

Sandeep Singh Sekhon v. Harbans Singh Sandhu (2023-4)212 PLR 381, PLRonline 492683

PUNJAB AND HARYANA HIGH COURT

*Before : Justice Karamjit Singh.*

SANDEEP SINGH SEKHON and others – Petitioners

*Versus*

HARBANS SINGH SANDHU – Respondent

CR-1719 of 2023

**Punjab Rent Act, 1995 (13 of 2012), Section 24 (1)(c) - Leave to defend - Limitation - Tenant shall have to apply for leave to contest within 15 days of effecting service on him and no application shall thereafter be entertained - Rent Controller has no power to condone the delay in filing such an application - No application seeking leave to defend was filed within stipulated period - Even the application seeking setting aside of ex-parte proceedings was also filed much beyond the aforesaid statutory limit - Rent Act being complete code, the provisions of Limitation Act would not be applicable to the eviction petition filed by the respondent - Application filed seeking setting aside of ex-parte proceedings rightly dismissed. [Para 10, 11]**

#### **Cases referred:**

1. (2011-3)163 PLR 34, *Harvinder Pal Kaur v. Kuldeep Singh Gurm @ Kuldeep Singh*
2. (2012-2)166 PLR 805, *Satish Kumar v. Dev Raj*
3. (2022-4)208 PLR 386, *Manjeet Singh v. Manveer Pal Singh Gill*
- 4.** (2006-3)144 PLR 561 , *Sahib Kaur v. Sukhbir Singh.*
5. (2010) 9 SCC 183, *Om Parkash v. Ashwani Kumar Bassi.*
6. (1998-3)120 P.L.R. 170, *Ashwani Kumar Gupta v. Siri Pal Jain*
- 7.** (2010)2 SCC 15, *Prithipal Singh v. Satpal Singh (Dead) through his LRs*
8. (2009-4)156 PLR 815, *S.Sadhu Singh v. Col. Avnish Sharma.*

*Mr. Aayush Gupta, for the petitioner(s). Mr. Vaibhav Sehgal, for the respondent(s).*

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**Karamjit Singh, J. (ORAL) - (Reserved on 14.11.2023, Decided on: 05.12.2023) -**

**1.** Petitioners/tenants being aggrieved by order dated 4.8.2022 passed by the Court of Rent

Controller-cum-Civil Judge (Junior Division), Ludhiana, whereby the petitioners were proceeded against ex-parte and order dated 6.3.2023, whereby an application filed by the petitioners for setting aside aforesaid ex-parte order dated 4.8.2022 has been dismissed in rent petition having CIS No.RP/350/2022 titled Harbans Singh Sandhu vs. Sandeep Singh Sekhon and Others, have filed the present petition.

**2.** The brief facts of the case are that respondent/landlord filed eviction petition against the petitioners with regard to property bearing UID No.PT-1206-115531 popularly known as Hotel Mini Holland, Mullanpur Dakha (Ludhiana) under Section 24 (1)(c) of the Punjab Rent Act, 1995 as amended by Act of 2014 (in short Rent Act), on the grounds that:-

(i) the said premises is required by the respondent/landlord (a senior citizen) for his own use and also for use and occupation by his son Rupinderjit Singh Sandhu;

(ii) the petitioners are in arrears of rent.

**3.** The notice of the eviction petition was issued to the petitioners/tenants for 04.08.2022 as per the provisions of Rent Act, with direction to petitioners to file an application for leave to defend within a period of 15 days of service of notice. Petitioners failed to appear in the Court within the aforesaid statutory period and were proceeded against exparte on 04.08.2022. Thereafter, the petitioners filed an application on 01.09.2022 seeking setting aside of ex-parte proceedings. The said application was contested by respondent and the Rent Controller dismissed the said application vide order dated 06.03.2023. The petitioners being aggrieved by orders dated 04.08.2022 and 06.03.2023 have filed the present petition.

