

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Civil Revision No.409 of 2015 (O&M)
Date of decision: 08.03.2018**

Santosh Sharma

.....Petitioner

Versus

Randhir Kumar Oberoi

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anish Setia, Advocate,
for the petitioner.

Mr. Varun Sharma, Advocate,
for the respondent.

Ritu Bahri, J.

Santosh Sharma-petitioner (tenant) has filed this petition against the order dated 21.05.2012 passed by the Rent Controller, Jalandhar, whereby her application for setting aside the exparte ejectment order dated 08.02.2007 has been dismissed.

Case pleaded by the petitioner was that she had received summons to appear before the Executing Court on 15.12.2007 and thereafter, she came to know that an exparte ejectment order dated 08.02.2007 had been passed against her by the Rent Controller. From 14.01.2008 to 16.01.2008, there were holidays and the application for setting aside the exparte order was filed on 17.01.2008, which was within the period of limitation from the

knowledge about the ejectment order dated 08.02.2007.

On notice, respondent-landlord put in appearance and took the ground that application was hopelessly time barred. Summons of ejectment petition was received by Mamta, daughter of tenant-applicant Santosh Sharma. She was served on 14.12.2007. After being served, no enquiry was made by her on 14.12.2007 to 17.12.2007.

From the pleadings of the parties, following issues were framed:-

1. Whether the applicant was served or not? OPA
2. Whether the exparte order dated 08.02.2007 is liable to be set aside? OPA
3. Relief.

Issue Nos. 1 and 2 were taken up together. Santosh Sharma-applicant appeared in the witness box as AW-1 and reiterated the contents of the application by way of affidavit Ex.AW1/A. Thereafter, she closed her evidence.

Respondent-landlord himself appeared as RW-1 and examined Ramesh Kumar, Bailiff (RW-2), Tarsem Lal, Process Server (RW-3) and Rachpal Singh, Process Server (RW-4).

After going through the evidence led by the parties, the Rent Controller held that in the ejectment petition, the address of applicant-Santosh Sharma was mentioned as resident of Amrik Nagar, near Ajit Nagar, Jalandhar. This fact was not disputed by applicant-tenant. During the pendency of ejectment application, summons were issued on the same address and were received back with the report of refusal. Thereafter, she was got served through substituted service i.e. munadi/affixation on the same address i.e. Amrik Nagar, near Ajit Nagar, Jalandhar. Despite service

through substituted process, she did not turn up. It was further observed that the main ground to challenge the report of Process Server was that he did not produce any witness in support of his report. Except, oral testimony of applicant-Santosh Sharma, she did not lead any evidence to produce that the report of refusal was false. Moreover, application for setting aside the exparte order dated 08.02.2007 was made on 17.01.2008, which was after the gap of one year. When she came to know about the summons on 15.12.2007, why she waited till 17.01.2008 for filing the application. There was no explanation in that regard. The Rent Controller has further observed that the applicant-tenant had miserably failed to prove that the report of the Process Server, who effected the summons through munadi/affixation, was false and procured one. With these observation, the application filed by tenant-petitioner for setting aside the exparte order, was dismissed. Hence, this petition.

Notice of motion in this petition, was issued on 21.01.2015 on the ground that there was non compliance of the provisions of Order V Rule 17 of the Code of Civil Procedure (CPC) inasmuch no effort was made to specify the names and addresses of the persons before whom, the house was identified and in whose presence, copies of the summons were affixed. It was further observed that from 14.01.2008 to 16.01.2008 were holidays. Hence, if these dates are excluded, application for setting aside of the exparte order was filed within 30 days from the date of knowledge i.e. 15.12.2007.

After hearing learned counsel for the parties, this petition deserves to be allowed. The first ground for setting aside the impugned order(s) is that the procedure for affixing summons on the house of Santosh

Sharma-petitioner was not carried out as per Order 5 Rule 17 CPC, which is reproduced as under.

“Rule 17. Procedure when defendant refuses to accept service, or cannot be found-

Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, [who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person(if any) by whom the house was identified and in whose presence the copy was affixed.”

As per above said provisions, when a defendant or his agent is not present for accepting the summons, the serving officer has to affix a copy of the summons on the outer door of the house, where the defendant ordinarily resides. After affixing the summons, he has to make a report explaining the circumstances, under which, he did so and mentioning the name and address of the person (if any) by whom the house was identified and in whose presence, copy was affixed. The report has to consist, if any effort was made by the Process Server to get the house identified from a witness, in whose present, copy was affixed.

In the present case, as per statement of Rachpal Singh, Process Server (RW-4) after getting the summons, he had visited the given address in order to effect the service of Santosh Sharma. He presented the summons

to her (Sansoth Sharma), but she refused to accept the same. Thereafter, he

made his report on 09.09.2006 and signed the same. In cross-examination, he stated that he did not obtain signatures of any witness to support his report. The report is neither signed by the Chowkidar nor by any respectable person of the area. The report of Rachpal Singh has been annexed as Annexure P-4. It does not state that when Smt. Santosh Sharma refused to receive the summons, he made any attempt to get the name and address of any person as a witness before affixing the summons on the house of Santosh Sharma. Hence, as per Order 5 Rule 17 CPC, before affixing the summons, no attempts were made by the Process Server to get the house identified by anyone. The report of Process Server does not state that he had taken any steps to associate a witness. The object of getting identification by a witness before affixation is that someone in the neighbourhood is/was aware that some legal proceedings were pending against the defendant. Hence, the necessary procedure as contemplated under Order 5 Rule 17 CPC has not been carried out in this case.

The next ground taken by the Rent Controller for dismissal of the application is that it was filed beyond the period of 30 days from the date of knowledge i.e. 15.12.2007. After going through the impugned order(s), it is apparent that the application for setting aside the exparte order was filed on 17.01.2008. Applicant-petitioner came to know about the exparte proceedings pending against her on 15.12.2007. Period of 30 days was to expire on 15.01.2008. However, there were holidays from 14.01.2008 to 16.01.2008. If these days are excluded, the application was filed within a period of 30 days. Hence, the application for setting aside the exparte order was filed well within the limitation. Accordingly, on both the grounds, the impugned orders are liable to be set aside.

In view of the above discussion, the impugned orders dated 08.02.2007, 21.05.2012 and 30.10.2014 are set aside and the trial Court/Rent Controller, Jalandhar is directed to decide the matter afresh after providing effective opportunities to applicant-petitioner Santosh Sharma to lead her evidence in accordance with law.

Petition stands allowed accordingly.

08.03.2018
ajp

(RITU BAHRI)
JUDGE

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