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

**CR-1556-2022 (O&M)
Date of decision : 10.05.2022**

Manjeet Singh

.....Petitioner

versus

Manveer Pal Singh Gill

.....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Divanshu Jain, Advocate for the petitioner.

Mr. Ashok Singla, Advocate and
Mr. Aakash Singla, Advocate for the caveator-respondent.

ALKA SARIN, J.

The present petition has been filed under Article 227 of the Constitution of India impugning the orders dated 03.03.2020 (Annexure P-7) and 24.01.2022 (Annexure P-9) passed by the Rent Controller and the Appellate Authority, respectively whereby eviction of the tenant-petitioner from the premises in dispute has been ordered.

Brief facts relevant to the present *lis* are that an eviction petition was filed by the landlord-respondent under Section 24 (3) of the Punjab Rent Act, 1995 (hereinafter referred to as the 'Rent Act') for eviction of the tenant-petitioner from the shop being part of property No.1, Passey Road, Opposite Gurudwara Dukhniwaran Sahib, Patiala on the ground of personal necessity. It was averred in the petition that the landlord-respondent is a permanent resident of Canada and he had been granted permanent residency

in Canada on 20.05.2013. Summons were issued to the tenant-petitioner mentioning a petition was under Section 24(3) of the Rent Act. The actual summons (Annexure P-3) reads as under :

“Summons to Defendants

Rp/26/2017

Manveer Pal Singh Gill

Versus

Manjeet Singh

Petition u/s 24(3) of the Punjab Rent Act.

To,

Manjeet Singh ®, r/o Uttam Singh

(son/daughter/wife/other) of Uttam Singh

Address : H. No.895/3, Khalsa Mohalla Patiala

*2nd Address : Shop c/o Part of property bearing No.1
Passey Road Opp Guruduwara Dukhniwaran Sahib,
Patiala*

*Whereas MANVEERPAL SINGH GILL has instituted a
suit against you, you are hereby summoned to appear in
this Court in person or by a pleader duly instructed on
19-05-2017 at 09.30 AM in the forenoon, to answer the
claim; and file written statement, if required with all the
documents upon which you intend to rely in support of
your defence.*

*Take notice that, in default of your appearance on the
day before mentioned, you will be proceeded against ex
parte.*

Given under my hand and seal of the Court, this 21-03-2017”

On 19.05.2017 the tenant-petitioner put in appearance and requested for an adjournment for filing the written statement. The said request was acceded to by the Rent Controller and the case was adjourned to 12.07.2017 for filing of the written statement. On 12.07.2017 the case was further adjourned to 02.08.2017 for filing of the written statement. On 02.08.2017 the written statement was filed and the case was fixed for 07.09.2017 for consideration on assessment of rent. On 07.09.2017 the case was again adjourned for consideration of provisional rent for 11.10.2017. On 11.10.2017 an application was filed by the landlord-respondent for passing eviction order against the tenant-petitioner on the ground that the petition had been filed under Section 24(3) of the Rent Act for eviction of the respondent and 15 days' period had elapsed since the date of service of summons and no application for leave to contest had been filed by the tenant-petitioner. Vide impugned order dated 03.03.2020 (Annexure P-7) eviction of the tenant-petitioner was ordered. The order dated 03.03.2020 was challenged before the Appellate Authority by filing an appeal which also came to be dismissed on 24.01.2022. Hence, the present revision petition.

Learned counsel for the tenant-petitioner would contend that as per Section 38(4) of the Rent Act, it has mandatorily been laid down that the summons shall be issued as specified in Schedule III of the Rent Act. It is further the contention of learned counsel for the tenant-petitioner that the summons were not issued in the correct form and the summons that were issued only stated that tenant-petitioner was to put in appearance and file the

written statement on 19.05.2017, failing which he would be proceeded against *ex parte*. It is further the contention of learned counsel for the tenant-petitioner that as per the *zimini* orders from 19.05.2017 to 07.09.2017, it is very clear that the Rent Controller itself was treating the petition as under Section 20 of the Rent Act and not under Section 24 of the Rent Act.

