

In the High Court of Punjab and Haryana at Chandigarh

CR No. 2005 of 2008(O&M)

Date of Decision: 25.10.2018

Surjeet Kaur and others

---Petitioners

versus

Chander Mohan and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Arun Jindal, Advocate
for the petitioners**

**Mr. Gopal Sharma, Advocate,
for the respondents**

Rekha Mittal, J.

The present petition directs challenge against order dated 12.6.2007 passed by the Additional Civil Judge (Senior Division), Patiala whereby application for setting aside ex parte eviction order dated 22.4.1995 passed by the Rent Controller, Patiala, has been dismissed.

Krishan Vir Handa (since deceased) now represented by his LRs filed application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) for eviction of Subhash Devi and Joginder from House No. B-45/275 on the grounds of non-payment of rent, personal necessity and sub letting. The case was contested by Subhash Devi but Joginder respondent No. 2 therein was proceeded against ex parte vide order dated 24.1.1994 on the premise that notice sent to him through registered post has not been received back despite expiry of period of 30

days and he is deemed to be served in the case. Eventually, the proceedings culminated in eviction order dated 22.4.1995 whereby it has been held that respondent No. 1 has sub let the disputed property to respondent No. 2 without consent of the petitioner and demised premises is required by the petitioner for his personal necessity.

To substantiate his plea that the petitioner was never served in the case, he appeared in the witness box and reiterated his version raised in the application Annexure A-2. However, no evidence has been led by the respondent-landlord in proceedings for setting aside ex parte eviction order dated 22.4.1995.

Counsel for the petitioners would urge that Joginder Singh was a direct tenant in the house in question under the respondent/landlord who is successful in obtaining eviction order in connivance with respondent No. 1 therein. It is further argued that as the petitioner was not duly much less personally served in the proceedings nor he was aware of pendency of the eviction proceedings or passing of eviction order till 12.3.1998, application for setting aside ex parte eviction order is clearly within limitation.

Counsel for the respondent, on the contrary, has supported the impugned order with the submission that as notice sent through registered cover was not received back despite expiry of period of 30 days from the date of its sending, the Rent Controller has rightly presumed that the petitioner has been served and accordingly initiated ex parte proceedings vide order dated 24.1.1994. He has further submitted that as the petitioner is a sub tenant in the suit property under Subhash Devi, respondent No. 1 therein, the court has rightly presumed that he has the necessary knowledge of pendency of eviction proceedings, therefore, application for setting aside

eviction order dated 22.4.1995 filed in March 1998 is clearly barred by limitation.

I have heard counsel for the parties, perused the paper book and the original records of Rent Case No. 14 of 30.1.1993 decided on 22.4.1995.

Perusal of zimni orders recorded by the Rent Controller prior to 24.1.1994 would reveal that the case was registered on 30.1.1993 and respondents were ordered to be summoned for 15.3.1993 on PF and copies. On the adjourned date, the respondents were ordered to be summoned through registered post and in ordinary way with a direction to file registered cover. In all the zimni orders recorded upto 13.9.1993, it has been recorded that summons issued to the respondent have not been received back. There is no endorsement in the margin with regard to issuance of summons by Ahlmad of the court. It appears that without appreciating as to why repeated summons purported to be issued by the court were not being received back and ensuring that respondents are served through ordinary process, the then Rent Controller proceeded to pass order dated 24.1.1994 presuming service effected and thus, proceeded ex parte against the petitioner. There is no endorsement on order dated 5.1.1994 that Ahlmad of the Court had issued process through registered cover for service of respondent No. 2 therein. No evidence has been adduced by the respondent that actually any process was issued by the court for service of respondent therein-Joginder Singh, therefore, it can safely be held that the court below has committed a serious error by holding that the petitioner had been duly served in the rent proceedings and had rightly been proceeded against ex parte vide order dated 24.1.1994. Similarly, findings recorded by the court imputing knowledge to Joginder Singh are absolutely

unwarranted and appears to be the result of failure of the Court to appreciate the factual and legal aspects in right perspective. In this view of the matter, I find merit in contention of the petitioners that the impugned order cannot be allowed to sustain and liable to be set aside.

For the foregoing reasons, the petition is allowed. As a consequence, order dated 24.1.1994 proceeding ex parte against the petitioner and ex parte eviction order dated 22.4.1995 are set aside. Rent Case No. 14 of 30.1.1993 is restored at the board of Rent Controller, Patiala for deciding the case afresh after providing an opportunity to the petitioner (since deceased) represented by LRs to file written statement and thereafter to proceed with the case, in accordance with law.

Before parting with the order, it is pertinent to mention that counsel for the parties are ad idem that the petitioner now represented by his LRs would deposit use and occupation charges @ Rs. 60/- per month with effect from March 2015, within a period of two months with the Rent Controller, Patiala but without prejudice to right of the respondent-landlord to press for eviction on the ground of subletting.

Parties through their counsel are directed to appear before the Rent Controller, Patiala on 12.11.2018. The Rent Controller is directed to conduct day-to-day proceedings and dispose of the case within a period of four months of the parties putting in appearance.

(Rekha Mittal)
Judge

25.10.2018

PARAMJIT	Whether speaking/reasoned	: Yes
	Whether reportable	: Yes/No