

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.108

Case No. : C.R. No.7197 of 2018

Date of Decision : October 11, 2023

Dinesh Kumar		Petitioner
vs.		
Baldev Singh		Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sukhjit Singh, Advocate
for the petitioner.

Mr. R. S. Birdi, Advocate
for the respondent.

* * *

GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 23.08.2018 (Annexure P-5), passed by learned Rent Controller, Jagraon, whereby application filed by the petitioner under Order 9 Rule 7 CPC read with Section 151 CPC (Annexure P-3), for setting aside the ex-parte order dated 16.04.2018 (Annexure P-2), has been dismissed.

2. The brief facts of the case, as culled out from the paper-book, are that the respondent-landlord has filed a petition under Section 24(3) of the Punjab Rent Act, 1995 (Annexure P-1) for recovery of immediate possession of the property mentioned in the head note of the petition. The petitioner was proceeded against ex-parte vide order dated 16.04.2018 (Annexure P-2), passed by learned Rent Controller and the case was

adjourned to 23.05.2018 for recording ex-parte evidence of the respondent/landlord. The petitioner moved an application dated 23.05.2018 (Annexure P-3) for setting aside the ex-parte order passed against him and another application (Annexure P-3A) for leave to appear and contest the petition. The learned Rent Controller, vide impugned order dated 23.08.2018 (Annexure P-5), dismissed the petitioner's application but allowed him to join the proceedings from that stage and adjourned the case for consideration on application for leave to appear and contest the petition.

3. Learned counsel for the petitioner has argued that the petitioner was not having knowledge about the pendency of the case. The summons were not received by him. Petitioner came to know about the pendency of the case only on 23.05.2018 and without any delay, moved the application for setting aside the ex-parte order passed against him. It is further submitted that report of the Process Server regarding refusal on the part of the petitioner is totally procured one as neither the Process Server visited the place of the petitioner nor the petitioner ever refused to receive summons. No notice was affixed at the shop of the petitioner or any other conspicuous part of the area. No *munadi* was ever conducted. If ex-parte proceedings are not set aside, then the petitioner would suffer irreparable loss and will be deprived of from presenting his case in accordance with law.

4. On the other hand, learned counsel for the respondent-landlord has submitted that the petitioner refused to receive the summons. So, the learned Rent Controller ordered to effect service by way of *munadi* and the same was effected on 13.04.2018 (Annexure R-2). One notice was also pasted at the shop of the petitioner. Since the petitioner intentionally failed

to appear before the Court, so, the order passed by learned Rent Controller is in accordance with law. He has placed reliance on a judgment of Hon'ble Apex Court in the case of **Sangram Singh vs. Election Tribunal Kotah and another** reported as **1955 AIR (SC) 425** and also on a judgment passed by a Co-ordinate Bench of this Court in case **Bijay Kumar and others vs. Shri Sanatan Dharam High School, Bhiwani** reported as **2008(4) RCR (Civil) 633**.

5. I have heard the submissions of learned counsel for the parties and have perused the file.

6. As per Order 5 Rule 17 CPC, when the defendant refuses to accept service, then serving official is supposed to affix a copy of the summons on the outer door or some other conspicuous part of the house, where the defendant ordinarily resides or carries on his business and he will make an endorsement thereon regarding the said fact and shall also disclose the name and address of the person, by whom the house was identified and in whose presence the copy was affixed.

7. The respondent has placed on record a copy of Report (Annexure R-1), made by Process Server, which reads as under :-

"It is submitted that Dinesh Kumar traced by arriving at the spot i.e. Shop # 262, Link Road, Jagraon, on which, he found present at the spot. He was asked to effect service of summon, on which, he gone through the summon and then, flatly refused to receive the same."

8. As per the aforesaid report, the Process Server failed to affix a copy of summons as per Order 5 Rule 17 CPC and also failed to give report,

by whom the premises was identified. So, the said report is against law and learned Rent Controller was required to issue fresh summons but instead, the learned Rent Controller ordered that the petitioner be served through *munadi*.

9. The report of Process Server regarding *munadi* is annexed as Annexure R-2, wherein it has not been disclosed, in whose presence, a copy of the notice through *munadi*, was affixed at the shop of the petitioner. Therefore, learned Rent Controller has wrongly dismissed the application filed by the petitioner for setting aside the ex-parte proceedings. In case of **Sangram Singh** (*supra*), after some hearings, the appellant did not appear nor any of his counsel was present. So, the Tribunal proceeded ex-parte against him. In case **Bijay Kumar** (*supra*), the plaintiff instituted suit for permanent injunction as well as declaration. Defendants appeared and filed counter claim. Plaintiff concluded his evidence. When the suit was at the stage of evidence of the defendants, the plaintiff moved an application for permission of the Court to withdraw the suit. Thereafter, no one appeared on behalf of the plaintiff. The prayer for withdrawal of the suit was considered in the absence of the plaintiff. The suit was dismissed as withdrawn and the defendants were permitted to pursue their counter-claim and plaintiff was proceeded against ex-parte. Thereafter, the plaintiff was allowed to join the proceedings. Both the authorities, relied upon by the learned counsel for the respondent-landlord, are distinguishable on facts and cannot be applied to the facts and circumstances of the present case.

10. Since there is nothing on record to show that the petitioner was having knowledge of the pendency of the case or he was served, therefore,

the impugned order 23.08.2018 (Annexure P-5), passed by learned Rent Controller, Jagraon, dismissing the application of the petitioner (Annexure P-3), is hereby set aside and ex-parte proceedings against the petitioner are also set aside, subject to payment of Rs.5,000/- as costs, out of which Rs.2,000/- shall be deposited with the concerned District Legal Services Authority and Rs.3,000/- shall be paid to the respondent-landlord.

11. The present revision petition stands disposed of in the aforesaid terms.
12. The parties, through their counsel, are directed to appear before the learned Rent Controller, Jagraon, on 02.11.2023. The said Court shall proceed further in accordance with law.
13. Pending applications, if any, shall stand disposed of along with this judgment.

October 11, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.