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Nand Kishore Vs Santosh Mishra

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 14, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 13
East Punjab Urban Rent Restriction Act, 1949 â€" Section 13

Citation: (2014) 2 RCR(Rent) 339

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: Amit Dhawan, Advocate for the Appellant; Vishal Munjal, Advocate for the Respondent

Judgement

Sabina, J.
Respondent had filed the petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 against petitioner No.

1 and his father Tarsem Lal seeking their ejectment from the disputed shop. The said ejectment petition was allowed in ex parte by the trial Court

vide order dated 30.11.2007 (Annexure P-1). Thereafter, an application was moved by petitioner No. 1 under Order 9 Rule 13 of the Code of

Civil Procedure, 1908 (CPC for short) for setting aside the ex parte ejectment order. The said application was dismissed vide impugned order

dated 28.1.2013. Hence, the present petition by the petitioners. I have heard learned counsel for the parties and have gone through the record

available on the file carefully.

2. In the present case, learned counsel for the petitioners has drawn the attention of the Court to Annexure P-4, report made by the process

server, which reads as under:-

It is submitted that after reaching the spot i.e. Mohalla Guru Tegh Bahadur Nagar, Nakodar, Nand Kishore son of Tarsem Lal son of Girdhari Lal

was searched for serving of summons. However, he was not found at the spot. On verbal enquiry, father of Nand Kishore namely Tarsem Lal

gave his oral statement that Nand Kishore has gone to Ludhiana in connection with his personal work. Father of Nand Kishore namely Tarsem Lal

was asked to receive summons on behalf of his son. However, Tarsem Lal refused to receive summon on behalf of his son. One copy of summon

was affixed on his door which was already opened. Report is presented.

3. Thus, as per the above report, petitioner No. 1 was not found at the spot and his father had refused to accept summons on behalf of his son.

Although, father of petitioner No. 1 had also refused to accept summons on his own behalf but so far as petitioner No. 1 is concerned, he was not

found present at the spot. In these circumstances, learned Rent Controller should have made another effort to effect service on petitioner No. 1

rather than initiating ex parte proceedings against him.

4. Case of petitioner No. 1 was that he came to know about passing of the impugned judgment against him when he received the notice from the

Executing Court. The ejectment had been sought by the respondent on the ground of non payment of rent and change of user of the shop in

question and that the shop had been rendered unfit for human habitation.

5. In the facts and circumstances of the present case, the trial Court should have set aside the ex parte proceedings against petitioner No. 1 as he

was not found present at the spot when the process server had gone for effecting service of the summons. The fact that father of petitioner No. 1

had refused to accept service on behalf of petitioner No. 1 should not have been held against petitioner No. 1. Another effort should have been

made by the trial Court to effect service on petitioner No. 1 so that lis between the parties should have been disposed of on merits. Accordingly,

the petition is allowed. Impugned order dated 28.1.2013 is set aside. Consequently, application moved by the petitioners under Order 9 Rule 13

C.P.C. is allowed subject to payment of Rs. 10,000/- as costs. In consequence thereto, ex parte judgment passed by the learned Rent Controller

dated 30.11.2007 (Annexure P-1) is set aside.