Learned counsel for the tenant-petitioner has relied upon the judgments of this Court in the cases of **Gursharan Singh Vs. Satpal [1991(2) RCR (Rent) 546]**, **R.K. Sarin Vs. Baljit Kularia [2012(68) RCR (Civil) 228]**, **Pran Nath Vs. Avtar Singh & Ors.” [2008(10) RCR (Civil) 955]** and **Vivek Jain Vs. Surjit Kaur [CR No.493 of 2017 decided on 12.10.2018]** to contend that once the summons were not issued in the prescribed format, the tenant-petitioner could not have been proceeded against and eviction ordered.

Notice of motion.

Mr. Ashok Singla, Advocate, who is representing the caveator-landlord-respondent, accepts notice and contends that two petitions were filed by the landlord-respondent : one under Section 24 of the Rent Act which is the present petition and another petition under Section 20 of the Rent Act for eviction of the tenant-petitioner on the ground of arrears of rent. In the petition filed against the tenant-petitioner on the ground of arrears of rent, eviction order already stands passed on 30.11.2021 since the tenant-petitioner failed to pay the rent as assessed. Learned counsel for the landlord-respondent has further contended that the conduct of the tenant-petitioner needs to be seen in the present case inasmuch as even if it is taken that the summons were not served in the prescribed format, however, the tenant-petitioner was firstly, as mentioned in the order of the Rent

Controller, given a copy of the petition on 19.05.2017 and subsequently a written statement was also filed by him on 02.08.2017 and, hence, there was no excuse for not filing the application for leave to contest. He has further contended that merely because the summons were not issued in the prescribed format, no prejudice has been caused to the tenant-petitioner. In support of his arguments, learned counsel for the landlord-respondent has relied upon the judgment of this Court in the case of **Braham Kumar Vs. Sukhdev Singh [2012(3) RCR (Civil) 399]**.

It is further the contention of learned counsel for the landlord-respondent that the object of the provisions of the Rent Act is to grant the tenant an opportunity to file his/her response as also to prevent any sort of delay as far as the landlord is concerned.

Heard.

In the present case the undisputed facts are that an eviction petition was filed by the landlord-respondent under Section 24 of the Rent Act. The summons, in the present case, as reproduced above, were not in the format as prescribed in Schedule III of the Rent Act. Section 38(4) of the Rent Act clearly states that notices are to be issued in the format as prescribed in Schedule III of the Rent Act. Section 38(4) is reproduced as under :

“Schedule III

[See sub-section (4) of section 38]

Form of Summons

(Name, description and place of residence of the tenant)

Whereas Shri _____ has filed an application (a copy annexed) _____ on the grounds specified in section _____.

You are hereby summoned to appear before the Rent Authority within () days of the service hereof and file a reply within _____ days in default whereof the matter shall be heard and disposed of ex parte.

You are to obtain the leave of the Rent Authority to contest the application for eviction on the ground _____ in default whereof the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said premises.

Leave to appear and contest the application may be obtained on an application to the Rent Authority supported by an affidavit as is referred to in clause (b) of sub-section (7) of section 38.

Given under my hand and seal of the Rent Authority or Additional Rent Authority;

This _____ day of _____ 19 .

(Seal)

Rent Authority/Additional Rent Authority.”

Admittedly, the summons were not sent in the prescribed format. No doubt that the tenant-petitioner had caused appearance and filed his written statement, however, the fact cannot be overlooked that the mandatory provisions of law as laid down in Section 38(4) of the Rent Act

were not complied with.

This Court in the case of **Vivek Jain's** case (*supra*) had in a similar case on facts permitted the tenant-petitioner to file his application for leave to defend and the same to be decided in accordance with law.

In the case of **Gursharan Singh** (*supra*), which is under Sections 13-A and 18-A of the East Punjab Urban Rent Restriction Act, 1949, it has held as under :

