

(2011) 163 PLR 34 : (2011) 2 RCR(Civil) 804

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 4259 of 2010 (O and M)

Harwinder Pal Kaur and
Another

APPELLANT

Vs

Kuldeep Singh Gurm @
Kuldeep Singh and
Others

RESPONDENT

Date of Decision: March 4, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 17, Order 5 Rule 19
- East Punjab Urban Rent Restriction Act, 1949 - Section 13A, 13B, 18A, 18A(2), 18A(3)

Citation: (2011) 163 PLR 34 : (2011) 2 RCR(Civil) 804

Hon'ble Judges: Rakesh Kumar Jain, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rakesh Kumar Jain, J.

This revision petition is directed against the order of learned Rent Controller, Ludhiana, dated 31.5.2010, by which an application filed by the Petitioner u/s 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the Act"), seeking leave to defend the petition filed by the landlord u/s 13B of the Act, was dismissed.

2. In brief, the landlord/Respondent filed an eviction petition against the tenants/Petitioners u/s 13-B of the Act, in respect of a shop measuring 11 x 20" forming part of property No. 560, opposite Gurudwara Shri Guru Hargobind Sahib, Raikot Road, Mullanpur Dakha, Ludhiana, alleging therein that the shop (demised premises) was devolved upon him and his brothers upon the death of their father Kartar Singh on 31.8.1994 on the basis of a registered Will dated 01.10.1980 and as such, he along-with his brothers is the owner of the demised premises for the last more than 14 years. The landlord migrated to Canada in July, 1995 and is having a passport bearing No. WB-

742641 and is a Non-Resident Indian. The landlord had let out the demised premises to the tenants on 20.7.1995 at a monthly rent of Rs. 2000/- for running electronic business. The tenants were separately liable to pay house tax @ 15% per annum and the electricity charges. It was alleged that the landlord wanted to open a shop of cloth merchant along-with his wife Smt. Malkiat Kaur and two sons, namely Manjinder Singh and Mandeep Singh in which his younger brother Baljinder Singh was also to join. The adjoining shop of the demised premises is with one Malkiat Singh, who assured him to vacate it within a period of 5/6 months or as soon as he finds a suitable accommodation. Thus, a case of bona fide necessity was set up. According to the zimni orders available on record, the eviction petition was filed on 03.6.2009, in which the following order was passed.

Present: Counsel for the Petitioner Rent petition received by entrustment. It be registered. Notice of the petition be issued to the Respondents for 18.7.2009.

On 18.7.2009, following order was passed :-Present: Counsel for the Petitioner.

Summons received back with the report of unserved. So, Respondent be summoned through munadi for 07.8.2009.

On 7.8.2009, the following order was passed:

Present: Counsel for the Petitioner.

On last date, summon received back with the report of refusal and munadi was issued against the Respondents. But inadvertently, in the zimni orders, it was written as summon received back unserved, so, this order is rectified to the extent may be read as summons received back with refusal. Today both the Respondents appeared through Sh. Parupkar Singh, Advocate, and filed power of attorney. Counsel for the Respondent made a request that he wants to file an application. Case is fixed for 22.8.2009.

3. Admittedly, an application u/s 18A of the Act seeking "leave to defend" was filed on 21.8.2009 within a period of 15 days from the date of appearance.

4. In the application for "leave to defend", it was alleged that ordinary notice for appearance before the Court was received on 7.8.2009 which was not accompanied with the copy of petition. It was further alleged that the demised premises is not owned by the landlord exclusively, therefore, she has no locus standi to file the present petition. Earlier, Mukhtiar Singh, Attorney Holder of the landlord had filed an application for ejectment, which was dismissed in default on 28.9.2006 and another application for ejectment was dismissed on 13.4.2007. Besides this, it was also alleged that there is no bona fide necessity which has been projected by the landlord in the petition.

