

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CR-6473-2018 (O&M)
Date of Decision: April 12, 2019

Harshan Singh Bamrah

.....Petitioner

VERSUS

Kawaljit Singh

..... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. V.K. Sandhir, Advocate
for the petitioner.

Mr. B.S. Bhalla, Advocate
for the respondent.

JAISHREE THAKUR, J.(Oral)

1. The instant civil revision has been filed seeking to set aside the impugned order dated 25.05.2018 (Annexure P-2) passed by the Court of Civil Judge, Jr. Division, Amritsar whereby the respondent has been granted time to file application for leave to defend.

2. The brief facts of the case are that the petitioner-Harshan Singh Bamrah, who is an NRI and a permanent citizen of United Kingdom is the landlord of the property in India as described in the plaint. The petitioner filed a petition under Section 24 of the Punjab Rent Act, 1985 seeking the eviction of the respondent from the demised premises. Notice in the aforesaid petition was issued under Section 38(5) of the Punjab Rent Act, 1985 on 22.08.2017 for 18.09.2017. The respondent appeared on 18.09.2017 and the case was adjourned to 12.10.2017 for filing written reply and permission for contesting the application/leave to defend. On 12.10.2017 the respondent filed an

application under Order 7 Rule 14 CPC for dismissal of the application, but did not file an affidavit in compliance of provision seeking leave to defend. The Civil Judge (Jr. Division), Amritsar vide order dated 25.05.2018 held that the respondent was supposed to file an application for leave to defend, but he was issued ordinary summons. Therefore, the court gave a chance to the respondent to file leave to defend , holding that the summons were to be issued on prescribed proforma, which was an inadvertent mistake done by the court staff.

3. The petitioner has challenged the aforesaid order dated 25.05.2018 through the present civil revision petition.

4. Mr. V. K. Sandhir, learned counsel appearing on behalf of the petitioner herein contends that being an NRI, the petitioner is entitled to recover immediate possession of the premises as stipulated under Section 24 of the Punjab Rent Act, 1995. It is also argued that once notice was issued under Section 38(5) of the Punjab Rent Act on 22.08.2017 for 18.09.2017, the respondent put in an appearance and the case was subsequently adjourned to 12.10.2017 for filing written reply and for contesting the application and instead of filing any application for leave to contest, an application under Order 7 Rule 14 was filed to which a reply was filed on 20.11.2017 itself. However, the Rent Controller by impugned order suo-moto granted permission to the respondent to file leave to defend on the ground that summons were issued on ordinary process and not in the prescribed proforma, which order has been challenged on the ground that the respondent who had been served , was to file leave to defend within 15 days under the provisions of Section 38(7)(b) of the Punjab Rent Act, 1995 and once having failed to do so, the Rent Controller could not have given permission again. In this regard, learned counsel appearing on behalf of the appellant would rely upon a judgment

rendered in *Krishan Kumar vs. Kamla Devi, 2016(1) RCR(Rent)525* and *Ashwani Gupta vs. Siri Pal Jain, 1998 (2)RCR(Rent)222* and *S.Sadhu Singh vs. Col. Avinish Sharma 2010(1) RCR (Rent)12*.

5. Per contra, Mr. B.S. Bhalla learned counsel appearing on behalf of the respondent urges that the service itself that was effected upon the respondent was defective and, therefore, he had rightly been allowed additional time and chance by the Rent Controller to file leave to defend vide order dated 25.05.2018. It is also argued that the instant petition under Section 24 of the Punjab Rent Act is not maintainable in so far as Clause 24(3) clearly specifies that where an owner is an NRI and returns to India for permanent residence, he usually may apply for recovery of possession of residential or non-residential accommodation. It is argued that a reading of the application filed under Section 24 of the Punjab Rent Act 1995 clearly reflects that the petitioner is a resident of UK and has filed the petition through his Attorney and, therefore there is non-compliance of Section 24(3) as he has not returned to India. It is also argued that in judgment rendered in “**Paramjit Singh vs. Additional District Judge Ludhiana, 1992 PLJ 480**”, it has clearly been mentioned that in case there is a mistake on the part of a Court or the officials of the Court, the party should not be made to suffer, as in the instant case. It is argued that summons itself were faulty and were not served in the prescribed proforma and, therefore, the Rent Controller had correctly noted that no opportunity was given for leave to defend. Counsel also places reliance upon a judgment rendered in “**Harwinder Pal Kaur and another vs. Kuldeep Singh Gurm alias Kuldeep Singh and others, 2011(2) RCR (Civil) 804**” to argue that if there is no proper service then application by tenant seeking leave to defend

cannot be rejected on the ground that application was filed after an expiry of 15 days of such service.

6. I have heard learned counsel for the parties and have also gone through the pleadings of the case and the case law as relied upon.

