

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

**CR No.138 of 2016 (O&M)
Date of Decision: 28.11.2019**

Surinder Kumar

..... Petitioner

Versus

Kanchan Wadhera and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Fateh Saini, Advocate
for the petitioner.

Mr. Ashok Sehgal, Advocate
for the respondents.

SUDIP AHLUWALIA J. (ORAL)

This Revision is directed against the impugned order passed by the Ld. Rent Controller on 06.01.2014 in Civil Misc. No.43 of 2003 of his Court, whereby, the petitioner's application under Order 9 Rule 13 read with Section 151 CPC seeking to set aside the *ex parte* ejectment order passed against him by the Ld. Rent Controller earlier on 23.05.2000, was dismissed.

2. Background of the matter is that the eviction petition was filed on behalf of the respondents-landlords against the petitioner seeking his ejectment on the ground that basically, he had defaulted for the payment of rent for a long time.

3. The Rent Petition itself was filed way back on 23.10.1996. In the same, the petitioner-tenant was proceeded against *ex parte* as the Ld.

Rent Controller found that he had not appeared in spite of due service of summons upon him. Consequently, his ejectment was finally ordered on 23.05.2000, after which, the respondents-landlords apparently sought execution of such order.

4. The petitioner claims to have gained knowledge of the proceedings from some close friend of the respondents themselves, on 08.04.2003. He, thereafter, filed his aforesaid application under Order 9 Rule 13 read with Section 151 CPC on 15.04.2003 (Annexure P-2), which was dismissed by the Ld. Rent Controller, who found no merits in the same. Thereafter, the petitioner initially preferred an appeal against such order of dismissal, which was, however, dismissed by the Ld. Appellate Authority on 09.10.2015 since it was held that although dismissal of an application under Order 9 Rule 13 read with Section 151 CPC is itself appealable, but the same does not apply in case of Rent matters, for which, a Special Legislation by way of East Punjab Urban Rent Restriction Act, 1949, has been enacted.

5. He, thereafter, has approached this Court against both the orders passed by the Ld. Rent Controller as well as the Ld. Appellate Authority.

6. In view of the Division Bench decision of this Court in ***“Tirlok Singh and others vs. Prem Chand & Sons and others”***, 2012(2) RCR (Rent) 472, to the effect that appeal in rent proceedings can be filed only against orders passed under Sections 4, 10, 12 and 13 of the East Punjab Urban Rent Restriction Act, 1949, there is hardly any dispute that the appeal against dismissal of the petitioner's application under Order 9

Rule 13 read with Section 151 CPC would not have been maintainable.

7. Consequently, this Court proceeds to examine the merits of the earlier order passed by the Ld. Rent Controller on 06.01.2014.

8. It is noted that the Ld. Rent Controller had found that initially when summons were issued upon the petitioner-tenant, the concerned process server, on visiting the petitioner's address, submitted a report that it was not possible to effect service upon him in the ordinary course. Thereafter, substituted service by way of affixation and *Munadi* was ordered by the Ld. Rent Controller, which was got done in accordance with the prescribed procedure. The original Summons, Certified Copy of the Process Server's initial Report as well as the Report of the service through *Munadi* and affixation, were led into evidence as Exhibits R-1, R-2 and R-4, respectively. The Ld. Rent Controller did not find any cogent reason to disbelieve the statements of the process servers and relied upon the decision in “*Sri Kamalesh Adhikary vs. Dakshin Damodar Cold Storage Pvt. Ltd.*”, 2002(4) ICC 780, wherein it had been observed *inter alia* that *process servers are not the postal peons, rather they are part and parcel of the judicial system and anyone disbelieving the process servers must come with clean hands with a specific case served by examining the concerned process server to prove the non-service.*

9. It is also to be noted that the application under Order 9 Rule 13 read with Section 151 CPC was filed more than three (03) years after the ejectment order was passed on 23.05.2000. The petitioner, in his application, had made out a case that he learnt about the proceedings through some close friend of the respondents themselves. He, however,

never revealed the name of such informant, much less got the said informant, examined from his side to support his case. Thereafter, his contention was that on knowing about the *ex parte* order and execution proceedings, he contacted his Counsel on 09.04.2013, after which, an application under Order 9 Rule 13 read with Section 151 CPC was filed a few days later. Yet no document or evidence to the effect that the Counsel had made any inspection to the judicial records to know about the factual background was also forthcoming from his side.

10. In such circumstances, this Court has no hesitation in concurring with the opinion of the Ld. Rent Controller that all through the attempt of the petitioner had been to delay the proceedings by one way or the other. It is by now more than 19 years after the eviction order was passed in favour of the respondents-landlords and at this stage, the petitioner can not be granted any further indulgence to deny the fruits of such eviction order to them.

11. In view of the aforesaid observations, this Court, thus, finds no merit in the present petition and the same is, therefore, dismissed.

(SUDIP AHLUWALIA)
JUDGE

November 28, 2019

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No