**4.** I have heard the counsel for the parties.

**5.** The counsel for the petitioners has, *inter alia*, contended that in the instant case no proper service of the petitioners was effected. That as per provisions of Section 38 (4) and (5) of the Rent Act, the summons in relation to rent petition, would be in form specified in Schedule III of Rent Act. That summons to petitioners were not issued in accordance with the aforesaid mandatory statutory provisions, as no summons were served at the place where the petitioners actually and voluntarily resides. That as the summons were not issued to the petitioners in specified form, and further the petitioners were not served in person, such service could not be treated as a proper service of the petitioners. The counsel for the petitioners has further contended that when the petitioners came to know about the pendency of the rent petition for the first time, they immediately approached the Court of Rent Controller, Ludhiana for setting aside the ex-parte order dated 04.08.2022 and the said application is dated 01.09.2022. The counsel for the petitioners while placing reliance upon *Harvinder Pal Kaur and Another v. Kuldeep Singh Gurm @ Kuldeep Singh and Ors.* (2011-3)163 PLR 34 and *Satish Kumar v. Dev Raj* (2012-2)166 PLR 805 and *Manjeet Singh Vs. Manveer Pal Singh Gill* (2022-4)208 PLR 386,, has contended that as in the present case service of summons was not effected in consonance with the mandatory provisions of the Rent Act, the application filed by the petitioners seeking setting aside of ex-parte proceedings dated 04.08.2022 deserves to be allowed. The counsel for the petitioners has

further contended that the mere request of the petitioners is to set aside ex parte order dated 04.08.2022. That as per the ratio laid down by this Court in *Smt. Sahib Kaur v. Sukhbir Singh*, (2006-3)144 PLR 561, the petitioners could be allowed to join the proceedings at any stage and the application for setting aside of ex-parte proceedings cannot be dismissed merely on the ground of delay. The counsel for the petitioners has further submitted that the Court of Rent Controller while dismissing the application seeking setting aside of ex-parte proceedings, took it as an application filed for seeking leave to defend the rent petition. The counsel for the petitioners further submits that interest of justice demands that the litigation between the parties should be decided on merits after affording opportunity of hearing to both the parties. So prayer is made that the ex-parte proceedings against the petitioners be set aside and accordingly, the present petition be allowed.

**6.** On the other hand, the counsel for the respondent while supporting the orders dated 04.08.2022 and 06.03.2023 passed by the Court of Rent Controller has argued that there is no illegality or perversity in both the said orders which were passed by the Court concerned in accordance with law. It is further contended that the notices of the rent petition in the present case were served by way of alternative modes to the petitioners as per the provisions of Section 38 (4) and (5) of the Rent Act. That the said modes of service of notices were by way of summons as prescribed in Schedule III of Rent Act, registered post with acknowledgment due, under postal certificate (UPC) and by way of *Munadi*. It is further contended that the service of the said notices was effected on petitioners through their authorized agent (Manager), at the place where they were carrying on business i.e. Hotel Mini Holland, Mullanpur Dakha. The counsel for the respondent while referring to the summons issued in form prescribed in Schedule III of Rent Act, has submitted that 15 days time from the date of service of notice was given in the said summons, to the petitioners to appear and contest the rent petition. That however, the petitioners failed to appear in the Court of Rent Controller within 15 days of effecting service on them. That as per summons the next date of hearing was fixed as 04.08.2022. That even on 04.08.2022 no one appeared in the Court and resultantly, the petitioners were preceded against ex-parte on that date. It is further submitted that even within next 15 days no application was filed by the petitioners for setting aside ex-parte proceedings or for seeking leave to defend. It is further contended that application for setting aside ex-parte proceedings was filed by the petitioners only on 01.09.2022 i.e. after expiry of the stipulated period of 15 days from the date on which the service was effected. The counsel for the respondent while placing reliance upon the judgment of Hon'ble Supreme Court in *Om Parkash v. Ashwani Kumar Bassi*, (2010) 9 SCC 183 has submitted that the Rent Controller is having no jurisdiction to condone delay in case application for leave to defend is not filed by the tenant within prescribed period of 15 days. The counsel for the respondent also referred to decision of this Court in *Ashwani Kumar Gupta Vs. Siri Pal Jain*, (1998-3)120 P.L.R. 170 wherein also similar view was taken. The counsel for the respondent has further contended that in light of the settled position of law as has been discussed above, the learned trial Court rightly passed impugned order dated 06.03.2023 whereby the application filed by the petitioners seeking setting aside of order dated 04.08.2022 has been dismissed.

