

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

141

CR-2060-2022(O&M)
Date of Order: 23.05.2022

M/S JAGDAMBA JEWELLERS

..Petitioner

Versus

SURINDER SINGH

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

ANIL KSHETARPAL, J(Oral)

The tenant's application for setting aside ex parte eviction order has been dismissed.

Admittedly, the petitioner did receive the notice for service of summons on 11.08.2021. On his non-appearance, ex parte proceedings were ordered on 20.09.2021 and thereafter, an ex parte decree was passed. The petitioner claims that it remained under a confusion as a similarly titled proceedings under Section 138 of the Negotiable Instruments Act, 1881, were also pending. It is further submitted that the summons were not accompanied by a copy of the petition.

The Court has noticed that the petitioner has not paid arrears of rent to the tune of Rs.40,00,000/-, approximately. The petitioner took the premises on rent at the rate of Rs.1,00,000/- per month which was liable to be increase as per determined percentage every year. The petitioner did receive the summons. The summons were issued to the petitioner by Civil Judge, Junior Division, Chandigarh. The summons in a criminal complaint are issued by the Judicial Magistrate.

There is a ex parte decree for eviction. The Rent Controller, on appreciation of material, has recorded as many as five reasons to dismiss the application. The relevant discussion is as under:-

“(i) On the summons sent for the service of the case in question, the name of the Court before which the same was pending has been duly mentioned, along-with the nature of the case filed against her. The case in question instituted against the applicant/respondent had a different title and different number, which could not have been confused as any other case instituted against the applicant/respondent for the dishonour of any cheque.

(ii) The summons of the case in question were served on the applicant/respondent for a specific date i.e. 20.09.2021. Nothing has been brought on record on behalf of applicant/respondent to show that the other case pending between the parties was also fixed for the same date, so as to justify the confusion of the applicant/respondent regarding both the said cases being the same.

(iii) It is stated that the applicant has not been feeling well for the last couple of years, because of which she failed to engage a counsel and show the summons received by her to the said counsel. However, in support of the said claim of the applicant, no medical record etc. has been produced, which could establish that the applicant was suffering from such a serious ailment, which prevented her from even approaching her counsel on receiving a fresh set of summons in her name from the Court. As such, in the opinion of this Court, the above furnished reasoning of the applicant is nothing but a vague excuse.

(iv) It is stated that the applicant did not receive a copy of the Rent Petition in question along-with summons sent to her. However, no such objections has been taken by the applicant while receiving the said summons, which is evident from the report of the process server upon the copy of the said summons attached on the judicial file. Had the applicant really not received a copy of the petition along-with the summons served to her, she would objected regarding the same during that time only and the said objection would have been recorded by the process server upon the copy of the said summons sent back to the Court. It appears that the applicant has taken this objection as a result of an afterthought, only to create an additional ground in her favour for setting aside the exparte eviction order passed against her.

(v) In the case in question, the summons were received by the applicant on 11.08.2021. She was

proceeded against ex parte on 20.09.2021 and thereafter, after a period of roughly two months, final eviction order was passed against her on 16.11.2021. In the case in question, the applicant after receiving the summons, had a total period of more than 3 months to put in her appearance before the Court, before the final eviction order was passed against her. However, she herself showed laxity in doing so. Now at this stage, in the opinion of this Court, the applicant cannot claim the benefit for her own negligence and the respondent/landlord cannot be made to suffer for the same.”

The learned counsel representing the petitioner contends that the service of notice was not in accordance with Order 5 Rule 2 CPC as the copy of the petition was not attached. He further submits that once the petitioner filed an application for setting aside ex parte decree asserting that the summons were not accompanied by the copy of the petition, the onus lays on the landlord to prove that fact. He further submits that the rent note being for a period of three years and not being registered, is not admissible in evidence. He relies upon the judgment passed by the Supreme Court in *M/s Nahar Enterprises Vs. M/s Hyderabad Allwyn Ltd and another, 2007(9) SCC 466*, and a Division Bench judgment of this Court passed in *Babu Ram Bhatnagar Vs. Satish Kumar Rawal, 1991(2) PLR 234*.

The summons sent for service of notice have been placed on file. The petitioner, admittedly, received the summons. Its receipt is not objected to by the petitioner. At that time, it did not complain that the summons were not accompanied by the copy of eviction petition. The petitioner is a jewellery shop in the city of Chandigarh. On account of dishonour of cheque, proceedings under Section 138 of the Negotiable Instruments Act, 1881, are already pending. The petitioner has failed to pay the rent for quite some time. The proprietor of petitioner-shop is not a rustic

villager. She, being an experienced litigant, can make out the difference between the summons sent by a Civil Court and a Criminal Court. Further, she could have asked for a copy of the petition which was not accompanied with the summons. It was the duty of the petitioner to point out the same to the process server. She could have made a note on the copy of summons itself which was given/mark to serving officer. Even otherwise, it was her duty to appear before the Court on the date which was mentioned on the summons, where she could have enquired about the matter. However, on receipt of summons on 20.09.2021, the petitioner neither appeared before the Court nor complained about the non-receipt of the copy of the petition. For the first time, this stand was taken while filing an application for setting aside the ex parte decree. The Rent Controller has found that the aforesaid plea in the facts of the case is not acceptable. This Court does not find that the view taken by the Rent Controller is erroneous. No doubt, Order 5 Rule 2 CPC mandates that every summon shall be accompanied by a copy of plaint, however, if it is not so accompanied, then it is the duty of the party who receives the summon to make an objection to the Court at the time of putting appearance or declining to receive the summons while pointing out the defect. Hence, the judgment relied upon by the learned counsel representing the petitioner does not hold her cause.

As regard the rent note being unregistered, it may be noticed that the same can be considered for a collateral purpose. Even if the increase clause is excluded from consideration, the petitioner has failed to tender even the original rent agreed upon.

Hence, no ground to interfere is made out.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

May 23th, 2022

(ANIL KSHETARPAL)
JUDGE

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