

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

CR-1259-2021(O&M)

Date of decision:-19.12.2022

Paramvir Kaur

...Petitioner

Versus

Balbir Kaur and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Satnam Chauhan, Advocate
for the petitioner.

Mr.R.S. Bajaj, Advocate
for the respondents.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioners/landlords Balbir Kaur, Manjinder Kumar and Mandeep Kumar, non-resident Indians (for short NRI) putting up in Paranaque City, Phillipines as well as Sharanjit Kaur, a resident of Jalandhar had brought a petition under Section 24 of Punjab Rent Act, 1995 against respondent Paramvir Kaur seeking ejectment of the latter from first and second floor of Kothi bearing No. 102, Guru Teg Bahadur Nagar, Jalandhar. The petition had been filed by petitioner Balbir Kaur as general attorney of remaining petitioners through authorized person Sh.Satnam Singh.

2. Inter alia in the petition, the petitioners contended that respondent Paramvir Kaur was inducted as a tenant in the first floor of kothi in question w.e.f. 10.7.2011 and the rent deed dated 20.7.2011 was executed between petitioner No.1 and the respondent; the rate of rent was

fixed as Rs.5,000/- per month payable on or before 15th day of every month; thereafter petitioner No.1 through attorney Tajinder Kaur executed fresh document dated 10.6.2012 in respect of first floor at monthly rent of Rs.5,250/- payable or or before 15th day of every month; petitioner No.1 Balbir Kaur as and when came to Jalandhar used to stay on ground floor of kothi in question; as per the case of the petitioners, the respondent has not paid rent to petitioner No.1 for the last six years and half month i.e. w.e.f. January 2013 @ Rs.5,250/- per month till date in respect of the first floor of the kothi in question; further in the month of April 2017, the respondent took forcible possession of the ground floor of the kothi after breaking open the lock, which had been put by petitioner No.1; the matter was reported to the police and FIR No.127 dated 21.7.2019, under Sections 448, 341, 506 IPC was registered with Police Station Division No.6, Jalandhar against the respondent; the respondent had been claiming that the ground floor of the kothi was under her tenancy on payment of rent @ Rs.7,000/- w.e.f. April 2017 in excess of Rs.5,250/-, which is for the first floor, in that way, the respondent admitted herself to be tenant under petitioner No.1 in respect of ground floor and first floor to the tune of Rs.12,250/- per month w.e.f. 1.4.2017 till 31.8.2019.

The petitioners sought ejectment of the respondent contending that petitioner No.1 is a NRI and is working for livelihood in Philippines; she wants to eject the respondent from the property on following grounds:

The petitioner No.1 is a widow lady and co-owner of the property as well as landlady of the same in view of the sale deed in her favour and

property in dispute has been rented out to respondent about 8 years prior to filing of the petition; the petitioner No.1 is not having any other residential house within municipal limits of Jalandhar and she wants to use the demised premises for her own use and occupation, after returning to India and settling down in the property in question permanently. The petitioner No.1 does not own any residential property nor she has vacated any such property within the limits of Municipal Corporation, Jalandhar.

3. On refusal of respondents to do, she brought petition in question.

4. Notice of the petition was given to respondent, who put in appearance and moved an application seeking condonation of delay in filing of application seeking relief of leave to contest. Inter alia, she had contended that she was suffering from eyesore for the last many days and was confined to bed; she was unable to move and failed to remember the date of service of notice, resultantly delay took place due to unavoidable circumstances beyond the control of the respondent; the petitioner had filed a similar eviction petition u/s 13 of East Punjab Rent Restriction Act, which is pending before the Civil Judge, Senior Division, NRI Cases, Jalandhar. Counsel for the respondent pressed into service judgment by the Apex Court i.e. **Superintending Engineer Vs. Excise and Taxation Officer, Sudarnagar etc.**, Civil Appeal No. 8276-8277 of 2019 SLP No.C-15280-15281 of 2019 decided on 25.10.2019 to show that such delay can be condoned.

5. The application was resisted by the petitioner contending that there was no legal provision under which the delay in seeking the leave to

contest can be condoned. Counsel for the petitioner also placed reliance upon several judgments in support of that contention and prayed for dismissal of the application.

