

In the High Court of Punjab and Haryana at Chandigarh

CR No. 3040 of 2013(O&M)

Date of Decision: 29.5.2018

Kirpal Singh @ Pintu @ Gurpal Singh

---Petitioner

versus

Sarup Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rahul Rampal, Advocate
for the petitioner**

**Mr. Rakesh Kumar, Advocate,
for the respondent**

Rekha Mittal, J.

CM No. 791-CII of 2016

Heard.

**Allowed as prayed for. Annexure R-1 is taken on record
subject to just exceptions.**

Disposed of accordingly.

CR No. 3040 of 2013

**Challenge in the present petition has been laid against order
dated 26.2.2013 passed by the Civil Judge (Junior Division), Ludhiana
whereby application filed under Order 9 Rule 13 of the Code of Civil
Procedure (in short “the Code”) for setting aside ex parte ejectment order
dated 19.2.2008 passed by the Rent Controller, Ludhiana was ordered to be**

dismissed.

Counsel for the petitioner would argue that prior to filing of Rent application No. 46 of 24.8.2006 decided on 19.2.2008 in which ex parte ejectment order has been passed, the respondent filed RA No. 113 of 2.11.1995 seeking ejectment of the petitioner from the tenancy premises and the same was decided by the Rent Controller on 9.3.2004 (Annexure P-2) wherein the Rent Controller answered issue No. 1 pertaining to existence of relationship of landlord-tenant between the parties against the respondent-landlord and as a consequence, the application for eviction was dismissed. The order passed by the Rent Controller became subject matter of appeal before the Appellate Authority that came to be decided vide order dated 16.11.2011 (Annexure P-3) and the same was dismissed and findings recorded by the Rent Controller negating plea of the respondent qua existence of relationship of landlord-tenant between the parties were affirmed. It is argued with vehemence that in case the ex parte eviction order dated 19.2.2008 is allowed to sustain, it would nullify the order passed in the earlier proceedings wherein after due contest, plea of the respondent with regard to relationship of landlord-tenant has been rejected and has attained finality.

Another submission made by counsel is that the petitioner was served through affixation and munadi but the process server who effected munadi was not examined, therefore, the respondent failed to adduce sufficient evidence that petitioner was served by way of munadi and affixation. The Court below has failed to appreciate in right perspective that since the petitioner was not duly served in the case and learnt about ejectment order a day before filing of the application for setting aside ex

parte order when bailiff of the court had gone to the spot for delivery of possession in execution of warrants issued by the court concerned, limitation for filing application for setting aside ex parte eviction order shall commence from the date of knowledge and as application was filed within a period of 30 days from the date of knowledge, the same is clearly within limitation. In the alternative, it has been argued that as a matter of fact, the provisions of the Limitation Act are not applicable to the proceedings before the Rent Controller, a Fora created with limited jurisdiction to decide cases under the Rent Act. For this purpose, he has relied upon judgment of this court **Sohan Lal vs. Smt. Parkash Kaur and others, 2009(1) RCR (Rent) 171.**

Counsel representing the respondent has supported the impugned order with the submission that the petitioner is in possession of the property in question without payment of rent for the past about 15 years. It is further argued that application for setting aside eviction order is nothing but filed with a clear intent to delay recovery of possession by the respondent who is being harassed because of litigation to seek eviction of the petitioner. In addition, it is argued that the shop in question is a part of big building in respect whereof sale deed was executed in favour of the respondent and a copy thereof has been placed on record as Annexure R-1.

Be that as it may, it is undisputed position of the case that eviction proceedings initiated by the respondent by filing application in the year 1995 culminated in order dated 9.3.2004 passed by the Rent Controller, Ludhiana that came to be affirmed in appeal on 16.11.2011 wherein it has been consistently held by the courts that there does not exist relationship of landlord-tenant between the parties. In the case at hand, the petitioner has

been served through affixation and munadi on the basis whereof, ex parte proceedings were initiated against him. Admittedly, the respondent did not examine the concerned process server to prove report with regard to service through affixation and munadi and the person(s) in whose presence the munadi was effected. Counsel for the respondent has failed to point out any materials on record that the petitioner gained knowledge of service through affixation and munadi or pendency of proceedings at any point of time prior to filing of application under Order 9 Rule 13 of the Code. Under Article 123 of the Limitation Act, application for setting aside ex parte decree can be filed within a period of 30 days from the date of passing of the decree/order if the defendant has been duly served otherwise it would be 30 days from the date of knowledge of the petitioner. In the case at hand, the application was filed within a period of 30 days from the date of knowledge, therefore, the application is within limitation even if examined in the light of provisions of Article 123 of the Limitation Act. This apart, this Court in **Sohan Lal's case (supra)** has held that provisions of the Limitation Act are not applicable to the proceedings before the Rent Controller exercising jurisdiction under the Rent Act. That being so, the Rent Controller has seriously erred by holding that the application for setting aside eviction order is barred by limitation. Analyzed from any angle, the impugned order cannot be allowed to sustain and is liable to be set aside.

For the foregoing reasons, the petition is allowed, impugned order is set aside and rent application No. 46 dated 24.8.2006 is restored on the Board of Rent Controller concerned. The Rent Controller shall proceed with the case from the stage of filing of written statement by the petitioner.

However, since application for eviction filed in the year 2006 has been revived on the Board of Rent Controller, Rent Controller shall dispose of the case within a period of six months from the parties putting in appearance on 20.7.2018.

(Rekha Mittal)
Judge

29.5.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No