

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CM-16339-CII-2016 in/and
CR-4322-2014 (O&M)
Date of Decision : 11.9.2018

Punjab National Bank and another

.... Petitioners

vs.

Ranjit Singh Gill and another

....Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr.N.C. Sahni, Advocate
for the petitioners-tenants.

Mr. R.S.Bains, Advocate
for the applicant/respondent-landlord.

AJAY TEWARI, J. (Oral)

This petition has been filed challenging the order of the Rent Controller allowing a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 filed by the respondent.

The solitary contention raised by the learned counsel for the petitioners is that the application for leave to defend which was filed by the petitioner-tenant was wrongly dismissed because due service as envisaged under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 was not effected. He has pointed out the heading of the petition is as follows :-

*“PETITION UNDER SECTION 13-B OF THE EAST
PUNJAB RENT RESTRICTION ACT, FOR RECOVERY OF
IMMEDIATE POSSESSION BY EVICTION OF THE
RESPONDENT/TENANT FROM DEMISED PREMISES I.E. ENTIRE*

*GROUND AND FIRST FLOOR OF SCO NO. 26-27, PHASE-VII, SAS
NAGAR, MOHALI”*

As per him, the respondent No.2 has been impleaded individually and actually only respondent No.1 was the party. He has argued that service on respondent No.2 was not validly effected and consequently, there was no service in the eyes of law. It may be mentioned here that service on respondent No.2 was effected on 10.9.2013. While as per learned counsel for the petitioners, service on respondent No.1 was effected only on 14.9.2013 by registered post and therefore the application for leave to defend which was filed on 27.9.2013 was well in time. He has pointed out that under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949, apart from the ordinary mode of service as prescribed under Order 5 of the first schedule of the CPC two more modes of service are mandatory, one by registered post and second by affixation and admittedly, there is no evidence of those two modes having been used. As per him, since there was no service by ordinary process/affixation on the respondent No.1 this is a case where service was not properly effected. Moreover, as per him service on respondent No.2 is no service in the eyes of law because respondent No.2 was neither a necessary or a proper party.

On the contrary, counsel for the respondent has argued that the petitioner is raising unnecessarily pedantic and technicalistic plea and has managed to thwart the order for a period of four years by these pleas which are merely jugglery of words. He has pointed out that respondent No.1 was the Punjab National Bank while respondent No.2 was the Manager of the Branch of Punjab National Bank which was the tenant.

In my considered opinion, it cannot be said that the respondent No.2 is neither a necessary or a proper party. It is well known that most (if not in all) litigations in which various public sector Banks are involved, the Manager of the concerned Branch is normally authorized to prosecute the litigation. For the bank to now argue that the Manager of the concerned Branch is an unrelated person is too much to swallow. There is no explanation why once summons had been received by the Manager on 9.9.2013 the application could not be filed on or before 24.9.2013. The Banks have standing counsel in every city and this was a straightforward application for which no special preparation was required. It is also be to be noticed that the additional modes of service prescribed under Section 18-A are intended to ensure speedy disposal of the case and not to give a handle to the tenant to obstruct the proceedings. As a matter of the fact, it would also be appropriate at this stage to notice the provisions of second proviso to Rule 13 of Order 9 CPC. Rule 9 Order 13 lays down the circumstances in which an ex parte decree can be set aside and the second proviso is to the following effect:-

“Provided further that no Courts shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.”

It is thus clear from this proviso that the important thing which the Court has to satisfy its judicial conscience about is whether the defendant had knowledge of the date of hearing. In the present case, the petitioner-bank cannot argue that it had no knowledge of the date of

hearing.

In the circumstances, I have no hesitation in rejecting this argument.

Counsel has relied upon the two judgments of this Court in the matters of ***Harwinder Pal Kaur and another vs. Kuldeep Singh Gurm @ Kuldeep Singh and others*** reported as 2011 (2) RCR (Civil) 804 and in the matter of ***R.K. Sarin vs. Baljit Kularia reported as 2012 (3) L.A.R 266***.

A perusal of these judgments reveals that these are completely distinguishable because in those cases there was serious dispute about the service of summons and that is why this Court had emphasized at the importance of Order 18-A. In the present case, there is no dispute about the service as such. Moreover, as regards delay, in ***Om Parkash vs. Ashwani Kumar Bassi*** reported as ***(2010) AIR (SC)3791***, the Supreme Court had upheld the decision of the High Court whereby one day's delay in filing the application for leave to defend was rejected.

Another very serious matter which has been raised by the counsel for the respondent is that the stay order was obtained by this Public Sector Bank by making a patently false statement. On 9.7.2014 the following order was passed :-

“Present: Shri N.C. Sahni, Advocate for the petitioners.

Shri Rajeev Gupta, Advocate for the caveator-respondent.

Counsel for the petitioner states that the respondent-landlord is a British passport holder and, thus, is not an NRI to claim special statutory right under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against the

petitioner-tenant.

Notice of motion to the respondent.

Shri Rajeev Gupta, Advocate accepts notice.

Adjourned to 11.11.2014 for arguments.

If execution is preferred, then the date therein be given after this date.”

The stand of the counsel for the respondent is that respondent was an Indian passport holder and this false statement was made only to get interim order and notice of motion.

Counsel for the petitioners has sought to defend the statement by drawing the attention of the Court to Paragraph 1 of the Rent petition. The same is quoted hereinbelow :-

“RESPECTFULLY SHOWETH :-

That the petitioner is of Indian origin and is a Non Resident Indian(herein after referred to as 'NRI). A copy of his passport issued at London duly attested by Notary Public proving the said averment is being attached alongwith petition as Annexures P-1. It is pertinent to mention here that in this passport the date and number of the previous passport of the petitioner that was renewed is clearly mentioned as Passport No. Z001797 dated 3.11.2006 and the previous passport was also issued at London and therefore, the petitioner is competent to file the present petition.”

As per learned counsel for the petitioners, a perusal of the paragraph 1 reveals that no intentional false statement was made because respondent had himself mentioned that his passport was issued in London.

Counsel for the respondent has pointed out this may have been true if the copy of the passport had not been appended as Annexure P-1. Even bare perusal of the passport would have shown that it was issued to

the respondent by the Indian High Commission at London. I find the action of the petitioner-bank deplorable. Counsel for the respondent states that Bank though had annexed every other document but withheld the document Annexure P-1 from the paper book.

In the circumstances, I find no ground to grant any relief to the petitioners.

The revision stands dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

11.9.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No