“5. A reading of sub-sections (2) and (3) of Section 18-A reveals that it lays down a wholly independent procedure of service in petitions under Section 13-A of the Act. This procedure to my mind is mandatory. Notice, as mentioned in Schedule II, required to be served on the tenant under sub-section (2), specifically provides that the tenant should appear within 15 days of the service of the notice to obtain leave of the Controller to contest the application for eviction under Section 13-A of the Act and in default whereof the applicant shall be entitled at any time after the expiry of the said period of 15 days to obtain an order of eviction from the residential premises or the scheduled building and the leave to appear and contest the application be obtained on an application to the Controller supported by an affidavit, as referred to in sub-section (5) of Section 18-A of the said Act. Thus the Rent Controller is enjoined to declare that there has been a valid service of summons after perusing the reports of the process server both by

ordinary process as also by registered covers, especially when service by registered covers had already been ordered. The Rent Controller is also enjoined upon to see that service has been effected in the prescribed form, as contained in Schedule II to the Act, in view of the fact that 15 days' time to file an affidavit and to seek leave to contest is to be counted from the date of service of the notice, and if the tenant fails to appear and seek leave to contest, an order of ejectment shall follow.

6. In the present case, as already noticed, the petitioner was never served with a notice either by ordinary process or through registered post acknowledgement due along with a copy of the petition under Section 13-A of the Act in the form prescribed in Schedule II to the Act, though such an order was passed on 24.12.1989 while ordering the registration of the petitioner. Service effected in the ordinary course in the form prescribed under Order 5 Rule 3, CPC on the tenant even with a copy of the petition filed by the learned under Section 13-A of the Act, will not amount to a service of the notice on the tenant in the prescribed form. A duty was cast on the Rent Controller to examine that the service had been effected in the form specified in Schedule II to the Act, both in the ordinary way as also by registered post especially when the service was ordered to be effected by both the modes.

7. The contention of the learned counsel of the respondent that the purpose of service of notice on the tenant was to inform him of the pendency of the proceedings in a particular Court and once the notice was served whether in the prescribed form or otherwise would be immaterial and service should be deemed to have been duly effected. The further contention of the learned counsel was that once the tenant was served in the ordinary way, it was not necessary to issue notice through registered cover though ordered by the Rent Controller at the initial stage. According to the learned counsel, it was not necessary at all to serve the tenant with a notice of the petition under Section 13-A with a summons in the form prescribed, as detailed in Schedule II to the Act. The tenant had been served with a copy of the petition on 4.1.1989 as was apparent from the report of the process server and he having failed to appear and to seek leave to contest the application within 15 days, on order of ejectment would follow as a matter of course. I do not agree with the submission of the learned counsel for the respondent and find force in the contention of the learned counsel for the petitioner.”

Further, in the case of **R.K. Sarin** (*supra*) it has been held that it was mandatory for a copy of the petition to be appended with the summons. Para Nos.14, 15 and 24 of the judgment read as under :

“14. The next date of claimed service is alleged to be

16.11.2010 in pursuance of the order of substituted service dated 06.10.2010 reproduced above. A perusal of the summons which were sent for effecting service for 20.11.2010 go on to show that the copy of the petition was not appended with a copy of the summons which was mandatory and were not in the prescribed proforma as prescribed under Schedule II as per Sub-section (2) of Section 18A of the Act. Schedule II reads as under:

"Schedule II

[See sub-section (2) of Section 18A]

Form of summons in a case where recovery of possession of residential building or scheduled building is prayed for under Section 13A of the East Punjab Urban Rent Restriction Act, 1949.

(Name, description and place of residence of the tenant)

Whereas Shri_ has filed an application (a copy of which is annexed) for your eviction from _____ (here insert the particulars of the residential building or scheduled building under Section 13A of the East Punjab Urban Rent Restriction Act, 1949;

Now, therefore, you are hereby summoned to appear before the Controller within fifteen days of the service thereof and to obtain the leave of the Controller to contest the application for eviction

under Section 13A of the said Act, in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said residential building or scheduled building.

Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of the Section 18A of the said Act.

