

ALLAHABAD HIGH COURT

Ganga Ram

Vs.

Smt. Phulwati

Second Appeal No. 2753 of 1967
(S.D. Khare, R.B. Misra and H.N. Seth, JJ.)

04.03.1970

JUDGMENT

S.D. Khare, J.

1. In this second appeal the main point for consideration is :-

What presumptions may be drawn when it is found that a combined notice of demand of rent under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, (III of 1947) and Section 106 of the Transfer of Property Act (as amended by Act XX of 1929) was sent by registered post by the landlord to the correct address of the tenant, but was received back by the landlord undelivered with an endorsement made by someone in the post office that the addressee had refused to take the notice on a particular day.

2. The plaintiff had not led any evidence to show that the endorsement had been made by the postman concerned. In second appeal filed by the tenant the contention is that in the absence of such evidence having been led on behalf of the plaintiff no presumption of service could be made under Section 114 of the Indian Evidence Act.

3. The appeal came up for hearing first before a learned Single Judge, who formulated three points (mentioned hereinafter) for the consideration of a large Bench. The Division Bench before which this appeal was listed noticed that there was some conflict of opinion in two decisions given by the two Division Benches of this Court during the last two years. In the case of *Budhu v. Smt. Kamla Narain*¹, it was held by a Division Bench of this Court that a presumption about the service of such notice could be raised under Section 114 of the Indian Evidence Act, that, when so raised, will be a presumption of fact. On the other hand it was held in the case of *Dwarka Singh v. Ratan Singh Ahuja*², that in a case like this a presumption with regard to service of notice will have to be raised under Section 27 of the General Clauses Act and that will be a presumption of law. The following three points, originally formulated by the learned Single Judge, have therefore, come up for consideration before this Full Bench :-

(1) Whether a notice under Section 3 of the U.P. (Temporary) Control of

¹1968 ALJ 707

²1969 Rent Control Reporter 849 : 1969 AWR 477 : 1969 ALJ 849

Rent and Eviction Act, even if combined with a notice under Section 106 of the Transfer of Property Act, has to be served on the tenant personally ?

(2) Whether it is incumbent on the plaintiff to prove the endorsement of refusal on the notice sent by registered post by producing the postman or other evidence in case the defendant denies service on him ?

(3) Whether in the circumstances of the present case the Courts below were right in raising the presumption under Section 114 of the Evidence Act in favor of the landlord ?

4. Whenever a notice for ejection under Section 106 of the Transfer of Property Act is attempted to be served on a tenant by means of a registered post, giving the correct address of the tenant, but is received back with an endorsement "not met" or "refused", the question arises as to what presumptions can safely be drawn regarding the service of notice where the actual proof of service is wanting.

5. It is contended by the learned counsel for the appellant that inasmuch as the registered letter has been received back by the sender, it is obvious that it did not reach the hands of the addressee and, therefore, no presumption whatsoever should be drawn regarding the service of the notice on him. The relevant provisions of the Post Office Act (hereinafter referred to as the Act, and the rules framed there under will be helpful. Section 3(c) of the Act provides that the delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to be authorized to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be "delivery" to the addressee. Section 14(1) of the Act lays down that in every proceeding under the Act in respect of postal article, the production of the postal article, having thereon the official make of the Post Office denoting that the article has been refused, shall be *prima facie* evidence of the fact so denoted. Section 51 of the Act imposes penalty where a person employed to carry or deliver any postal article in course of transmission by post and required while so employed to keep any register, makes, or causes or suffers to be made, any false entry in the register with intent to induce the belief that he has visited a place or delivered the postal article which he has not visited or delivered.

6. It is also necessary to consider the rules framed under the Act. Indian Post Office Rules 62, 63 and 64(1) read as follows :-

"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.

64(1). If the sender of a registered article pays at the time of posting the article a fee of one anna in addition to the postage and registration fee, there shall be sent to him on the delivery of the article a form of acknowledgement which shall be signed by the addressee or if the addressee refuses to sign shall be accompanied by statement to the effect that the addressee has refused to sign."

A perusal of the relevant provisions of the Posts and Telegraphs Manual, Vol. VI, would indicate the working in the Post Offices. Paragraph 183, 191 and 195 of the Manual may be examined. Paragraph 183 deals with receipts, acknowledgements and undelivered articles taken by postmen. The relevant portion of sub-para (1) of paragraph 183 reads as follows :-

"The receipts (Form R.P. 31) and acknowledgements (Form R.P. 54 or R.P. 54(a) for the registered articles delivered the undelivered registered articles with their receipts and acknowledgements (if any) must be taken by the registration or parcel clerk, as the case may be, from the postman immediately on their return to the office...."

