

2018 PLRonline 1206

Vivek Jain v. Surjit Kaur

Punjab and Haryana High Court

JUSTICE ANIL KSHETARPAL

Vivek Jain v. Surjit Kaur

CR No.493 of 2017 (O & M)

12.10.2018

East Punjab Urban Rent Restriction Act, 1949 , Section 13-B, 18-A - Per procedure under Section 18-A of the 1949 Act summons have to be sent on the prescribed form in Schedule 2 - Summons were sent not on the prescribed form but summons issued by the Court on a form provided under Order 9 Rule 6 of the [CPC](#) - After appearance, tenant filed reply but the procedure, which has been prescribed under the Act, enabling the tenant to file an application seeking leave of the Controller to contest the eviction petition within the prescribed time, was not followed as the correct summons were not sent - Tenant-petitioner has been deprived of an opportunity to file an application for leave to contest - Eviction order set aside - Matter remanded

East Punjab Urban Rent Restriction Act, 1949 , Section 13-B, 18-A - Section 18, the summons have to be sent along with the documents, which is not proved in the present case - eviction order set aside - Matter remanded.

Mr. Sheery K. Singla, for the petitioner. Mr. K.B. Raheja, for the respondent.

ANIL KSHETARPAL, J.(Oral) The present petition was filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 seeking eviction of the tenant. As per procedure under Section 18-A of the 1949 Act summons have to be sent on the prescribed form in Schedule 2. The form prescribed is extracted as under:-

SCHEDULE [See Sub-section (2) of Section 18-A] Form of summons in a case where recovery of possession of [residential building or scheduled and/or nonresidential building] is prayed for under [section 13- A or section 13-B] of the East Punjab Urban Rent Restriction Act, 1949.

(Name, description and place of residence of the tenant) 1 of 3 Whereas Shri----- has filed an application (a copy of which is annexed for your eviction from----- (here insert the particulars of the residential building or scheduled building) under [section 13-A or section 13-B] of the East Punjab Urban Rent Restriction Act, 1949.

Now, therefore, you are hereby summoned to appear before the Controller within fifteen days of the service thereof and to obtain the leave of the Controller to contest the applicant for eviction under [section 13-A or section 13-B] of the said Act, in default whereof, the application will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said [residential building or scheduled building and/or non-residential building].

Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of Section 18-A of the said Act. Given under my hand and seal this day of....19 ... Controller”]”

2. Admittedly, the summons were sent not on the prescribed form but summons issued by the Court on a form provided under Order 9 Rule 6 of the Code of Civil Procedure. No doubt, after appearance, tenant filed reply but the procedure, which has been prescribed under the Act, enabling the tenant to file an application seeking leave of the Controller to contest the 2 of 3 eviction petition within the prescribed time, was not followed as the correct summons were not sent.

3. Although, learned counsel for the respondent-landlord has vehemently argued that since the petitioner had been served on 06.06.2016 and had filed reply on 10.08.2016, therefore, no prejudice has been caused. However, this Court is of the considered opinion that tenant-petitioner has been deprived of an opportunity to file an application for leave to contest.

4. Still further, as per the procedure prescribed under Section 18, the summons have to be sent along with the documents, which is not proved in the present case.

5. Accordingly, the order under challenge is set aside. Learned Rent Controller is directed to proceed to decide the application for leave to defend, which the tenant undertake to file within two weeks.

6. Needless to say that any observations made by the learned Rent Controller or by this Court while deciding the petition would not prejudice the Court while deciding the application for leave to contest.

7. Learned Rent Controller is directed to decide the application within a period of two months from the date of receipt of certified copy of the order.

Revision petition is disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.