

Before J. V. Gupta, J.

KRISHAN LAL,—*Petitioner.*

versus

VIRENDER KUMAR AND OTHERS,...*Respondents.*

Civil Revision No. 3341 of 1984.

May 17, 1985.

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973)—Section 15(6)—Code of Civil Procedure (V of 1908)—Order 5 Rule 28 and Order 9 Rule 13—Application for ejection against joint tenants—Substituted service effected on one of the tenants—Ex-parte order of ejection against the tenants—Application to set aside the ex-parte order by the tenant served by substituted service—Family of such tenant living with other tenants in the demised premises—Applicant tenant—Whether could be held to have knowledge of the ex-parte proceedings—Sufficient cause for setting aside ex-parte order—Whether made out.

Held, that where the tenancy was joint and all the brothers and their mother were joint tenants and it was admitted that their families were also joint and had joint business and there is nothing to suggest that the interest of the brothers and their mother was adverse to one of the tenants who was living away, it could not be argued that that tenant did not know about the ejection proceedings or the ex-parte ejection order passed against them. Where all the tenants except the one who was living away have been appearing in Court regularly and suddenly absented themselves when the ejection order was passed, the Rent Controller was right in holding that there was no sufficient ground set aside the ex-parte ejection order and that application for setting aside the same was also barred by time. There would be no illegality or impropriety in the said order to be interfered with in revisional jurisdiction.

(Para 4)

Petition under Section 15(6) of Haryana Urban (Rent and Eviction) Act, 1973 for revision of the Order of the Court of Shri V. K. Kaushal, Appellate Authority, Rohtak, dated 14th December, 1984, affirming that of the Order of the Court of Shri N. C. Nahata, Rent Controller, Rohtak, dated 23rd May, 1984 dismissing the application for setting aside the ex-parte ejection order dated 9th September, 1980.

Claim: Application for ejection.

Claim in Revision: For reversal of the Order of the Lower Courts.

D. V. Sehgal, Advocate with P. S. Rana, Advocate, for the *Petitioner.*

Ashok Bhan, Advocate with Rakesh Garg Advocate, for the *Respondent.*

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JUDGMENT

J. V. Gupta, J

(1) This petition is directed against the order of the Rent Controller dated 23rd May, 1984 whereby the application for setting aside the ex-parte ejectment order dated 9th September, 1980 was dismissed.

(2) The landlord Virender Kumar filed an ejectment application on 31st January, 1977, *inter alia*, on the ground that the tenants were in arrears of rent and that they had materially impaired the value and utility of the premises and that the landlord *bona-fide* required the premises for his own use and occupation. In the ejectment application, five persons were arrayed as tenants named Krishan Lal, Jagmohan, Kuldip Singh and Rajinder Singh, sons of Raghu Nath Rai Bakshi and their mother Harbans Kaur, widow of Shri Raghu Nath Rai. It may be stated here that originally Raghu Nath Rai was the tenant but after his death, the four sons and the widow inherited the tenancy. All the respondents-tenant except Krishan Lal (petitioner) were served personally in the ejectment application. Krishan Lal was served through substituted means as he was serving in the Military and was not himself residing in the tenanted premises. The tenants tendered the arrears of rent on the first date of hearing. The application remained pending and the tenants resisted the same. It was only on 5th September, 1980 when they absented themselves and consequently, ex-parte order of ejectment was passed on 9th September, 1980. On 9th January, 1981, Krishan Lal filed an application for setting aside the ex-parte ejectment order alleging that he was never served in the ejectment application filed against him. The other respondents also moved a separate application for setting aside the ex-parte order on the ground that the case was adjourned for compromise and, therefore, they did not appear before the Rent Controller under the impression that the case was fixed for compromise and not for regular hearing. These applications were contested on behalf of the landlord who denied the averments made in these applications. A further plea was taken that the applications were barred by time. The learned Rent Controller framed the following two issues:—

- (1) Whether there are sufficient grounds to set aside the ex-parte decree dated 9th September, 1980 as alleged? OPA.
- (2) Whether the application is within time? OPA.