6. Learned Rent Controller, NRI Cases, Jalandhar vide a detailed order dated 13.12.2019 had dismissed the application. For ready reference, the operative part of the order is reproduced as under:

3. *In view of the rival contentions raised before this court and after going through the established legal proposition this court is of the considered opinion in the instant case respondent Paramvir Kaur was served with the notice of ejectment petition in the prescribed format as per the requirement of Section 38 (4) and in accordance with proforma attached in schedule (3) to the Punjab Rent Act, 1995. As per the report on the notice the respondent received the same on 12.10.2019 in person. Thereafter the period of 15 days elapsed and respondent did not appear before this court within fifteen days as per the requirement of Section 38 (7) (b) and did not apply for leave to contest within the period of limitation provided under the aforesaid Section. She appeared on 01.11.2019 and filed the instant application which is clearly time barred. The grounds which have been mentioned by her while seeking the condonation of delay do not appeal to the conscience of this court and are rendered frivolous. Most importantly no such delay can be condoned within the establish principles of law. As per the law laid down by Apex Court in Om Parkash vs. Ashwani Kumar Bassi” AIR 2010 SC 3791 the Rent Authority being the creature of statute*

and act in terms of powers vested in him by statute cannot therefore entertain an application u/s 5 of Limitation Act for condonation of delay since the statute does not vest him with such power. All citations quoted by the ld. Counsel for the petitioner are relevant and applicable to the instant proposition. Therefore in view of this brief discussion this court holds that the application filed by the respondent is devoid of merits and the same is hereby dismissed.

4. Since the respondent failed to apply for the application for leave to contest within the limitation provided under law, therefore this makes out a case of ejectment in the favour of the petitioner with immediate effect. Accordingly the petition for ejectment filed by the petitioner is considered and allowed and respondent is directed to be ejected out from the demised premises with immediate effect as per law. The respondent is directed to handover the vacant premises to the petitioner within a period of two months failing which the petitioner is at liberty to get it vacated as per law. Memo of costs be prepared and file be consigned to the Judicial Record Room, Jalandhar.

7. Resultantly observing that the respondent had failed to apply for leave to contest within limitation provided under the law, the petition filed by petitioner was considered and allowed and respondent was ordered to be ejected from the demised premises with immediate effect and secondly a direction was issued to the respondent to hand over the vacant premises to the petitioner within a period of two months failing which the petitioner is at liberty to get it vacated as per law.

8. Feeling aggrieved by the said order, the respondent/tenant had preferred an appeal before District Judge, Jalandhar, which was assigned to Additional District Judge-cum-Appellate Authority, Jalandhar, who vide order dated 25.3.2021 dismissed the appeal upholding the impugned order passed by the Rent Controller, NRI Cases, Jalandhar. Learned Appellate Authority, Jalandhar in the order has observed that after filing of rent petition, notice was issued to appellant-tenant and as per summons issued for 01.11.2019, it was specifically pointed out in the notice that appellant-tenant is directed to appear within 15 days of service and obtain leave to defend if intended and in case of default, petitioners-landlords shall be entitled for an order of eviction. This notice was duly served upon appellant-tenant on 12.10.2019 and was duly signed by her. She had put in appearance on 01.11.2019 filing an application for condonation of delay, reply to it had been filed. However, the Rent Controller/Authority vide order dated 13.12.2019 had refused to condone the delay and passed subsequent order of eviction.

9. In the appeal, appellant/tenant claimed that the delay took place on account of negligence of her counsel; on 1.11.2019 itself which was first day of appearance, application for condonation of delay was filed and application for leave to contest was also filed on the same day; on 1.11.2019 when the application for leave to defend was filed, there was delay of four days only; that the petitioners/landlords want to take possession of the demised premises from the tenant and thereafter to sell the property.

10. Learned Appellate Authority in light of the judicial

pronouncements came to the conclusion that the application under Section 5 of the Limitation Act for condonation of delay is not maintainable in such proceedings. The Appellate Authority also observed that the appellant does not seem to have any convincing case for condonation of delay inasmuch as in the application filed before Rent Controller, the plea was that delay had took place as she was suffering from eyesore for the last many days and was confined to bed whereas the plea taken before Appellate Authority was that it was due to negligence of earlier counsel representing the appellant. Therefore, the order passed by the Rent Controller was upheld, whereas appeal was dismissed.

11. Still feeling dissatisfied, the respondent/tenant has brought the present revision petition, notice of which was issued to the respondents, who put in appearance through counsel.

12. I have heard learned counsel for the parties besides going through the record.

13. Admittedly, the application for leave to contest was not filed by the revisionist/tenant within stipulated period of 15 days from putting in appearance in the Court. Later on also, the revisionist/tenant only filed an application for condonation of delay without moving application seeking leave to contest. Though according to the revisionist, there is delay of only four days in filing the application, which should be condoned but both the Courts below have returned concurrent findings that Rent Controller has no jurisdiction to condone such delay. Before this Court, learned counsel appearing for the revisionist has addressed arguments that summons were not sent to revisionist in prescribed form,

therefore causing prejudice to the revisionist and furthermore in terms of Section 38 Rule 4 of Punjab Rent Act, 1995 which deals with procedure to be followed by the Rent Authority; the Rent Authority is required to issue summons in relation to every application under this Act in the form specified in Schedule III to this Act. According to learned counsel for the revisionist, the notice sent to the revisionist was not in that form. As per Sub-Rule 5 the Rent Authority shall, in addition to, and simultaneously with the issue of summons for service on the opposite party, also direct the summons to be served by registered post, acknowledgement due, under certificate of posting addressed to the opposite party or his agent authorised to accept the service at the place where the opposite party or his agent actually and voluntarily resides or carries on business or personally works for gain, and shall also direct affixing of the same on the door of the premises in dispute and get a munadi in this behalf, which would constitute valid service of summons.

