

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4920-2023 (O&M)
Pronounced on: 07.03.2024

Jagmeet Singh

...Petitioners

Versus

Dr. R C Khosla (since deceased) now represented
by his legal heirs and another

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. Shubham Goyal, Advocate
for the petitioner.

Mr. Ramandeep Singh Gill, Advocate
for respondent No.2.

RITU TAGORE, J. (Oral)

1. Challenge in the present revision petition, filed by the petitioner-tenant, is to the order dated 19.07.2023 passed by learned Additional District Judge, Jalandhar, exercising the power of Appellate Authority under The Punjab Rent Act, 1995 (for short, ‘the Act’), confirming and upholding the findings of learned Rent Controller, Jalandhar dated 21.07.2022 passing the eviction order against the petitioner due to non-filing of affidavit/application for leave to contest within the period of limitation.
2. Relevant facts for the adjudication of the present revision petition are that respondents-landlords filed an eviction petition bearing No.82 of 2022 on 30.03.2022 under Sections 20 and 24 of the Act

(Annexure P-6) for ejectment of the petitioner from the demised premises on the grounds of i) non- payment of rent and ii) personal necessity of the premises by the respondent No.1-Dr.R.C.Khosla, aged 82 years, a senior citizen.

3. After hearing both the sides and examining the records, learned Rent Controller noted that the petitioner was duly served through registered cover and AD in the present rent petition on 04.04.2022 and appeared in the Court for the first time on 07.04.2022. Thereafter on 25.04.2022, the petitioner (respondent before the learned Rent Controller) was proceeded against *ex parte* and again joined the proceedings on the same day at about 4:30 pm through his counsel by filing memo of appearance. The learned Rent Controller further observed that petitioner filed a leave to defend the petition after lapse of 30 days from the date of his first appearance in the petition, and further noting that there is no provision under the law to extend the time for filing leave to defend. Consequently, learned Rent Controller passed an order of eviction, assessed the rent for the period from March 2018 till 31.07.2022 at the rate of Rs.20,000/- per month and interest thereon, and directed the petitioner to hand over the vacant possession of demise premises within two months to the respondents-landlords (petitioners before the learned Rent Controller).

4. Aggrieved with the order of learned Rent Controller, the petitioner preferred an appeal before learned Appellate Authority but same was dismissed vide impugned order dated 19.07.2023, observing no infirmity in the order of learned Rent Controller.

5. Being dissatisfied with the orders of eviction passed against the petitioner by the learned authorities below, filed this petition.

6. Learned counsel for the petitioner made the following

submissions to challenge the validity of the orders;

i) that the learned Courts below failed to take note of the fact that summons according to sub Section (4) of Section 38 of the Act in form specified in Schedule III of the Act were not served upon the petitioner, whereas service of summons as per Section 38(7)(b) of the Act read with form specified in Schedule III are mandatory. It is in case of service of such summons only, the petitioner would have been aware of the fact of filing of the application for leave to contest within 15 days period. The learned counsel thus contended that since there is non-compliance of the provisions of the Act with respect to service upon the petitioner, the observations of the Courts below that petitioner was duly served is indefensible in the eyes of law. Learned counsel stated that it is on 07.04.2022, the counsel of the petitioner Sh. S. N. Momi, Advocate was present in the Court of learned Rent Controller Jalandhar and was told by the learned Authority to put his appearance on behalf of the petitioner in the case in hand. Accordingly, as the learned counsel Sh. S. N. Momi and Sh. R. K. Nagina, Advocates, who represent the petitioner in other ejectment petition filed earlier by the respondents, Sh. S. N. Momi, Advocate, filed his memo of appearance on behalf of the petitioner.

ii) Learned counsel for the petitioner submitted that petitioner was not provided with the copies of the petition and accompanying documents relied upon by the respondents despite verbal request made to them. An application was subsequently moved by the petitioner for supply of the copy of the petition and documents, which were supplied on 19.05.2022. Immediately, thereafter on 23.05.2022, the petitioner filed an application for leave to contest the petition. The learned counsel contended that in these circumstances, the period of limitation should be reckoned from

the date of receipt of the copies of petition and documents by the petitioner. From the said date, the petitioner's application for leave to contest falls within the period of limitation. The learned Courts below erred in concluding that leave to defend was not filed within the period of limitation. It is urged by the learned counsel that the impugned order should be set aside.

iii) The learned counsel further submitted that tenant is not required to seek leave to contest the petition in every rent petition. It is only in cases involving special categories of landlords as defined in clause (d) or (e) or (g) of sub-Section 2 of Section 20 or under Section 21 or under Section 22, 23 or 24 or under Section 31 of the Act, that a tenant is required to seek leave to contest the petition, as provided under Section 38 (7) (a) of the Act. It is stated that in present case, the petition has been filed under Section 20 and 24 of the Act, and therefore, leave to contest the petition as such is not required. On this ground alone, the impugned orders are liable to be set aside.

iv) The learned counsel argued that the respondents had previously filed a petition bearing RA No.154/2019 on 03.05.2019 under Section 24 of the Act against the petitioner, and the petitioner had filed an application for leave to contest the petition, which is still pending for adjudication. It is during the pendency of the aforesaid petition, the respondents have filed the instant petition on same grounds. Therefore, the petitioner is not required to seek leave to contest in every such petition.

v) The learned counsel further submitted that the petition, as such, for the personal necessity of Dr.R.C.Khosla-respondent No.1 is not maintainable, as the demised property belongs to Dr.Satyapal Khosla Charitable Memorial Trust an independent juristic body, and not to Dr. R.C.