Paragraph 191 of the manual provides regarding the manner in which the refused registered articles shall be dealt with. The relevant portion of this Paragraph reads as follows :-

"(1) *Inland* registered articles of the letter main... which are refused by the addressee and which have the name and address of the sender clearly written on them, should not be kept in deposit, but should be marked "Refused" and sent by first post with the acknowledgement, if any, to the office of posting for delivery to the senders, the receipts prepared in the office being filed with the lists with which they are received...."

If the addressee, while refusing to take delivery on presentation of the article to him, makes an application in writing to the post office of delivery for detention of the article for a period not exceeding seven days, the article shall be detained in the post office for a period of seven days from the date of its presentation to the addressee and if the addressee fails to take delivery of the article from the post office within the said period of seven days, the article shall be returned to the office of posting for delivery to the sender on the first working day immediately following the expiry of the said period of seven days.

Paragraph 195(1) deals with the examination of registered and Parcel lists. It provides :-

"The postmaster should see daily that all due registered lists (Form R.P. 32) are received; that these lists as well as those received in registered bundles and properly filed as soon as all the articles entered in them have been delivered or otherwise disposed of...."

A perusal of above provisions in the Act and the Rules as contained in the Posts and Telegraphs Manual will clearly indicate what the postmen or the clerks at the station of destination are

required to do and what endorsements they are required to make. All such acts are done by them and all such endorsements are made by them in the discharge of their official duties.

7. It is, therefore, evident that in the case of a notice under Section 106 of the Transfer of Property Act, after that notice has been duly dispatched through the post office by registered Post to the correct address of the tenant, a presumption about due service of that notice can be made under illustrations (e) and (e) of Section 114 of the Indian Evidence Act which reads as follows :-
114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case.

Illustrations

The Court may presume –

.....

(e) that judicial and official acts have been regularly performed;

(g) that the common course of business has been followed in particular cases....."

8. When a registered article or a registered letter is handed over to an accepting or receiving post office, it is the official duty of the postal authorities to make delivery of it to the addressee. Human experience shows that except in a few exceptional cases letters or articles received by the post office are duly, regularly and properly taken to the addressee. Consequently as a proposition it cannot be disputed that when a letter is delivered to an accepting or receiving post office it is reasonably expected that in the normal course it would be delivered to the addressee. That is the official and the normal function of the post office.

9. Help can also be taken from Section 16 of the Indian Evidence Act, which reads as follows :-

"When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations

(a) The question is whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant."

10. Taking into consideration the manner in which the post office deals with registered letters, the

endorsement on the notice "Refused" strengthens the presumption that an attempt was made to deliver the notice to the addressee.

11. Section 106 of the Transfer of Property Act (as amended by Act XX of 1929) provides for certain modes in which a notice under that section may be served on the tenant. The relevant part of Section 106 of the Transfer of Property Act reads as follows :-

"Every notice under this section must be in writing signed by or on behalf of the person giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one of his family or servant at his residence or if such tender or delivery is not practicable affixed to a conspicuous part of the property."

12. In the case of a notice under Section 106 of the Transfer of Property Act a presumption can therefore, be made also under Section 27 of the General Clauses Act, which reads as follows :-

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

13. Section 106 of the Transfer of Property Act provides for a mode of service of the notice and, therefore, the provisions of Section 27 of the General Clauses Act, shall apply and once it is established that a registered notice was delivered at the receiving post office containing the correct address of the tenant, a presumption of law can be made that the notice has been served on the address.

14. Section 106 of the Transfer of Property Act was amended in the year 1929 by Act XX of 1929. The view taken by our High Court in all the cases decided after the year 1929 is consistently in favour of what we have said in the preceding paragraphs.

15. It was held by a learned single Judge in the case of *Bachcha Lal v. Lachhman*³, that in a case of notice under Section 106 of the Transfer of Property Act the presumption of law with regard to service of notice will arise under Section 27 of the General Clauses Act, and that the service of notice must be deemed to be effective service unless proved to the contrary. The case of *Radhey Lal v. Mst. Bindo*⁴, was distinguished on the ground that it had been decided before the passing of Act XX of 1929 which added one more method of service of notice, to it, by registered post, under Section 106 of the Transfer of Property Act.