**7.** I have considered the submissions made by counsel for the parties.

8. Admittedly, respondent a senior citizen aged about 80 years has filed rent petition under Section 24 (1) (c) of Rent Act against the petitioners on the ground of his own personal use and further for use and occupation of the demised premises by his married son Rupinderjit Singh Sandhu. The notice of the rent petition was issued to the petitioners on 02.07.2022 through summons, registered post as well as *Munadi* and affixation and the next date fixed was 04.08.2022. The summons were issued in form as prescribed in Schedule III of Rent Act wherein it was specifically mentioned that tenants have to apply for leave to contest within 15 days of service of notice. The notices of the rent petition were also issued through registered post, acknowledgment due and further separately through *Munadi* and affixation. It appears that the summons issued in form as per Schedule III of Rent Act were served to the petitioners through Manager Yuvraj Singh, at the premises where they were carrying on their business i.e. Hotel Mini Holland, Mullanpur Dakha, Ludhiana. The tracking record of registered acknowledgment was also produced to show that even the notices sent through registered post were also received by the addressees. Even it appears that the petitioners were also served through *Munadi* and affixation at their aforesaid address. Summons as prescribed in Schedule III were served to the petitioners through their Manager on 09.07.2022, while service through *Munadi* and affixation was effected on petitioners on 26.07.2022 and registered posts were received by the addressees on 08.07.2022. From the perusal of order dated 04.08.2022 it is evident that none appeared on behalf of the petitioners within 15 days of service of notice to them by way of summons issued as per Schedule III of Rent Act and accordingly, the petitioners were proceeded against ex-parte on 04.08.2022. Admittedly, application for setting aside aforesaid ex-parte proceedings was filed by the petitioners on 01.09.2022. Thus, making it clear that in the instant case no leave to defend was filed within statutory period of 15 days from the date of service of notice. Even the application for ex-parte proceedings was filed by the petitioners after more than 15 days of the date fixed i.e. 04.08.2022 and the said application was not supported by any application under Section 5 of the Limitation Act. The reason given by the petitioners for their non appearance within statutory period of 15 days of the service of notice is that respondent got registered FIR No.86 dated 03.06.2022 in Police Station Dakha against the petitioners and that the petitioners were apprehending their arrest and after getting bail, the petitioners filed an application for setting aside of ex-parte proceedings against them. However, the aforesaid plea was not taken by the petitioners in their application (Annexure P-2) filed by them seeking setting aside of ex-parte order dated 04.08.2022.

9. It is settled position of law that the tenant shall have to apply for leave to contest within 15 days of effecting service on him and no application shall thereafter be entertained and the Rent Controller has no power to condone the delay in filing such an application, as has been held by Hon'ble Supreme Court in *Prithipal Singh v. Satpal Singh (Dead) through his LRs* (2010)2 SCC 15, wherein delay of 8 days by tenant in seeking leave to defend was declined. The similar view was taken by the Hon'ble Apex Court in *Om Parkash's case* (supra) wherein also one day delay in filing of application for leave to defend was not condoned. This Court in *S.Sadhu Singh Vs. Col. Avnish Sharma and another*, (2009-4)156 PLR 815, also held that the period of 15 days within which the tenant is required to apply for leave to contest from the date of receipt of summons is mandatory and the Rent Controller is having no jurisdiction to extend the said statutory period.

**10.** Admittedly, in the present case no application seeking leave to defend was filed by the petitioners within stipulated period of 15 days of service of notice. Even the application seeking setting aside of ex-parte proceedings dated 04.08.2022 was also filed much beyond the aforesaid statutory limit. Further no plausible reasons are given in the application (Annexure P-2) to explain the delay in filing of application, despite the fact that petitioners were duly served through their authorized agent on 09.07.2022 and said summons were issued in form as prescribed in Schedule III of the Rent Act and service by alternative modes was also effected as per mandatory provisions of the said Act, at the place of business of the petitioners. Otherwise also, the Rent Act being complete code, the provisions of Limitation Act would not be applicable to the eviction petition filed by the respondent.

**11.** In the light of the factual matrix and the settled position of law as has been discussed above, the Rent Controller rightly dismissed the application filed by the petitioners seeking setting aside of ex-parte proceedings dated 04.08.2022. Consequently, finding no infirmity with the impugned orders dated 04.08.2022 and 06.03.2023 of the Rent Controller, Ludhiana, the present revision petition is hereby dismissed being devoid of merits.