

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

Civil Revision No.6273 of 2016 (O&M)

Date of Decision: September 22, 2016

Sudha Khanna

.....Petitioner

Versus

Raj Kumar Dalmia and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kushagra Mahajan, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.19299-CII of 2016

Application is allowed as prayed for subject to all just exceptions and exemption from filing the certified copies of impugned order dated 23.02.2016 alongwith Annexures P-1 to P-5, is granted.

Civil Revision No.6273 of 2016

Petitioner has approached this Court impugning the order dated 23.02.2016, passed by the Civil Judge (Junior Division), Amritsar whereby an application under Order 9 Rule 13 of the Code of Civil Procedure 1908 (hereinafter referred as “CPC”), read with Section 151 CPC, filed by the petitioner for setting aside the *ex parte* ejectment order dated 24.09.2013 on the ground that the petitioner had not been properly served in the eviction petition has been dismissed.

It is the contention of learned counsel for the petitioner that as per the provisions contained in the Code of Civil Procedure, the petitioner has not been properly served, as service upon the servants cannot be said to

be effective service of the parties. He, thus, contends that the *ex parte* proceedings initiated against the petitioner and, thereafter, a final *ex parte* decree cannot sustain and deserves to be set aside.

This contention of learned counsel for the petitioner cannot be accepted in the light of the fact that Sh. Rakesh Kashyap, Advocate appeared, on behalf of the petitioner in the rent petition on 04.08.2011 and he continued to contest the case on her behalf upto 19.12.2012. In the application which has been moved by the petitioner for setting aside the *ex parte* proceedings and the order of eviction, it has not even been mentioned that she has not engaged/appoint Sh. Rakesh Kashyap, Advocate as her counsel in the main petition.

In the light of there being no such plea in the application for setting aside the *ex parte* order dated 24.09.2013, whereby the ejectment of the petitioner was ordered, the factum that Sh. Rakesh Kashyap, Advocate had appeared on her behalf stands established. The findings, therefore, returned in the impugned order dated 23.02.2016 passed by the Rent Controller, Amritsar cannot be said to be not in accordance with the pleadings. The impugned order being based upon the proper application of mind and in accordance with law, does not call for any interference.

The present petition, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

September 22, 2016

ps-I

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No