

Civil Revision No.7903 of 2015 (O&M)

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

Civil Revision No.7903 of 2015 (O&M)

Date of Decision: January 11, 2016

Mohinder Kumar Sharma

...Petitioner

Versus

Rai Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashwani K. Chopra, Senior Advocate with
Mr. Akshit Chaudhary, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.24797-CII of 2015

Exemption is granted from filing certified copy of Annexures
P/2 and P/3, subject to all just exceptions.

Application stands disposed of.

CM No.389-CII of 2016

Exemption is granted from filing certified copy of Annexure
A/1 (colly), subject to all just exceptions.

Application stands disposed of.

CR No.7903 of 2015

Challenge in this revision petition is to the order dated
03.09.2015 (Annexure P-4) passed by the Additional Civil Judge (Senior
Division), Dasuya, District Hoshiarpur, whereby, an application for

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setting aside the *ex parte* order of eviction dated 22.11.2012, has been allowed.

It is the contention of the learned Senior Counsel for the petitioner that the respondent-tenant was proceeded against *ex parte* and the decree was passed on 22.11.2012, whereas, the present application has been moved on 06.05.2013 which is much beyond the period of 30 days as prescribed in Article 123 of the Indian Limitation Act, 1963. He contends that the Courts below has not considered the said aspect and has totally ignored the same and brushed aside the assertion by merely observing that the Limitation Act is not applicable. He contends that the said finding of the Court below is not sustainable. That apart, he contends that as per Clause B of para 2 of the application for setting aside the *ex parte* order, the service of the summons upon the respondent-tenant has been admitted as he is not disputing the said fact by stating that by mistake, he did not appear before the Court as he was of the opinion that a similar title eviction petition No.11 of 2011 which was filed by the petitioner and was decided on 19.04.2012, the said petition was relatable to the same. He, thus, contends that merely because the summons were not accompanied alongwith the copy of the plaint, cannot be a ground for holding that he has not been duly served on the ground that it would merely be an irregularity as per second proviso to Order 9 Rule 13 of CPC.

Reliance has also been placed on the judgment of this Court in **Baldev Singh Vs. Jiwan Kumar Pathak, 2005 (1) PLR 391**

and Gurmeet Chand & another Vs. Ajit Singh, 2013 (2) Civil Court Cases 260 (P&H), to contend that it is a mere irregularity and not an illegality which would amount to non-service upon the respondent. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in Parimal Vs. Veena @ Bharti 2011 (2) Civil Court Cases 667 (S.C), to contend that unless sufficient cause has been shown by the party, the *ex parte* proceedings initiated against him could not have been set aside. His further contention is that the second proviso to Order 9 Rule 13 CPC being mandatory has to be looked into in strict terms and cannot be brushed aside by the Court in a casual manner. He, thus, contends that the present revision be allowed by setting aside the impugned order.

I have considered the submissions of the learned Senior Counsel for the petitioner and with his able assistance have gone through the impugned order but do not find any illegality in the same.

The contention of the learned Senior Counsel for the petitioner that the application for setting aside the *ex parte* order is not maintainable as it is beyond the period of limitation as prescribed in Article 123 of the Limitation Act, cannot be accepted as the Court has rightly come to the conclusion that the Limitation Act is not applicable to the proceedings under the East Punjab Urban Rent Restriction Act, 1949.

As regards the contention of the learned Senior Counsel for the petitioner that the knowledge of the date fixed in the case, was good

enough to mandate his presence in the Court without accompanying the copy of the plaint, also cannot be accepted as it is the mandate of the statute that the service upon the respondent through summons would be complete alongwith the copy of the plaint. Since in the present case, admittedly, copy of the plaint did not accompany the summons, the service upon the respondent cannot be said to be legal or a mere irregularity.

The principle as laid down by the Supreme Court in *Parimal's* case (supra) cannot be disputed with and in the facts and circumstances of this case, the same stands fulfilled as sufficient cause has been shown by the respondent-tenant and the Court below has exercised its discretion correctly.

The judgments on which reliance has been placed by the learned Senior Counsel for the petitioner would not be applicable to the case in hand as in the case of *Baldev Singh's* case (supra), that was not the real question which was involved in the case and a passing reference was made in this regard by the Court. In the case of *Gurmeet Chand's* case (supra) although an observation to that effect has been made that it is a mere irregularity in the service of summons, however, keeping in view the mandate of the statute where it is clearly stipulated that the copy of the plaint has to accompany the summons, the non-service of the plaint alongwith the summons cannot be said to be due service upon the respondent. Reliance in this regard has rightly been placed by the Court below upon the judgment of this Court in

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Babu Ram Vs. Satish Kumar Rawal, 1991 PLJ 447 which judgment is fully applicable to the case in hand.

In view of the above, finding no merit in the present revision petition, the same stands dismissed.

It may, however, be added here that the *ex parte* proceedings have been set aside and the parties will have a right to contest and decide the case on merit.

CM No.390-CII of 2016

In view of the order passed in the main revision petition, the present application for staying the operation of the impugned order passed by the Additional Civil Judge (Senior Division), Dasuya, has become infructuous.

Disposed of as such.

January 11, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**