Given under my hand and seal this _____ day of _____ 19

Controller"

15. The tenant, on the receipt of the summons, has specifically mentioned that he has received only a copy of the notice and once that was so, then there was no effective service as provided under the provisions of Section 18A Sub-clause (2) & (3)(a) and, therefore, the reasoning given by the Rent Controller that service had been validly effected when the tenant appeared on 20.11.2010 is against the statutory requirements of the provisions. In fact, a perusal of the order dated 20.11.2010 mentions that the respondent be summoned for 12.03.2011 on filing of copies etc. and subsequently, on appearance of the tenant, the case was fixed for filing of written statement whereas the tenant who had appeared in person was not informed of his right that

the application was filed under Section 13A of the Act by a specified landlord and therefore, he had to file the application for leave to contest within 15 days. It also transpires from the record that as noticed above, 2 more applications dated 05.01.2011 and 16.02.2011 had been filed praying that ejectment order be passed since the tenant had not filed the application within the statutory period though he had been served. Notice of one application was issued to the tenant for filing reply on 16.02.2011 and the reply was filed on 05.03.2011. In the reply, the tenant had very categorically mentioned that he was never served as per the provisions of Section 18A of the Act and the summons received by the tenant was not in the proforma as given in Schedule II and accordingly, it was mentioned that the judgment relied upon in Om Prakash (supra) and Suresh Kumar (supra) were not applicable and that he be allowed to contest the petition on merits. The Rent Controller, however, failed to take this reply into consideration and also failed to take into consideration the specific procedure which was laid down in Section 18A wherein he had to declare that a valid service of summons had been effected upon the tenant and the endorsement made by the Process Server was correct and he was satisfied about the correctness of the summons. This exercise has not been carried out which would be clear from the

impugned order.

xxx

24. The Rent Controller, Chandigarh shall decide the application for leave to contest on merits expeditiously within a period of 4 months from the date of receipt of a certified copy of this order since this Court has come to the conclusion that service was never validly effected as per the provisions of Section 18A and Sub-clauses (2) & (3)(a), and therefore, the order of the Rent Controller dismissing the application on the ground of limitation was not justified.”

In the present case, admittedly, as is also apparent from the perusal of the impugned order, a copy of the petition was given to the tenant-petitioner only on 19.05.2017 when he caused appearance. The argument raised by learned counsel for the landlord-respondent that no prejudice has been caused to the tenant-petitioner cannot be accepted inasmuch as the provisions of Section 38(4) of the Rent Act mandate that the summons in relation to every application under this Act would be in the form specified in Schedule III of the Rent Act. Section 38(4) of the Rent Act reads as under :

“(4) The Rent Authority shall issue summons in relation to every application under this Act in the form specified in Schedule III to this Court.”

The summons having not been sent in consonance with Schedule III of the Rent Act, it cannot be said that no prejudice has been caused to the tenant-petitioner. No doubt as stated by learned counsel for the landlord-respondent that the conduct of the tenant-petitioner has to be seen

in the present case and that in the second eviction petition the tenant-petitioner had failed to deposit the rent and his eviction has been ordered, suffice it to say that the Law will take its own course in the second petition and the consequences for non-payment of rent would follow. However, in the present case there has been a clear violation of provisions of Section 38(4) of the Rent Act. The summons which were sent to the tenant-petitioner did not state anywhere that the reply was to be filed within 15 days and after expiry of which eviction from the premises in dispute would follow. Rather, the summons which were served upon the tenant-petitioner only stated that he was required to come present and file his reply failing which he would be proceeded against *ex parte*.

The judgement in the case of **Braham Kumar** (*supra*) cited by counsel for the landlord-respondent is distinguishable as in that case the tenant had filed an application seeking leave to defend which was rejected and consequently his ejectment was ordered.

In view of the above, the present petition is allowed and the impugned orders dated 03.03.2020 (Annexure P-7) and 24.01.2022 (Annexure P-9) are set aside and consequently the tenant-petitioner is granted two weeks' time from the date of passing of this order to file his application for leave to contest, if he so desires. It is made clear that in case the application for leave to contest is not filed by the tenant-petitioner within a period of two weeks from the date of passing of this order, the necessary consequences would follow and the landlord-respondent would be entitled to execute the eviction order passed in his favour.

Needless to say that any observations made herein or by the authorities below in the impugned orders would not prejudice the Rent

Controller while deciding the application for leave to contest.

Since the eviction petition was filed in the year 2017, the Rent Controller is requested to decide the application for leave to contest, if any is filed within the time mentioned above, within a period of three months from the date of filing of the said application for leave to contest.

Disposed off accordingly. Pending applications, if any, also stand disposed off.

10.05.2022

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

NOTE : Whether speaking/non-speaking : Speaking
 Whether reportable : Yes/No