

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8154 of 2017 (O&M)

Date of Decision: 28.11.2017

Nisha Mahajan and others

... Petitioners

Versus

Nirmal Singh Hothi

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Puneet Jindal, Sr. Advocate,
with Ms. Neha Anand Mahajan, Advocate,
for the petitioners.

Mr. Gurvinder Arora, Advocate,
for the caveator/respondent.

RAJIV NARAIN RAINA, J.

1. The petitioning tenant still expects this Court to believe that her husband had no knowledge of the ex parte ejectment order passed by the Rent Controller, Jalandhar on May 15, 2006. The settled law is that an ex parte order can be set aside when the defendants were not served with the summons or were prevented by sufficient reason for appearing in the Court. In the present case, the summons were sent by court but the tenant refused to accept them and thereafter *munadi* was effected by way of substituted service. In Paras.2 & 3 of the application under Order IX Rule 13 read with Section 152 CPC for setting aside the ex parte ejectment order the following has been pleaded:-

“2. That the judgment debtor had no knowledge about the pendency of the present ejectment petition against him and only received on e notice issued by this Hon'ble Court

to appear in the present execution proceedings. However, it is worthwhile to mention here that the decree holder has also filed another ejectment petition under Section 13-B of East Punjab Urban Rent Restriction Act on 28.5.2002 which was dismissed by the court of Shri Jaspinder Singh the then Rent Controller, Jalandhar vide order dated 21.11.2007 and the decree holder has preferred the revision against the said order in the Hon'ble Punjab and Haryana High Court at Chandigarh where matter is still pending. It is also important to mention here that the address of the objector / judgment debtor is same in both the petitions.

3. *That on 28.2.2011, the Applicant appeared in the execution proceedings, through his counsel and then only he got the knowledge about the ex-parte ejectment order passed by this Hon'ble Court on 15.5.2006. Prior to this, the applicant/respondent has no knowledge about pendency of the present ejectment petition against him."*

2. The application was filed on March 10, 2011. The ex parte eviction order was passed in a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the respondent tenant from residential house No.579, Golden Avenue, Phase-II, Garha Road, Jalandhar. The present revision arises out of those proceedings. It is another matter that proceedings under Section 13-B are pending in this Court between the same parties as per statement of the tenant herself.

3. Counsel for the caveator has pointed out to the statement of RW-3 Shiv Sharma, Process Server attached to the Court of Civil Judge (Senior Division), Jalandhar recorded during the trial. The official witness has testified on oath as follows:-

"I had gone to the spot. I.e Hno.579 Golden Avenue Garha Road Jalandhar on 03.09.2002 for service of summons upon aboveaid Naresh Mahajan who was found present in his house mentioned above and he was informed regarding the summons of the case which was fixed for 05.09.2002 in

the court of Sh. HS Gill, CJJD, Jalandhar and he was also informed regarding date of the case and Naresh Mahajan read over summons ExRW3/A but he refused to sign the summons. I had affixed the second copy of the summons of ExRW3/A at hno.579, Golden Avenue Garha Road Jalandhar in which Naresh Mahajan was residing in presence of one witness Pawan Kumar S/o Om Parkash, Dayanand Chowk Garha, Jalandhar and said Pawan Kumar also signed as witness on summons and my detailed report which in my hand is ExR1 which is at the back of summons ExRW3/A and I identify the same being in my hand and under my signature. I had also sworn affidavit on the back of summons and regarding correctness of my report which is attested by CJJD, Jalandhar on 04.09.2009 and same is ExRW3/B. My report is true and correct.”

4. The learned Senior counsel for the petitioning tenant relies on the further deposition recorded during cross-examination of RW-3/Process Server to the effect that:-

“I do not know Naresh Mahajan personally. I only took the summons for service upon Naresh mahajan. No one else identified the person Naresh Mahajan there. He himself stated to be naresh mahajan. I did not check any ID proof of that person who is stating himself to be Naresh Mahajan. It is wrong that no service was effected to naresh mahajan. It is wrong that Naresh mahajan never refused any summons. It is wrong that I make false report as per instruction of Nirmal Singh. I do not remember the name of neighboring house as it was very long ago.”

