

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

CR-3098-2021

Date of Decision:03.12.2021

RAJINDER SINGH BRAR

...Petitioner

Versus

SUKHWINDER KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Shailendra Sharma, Advocate
 for the petitioner.
 (Presence marked through Video Conference)

ARUN MONGA, J. (ORAL)

Petition herein, under Article 227 of Constitution of India is for setting aside the impugned order dated 09.11.2021 passed by learned Civil Judge (Junior Division), Mohali, whereby, for disposal of an application under Order 9 Rule 13 CPC moved by the respondent for setting aside the Ex-parte order dated 25.01.2019 and order of eviction dated 29.01.2020 passed by the learned Rent Controller, Mohali in Rent Petition No.78 of 2018 titled as 'Rajinder Singh Brar vs Sukhwinder Kaur' issues have been framed and the case has been fixed for recording of evidence.

2. Learned counsel for the petitioner, while relying upon the report of the process server (Annexure P-1), submits that when the respondent refused to accept the summons, the same along with copy of the petition has been pasted at her place. He further submits that on the basis of said report, the respondent was proceeded against ex-parte and after recording ex-parte evidence, order of eviction dated 29.01.2020 was passed. Thereafter, the execution petition was filed by the petitioner. Only thereafter, the respondent filed application whereby, she submitted that on the given date when the

process server visited, she was not at home due to the bereavement in her family.

3. I have heard learned counsel for the petitioner and gone through the case file.

4. No interference is called for in the order assailed herein, which is premised, *inter alia*, on the following reasoning:

“7. From above pleadings of the parties and its reply filed by the respondent/owner, it becomes clear that there are various points of contention with regard to whether service of summons effectively took place against the applicant/tenant and whether the applicant/tenant was present at Mohali at the time of service of summons against her. The said points of determination cannot be determined only on the bare averments and pleading of the parties. As such, it is the considered opinion of this court that both the parties should be given opportunities to lead evidence to prove their case in the interest of justice and fairness. No prejudice will be caused to the respondent/owner as she will get ample of opportunity to rebut the case of the applicant by conducting cross examination of the witnesses of the applicant and lead evidence in her support at the time of respondent evidence. Rather by bringing on record evidence as per law, it will only help the court at reaching just and fair conclusion. Hence, in the interest of justice, equity and fairness, the present application of applicant/tenant Sukhwinder Kaur for leading evidence in respect of her application under Order 9 Rule 13 of CPC stands allowed.”

5. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extra ordinary revisional jurisdiction vested with this Court.

6. There is no room for interference in the aforesaid valid reasons recorded by the trial Court, with which I agree. However, in order to establish her bona fide, the tenant/respondent shall pay or deposit upto date arrears of rent or file proof thereof to the satisfaction of the Rent Controller, within one month as a condition precedent to pursue her application for

setting aside the ex-parte proceedings/eviction order passed by the Rent Controller.

7. With these directions, the petition is dismissed.

(ARUN MONGA)
JUDGE

03.12.2021
gurpreet

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