5. The learned Rent Controller, vide his impugned order dated 31.5.2010 dismissed the application filed u/s 18-A of the Act, on the ground that relationship of landlord and tenant

is admitted. Ownership of the landlord is also proved from the Will and Death Certificate of Kartar Singh. The landlord is also proved to be a Non Resident Indian, who has genuine need for his own accommodation and she has been the owner of the demised premises for the last five years. It was also observed the tenants were served on 17.7.2009 when Dimple son of Surinder Singh (Petitioner No. 1/tenant) refused to accept the summon which was returned by the Process Server with the report of refusal, whereas leave to contest" was filed on 22.8.2009 which was barred by 15 days and in no case, limitation could have been condoned.

6. However, it is pertinent to mention here that one of the issues raised by the learned Counsel for the tenants that the demised premises is jointly owned by the brother of the landlord, therefore, he alone had no jurisdiction to file and maintain the petition, was not decided. However, with the dismissal of the application filed u/s 18A of the Act, the ejectment application filed u/s 13B of the Act was allowed and the tenants were directed to. hand over actual physical possession to the landlord within two months.

7. Aggrieved against the impugned order, the present revision petition has been filed in which dispossession of the Petitioners was stayed.

8. Opening his arguments, learned Counsel for the Petitioners has submitted that there is a patent error in the impugned order in respect of the service of summons. He has drawn attention of this Court to the zimni orders which I have already reproduced in the earlier part of the judgment, as per which on 18.7.2009, the learned Rent Controller had recorded that the summons have been received back with the report of "unserved" and then directed for their service through munadi for 7.8.2009. On. 7.8.2009, it was recorded that inadvertently, in the order dated 18.7.2009, report of service was mentioned as, "unserved" whereas it was a report of refusal. Therefore, it was Ordered that the tenants are deemed to have been served. It is submitted that the tenants were served only on 07.8.2009 and immediately thereafter, on the same date, they had appeared and filed an application for seeking "leave to defend" within the prescribed period.

9. In reply, learned Counsel for the Respondents has submitted that refusal of summons by Dimple son of Surinder Singh (Petitioner No. 1/tenant) has been admitted even in ground No. 4 of the grounds of revision, therefore, it was a valid service and the service is deemed to have been effected on 17.7.2009.

10. I have heard learned Counsel for both the parties and have perused the available record.

11. Section 13B of the Act, is a special provision in the Statute which confers a right upon a Non Resident Indian of immediate possession of the demised premises which is owned by him for over a period of five years and he has returned or intends to return to India to claim the demised premises let out by him for personal occupation of one premises which right is not exercised by him earlier and where an owner recovers possession of a

building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of five years from the date of taking possession otherwise the evicted tenant can be re-inducted by the learned Rent Controller. Since extra-ordinary right has been conferred upon Non Resident Indian to seek possession immediately, the tenant of such a owner of the demised premises is given a chance to leave to defend" by showing that the petition filed u/s 13B of the Act is not maintainable as the eviction petition does not fulfill the requirement enshrined u/s 13B of the Act as a very limited right is granted to the tenant. Entire effort was made by the Law Makers to ensure service upon the tenant in such petitions filed u/s 13A and 13B of the Act, so that he could know that he is facing a petition u/s 13-B and after service is found to be complete in terms of provisions of Section 18A(3)(a)(b) of the Act, the learned Rent Controller is required to declare the valid service of the summons on the tenants and thus a very limited time is granted to the tenant to show cause so that he may not unnecessarily delay the matter by taking unnecessary adjournment in the name of filing application for to leave to defend". Thus, sine qua non in these proceedings is the service upon the tenant, so that unscrupulous landlord may not get a walk over the tenant by showing the order served in connivance with the process serving agency. The Legislature has specifically provided in Section 18A(2) of the Act the form of summons in which it is categorically provided that it would inform the tenant to appear before the Rent Controller within 15 days of service to obtain leave to contest", otherwise after the expiry of the said period of 15 days, the landlord would be entitled to obtain the order of eviction against the tenant. The form also provides that an application for leave to defend" is to be in the form of an affidavit. Section 18-A(3)(a) provides that summons prescribed u/s 18-A(2) of the Act shall be served in accordance with the provisions of Order 5 of the First Schedule of Code of Civil Procedure, 1908 (for short, CPC). In addition, the Controller shall also direct that a copy of summon be also simultaneously sent by registered post acknowledgement due addressed to the tenant or his agent and another copy of summons is required to be affixed on some conspicuous part of the building in respect of which an application is filed u/s 13-A or 13-B of the Act. Section 18-A(3)(b) further provides that an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered articles containing the same is received back with an endorsement purported to have been made by a postal employee to the effect that the tenant or his agent has refused to take the delivery of the registered article and an endorsement is made by a Process Server to the effect that copy of the summons has been affixed, as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as to the summons and on being satisfied about the correctness of the endorsement, would declare that there is a valid service of summons on the tenant. Thus, to my mind, the Legislature has provided all possible ways and means for ensuring the service of summons upon the tenant so that he may know of his right which could be jeopardised for not filing application for leave to defend" within 15 days from the date of service. Section 18A(b) of the Act provides that summon has to be issued in terms of Order 5 of CPC and in addition thereto, by registered post and by affixing another copy of the summons on the conspicuous part of the building in dispute. Accordingly, the Controller has to follow all the

