citation: (1997) AWC 231 Supp

Hon'ble Judges: Sudhir Narain, J

Bench: Single Bench

Advocate: Someswari Prasad, A.S. Dubey and Siddheshwari Prasad, for the Appellant;

Final Decision: Dismissed

Judgement

Sudhir Narain, J.

The Petitioner seeks writ of certiorari quashing the judgment and decree dated 31.1.1994 passed by the Judge, Small Causes Court, Respondent No. 2 and the order dated 21.1.1997 passed by Respondent No. 1 dismissing the revision against the aforesaid order.

2. The facts, in brief, are that Respondent No. 3 filed Suit No. 5 of 1992 against the Petitioner for recovery of arrears of rent, ejectment and damages on the allegation that the Petitioner was a tenant at a monthly rent of Rs. 150. He failed to pay rent since 1.1.1984. A notice dated 6.9.1991 was given to the Petitioner demanding arrears of rent since 1.1.1984 and terminating his tenancy. The Petitioner filed written statement in the suit. It was alleged by him that the rate of rent was Rs. 55

per month and not Rs. 150 per month. He denied that the rent was due since 1.1.1984. He had sent Money Order dated 10th September, 1986 to the Plaintiffs. He further denied that any notice sent by the Respondents on 6th September, 1991 was received by him. The trial court recorded a finding that the notice was received by the Petitioner. The rate of rent was Rs. 150 per month and it was due since 1st January, 1984. The suit was decreed on 31.1.1994. The Petitioner preferred revision against the said order and Respondent No. 1 dismissed the revision on 21.1.1997 by the impugned order.

3. Sri Siddheshwari Prasad, Senior Advocate, urged that the findings of the courts below on the question of service of notice are perverse. The notice was alleged to have been served on the basis that acknowledgment due purports to bear signature of the Petitioner but in fact it did not bear his signature and that was denied by him. It is contended that once the Petitioner denied his signature on the acknowledgment due card, the burden of proof is upon the Plaintiff-landlord to prove that in fact the signature is that of the addressee. He should have summoned either the postman concerned or to have led the evidence of handwriting expert.

4. If a notice is given by the landlord u/s 106 of the Transfer of Property Act, there is a presumption of service of notice u/s 27 of General Clauses Act which provides that the service shall be deemed to have been effected by properly addressing, prepaying and posting by registered post, a letter containing 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. If a letter has been posted at the correct address, it will be deemed to have been served. The presumption relates not only regarding the posting and service of the notice but also of the signature of the recipient on the acknowledgment due form. The landlord is not bound to produce the postman to prove the service of the notice.

In Full Bench decision of this Court in Ganga Ram Vs. Smt. Phulwati, , it has been held that there is a presumption of official acts u/s 114(e) and (f) of the Evidence Act. The sender is not under the obligation to produce the postman regarding service of notice, even if there is endorsement of refusal by the postman

5. Rules 62 and 63 of the Indian Post Office Rules read with Section 114 of the Evidence Act also raises that presumption. Rule 63 refers to obtaining the signature of the addressee. They read as under:

62. A receipt shall be given to the person who presents an article for registration at the post office window during the hours prescribed for posting registered articles.

63. No registered article shall be delivered to the addressee unless and until he or his agent has signed a receipt for it in such form as the Director-General shall prescribe.

6. The registered letter is given containing the acknowledgment due. The postman is supposed to obtain signature of the addressee or his agent under Rule 63. If a tenant is addressee, it is for him to establish that it did not contain his signature. The mere denial of an addressee is also not sufficient to rebut the presumption. It is a matter of assessment of evidence. In case his statement is believed by the court, the burden of proof will then shift on the landlord. The question of the presumption of the signature of an addressee was considered by the Supreme Court in M/s. Green View Radio Service Vs. Laxmibai Ramji and another, , wherein it was held as under:

Thus, in our view, the presumption of service of a letter sent by registered post can be rebutted by the addressee by appearing as witness and stating that he never received such letter. If the acknowledgment due receipt contains the signatures of the addressee himself and the addressee as a witness states that he never received such letter and the acknowledgment due does not bear his signature and such statement of the addressee is believed, then it would be sufficient rebuttal of the presumption drawn against him. The burden would then shift on the Plaintiff who wants to rely on such presumption to satisfy the court by leading oral or documentary evidence to prove the service of such letter on the addressee. This rebuttal by the Defendant of the presumption drawn against him would of course depend on the veracity of his statement. The court in the facts and circumstances of a case may not consider such denial by the Defendant as truthful and in that case such denial alone would not be sufficient. But if there is nothing to disbelieve the statement of the Defendant then it would be sufficient rebuttal of the presumption of service of such letter or notice sent to him by registered post.

7. The courts below have considered the statement of the Petitioner who had appeared as a witness in the case. His statement has been believed by the trial court as well as by the Revisional Court. In the statement, he denied his signature even on the written statement but later on he withdrew his statement. It was admitted by him that the notice was sent at the correct address. The acknowledgment due was filed by the Plaintiff bearing signature of the Petitioner but there was no endorsement denying such signature by the counsel for the Petitioner. It was also relevant that on the same date, the Petitioner is alleged to have sent notice under certificate of posting but it was not returned. Normally there is also presumption of service of notice sent under certificate of posting as held in Kanak Lata Ghose Vs. Amal Kumar Ghose, , and Shashi Kumar v. Dharam Pal Sharma AIR 1981 Del 169.

8. The courts below have given cogent reason for holding that it was fully established that the acknowledgment due bears signature of the Petitioner. The finding does not suffer from any illegality. Learned Counsel for the Petitioner placed reliance upon the decision, Sri Pal Singh v. District Judge, Hardoi and Ors. 1990 SCD 257, wherein the High Court had remanded the case to the trial court to consider whether the signature of the Defendant-tenant existed on the acknowledgment

due. It was, on the facts of that case, the court found that the matter required reconsideration on remand.

9. Learned Counsel for the Petitioner then contended that during the pendency of revision, the Petitioner had filed application for amendment of written statement wherein he wanted to incorporate the fact that the acknowledgment due did not contain the signature of the Petitioner but that was rejected. He filed another application that his signature appearing on the acknowledgment due may be sent to the expert for his opinion and the said application was also rejected. I have perused those orders, Respondent No. 1 rightly took the view that the Petitioner did not give any cogent explanation as to why he did not file such an application before the trial court. The additional evidence could have been permitted to be led in such circumstances which are mentioned in Order XLI, Rule 27, CPC He cannot claim to file any evidence as a matter of right.

10. There is no merit in the writ petition. It is accordingly dismissed.