
(1989) 07 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 27 of 1989

Om Parkash

APPELLANT

Vs

Surinder Kumar and another

RESPONDENT

Date of Decision : 25-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 17
East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : AIR 1990 P&H 97 : (1989) 96 PLR 655 : (1989) 2 RCR(Rent) 456

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : V.P. Sarda, for the Appellant; Vijay Jhanji, for the Respondent

Judgement

1. This revision petition is directed against the order dated 17th December, 1988 of the learned Rent Controller, Ludhiana refusing to recall the order by which ex parte proceedings were taken against the petitioner. The respondent (hereinafter referred to as landlord) filed an application for eviction against the petitioner (hereinafter referred to as the tenant) on the grounds of non-payment of arrears of rent and making material alterations in the demised premises without written permission of the landlord. Notice of the application was issued to the tenant for 7th November, 1986. The tenant was allegedly served but he did not put in appearance. Summons were not traceable on the file, so fresh summons were issued for 3rd December, 1986. The Process Server reported that the tenant had refused to accept the service. On the basis of this report, ex parte proceedings were ordered against the tenant. On 8th May, 1987 the tenant moved an application for recalling the order dated 3rd December, 1986 and permitting him to join the proceedings from the date ex parte proceedings were taken against him.

2. The learned Rent Controller dismissed the application holding that the tenant was personally served for 7th November, 1986 but since the summons on which personal service was effected on him was not traceable on the record, fresh

summons were ordered to be issued for 3rd December, 1987 when he refused to accept the service and ex parte proceedings were correctly taken against him and there was no justification to recall the order.

3. The entire approach of the learned Rent Controller is unjust and unacceptable. He is in error in holding that the tenant was served for 7th November, 1986. Since the summons issued for 7th November, 1986 were not available on record, the learned Rent Controller who was seized of the matter, was not satisfied that the tenant, had, in fact, been personally served and it is for this reason that he ordered the issuance of fresh summons to the tenant for 3rd December, 1986. If the Rent Controller had been convinced that the tenant was personally served for 7th November, 1986, he would not have ordered the issuance of fresh summons for another date. He could not take into consideration a fact which was not accepted as a fact at an earlier stage. So far as the summons issued for 3rd December, 1986, on which the refusal of the tenant has been recorded, are concerned, the service alleged to have been effected pursuant thereto is wholly illegal. Perusal of those summons Exhibit R-4 reveals that the tenant refused to accept the service when the summons were presented to him. Only this fact is recorded on the back of the summons, which cannot be treated to be a proper service on the tenant in the eye of law. As enjoined by Order 5, Rule 17 of the Code of Civil Procedure, when a defendant or his agent refuses to sign the acknowledgment when the summons are presented to him, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original to the Court from which it was issued, with a report endorsed thereon stating that he had so affixed the copy of the summons, the circumstances under which he did so, and the name and address of the person by whom the house was identified and in whose presence the copy was affixed. But the report of refusal on the summons does not indicate that the mandatory provisions of the rule were complied with. The report does not indicate affixing a copy of the summons on the conspicuous part of the tenant's house and who identified it. The report cannot be relied upon. It is a patent illegality and invalidates the order by which ex parte proceedings were ordered.

4. Pursuant to the directions by the Motion Bench dated 4th January, 1989 the tenant had deposited the arrears of rent with interest at the rate of 12 per cent. This fact indicates that the tenant had means to tender the arrears of rent on the first date of hearing.

5. The revision petition is allowed. The order dated 17th December, 1988 is set aside. The application filed by the tenant for recalling the order dated 3rd December, 1986 is allowed subject to payment of Rs. 2000/- as conditional costs.

6. The parties through their counsel are directed to appear before the Court of Rent Controller concerned on 1st September, 1989 on which date the Rent Controller shall fix a date for payment of interest and costs etc. of the petition

and that date will be deemed to be the first date of hearing. If any excess payment has been paid by the tenant, the landlord is directed to refund the same to the tenant. For payment of costs to come up on 28th July, 1989.

7. Petition allowed.