three methods. He would be satisfied about the service if he receives the acknowledgment of receipt and in case of refusal of summons which is delivered through the Process Server if there is an endorsement to the effect that copy of the summon has been affixed on the conspicuous part of the building. This provision is in tune with Order 5 Rule 17 of CPC, whereas Order 5 Rule 19 of CPC provides for procedure to judge the veracity of the Process Server about the report of refusal.

12. Interestingly, in the present case, no such procedure, as directed u/s 18-A(3) (a) and (b) has been followed by the learned Rent Controller, who has simply relied upon the report of refusal without recording anything as to service upon the tenant by way of registered post or by way of affixation by Process Server in case of refusal, nor given any chance to verify the question of refusal on the part of the tenant and has dismissed the application simply on the ground that Dimple son of Surinder Singh (Petitioner No, 1/tenant) has admitted to have refused service. To my mind, the finding of the learned Rent Controller in this regard is patently erroneous and cannot be sustained to hold that service upon the tenant was validly effected on 17.7.2009. Accordingly, the application filed by the tenant for leave to defend" was within limitation.

13. Coming to the merits of the present case. One of the questions raised by the tenant is that the demised premises is jointly owned by the brother of the landlord. The question is whether all of them are Non Resident Indian and if it is otherwise, whether a petition could be maintained by a co-owner. Moreover, learned Counsel for the Petitioner has relied upon a decision of this Court in the case of Sardar Ajit Singh v. Sardar Amarjit Singh and Ors. 2007 (3) R.C.R.(Civil) 485 : 2007 (2) R.C.R. (Rent) 92: 2007 (2) L.A.R. 278 , to contend that the demised premises is required alongwith another shop in possession of Malkiat Singh against whom no petition has been filed and it is a question of fact as to whether there is any agreement with Malkiat Singh to vacate the premises for his personal use and occupation. He has also relied upon a decision of the Supreme Court in the case of Charan Dass Duggal v. Brahma Nand, (1983) 1 SCC 301 in which it is held that where the tenant raises a triable issue making out a prima facie case against landlord's eviction suit on the ground of personal requirement, leave to defend must be granted. Further, he has relied upon decision of this Court in the case of Kundan Singh v. Lal Singh 2005 (1) R.C.R. (Rent) 194, in which it was held that if the landlord is joint owner of the premises and has filed a petition u/s 13-B, this raises a triable issue for which leave to contest must be granted.

14. Learned Counsel has also relied upon a decision of the Supreme Court in the case of Sushil Kumar Sabharwal v. Gurpreet Singh and Ors. 2002 (3) R.C.R. (Civil) 431 : 2002 (1) R.C.R. (Rent) 602 : 2002 (2) P.L.R. 382 in respect of Order 5 Rule 17 of CPC that if summon is not endorsed about the affixation of a copy of petition in case of refusal, then it is not a due service.

15. Considering the totality of circumstances, I am of the view that this revision petition has merit, as such, the same is hereby allowed and the impugned order is set aside. In

the circumstances of the case, the parties are left to bear their own costs.