

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 599 of 2017 (O&M)

Date of decision: 17.02.2017

Indu Rana

... Petitioner

Versus

Jinder Pal Swan

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. N.S. Brar, Advocate for the petitioner.

Mr. Ritesh Pandey, Advocate for the respondent.

HARI PAL VERMA, J. (ORAL)

The petitioner-tenant has filed the present revision petition impugning the order dated 07.12.2016 passed by learned Rent Controller, Chandigarh whereby the petition filed by the respondent-landlord under Section 13-B of the East Punjab Urban Rent Restriction Act as extended to the Union Territory of Chandigarh vide notification dated 09.10.2009 has been allowed and the petitioner-tenant had been ordered to be evicted from the demised premises and to hand over the possession of the same to the respondent-landlord.

Learned counsel for the petitioner submits that respondent-landlord has earlier also filed a rent petition in the year 2009 for eviction of the petitioner-tenant on the frivolous grounds of non-

payment of rent since 2006 and creating nuisance in the house, however said petition was dismissed by the Learned Rent Controller vide order dated 09.10.2013. Appeal filed against the said order was also dismissed by the ld. Appellate Authority vide order dated 21.10.2014. Now respondent-landlord has filed civil revision No.3341 of 2015 on 24.04.2015 which is pending before this Court and is fixed for 28.03.2017. However, during the pendency of the said petition, he filed another petition on 27.04.2015 under Section 13B of East Punjab Urban Rent Restriction Act before Rent Controller Chandigarh on the ground of personal necessity. He further submits that petitioner-tenant had never received any summon/notice/publication in the newspaper, as she has gone to USA in the month of July 2015 and returned back to India in December 2015. It is only after her return to India, i.e. in the month of February 2016 when the petition was listed at District Court Chandigarh, she came to know that she has been proceeded against ex-parte in the petition on 22.12.2015. Thereafter, the petitioner had moved an application under Order IX Rule 7 read with Section 151 C.P.C. for setting aside the ex-parte order dated 22.12.2015, which was allowed and order dated 22.12.2015 was set aside on 02.03.2016. Accordingly, the petitioner is entitled to be considered for leave to defend so as to submit her defence.

On the other hand, learned counsel for the respondent-landlord has argued that once the petitioner-tenant has filed an

application seeking setting aside of ex-parte order, the very object of summons provided in Schedule II stands complied with.

I have heard learned counsel for the parties.

No doubt, the order dated 22.12.2015 whereby the petitioner-tenant was proceeded against ex-parte, the trial Court has set aside the said order but, leave to defend has been declined presumingly on the ground that the same had not been filed within 15 days and, therefore, for non-compliance of the said provision, the petitioner is liable to be evicted as her prayer for leave to defend was not accepted. The format of summon provided in Schedule-II reads as under:-

“Schedule II

[See Sub-section (2) of Section 18-A)

Form of summons in a case where recovery of possession of residential building or scheduled and/or nonresidential building is prayed for under section 13-A or section 13- B] of the East Punjab Urban Rent Restriction Act, 1949.

(Name, description and place of residence of the tenant)

Whereas Shri_____ has filed an application (a copy of which is annexed for your eviction from_____ (here insert the particulars of the residential building or scheduled building and/or non-residential building) under section 13-A or section 13-B of the East Punjab Urban Rent Restriction Act, 1949;

Now, therefore, you are hereby summoned to appear before the Controller within fifteen days of the service

thereof and to obtain the leave of the Controller to contest the application for eviction under section 13-A or section 13-B of the said Act, in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said residential building or scheduled building and/or non-residential building.

Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of Section 18-A of the said Act.

Given under my hand and seal this _____ day of _____ 19

Controller"

This court finds that petitioner was required to move an application seeking leave to defend her case within 15 days from the date of passing of the order but she merely moved an application for setting aside the ex-parte order. This cannot be termed as a sufficient reason to decline the right of the petitioner to defend her case. Accordingly, the present petition is allowed and the order dated 07.12.2016 is set aside and case is remanded back to the Rent Controller, Chandigarh.

Parties are directed to appear before the Rent Controller on 23.02.2017.

However, as regards the period of 15 days for filing the application for leave to defend, it is made clear that the said period

shall commence from today. The petitioner would be required to move an application seeking leave to defend within 15 days from today failing which the instant petition shall be deemed to have been dismissed.

(HARI PAL VERMA)
JUDGE

17.02.2017

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Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No