5. It is Mr. Jindal's argument that procedure was not followed in serving summons on the tenant inasmuch as there is no proof that plaint was sent along with the summons. If there is positive evidence to this effect then it is one thing but from the statement of the Process Server a suggestion was not put that the petition was not served with the summons. Obviously the stand could not be taken in the face of denial that Naresh Mahajan (late

husband of the petitioner and original tenant) was not served at all since there is no proof of his identity at the time of service of summons by the process server. The argument is a desperate attempt to get out of the impugned orders. As per law summons may be served as per Sub-rule (3) of Rule 9 of Order 5 of the Code of Civil Procedure, 1908. According to the Punjab and Haryana High Court Case Flow Management Rules, 2007, Part P Track II in original suit that fixation of time limit while issuing notice shall indicate that the Code prescribes a maximum period of 30 days for filing written statement and as per Clause (b) of Head II the notice referred in Clause (a), mentioned next before, shall be accompanied by a complete copy of the plaint and all its annexures/enclosures and copies of the interlocutory applications, if any.

6. Order 5 Rule 19 CPC deals with examination of serving officer and lays down where a summons is returned under Rule 17 (refuses to accept service or cannot be found), the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

7. Order 5 Rule 20 CPC deals with substituted service where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some

conspicuous place in the Court House, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain or in such other manner as the Court thinks fit.

8. The other permitted way of substituted service is as per Sub Rule (1-A) of Rule 20 of Order 5 CPC which provides for service by an advertisement in a newspaper etc. The effect of substituted service is no different from personal service on the defendant.

9. The Process Server in his statement in Court has deposed that Naresh Mahajan refused to accept summons after reading them and this fact was identified by one Pawan Kumar s/o Om Parkash resident of Dayanand Chowk, Jalandhar. In his cross-examination the tenant did not ask the Process Server regarding the fact that refusal was not identified by Pawan Kumar. No evidence was brought during the proceedings for setting aside the ex parte eviction order that tenant Naresh Mahajan did not know Pawan Kumar. No suggestion was put to the Process Server that summons were not pasted at the address of the applicant on refusal. There is no doubt that the address in the plaint and in application under Order 9 Rule 13 CPC is the same as mentioned in the summons Ex.RW-3/A. I have nothing to doubt that the correctness of the findings of the rent authorities are acceptable in that due process as per Order 5 Rule 17 CPC was followed by the Process Server and thereafter Munadi as per Order 5 Rule 20 CPC was carried out.

10. More important than anything is the judicial file which speaks for itself regarding service of summons. The learned Rent Controller in his order dated March 29, 2017 has found facts on record which nail the

tenant's lie in para.3 of the application reproduced above that the application under Order 9 Rule 13 CPC itself was filed within the period of limitation of 30 days from the date of knowledge of the order proceeding ex parte. The execution was filed by the landlord on February 27, 2010. Summons of the application were served on the tenant on January 24, 2011. Tenant Naresh Mahajan during his cross-examination has stated that:-

“I have seen the summons on the judicial file sent by the court of Shri Sanjiv Joshi, Civil Judge (Sr. Div.) Jalandhar and I have seen my signatures at point A on ExR1 dated 24.01.2011... On 24.01.2011 I had filed the application for setting aside the exparte ejectment order passed by court of Sh. Rajinder Aggarwal.”

11. Therefore, leaving aside the past delay of 5 to 6 years, the present application was filed beyond limitation on the admission of knowledge of ex parte order received through summons served on January 24, 2011. The application under Order 9 Rule 13 CPC was filed on March 10, 2007 without sufficient cause explained for the delay. This is another reason why I would not interfere with the orders of the rent authorities.

12. In view of the above discussion, the case in Ranjit Singh v. Sarup Singh, 2015 (4) PLR 367 is of no help to the tenant. In that case, it was proved that copy of plaint was not sent with the summons and, therefore, there was no due service. In the circumstances, the learned Single Judge found that since the matter related to immovable property it would be only appropriate that parties have full contest on the respective contentions by pleadings in trial.

13. There is no jurisdictional infirmity or fundamental error in the impugned order and thus the same calls for no interference. Findings are

based on appreciation of evidence.

14. For the foregoing reasons, I find no merit in this petition and the same is dismissed.

15. Caveat is discharged.

28.11.2017
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(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>