

Before : J. V. Gupta, J.

JAGDEV SINGH,—Petitioner.

versus

LAMUEL SINGH,—Respondent.

Civil Revision No. 2491 of 1988

July 28, 1989.

*Haryana Urban (Control of Rent and Eviction) Act (XI of 1973)—S. 13—Summons sent by post under registered cover—Summons received back with report of refusal—Substituted service ordered by publication in newspaper—Tenant proceeded ex-parte after such service—Application for setting aside ex-parte order—Such application rejected by Rent Controller—Revision against such order—Scope of.*

*Held*, that the petitioner is a responsible Police Officer. Instead of being present in Court after service, he avoided to appear and suffered an *ex-parte* order. The whole effort seems to delay the proceedings. The landlord sought the ejection *inter-alia* on the ground of his *bona-fide* personal necessity. The application was filed in January, 1986 i.e. more than three years back. The Rent Controller has gone into the matter in detail and has given a firm finding that he was duly served by substituted service and had also refused the registered cover with acknowledgement due. In these circumstances, no interference is possible in revisional jurisdiction.

(Para 5).

*Petition under Section 15(5) of Rent Restriction Act for revision of the order of the court of Rent Controller, Ambala City, dated 29th September, 1988 dismissing the application with no order as to costs.*

*Claim : Application under Section 13 of the Haryana Urban (Control of Rent and Eviction Act, 1973) for ejection.*

*Claim in Revision : For reversal of the order of the Lower Court.*

K. S. Sidhu, Advocate and M. S. Sullar, Advocate, for the Petitioner,

S. C. Kapoor, Advocate, for the Respondent.

Jagdev Singh v. Lamuel Singh (J. V. Gupta, J.)

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ORDER

J. V. Gupta, J.

(1) This revision petition is directed against the order of the Rent Controller, dated September 29, 1988, whereby the application filed by the tenant for setting aside the *ex parte* eviction order has been dismissed.

(2) The landlord filed the ejectment application on June, 19, 1986, seeking ejectment of the tenant from the premises, in dispute, consisting of two rooms and a kitchen etc. The ejectment was sought *inter alia* on the ground that the tenant was in arrears of rent with effect from January, 1984 and that the landlord *bone fide* required the premises for his own use and occupation because on the retirement of his wife from service in March, 1985, the Government premises in his occupation earlier had been got vacated. At present, he was only in occupation of one room of the demised premises and his luggage was lying outside. Notice of the application was sent to the tenant who happens to be a responsible police officer, i.e., an A.S.I. in the C.I.D. Department, Ambala City. Summons by Registered A.D. post were sent which came back with the report of refusal. In spite of that, the Rent Controller when found that the tenant cannot be served in ordinary way, he summoned him through substituted service, i.e., by way of publication in the Daily Ranjit for which the landlord had to pay the publication charges. In spite of that, the tenant failed to appear and suffered an *ex parte* eviction order on January 14, 1987. When execution was sought by the landlord, the tenant filed the petition for setting aside the *ex parte* order on April 3, 1987, alleging that he came to know of the eviction order on March 29, 1987. According to the averments made in the application, he was never served and he never refused to accept the service and, therefore, the *ex parte* order was liable to be set aside. The allegations made therein were controverted in the reply filed on behalf of the landlord. It was pleaded that the tenant had refused to receive the summons and since he had not appeared despite publication, he was proceeded *ex parte*. There was no justification for setting aside the *ex parte* eviction order. The learned Rent Controller after framing the necessary issues and allowing the parties to lead evidence came to the conclusion,—

“No doubt, the Rent Controller got inherent power to set aside his own *ex parte* order but in view of the facts and circumstances of this case where proper service was done

through publication and the registered cover was sent back as refused, I do not find any ground to set aside the *ex parte* ejection order."

Consequently, the application under Order IX rule 13, Code of Civil Procedure, was dismissed,—*vide* impugned order.

(3) According to the learned counsel for the petitioner, there was no occasion for passing the *ex parte* eviction order as no proper service was done, nor there was any occasion for directing the substituted service by publication.

(4) After hearing, I do not find any merit in this petition.

(5) The petitioner is a responsible Police Officer. Instead of being present in Court after service, he avoided to appear and suffered an *ex parte* order. The whole effort seems to delay the proceedings. The landlord sought the ejection *inter alia* on the ground of his *bona fide* personal necessity. The application was filed in January, 1986, i.e., more than three years back. The Rent Controller has gone into the matter in detail and has given a firm finding that he was duly served by substituted service and had also refused the registered cover with acknowledgement due. In these circumstances, no interference is possible in revisional jurisdiction. Consequently, the petition fails and is dismissed with costs. However, the tenant is allowed one month's time to vacate the premises; provided all the arrears of rent up to date and the rent for one month in advance, are deposited with the Rent Controller within a fortnight.

P.C.G.

FULL BENCH

Before : I. S. Tiwana, A. L. Bahri and A. P. Chowdhri, JJ.

SUBHASH CHANDER KAMLESH KUMAR,—*Petitioner.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3923 of 1986

March 9, 1990.

*Punjab Agricultural Produce (Markets) Act, 1961—Ss. 2(q), 6(3), 10 and 23—Punjab Agricultural Produce Markets (General) Rules, 1962—Rls. 18(1)(c), 24, 29(1) and 31(a)—Punjab Agricultural Produce*