

(2011) 07 P&H CK 0219

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2159 of 2011 (O and M)

Naveen Mehta

APPELLANT

Vs

Rakesh Kumar Gupta

RESPONDENT

Date of Decision: July 11, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 5 Rule 17
- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(1A), 13(1A)(2), 13(1A)(5), 13A(1)

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This is tenant's revision petition challenging the impugned order dated 03.02.2011, whereby his application for leave to defend the eviction application filed by Respondent-landlord u/s 13(1-A) of Haryana Urban(Control of Rent & Eviction) Act, 1973(hereinafter referred to as "the Act"), has been declined being barred by limitation as well as being devoid of any material which would dis-entitle the landlord from obtaining order for recovery of possession of building under the Act with a further direction to vacate the premises within two months from the date of order.

2. At the time of motion hearing, the following submission was made by the learned Counsel appearing on behalf of the Petitioner:

Present: Mr. Manoj Bajaj, Advocate, for the Petitioner.

CM No. 8607-CII of 2011

Application is allowed as prayed for.

CR No. 2159 of 2011 (O and M)

Learned Counsel for the Petitioner, inter alia, contends that on 13.11.2010 notice issued to the Petitioner/tenant on his first address was received back with the report of refusal by his mother and since service on his second address was not effected, therefore, service by way of munadi was ordered. It is submitted that there is a limited right granted to the tenant u/s 13(1-A)(5) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 [for short "the Act"] as he had to seek leave to defend his case and for that purposes Legislature has provided a mechanism for service as it is apparent from Section 13(1-A)(2) of the Act that the Controller shall issue summons in relation to every application referred to in Sub-section (1) of Section 13-A of the Act and in addition thereto and simultaneously with the issue of summons for service on the tenant, also direct the summons to be served by registered post, acknowledgment due, addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides. He further submits that in case of refusal of summons by his mother, the learned Rent Controller should have resorted to the provisions of Order 5 Rule 17 of the Code of Civil Procedure, 1908 [for short "CPC"] which provides for affixation of the summons on the outer door or some other conspicuous part of the house of the tenant. It is further argued that the Petitioner/tenant has been served by way of publication on 07.01.2011 when the case was fixed for 17.01.2011 for filing application seeking leave to defend which has been dismissed by the learned Rent Controller by taking service from the first date of issuance of notice.

Notice of motion for 27.04.2011.

Dispossession of the Petitioner shall remain stayed till then.

March 29, 2011

(Rakesh Kumar Jain) Judge

3. Mr. Jaswant Jain, learned Counsel appearing on behalf of the Respondent-landlord has vehemently contested the argument raised by learned Counsel for the Petitioner and has submitted that the Petitioner was served on 27.11.2010, whereas the application for leave to defend was filed on 17.01.2011 which was beyond the statutory period of 15 days. As such the leave to defend was rightly declined and the impugned order directing the Petitioner to vacate the premises was passed rightly as delay in filing the application for leave to contest cannot be condoned in view of the various Judgments of this Court.

4. Mr. Manoj Bajaj, learned Counsel appearing on behalf of the Petitioner-tenant has vehemently argued that the findings of the Rent Controller, Panchkula that Petitioner was served by way of Munadi and affixation at both of his addresses on two different dates i.e. on 27.11.2010 and 06.12.2010 was wrong as Petitioner remained throughout busy in

the PGI Chandigarh from 27.11.2010 up to 08.12.2010 as his mother was seriously ill and was admittedly to the said institute for surgery in her eye. In support of his argument, learned Counsel for the Petitioner has referred to the record of the PGI, according to which his mother has visited lens clinic of the Eye Department on 27.11.2010 and was admitted on 29.11.2010 and was operated upon on 05.12.2010.

5. The records were summoned in this case. I have perused the records. On 13.11.2010 the following order was passed by the Rent Controller, Panchkula:

Present: Sh.S.K. Sud, counsel for the Petitioner Notice issued against Respondent on his 1st address received back with the report of refusal by her mother and on 2nd address service not effected. Now for the effective and proper service munadi be issued against the Respondent for 08.12.2010 on deposition of munadi fee by the Petitioner.

