

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 20.09.2017****CR No.6324 of 2017 (O&M)**

Amrik Singh

...Petitioner

Vs.

Mukhtiar Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Gurcharan Dass, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

NRI landlord Mukhtiar Singh filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') for the ejectment of the respondent/tenant (petitioner herein) and to recover immediate possession of the building owned by him situated in Islam Ganj, Ludhiana. The rent application was filed on 12.04.2006. The rented premises is an Atta Chakki run by 15 HP electric connection. The respondent was ex parte. An ex parte eviction order was passed by the Rent Controller, Ludhiana on 12.08.2009.

On 31.01.2011, the petitioner/tenant filed an application under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex parte eviction order. Notice was issued on the application and by a detailed order after allowing evidence to be recorded the application has been considered and dismissed finding insufficient grounds to set aside the ex parte eviction order.

In the past during trial, the Rent Controller had proceeded ex parte after due publication of notice in a newspaper to which the petitioner/tenant did not respond. The grounds set up by the petitioner/tenant regarding non-compliance of the provisions Section 18A of the East Punjab Urban Rent Restriction Act, 1949, which require service of application in accordance with the procedure prescribed in the Schedule, have been turned down because no effort was made or objection taken during the trial proceedings, which would have put the Rent Controller in a position to consider the application on or before the time of considering request for leave to contest. The Civil Judge (Junior Division), Ludhiana, acting as Rent Controller, pronounced the order on 04.07.2014 observing that the tenant had not acted with due diligence observing that a person who has slept over his rights is not entitled to any kind of relief. The landlord/respondent could not be disturbed after long lapse of time having secured an order of eviction as an NRI to take immediate possession of the building of his choice, a right to be exercised once in a lifetime. It is not disputed that the ingredients required to grant relief are satisfied in this case. The building was more than 5 years old at the time the action was brought nor had the landlord evicted any tenant from any other building.

Aggrieved by the order of the Rent Controller, Ludhiana dismissing the application for setting aside the ex parte order and the proceedings leading to the eviction order, the petitioner/tenant carried an appeal to the Appellate Authority, Ludhiana for setting aside the order. The Appellate Authority noticed from the record that despite repeated issuance of notices to the tenant, his presence could not be secured. He was ordered to be served through registered cover also at the address of the tenanted

premises. The summonses issued to tenant on 30.10.2008 were received back with the report that his servant met the process service, but reported that he was not available there. Thereupon, the Court had ordered service through publication in the 'Daily Aashiana Patiala', which was a listed newspaper for purposes of service of summons by way of substituted service. Tenant complained that this newspaper paper does not enjoy wide circulation in the urban area of the demised premises. Publication was effected on 25.11.2008 for 28.11.2008. The tenant failed to appear. As a result, ex parte evidence was adduced by the respondent/landlord and the eviction petition was allowed ex parte on 12.08.2009, which period in the interregnum also gave sufficient time for the tenant to have entered proceedings and acted with due diligence to defend the case.

The story set up by the tenant was that the ex parte eviction order came to his notice only on 10.01.2011, when he received notices in the execution proceedings. This is how an application was filed on 31.01.2011 for setting aside the ex parte order. It may be noticed that there was an earlier ejectment petition filed which was not taken to its logical conclusion. Since the narrow issue in this case is; whether the order proceeding against the tenant ex parte deserves to be recalled, the Appellate Authority found in answer that the address of the respondent/tenant given in the application as well as in the appeal is the same address, which is given in the eviction petition filed by the landlord/petitioner under Section 13-B of the Act. It was not the case of the tenant/petitioner that notice was sent to wrong address and, therefore, there is no presumption of service even if the substitute process had not been followed. That process has to be viewed as a

necessary step in serving process upon the tenant by substituted service, which is as per law.

Had the petitioner/tenant moved an application under Order 9 Rule 13 CPC when the trial was on, it would have been a different matter, but he kept silent and did not show his face obviously to bide for time to with a view to come back later and in the meanwhile to continue his possession of the demised building in the hope that some court may unsettle the eviction order and return the petition to be tried on merits.

Having heard Mr. Gurcharan Dass and after perusing the file with his assistance and looking also to the synopsis of dates and events handed over by him at the time of hearing, I find no room to accommodate the prayer for unsettling settled things. The petitioner/tenant has played fast and loose for over 10 years depriving the respondent/landlord of his special right under Section 13-B of the Act. The immediateness of recovery of possession enshrined by Section 13-B has been frustrated by the tenant and I find that he is not entitled to any equity from this Court to save him from eviction. I may note that Mr. Dass has taken me to order-sheet and I find nothing from there strongly in favour of the tenant to undo ex parte eviction order passed on 12.08.2009 and the subsequent orders passed by the Rent Controller, Ludhiana and of the Appellate Authority, Ludhiana on the application under Order 9 Rule 13 CPC.

The tenant must realize that publication in newspaper of national or pan regional standing costs a lot of money and if he expects an argument to be sustained that the circulation was not done through a leading regional paper he cannot at the same time complain that the newspaper in which the notice was published was not on the list of approved newspaper

for publication maintained by the District Courts. The tenant should not have expected the landlord to have been put to considerable expense of paying for huge advertisement charges in English and vernacular newspapers after a Process Server had visited the premises with the summons and had recorded that the tenant's servant was met with in the tenant premises i.e. Atta Chakki informing that the tenant was not present there. He is presumed to have been informed of the visit and would know the purpose. If he avoided service he has only himself to blame.

Consequently, I do not find any patent illegality or irregularity in the orders passed by the Rent Controller, Ludhiana and the Appellate Authority, Ludhiana declining the application and would dismiss the instant petition being devoid of merit.

20.09.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>