

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

CR No. 1596 of 2019 (O&M)
Date of decision: 17.10.2019

Vijay Yadav

...Petitioner

Versus

Dr. Sudhir Gupta

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sudhir Aggarwal, Advocate,
for the petitioner.

Mr. Atul Yadav, Advocate,
for the respondent.

JAISHREE THAKUR, J.

CM No. 21285 CII of 2019

CM is allowed. The documents are taken on record and
exemption as prayed for is granted.

Main case

This is a revision that has been filed seeking to challenge the
order dated 2.2.2019 passed by the Appellate Authority, Gurugram, whereby
eviction order passed by the Rent Controller dated 7.8.2018 has been
affirmed. The eviction of the petitioner herein was ordered on the ground of
non-payment of provisional rent as assessed.

A few facts need to be noticed for proper adjudication of the
case. The respondent/landlord filed a petition for ejectment under Section

13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 against the petitioner herein on the grounds of non-payment of rent, mis-use and subletting of the tenanted premises. Notice was initially issued to the petitioner herein which was received by his father. However, the Rent Controller in its wisdom directed for fresh notice to be issued for 7.7.2018 by all modes except publication. On the adjourned date, the Rent Controller noted that the notice had been received back unserved and directed for issuance of fresh notice to be issued for 23.7.2018, again by all modes except publication. Dasti notice was also issued with a further direction that notice be affixed on the wall of the petitioner's house. On the adjourned date, the Rent Controller noted that summons issued to the petitioner was received back with the remarks that he was not found present at the given address. However, summons were affixed on the outer door/wall of the house of the petitioner and taking the service to be complete, the petitioner/tenant was proceeded ex-parte. On that date itself, arguments were heard and the provisional rent was assessed payable from May 2016 to April, 2018 at ₹1,27,374/-, which included interest and cost as well. While directing the payment of provisional rent, the Rent Controller, adjourned the matter for 7.8.2018, on which date the order of eviction was passed, in view of the judgment in **Rakesh Wadhawan Vs. Jagdamba Industrial Corporation, JT 2002 Supplementary SC 11**. As already noticed, the appeal filed by the petitioner against the eviction order passed by the Rent Controller too was dismissed.

Learned counsel appearing on behalf of the petitioner assails the order of ejectment on the ground that the service of summons had not

been effected properly in terms of Order 5 Rule 17 of the Code of Civil Procedure, 1908. He argues that even though service had been effected at the first instance, however, since fresh summons were ordered to be issued, the same were never served upon him, as would be evident from the report of the Process Server. It is further argued that initially on the date when he was proceeded ex-parte on 23.7.2018, the provisional rent had been assessed at ₹1,27,374/-, however, on the adjourned date i.e. 7.8.2018, on a fresh application being filed, the provisional rent was enhanced to ₹13,73,510/- and, therefore, even if the petitioner had put in appearance on that date, he would not have been in a position to pay the enhanced rent. It is argued that on 7.8.2018 itself, while allowing the correction in assessment of provisional rent, eviction order was also passed.

Per contra, learned counsel for the respondent argues with vehemence that the very conduct of the petitioner does not warrant any interference by this Court. It is contended that the petitioner had deliberately been avoiding service of the summons as would be evident from the report of the Process Service, who never found the petitioner at home. It was also argued that once provisional rent had been assessed, as per the law laid down in **Rakesh Wadhawan's case (Supra)**, the tenant had no option but to pay the same or face eviction proceedings as has been done by the impugned orders.

I have heard learned counsel for the parties and find that the impugned orders are not sustainable in light of the fact that the service had not been effected in terms of Order 5 Rule 17 of the Code of Civil Procedure. A reading of the said Rule clearly enjoins that 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 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.

A reading of the report of the Process Service clearly reflects that there is no mention of either the name or address of the person in whose presence copy of the summons was affixed. In such circumstances, this Court has no hesitation in holding that the summons were not properly served upon the petitioner herein. Therefore, the order holding the service effected is patently illegal and deserves to be set aside.

Another reason for setting aside the order of eviction is that admittedly the Rent Controller corrected the order assessing the provisional rent and enhanced the same by order dated 7.8.2018, which was assessed in the absence of the petitioner/tenant and also enhanced in his absence, while passing the order of eviction, which could not be termed in consonance with the rules of natural justice.

At this stage, learned counsel for the petitioner submits that the petitioner is ready to comply with the order of the Rent Controller and would deposit the provisional rent as assessed within a period of one month from today and would continue to deposit the rent by 10th of each month of the English calendar, in terms of the order of the Rent Controller.

Consequently, the revision petition is allowed, the impugned orders are set aside, subject to payment of ₹10,000/- to be paid to the respondent/landlord.

The parties are directed to appear before the Rent Controller on 4.11.2019.

17.10.2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No