16. Section 63 of the Income Tax Act provided for notice by post to an assessee. It was held in the case of *M/s. M.X. De Noronha and Sons, Cawnpore v. Commissioner of Income Tax U.P. and Ajmer-Merwara, Lucknow*⁵, that a notice to an assessee firm by registered post, properly addressed and postage pre-paid and received by an employee of the firm, would arise a presumption of due service under Section 27 of the General Clauses Act, which presumption, however, is rebuttable and it is open to the assessee to prove that the notice was not received by him.

17. In the case of *Asa Ram v. Ravi Prakash*⁶, it was held by a learned single Judge of this Court that where the landlord deposed that he had sent an envelope containing a notice under Section 106 of the Transfer of Property Act and the same envelope was received back by him with the endorsement "Refused", which was not there

³ AIR 1938 All 388 ⁵ AIR 1952 All 137

⁴ AIR 1920 All 195 ⁶1966 ALJ 421

before, and he produced the envelope with the endorsement, this is sufficient evidence to prove the endorsement, and a presumption of service could be made under Section 114 of the Indian Evidence Act. The same view was expressed by a Division Bench of this Court in the case of *Budhu v. Smt. Kamla Narain* (supra). It was, however, held that the presumption of service would be a presumption of fact under Section 114 of the Indian Evidence Act. The effect of Section 27 of the General Clauses Act on such a notice was not at all considered.

18. The next case is that of *Dwarka Singh v. Ratan Singh Ahuja* case (supra) where it was held that in the case of a notice under Section 106 of the Transfer of Property Act, sent by registered post and received back with the endorsement "Refused" the presumption of service could be raised under Section 27 of the General Clauses Act, and it would be a presumption of law, and not of fact.

19. In our opinion the only difference between such a presumption of law under Section 27 of the General Clauses Act and a presumption of fact under Section 114 of the Indian Evidence Act is that in the former case a presumption has got to be made by the Court, while in the latter case, i.e., under Section 114 of the Indian Evidence Act it may or may not be made according to the facts and circumstances of each case. However, even a presumption of law is rebuttable unless it is made unrebuttable by some provision of law. A presumption of law to be raised under Section 27 of the General Clauses Act has not been made unrebuttable.

20. The High Courts of Calcutta, Lahore Punjab and Madras have taken the view that a presumption of fact can be drawn even after such a registered notice is received back by the sender with an endorsement "Refused". In the two Lahore cases of *Sher Afzal v. Mohan Lal*⁶, and *Raunaq Ram v. Prabhu Dayal*⁷, the view taken was that the presumption of service can be made even where the letter is received back by the sender with such endorsement.

21. It was held in the case of *Nirmalbala Devi v. Provat Kumar Basu*⁸, that in such a case a presumption of service notice arises and the postman need not be examined to prove the endorsement. A similar view was taken in the case of *Kodali Bapayya v. Yadayalli Venkataratna*⁹,

22. In the case of *Balbhadar Mal v. Commissioner of Income-tax*¹⁰, the view taken was that where a notice under Section 106, Transfer of Property Act was received back by the sender with an endorsement "Refused", the presumption of service can be drawn both under Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act. The presumption is, however, rebuttable. We respectfully agree with the view taken by the Lahore, Calcutta and Madras High Courts in the cases (6 to 10) mentioned above.

23. The High Courts of Bombay, Madhya Bharat and Nagpur have expressed a view to the contrary. It was held in the case of *Vaman Vithal Kulkarni v. Khanderao Ram Rao Sholapurkar*¹¹, that where an unopened letter containing notice

⁶ AIR 1926 Lah 520

852 Cal Weekly Notes 659

10 AIR 1957 Pun 284

⁷ AIR 1930 Lah 439

9 AIR 1953 Mad 884

11 AIR 1935 Bom 247

was received back by the sender it could not be considered to be good service of notice. The Nagpur High Court in the case of *Jankiram Narhari Shahane v. Damodar Ramchandra Joshi*¹², and the Madhya Bharat High Court in the case of *Tekchand Devidas v. Gulab Chand Chandan Mal*, AIR 1957 Madhya Bharat 151 have taken the view that there can be no presumption that the endorsement of refusal was made by the postman and, therefore, unless the postman was examined such endorsement was inadmissible in evidence.