Khosla, respondent No 1.

7. The learned counsel thus submitted that the learned Rent Controller as well as Learned Appellate Authority did not take note of all these infirmities in the petition filed by the respondents and wrongly declined him the leave to contest the petition and ordering his eviction from the demise premises. It is stated that orders are not sustainable in the eyes of law and are liable to be set aside.

8. Contra, learned counsel for the respondents submitted that the petition bearing No.82 of 2022 has been filed under Section 20 and 24 of the Act and petition No.154 of 2019 has been filed under Section 24 of the Act. Both the petitions have been filed on separate cause of action and this fact has also been admitted by the petitioner in his application for leave to contest (Annexure P-7) by taking a plea that present petition is not maintainable due to the landlord raising different grounds in both the petitions. The learned counsel submits that the since the petitioner himself filed an application for leave to contest, he cannot be permitted to plead that he is not obliged to seek leave to contest in all the ejectment petitions so filed against him.

9. Learned counsel for the respondent further contended that the order passed by the learned Rent Controller is explicit in itself, wherein it is mentioned that the petitioner was duly served through registered cover and AD on 04.04.2022, and thereafter, he appeared for the first time in the petition on 07.04.2022. The counsel stated that it is a matter of record that on 25.04.2022, the respondent was proceeded *ex parte* and later that same day, he again appeared through his counsel Mr. R. K. Nagina, Advocate and upon the request of the counsel, the petition was posted for 25.04.2022 for filing power of attorney and written reply. However, on 25.04.2022 the

petitioner did not appear and was proceeded *ex parte*. The learned counsel submitted that the pleadings taken by the petitioner, stating that on the request of the learned Rent Controller, his counsel had appeared are totally against the record. Patently, the petitioner did not file an application seeking leave to contest the petition within statutory period as required under the Act, and the learned authorities below have rightly declined the petitioner the leave to contest and passed the order of eviction against him. It is stated that there is no merit in the revision and same is liable to be dismissed.

10. I have heard learned counsel for the parties and gone through the paper book.

11. Before I deal with the arguments of the learned counsel for the parties, it would be appropriate to go through the provisions of Section 38 alongwith the Schedule III specified under the Act:-

“38. Procedure to be followed by Rent Authority:-

- (1)*
- (2)*
- (3)*
- (4) The Rent Authority shall issue summons in relation to every application under this Act in the form specified in Schedule III to this Act.*
- (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 manadi in this behalf. This shall constitute valid service of summons.*
- (6).....*
- (7) (a) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (d) or clause (e) or clause (g) of sub-section (2) of section 20 or under section 21, or under section 22 or under section 23 or under section 24 or under section 31 shall be dealt with in accordance with the procedure specified in this sub-section.*

- (b) The tenant on whom the summons is duly served in accordance with sub-section (5) in the Form specified in Schedule III to this Act shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Authority as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction on the ground aforesaid.*
- (c) The Rent Authority shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises.*
- (d) Where leave is granted to the tenant to contest the application, the Rent Authority shall ordinarily commence the hearing of the application within seven days of the grant of such leave and shall provide day to day hearing and shall dispose of the application within thirty days of starting of such hearing failing such commencement of hearing or disposal of application within such time, the Rent Authority shall inform the Appellate Authority the reasons therefor.*
- (e) Where the leave to contest under clause (c) is denied to the tenant he may file an application for review before the Rent Authority within ten days of such denial and the Rent Authority shall endeavour to dispose of such application within seven days of its filing.*

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 _____ day 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 _____ 20 .

(Seal)

*Rent Authority/
Additional Rent Authority.*

*To be filled in
Strike off portion not applicable.*

Notes:-
*For cases covered under clauses (d) and (e) of sub-section (2) of section 20 and, sections 21, 22, 23, 24 and 31 indicate fifteen days and for other cases indicate thirty days.
For only cases covered under clause (a) of sub-section (8) of Section 38.*

12. Perusal of sub section 4 extracted above, reveals that summon(s) related to every application(s) under the Act of 1995 shall be issued by the Rent Controller in the Form specified under Schedule III, reproduced hereinabove. The Form specified under Schedule III is the format for issuance of summon(s) in terms of sub-section 4 and the first paragraph of the Schedule talks about annexation of copy of application filed before the Rent Controller.

13. Section 38(5) further indicates that in addition to, and simultaneously with the issuance of summon(s) for service on the opposite party, the Rent Controller shall also direct the summons to be served by registered post, acknowledgement due, under certificate of posting to the opposite party or his agent as the case may be and shall also direct affixation of the same on the door of the premises in dispute and get a *manadi* in this behalf. Sub-section 5 further says that "this shall constitute valid service of summons.”