14. According to learned counsel for the revisionist summons had not been sent to the revisionist/tenant as per registered AD post or under certificate of posting addressed to the opposite party or by way of munadi and affixation, therefore it is not a valid service, thereby invalidating the order of eviction. In support of such contention learned counsel for the revisionist has referred to various judgments i.e. **Vivek Jain Versus Surjit Kaur** passed by a co-ordinate Bench of this Court in CR No.493 of 2017, **Vinod Gupta Versus Santosh Kumar Jain** passed in CR No.6667 of 2017, **Harwinder Pal Kaur and another Versus Kuldeep Singh Gurm @ Kuldeep Singh and others, 2011(1) LAR 401, Pran Nath**

Versus Avtar Singh and others, 2009(1) LAR 674.

15. However, learned counsel for the respondents/landlords has contended that on getting notice such respondent/tenant had put in appearance before Rent Controller and she was not under any confusion about identity of the Court in which she was to put in appearance as well nature of proceedings, therefore no prejudice was caused to her.

16. After hearing the rival contentions, I find that the purpose of sending notice to the tenant is to apprise him/her about filing of ejectment petition against him/her and to approach the Rent Controller seeking leave to defend the petition. The provision that notice should be sent to the respondent as per registered AD post under postal certificate as well as by way of affixation, are meant to get the service effected upon the respondent in any eventuality not leave anything to chance. It cannot be interpreted in the manner that although the tenant has been served through a particular mode, then his service is to be got effected by time and again through other methods also. Therefore, on account of revisionist showing that any prejudice was caused to her by not sending the notice to her in prescribed proforma and by not sending notice to her by way of registered AD post and affixation, these procedural irregularities, which are of technical in nature do not go to the root of the matter and adversely affect the case of the landlords.

17. With regard to the Rent Controller having power to extend the period for filing an application for leave to contest, learned counsel for the revisionist submitted that such power is always there, which is to be exercised in the circumstances where the respondent for any reason

becomes unable to approach the Court in time and file application for leave to contest. In support of his contentions, he has referred to judgments i.e. **Mukri Gopalan Versus Cheppilat Puthanpurayil Aboobacker, 1995(2) RCR(Rent) 323, M/s Consolidated Engg. Enterprises Versus Principal Secy. Irrigation Deptt. And others, 2008(2) RCR(Civil)897. S. Manohar Singh Versus S. Aridaman Singh Dhillon, 2002(2) RCR(Rent) 652.**

18. Learned counsel for the respondents submits that the law is very clear that the Rent Controller has no jurisdiction to condone delay in filing of application for leave to contest. In support of that contention, he has referred to judgment **Om Prakash Versus Ashwani Kumar Bassi, 2010(2) RCR(Rent)244,** by the Apex Court wherein it was observed that in case of NRI filing a petition for eviction of tenant on the ground of bonafide requirement, the summons served were issued by the Rent Controller and served upon the tenant, however application for leave was not filed within prescribed period of 15 days with one day delay filing in application being there, it was observed that Rent Controller was justified in passing order of eviction. Learned counsel for the respondents has also placed reliance upon judgment **Rashpal Kaur @ Rachpal Kaur Versus Hardip Singh Gill, 2020(2) RCR(Rent) 164** by a Single Judge of this Court wherein dealing with a similar situation, a Single Judge of this Court observed that when the petitioner failed to make necessary application for leave to defend within a period of 15 days, the Rent Controller had no option but to dismiss the same. It was observed that an application under Section 5 of the Limitation Act for condonation of delay

would not be applicable to those proceedings and Rent Controller would have no power to condone the said delay.

19. Therefore, in this case, no reason is there to condone the delay. The order/judgment passed by the Rent Controller as well as the Appellate Authority are detailed and well reasoned, which do not come out to be suffering from any illegality or infirmity much less apparent on their face. The order/judgment are certainly not perverse or passed in an arbitrary manner. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned orders by way of exercising the revisional jurisdiction.

20. Thus, the petition is doomed for failure and is dismissed accordingly.

Since the main revision petition stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

19.12.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No