24. It is not the duty of the plaintiff to prove that the defendant, after having received notice, had actually read it and understood its contents. Similarly, where the registered envelope contains a correct address of the tenant and the addressee either cannot be met or refuses to take notice, there appears to be no reason why the notice should not be deemed to have been properly served on the addressee. In the case of *Harihar Benerji v. Ramshaahsi Roy*¹³, it was held that if a letter properly directed containing 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. In the absence of proof to the contrary it will be presumed that the refusal had been made by the tenant to whom the registered letter was correctly addressed at the time when the letter could be expected to reach him in the ordinary course. With great respect, and for the reasons given by us, we do not find it possible to agree with the views expressed in the above-mentioned cases decided by the Bombay, Madhya Bharat and Nagpur High Courts.

25. It has been further contended by the learned counsel for the appellant that although a presumption under Section 27, General Clauses Act, may be made in respect of a notice under Section 106 of the Transfer of Property Act, it cannot be made in respect of a notice under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, and, therefore, where a

combined notice under Section 106 of the Transfer of Property Act, and Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act is sent, a presumption should be raised only under Section 114 of the Indian Evidence Act, and not under Section 27 of the General Clauses Act.

26. In our opinion there is no force in this contention. A combined notice under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act and Section 106 of the Transfer of Property Act is permissible under law. A presumption under Section 27 of the General clauses Act has to be made in respect of a notice under Section 106 of the Transfer of Property Act. The demand of rent under Section 3 of the U.P. Act III of 1947, having been made in the notice under Section 106 of the Transfer of Property Act, must, therefore, be taken to have been served on the tenant when the notice under Section 106 of the Transfer of Property Act was legally served. Two standards of service with regard to two parts of the same notice cannot be applied. Therefore, if the notice read as a whole is deemed to have been served by virtue of Section 27 of the General Clauses Act, a clause in the notice containing a demand of more than three months' rent, if and when made by means of this very notice, must also be deemed to have been served on the tenant when that notice was served on him.

¹² AIR 1956 Nag 266

¹³ AIR 1918 PC 102

27. It has further been contended by the learned counsel for the appellant that Section 3(1)(a) of Act III of 1947 envisages a personal service on the tenant and, therefore, in a case like this where an endorsement of refusal exists and the sealed envelope containing the notice has been received back by the sender, no personal service can be presumed.

28. Section 3(1) of the U.P. (Temporary) Control of Rent and Eviction Act, reads as follows :-

3(1). subject to any order passed under sub-section (3) no suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds :

(a) that the tenant is in arrears of rent for more than three months and has failed to pay the same to the landlord within one month of the service upon him of a notice of demand.

....."

Clause (a) of sub-section (1) of Section 3 of the U.P. Act III of 1947 does not specifically mention personal service. The tenant may be a minor, or a person of unsound mind, or merely a juristic person, not capable of being served personally for fear of service of notice on him the tenant may also start refusing all the registered letter sent by the landlord by post. The intention of the law could never be that the tenant must personally accept a notice of demand before he can be ejected from his tenancy. The expression "service upon him of a notice of demand" used in clause (a) of sub-section (1) of Section 3 should include the service of notice deemed to have been made on a tenant under the provisions of Section 27 of the General Clauses Act, or presumed to have been made on him under Section 114 of the Indian Evidence Act.

29. The fact of that the notice was returned back to the sender with an endorsement "Refused" does not, in our opinion, dislodge the presumption that the registered notice had reached the addressee. On the other hand, it strengthens the presumption that the notice had reached the addressee. It could not be delivered to him because he refused to accept it.

30. In view of what we have stated above, we proceed to answer as follows the three questions referred to full Bench :

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QUESTION	OUR REPLY
(1) Whether a notice under Section 3 of the U.P. (Temporary) Control of Rent and Eviction Act, even if combined with a notice under Section 106 of the Transfer of Property Act, has to be served on a tenant personally ?	(1) The answer is in the negative,
	Even a notice of demand deemed or presumed to have been served on a tenant will be "service upon him of notice of demand."
(2) Where it is incumbent on the plaintiff to prove the endorsement of refusal on the notice sent by registered post by producing the postman or other evidence in case the defendant denies service on him ?	(2) The answer is in the negative.
(3) Whether in the circumstances of the present case the Courts below were right in raising the presumption under Section 114 of the Evidence Act in favour of the landlord ?	The answer is in the affirmative.
	(3) The presumption regarding service of such notice has also to be made under Section 27, General Clauses Act.

31. Let the papers of this appeal be now laid before the learned single Judge for the decision of the appeal.

R.B. Misra, J.

32. I agree.

H.N. Seth, J.

33. I agree.

Questions answered.