14. Insofar as plea of non-service of summons to the petitioner is concerned, same lacks support from the record. The copy of zimini order dated 07.04.2022 placed on record by the counsel for the respondents does not mention that on the request of learned Rent Controller, the counsel for the petitioner had put in appearance. Further, counsel for the petitioner failed to refute the observation made by the learned Rent Controller that petitioner was duly served through registered cover/AD in the petition in question on 04.04.2022 and appeared in the Court for the first time on 07.04.2022. Therefore, the plea of the petitioner that he was not served at all in the present petition in accordance with the provisions of the Act is not substantiated from the record. Further, order dated 07.04.2022 does not indicate that the petitioner made any request for providing him the copies of the petition or the documents.

15. The learned Rent Controller also observed that the petitioner was proceeded against *ex parte* on 25.04.2022 and thereafter on the same day he again appeared through his counsel. These facts of record have remained uncontroverted by the petitioner. Learned Appellate Authority observed that on 19.05.2022 instead of filing an application for leave to contest, the petitioner moved an application for production of the documents. Both the learned Courts below categorically observed that the petitioner, from the date of his appearance for the first time in the present petition on 07.04.2022 failed to file an application, seeking leave to contest within the statutory period of limitation as provided in the Act.

16. Law is settled that delay in filing leave to contest application cannot be condoned. In this regard reference can be made to a judgment of co-ordinate Bench of this Court in **Ganpati Hegde Vs. Dilpreet Singh Saini, 2017 (3) PLR 677**. It is also settled position of law that once leave to contest

application is not filed within the prescribed time and same is dismissed, eviction order necessarily has to follow. In this regard, reference can be made to Full Bench decision of this Court in *Anwar Ali v. Gian Kaur, 2011 (2) RCR (Rent) 604*.

17. As noticed earlier, when the petitioner first appeared in the Court, he did not request for the copy of petition and accompanying documents. It is not until 19.05.2022 a month after his first appearance, he filed an application seeking production of documents. The law cast duty on tenant to seek a leave to contest the petition within the statutory period, while also mandating the sending of summons, on the landlord, according to the provisions of the Act on a Form specified in Schedule III. Given this, when petitioner was duly served on 04.04.2022, he should have raised the issue immediately upon his appearance through his counsel. Instead, he requested time to file written statement without informing the Court of the service. All these circumstances, suggest that the petitioner was indeed served in accordance with law. Still, the petitioner kept quiet for more than one month from the date of his appearance in moving an application seeking documents. In the given circumstances, the time to file leave to contest cannot be extended to the date of receiving documents. Thus, the plea of the petitioner that period of limitation is to be counted from the date the petitioner was given the copies of the petition cannot be countenanced. In these circumstances, it is presumed that petitioner was duly served in accordance with sub-section (5) of section 38 the Act as per the Form specified in schedule III of this Act, as provided in section 38(7) (b) of the Act.

18. Insofar as the plea of the petitioner that he is not obligated to seek leave in every successive petitions filed by the landlord, citing the

another petition bearing No.154 of 2019 already pending against him, in which his application for leave to contest is still pending for adjudication and that present petition, is filed under Sections 20 and 24 of the Act, therefore, he is not required to file an application for leave to contest as it is only necessary in special category of cases of landlord, is concerned, in my considered opinion is devoid of merits on the grounds that Section 38 (7) (b) of the Act explicitly provides that the tenant shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent authority. The provision being specific mandating upon the tenant to seek leave to contest, and failure to do so results in landlord's statement being deemed admitted, leading to his eviction order. Additionally, the petitioner himself stated in his application of leave to contest (Annexure P-7) that grounds presented by the landlords-respondents are new and different from the earlier petition filed against him. On this premise as well, in my opinion, the tenant is required to seek leave to appeal in order to contest the application for possession sought by the landlord.

19. The respondent-landlord has filed the petition under Sections 20 and 24 of the Act, claiming himself as an old person and seeking the possession of the demise premises for his personal need and necessity and of his family, as detailed in the petition. According to Section 38 read with the schedule III attached with the Act, the respondent No.1 falls into a special category. Therefore, the petitioner is required to seek leave to contest the application for eviction as moved by the landlord.

20. Another ground raised by the petitioner is that the landlord Dr. R. C. Khosla, is not competent to file the ejectment petition for his personal necessity as the property does not belong to him but to a trust, which is a

juristic body. These pleas needs to be tested on the merits of the case. Since, the petitioner has not yet obtained leave to contest the eviction petition filed by the landlord against him , these contested pleas cannot be entertained in the present petition.

21. In view of the above said discussion, the orders passed by learned Rent Controller dated 21.07.2022 and the order dated 19.07.2023 of the learned Appellate Authority confirming and upholding the order of the learned Rent Controller do not suffer from any material irregularity or illegality, which would warrant interference by this Court in revisional jurisdiction. Accordingly, this revision petition is dismissed.

22. There is no expression of opinion on merits of the matter. Instead, the focus is solely on the specific controversy in hand.

23. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

07.03.2024
Rimpal

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