6. It is not in dispute that on the basis of the aforesaid order, the process server submitted the following report:

Sir,

After reaching the spot and by selling revenue stamp, Munadi was got done by making payment of Rs. 100/- and as per the orders of the Court, a copy of the summons was affixed on the door of SCO No. 818, NAC, Manimajra, Chandigarh.

7. The aforesaid report given by the Process Server which has been attested by him on oath, is not disputed. On the basis of the aforesaid report, the Naib Nazir(Service) has reported that the service by way of Munadi and Affixation has been effected. It is also relevant to mention, at this stage, that though the case was listed for 08.12.2010, the Rent Controller passed the following order on 04.12.2010:

Present: None

File taken up today as the undersigned has to appear in Departmental Examinations scheduled to be held on 8th December, 2010. Now the case is fixed for 07.01.2011 for the purpose already fixed. Parties be informed accordingly.

8. On the basis of the aforesaid order, learned Counsel for the Petitioner has vehemently argued that from the aforesaid order, it is crystal clear that the court has not taken the note of the service report of the Civil Nazir and thus it has to be taken that the Court was not satisfied with the service report and there was no valid service and thus the Court had adjourned the case for 07.01.2011 for fresh service and since the service was effected on 07.01.2011, the application moved by the Petitioner on 17.01.2011 was well within time. Learned Counsel for the Petitioner has further argued that there cannot be any valid service upon the Petitioner on 27.11.2010 by way of affixation as from the evidence on record, it is crystal clear that the same was not done in his presence and was meaningless.

9. On the other hand, learned Counsel appearing on behalf of the Respondent has maintained that once the Petitioner was served by way of affixation on 27.11.2010, it was for him to move an application for grant of leave within 15 days from the date of service as provided under the statute and it will not effect his case if the Rent Controller, Panchkula, has not recorded in its order that there was a valid service.

10. I have heard learned Counsel for the parties. The arguments raised by the learned Counsel for the Petitioner is without any merit. The report of the Process Server as certified by the Civil Nazir has not been disputed. The only argument raised by the learned Counsel for the Petitioner is that such service by way of affixation carries no value as the same was done in his absence and moreover it was not recorded by the Rent Controller, Panchkula, that there was a valid service. There is no such requirement of law that a service which is to be effected by way of affixation is to be carried out in the presence of the persons to be served. In fact, the service of summons by way of affixation is ordered only when the person is not available. Moreover, the record of the PGI does not show that the mother of the Petitioner was admitted on 27.11.2010 in the PGI and the Petitioner remained in the PGI throughout the day as it is crystal clear from the record produced before this Court that his mother had visited the PGI on 27.11.2010 only as an outdoor patient. Simply because the Rent Controller, Panchkula, has not recorded in the order dated 04.12.2010 that service has been effected, will not be sufficient to hold that the service upon the Petitioner on 27.11.2010 was not effected. Upon a valid service, it was for the Petitioner to apply for leave to contest within the statutory period. It is well settled that delay in filing the application for leave to contest cannot be condoned. Thus, the impugned order cannot be found faulted with on this ground. It may also be noticed that the learned Counsel for the Petitioner has approached this Court as if, the leave to defend has been declined only on account of the delay in filing the application. This is not so. A perusal of the impugned order would show that even on merits the Rent Controller, Panchkula, has found that the application was devoid of such facts which would dis-entitle the landlord from obtaining an order for recovery of possession of building. It has been clearly mentioned in the impugned order that the tenant has failed to put forward any substantial defence so as to dis-entitle the specified landlord from obtaining an order for recovery of possession. However, it is suffice to say that learned Counsel for the Petitioner has not addressed any arguments challenging the findings of the Rent Controller, Panchkula on the merits of his application for leave to defend. In the absence of any such challenge to the findings of the Rent Controller, Panchkula, on the merits of the application for grant of leave to defend, this petition is bound to fail.

11. Dismissed.