

(1980) 08 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 774 of 1980

Nasib Singh

APPELLANT

Vs

Jagdish Chand

RESPONDENT

Date of Decision: Aug. 18, 1980

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 19A

Hon'ble Judges: S.P. Goyal, J

Bench: Single Bench

Advocate: Hari Singh Mann, for the Appellant; Brij Mohan Lal, for the Respondent

Final Decision: Allowed

Judgement

S.P. Goyal, J.

This is a petition against the order of the Rent Controller, Kharar, dated March 4, 1980 refusing to set aside ex parte ejectment order passed on September 21, 1978.

2. The application for setting aside the ex parte order was filed on April 21, 1979. It was averred in the application that the exparte order had been secured fraudulently by giving a wrong address; that the Petitioner never refused to accept service and that he came to know of the said order only on April 15, 1979 when a process-server came to him to execute a warrant of delivery of possession. The application, was contested by the Respondent and the allegations made controverted. On the pleadings of the parties, the Rent Controller framed two issues regarding the limitation and the sufficiency of ground for setting aside the ex parte order. After recording evidence, the version of the Petitioner was disbelieved and his application dismissed.

3. The Petitioner in support of his application appeared as his own witness and denied on oath the refusal of the summons or of the registered letter sent by the Respondent for ejectment. The Respondent, in rebuttal, appeared as his own witness and examined Harbans Singh process-server. The Rent Controller believed

the statement of the process-server without taking into consideration all the relevant facts and circumstances. It was admitted by the process-server that he had not entered the address of the witnesses on the summonses in the presence of whom the service was refused by the Petitioner. I have seen the copy of the summons, Exhibit R-3, produced by the learned Counsel for the Petitioner and found that no complete address of the witnesses had been mentioned. In these circumstances, the Petitioner possibly could not produce any evidence except giving his own statement. The conduct of the Respondent, however, leaves no manner of doubt that the ex parte order was secured by him in connivance with the process-server. The ejectment order was passed on September 21, 1979. There is absolutely no explanation as to why he waited for nearly six months. Again, he has produced in evidence a registered envelope containing the notice to the tenant to vacate the premises in view of the ejectment order. This again was nothing but a device to create evidence to ascribe knowledge of the ejectment order because after the said order had been passed it could be straightway executed and usually no landlord would serve a notice on the tenant to vacate the premises.

4. To put a safeguard against such connivance between the Plaintiff and the process-server, the Legislature has now made it incumbent under Order 5, Rule 19A, CPC Code, to issue summons through registered post as well. This was not done in the present case. Both the modes prescribed were, therefore, not resorted to and on that score alone it can be said that the Petitioner was not duly served.

5. As regards the limitation, there is nothing on the record to show that the Petitioner had come to know of the ejectment order at any time prior to the year 1979. The only evidence relied upon in this respect by the Rent Controller is the registered notice, which as already observed above, proved nothing but an intentional device on the part of the landlord to ascribe knowledge to the tenant. The findings of the Rent Controller on both the issues are, therefore, not sustainable on the evidence on record and are hereby reversed with the result that the petition is allowed and the ex-parte order set aside. The parties, through their counsel, have been directed to appear in the Court of the Rent Controller, on September 8, 1980. No costs.