

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

Civil Revision No. 4642 of 2018 (O&M)

Date of decision : January 10, 2019

Sarabjit Singh Bedi

.....Appellant

Versus

Inderjit Kaur and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Surinder Sharma, Advocate
for the petitioner.

Mr. Aayush Gupta, Advocate
for the respondents.

LISA GILL, J.

This petition has been filed challenging judgment dated 27.04.2018 passed by the learned Civil Judge (Junior Division), Ludhiana whereby the petitioner's (tenant) application under Order 9 Rule 13 CPC has been dismissed.

Petition under Section 13 of the East Punjab Urban Rent Restriction Act (for short – 'the Act') was filed by the respondents/landlords seeking eviction of the present petitioner from the premises in question which is the first floor of the property i.e. a shop as described in the petition. The said petition under Section 13 of the Act was allowed by the learned Rent Controller, Ludhiana on 22.09.2006. The present petitioner – tenant was proceeded against *exparte* as it was observed that he did not appear despite service. Munadi and affixation was stated to be effected but still the petitioner did not join the proceedings.

Exparte order dated 22.09.2006 was impugned by the petitioner vide application dated 29.08.2015 with the averments that he was never

served in the proceedings. Petitioner's application under Order 9 Rule 13 CPC was, however, dismissed by the learned Civil Judge (Junior Division), Ludhiana on 27.04.2018.

Aggrieved therefrom, present petition has been filed.

Learned counsel for the petitioner vehemently argues that service upon the petitioner was not complete. There is clear cut violation of Order 5 Rule 19 CPC. Process server in this case was not examined. It is submitted that the service report stating that the petitioner was not residing at the given address, in fact shows connivance of the respondents – landlords with the process server. The present petitioner had nothing to gain by such a report and he was very much residing at the address given in the summons. Learned counsel for the petitioner relies upon the judgments of Hon'ble Supreme Court in **Sushil Kumar Sabharwal versus Gurpreet Singh 2002 (5) SCC 377** as well as of this Court in **Dhana versus Smt. Mewa Devi 2011(2) RCR (Civil) 765, Pritam Singh versus Raj Kumar 2013 (4) RCR (Civil) 126.** It is, thus, prayed that this petition be allowed.

Learned counsel for the respondents while refuting the said averments submits that the conduct of the petitioner is not bona fide. He was watching the proceedings before the learned Rent Controller from the sidelines. Despite service the petitioner chose not to associate with the proceedings and was proceeded exparte. It is denied that service upon the petitioner was not complete. Learned counsel for the respondents urges that the petitioner, having knowledge of the proceedings, is apparent from the fact that while filing the application for setting aside the exparte order, a certified copy of order dated 22.09.2006 (order of ejectment) was appended by the petitioner. The said order dated 22.09.2006 is clearly reflected to

have been applied for, on 13.10.2006 and received by the petitioner on 22.11.2006. Learned counsel has furnished a photocopy of certified copy of order dated 22.09.2006 appended by the petitioner with his application under Order 9 Rule 13 CPC. It is further submitted that in his cross examination, the petitioner admitted that he is residing at the address which is given in the summons. Therefore, averments regarding collusion of the respondents with the process server are denied. It is denied that there is any violation of Order 5 Rule 19 CPC. Dismissal of this petition is prayed for.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

It is not in dispute that petition under Section 13 of the Act filed by the respondents/landlords was allowed on 22.09.2006. Present petitioner/tenant was proceeded against exparte as it was observed by the learned Rent Controller that he did not appear despite service. Learned counsel for the petitioner has vociferously argued that as per the record, service upon the petitioner was never effected in accordance with law. The petitioner it is submitted never came to know of the said proceedings all the while. It is only when a person came to the petitioner's office on 24.07.2015 and proclaimed that an ejectment order had been passed against him that inquiries were made by the petitioner. As 25/26.07.2015 were holidays the petitioner inquired into the matter on 27.07.2015 and it is then, that the ejectment order dated 22.09.2006 came to light and the petitioner came to know that execution proceedings were pending against him for 01.08.2015. Collusion between the landlord and the process server is alleged. It is submitted that it is proved on record that service upon the petitioner was not effected in accordance with law and the petitioner had no knowledge of the

proceedings, therefore, learned Civil Judge (Junior Division), Ludhiana has grossly erred in dismissing the petitioner's application under Order 9 Rule 13 CPC for setting aside exparte order dated 22.09.2006. However, I do not find any merit in the arguments advanced by learned counsel for the petitioner.

It is pertinent to note at this stage that all the above said arguments are set at naught by the single fact that while filing the application for setting aside exparte order dated 22.09.2006, the petitioner himself appended a certified copy of order dated 22.09.2006, which was applied for on 13.10.2006 and received by the petitioner on 22.11.2006. Learned counsel for the petitioner is unable to deny these facts. Therefore, once it is proved that even a certified copy of order dated 22.09.2006 was received by the petitioner on 22.11.2006, it cannot be countenanced by any stretch of imagination that the petitioner did not have any knowledge of the proceedings till 24.07.2015. There is a merit in the argument raised on behalf of the respondents that the petitioner deliberately chose not to associate with the proceedings and he was watching the same throughout, from the sidelines. It is a settled position of law that no indulgence is to be afforded to any litigant who does not come to the Court with clean hands. The petitioner cannot be permitted to take shelter of the technical pleas raised on his behalf once it is evident that he was aware of and had full knowledge of the proceedings pending before the learned Rent Controller and he deliberately did not join the proceedings.

In the peculiar facts and circumstances of the case, I do not find any ground whatsoever to interfere in impugned order dated 27.04.2018 passed by the learned Civil Judge (Junior Division), Ludhiana dismissing the petitioner's application under Order 9 Rule 13 CPC.

Petition is, accordingly, dismissed. While taking a lenient view,
no costs are being imposed upon the petitioner.

January 10, 2019
rts

(Lisa Gill)
Judge

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