7. Admittedly, the petitioner herein is an NRI who initiated proceedings under Section 24 of the Punjab Rent Act, 1985 seeking eviction of the respondent from the demised premises through his attorney. It is also not in dispute that the summons that had been served upon the respondent were issued under the signatures of Civil Judge, Jr. Division, Amritsar asking the respondent to be present in Court for 18.09.2017 giving the details of the case No. as 343/2017. Section 38(4), prescribes a procedure which clearly specifies that the Rent Authority shall issue summons in relation to every application under this Act in the Form specified in Schedule III of the Act. It is evident that the service upon the respondents was not in terms of the said Schedule III appended to Section 38. However, it cannot be lost sight of that pursuant to the said notice, the respondent herein put in an appearance on 18.09.2017, the date fixed and he filed his power of attorney and sought permission for contesting the application for eviction by filing an application for leave to defend. The case was adjourned. In normal circumstances once service has been effected, the respondent would necessarily have to file an application for leave to defend within a specified period of 15 days as specified under Section 28(7)(b) of the Punjab Rent Act, 1995. Admittedly, an appearance was caused on behalf of the respondent on 18.09.2017 and the matter was then adjourned to 12.10.2017 giving him time to file his application for leave to defend, which was more than a period of 15 days, rather approximately a period of 25 days and the respondent failed to file his reply within that specified time instead moved an

application under Order 7 Rule 14 to dismiss the eviction petition filed. By an order dated 25.05.2018, the Rent Controller *suo moto* came to the conclusion that proper summons had not been issued and that the respondent had not been given a chance to file his application for leave to defend, which order is erroneous in the opinion of the Court.

Even if the summons were defective, the respondent herein had been given sufficient time to file his application for leave to defend by adjourning the case from 18.09.2017 to 12.10.2017 and despite that there was non-compliance of the said order.

8. The Punjab Rent Act, 1995 Section 38 (7)(b) prescribes that a tenant has to be served summons in accordance with sub section 5 of the Form specified in Schedule III and he shall not contest the prayer for eviction unless he files an affidavit stating the ground on which he seeks to contest the application for eviction and obtains leave from the Rent Controller/Authority and in default of his appearance, the statement made by the landlord in his application for eviction shall be deemed to be admitted by the tenant and the applicant would be entitled to an order for eviction on the grounds mentioned in the application. The Form under Schedule III specifies that an application/leave to defend is to be filed within a period of 15 days failing which the applicant would be entitled to an order for eviction on the grounds mentioned in the application and such application is to be supported by an affidavit, which lacuna is present in the instant case. The Rent Controller erred in not taking into account that he had already allowed time to the tenant to file his application for leave to defend as far back as on 18.09.2017 and as on the date of the impugned order no such application/leave to defend was filed rather an application had been filed under Order 7 rule 14 CPC seeking rejection of

the application.

9. An argument has been raised by the learned counsel for the respondent that as per Section 24(3) only such NRI who has returned to India for permanent residence, is entitled to seek eviction. Section 24(3) of the Punjab Rent Act 1995 and Section 13(b) of the East Punjab Urban Rent Restriction Act, 1949 are pari-materia, both enacted for the sole purpose of allowing NRI to be able to seek eviction of their tenants expeditiously. The question that whether a non-resident Indian has to return to India and only then file the eviction petition has already been dealt with in judgment rendered in ***Sohan Lal Vs. Swaran Kaur, 2003(2) RCR (Rent) 407***, wherein the learned Judge has held that the expression return to India does not necessarily mean permanent return. In the judgment rendered in ***Krishan Kumar Vs. Kamla Devi (supra)***, both Sections i.e. Section 13(b) of the 1949 Act and Section 24(3) of the 1995 Act were considered and the learned single Judge upheld the contention that there was no need for a person to return to India before filing of an eviction petition. The eviction petition under Section 24(3) of the 1995 Act would be maintainable as long as there was an averment made that the landlord wanted to come back to India to reside permanently, which has been done in the present case.

10. It is argued that the Rent Controller allowed the respondent to file his application for leave to defend, on account of sending summons in a wrong Performa, which is an argument without merit since the Rent Controller had already given permission to the respondent to file his leave to defend by order dated 18.9.2017 . Despite the said permission the respondent failed to file any such application as on date. The purpose of issuance of summons in

a particular form is to make the recipient/tenant aware of the proceedings against him and give him an opportunity to defend his case. However for reasons best known to him, the respondent chose to file an application under Order 7 Rule 14 CPC instead on an application seeking leave to defend .

11. The judgment as referred to in ***Harwinder Pal Kaur and another vs. Kuldeep Singh Gurm alias Kuldeep Singh and others (supra)*** by the counsel for the respondent to contend that in case there is a fault of the court in issuing of the summons by the Court under the provisions of the Punjab Rent Act and Schedule III, the respondent herein would be entitled to file an application for leave to defend, which has correctly been allowed by the Rent Controller , would be distinguishable and not applicable to the facts of the instant case. In ***Harwinder Pal Kaur's case***, summons had been returned back with a report of unserved with the remark 'refused' and then there was a direction for service through 'Munadi'. On appearance tenants filed an application within specified time of 15 days seeking leave to defend. It was contended that before Munadi there was a refusal of service report and the subsequent service through Munadi would not be counted as the date of service. The learned Single Judge came to held that the procedure as prescribed under the Rent Act had not been followed and therefore, the application filed by the tenant for leave to defend was within limitation taking it from the date when Munadi was effected. However , in the instant case, even though summons might have been wrongly effected but on appearance, the petitioner was given an opportunity to file his reply/ leave to defend beyond a period of 16 days by the Rent Controller and despite the said time allowed, the

respondent chose not to do so and the Rent Controller *suo-moto* allowed further time to the respondent to file his leave to defend , without there being any such application on the record. A reading of the Section 38 of the Punjab Act does not show that there is any such provision for the Rent Controller to *suo-moto* allow/extend time for leave to defend.

12. Accordingly, the instant Civil Revision petition stands allowed and the impugned order being without jurisdiction is hereby set aside

April 12, 2019

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.