

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(240)

CR No.8643 of 2014

Decided on: April 21, 2015.

Mastan Ali

.... Petitioner

Versus

Bittu @ Rashpal Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Rahul Rampal, Advocate,
for the petitioner.

M.M.S. BEDI, J (ORAL)

This is a plaintiff's revision petition against the order dated 08.12.2014 which reads as follows:

“ Present: Sh.D.R.Rampal, Adv. Counsel for the plaintiff.

Plaintiff failed to get effect the service of summons of defendant so ex parte stay order is vacated. Let fresh notice be issued to defendant for 16.01.2015 through ordinary manner as well as through registered post on filing of RC/copy.

*Sd/
(Mandeep Singh)
CJJD, Ludhiana, 08.12.2014”*

Perusal of the plaint indicates that the petitioner claiming himself to be a tenant having been inducted by the father of the defendant-respondent in June 1986 at the rate of rent of Rs.100/- per month had sought injunction against the respondent seeking an injunction restraining the defendant-respondent from dispossessing the plaintiff and from demolishing the shop except by the process of law. He appears to have obtained an ex parte order of status quo. Vide impugned

order, the ex parte stay order has been vacated on account of default of the plaintiff in getting the service of summons effected on the defendant.

The main grievance of the petitioner is that he had complied with the provisions of Order 39 Rule 3 CPC within 24 hours. He has placed on record affidavit dated 26.11.2014 in support of his contention that Order 39 Rule 3 CPC was complied with after the order of status quo was granted. Copy of the summons issued for 08.12.2014 and report of the Process Server Annexure P-5 to the effect that house of the defendant was locked where the summons have been pasted, have been relied upon by the petitioner to establish his bona fide to effect the service on the defendant-respondent. When notice was issued to the respondent, the report had been received from the process serving agency that the defendant-respondent has left the address given by the petitioner.

Taking into consideration the abovesaid circumstances, this Court is of the opinion that the petitioner cannot be penalized on account of service having not been effected on the defendant-respondent. The trial Court could have taken steps in accordance with law and given another opportunity to the plaintiff to serve the defendant. The order dated 08.12.2014 to the extent of vacating the ex parte status quo order deserves to be set aside but the order refusing to grant injunction in application under Order 39 Rules 1 and 2 CPC is an appealable order under Order 43 Rule 1 (r) CPC.

This revision petition is disposed of as pre-mature. The petitioner is relegated to avail alternative remedy of filing of an appeal under Order 43 Rule 1(r) CPC or to move an application under Order 39 Rule 4 CPC for modification of the order dated 08.12.2014 as “any party” dissatisfied with any order for injunction is entitled to file an application under this Rule.

(M.M.S. BEDI)
JUDGE

April 21, 2015

harsha