The learned Rent Controller found that as regards the application filed on behalf of Jagmohan and others, no evidence was led of any alleged compromise and they were, thus, rightly proceeded with ex-parte and there was no sufficient ground to set aside the ex-parte order. As regard the application filed by Krishan Lal the learned Rent Controller observed as under:—

“In the present case, three brothers and the mother of petitioner Krishan Lal had appeared in the court and, therefore, they could have well defended their interest with respect to the disputed house which was in their joint tenancy. They had even tendered the arrears of rent in this case on behalf of all the tenant including Krishan Lal and, therefore, it is very clear that they were jointly defending the interest of Krishan Lal also. Hence, the fact that the service upon the petitioner Krishan Lal was not affected through Military Personnel in this case is of no consequence. Therefore, I find no sufficient ground for setting aside the ex-parte ejectment order dated 9th September, 1980.”

Under Issue No. 2 the learned Rent Controller found that both the applications were barred by time as the same were filed after more than 30 days from the order or its knowledge. In view of these findings, both the applications were dismissed. Dissatisfied with the same, only Krishan Lal has filed this petition.

(3) The main argument of the learned counsel for the petitioner is that there was no due service on Krishan Lal as required under Order 5, Rule 28, Code of Civil Procedure, because he was serving the Military and, therefore, the summons for service were to be sent through his Commanding Officer together with a copy to be retained by the defendant and since this was never done there was no due service on him and any ex-parte order thus passed was liable to be set aside. It was also contended that each tenant had a separate interest and, therefore, it was obligatory on the part of the landlord to get the personal service effected on Krishan Lal tenant as well. In support of this contention, reference was made to *Trilokchand Kapoorchand v. Basubai Vastimal Oswal* (1), *Ishwarlal Pranjiwandas*

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v. Labhahankar Hargovindas Bhatt (2) and Vidyawanti v. Taken Dass (3).

(4) After hearing the learned counsel for the parties and going through the relevant evidence on record I do not find any merit in this petition. It was admitted by Krishan Lal as A.W.-1 that the tenancy was joint, i.e., all the brothers and their mother were joint tenants. He also admitted in his statement that their family was also joint and they had joint business. He has also stated that he had been receiving letters from his wife during the pendency of the ejectment application before the Rent Controller. Moreover, it has nowhere been suggested that the interest of his brothers and their mother was adverse in any manner to that of Krishan Lal. Admittedly Krishan Lal himself was not in occupation of the premises as such. His wife and children were living therein along with his other brothers. On these admitted facts, it could not be successfully argued that Krishan Lal did not know about the ejectment proceedings or the ex-parte ejectment order passed against them. All the other respondents except Krishan Lal have been appearing in Court regularly. For the reasons best known to them, they absented themselves on 5th September, 1980, when subsequently on 9th September, 1980, ex-parte ejectment order was passed against them. On these facts it has been rightly held by the learned Rent Controller that there was no sufficient ground to set aside the ex-parte ejectment order and that the application for setting aside the same was also barred by time. There is no illegality or impropriety in the said order to be interfered with in revisional jurisdiction. The authorities relied on by the learned counsel for the petitioners have no applicability to the facts of the present case. The ejectment application was filed in January, 1977, whereas the ejectment order was passed on 9th September, 1980. For all this period, the tenants had successfully delayed their ejectment from the demised premises when the landlord sought their ejectment on the ground of bona-fide personal necessity as well as on the ground that the tenants had impaired the value and utility of the building. Under these circumstances, the petition fails and is dismissed with costs. However, the tenants are allowed three months time to vacate the premises provided all the arrears of rent, if any, and advance rent for three months is deposited with the Rent Controller within one month with an undertaking in writing that

(2) 1982 (2) R.C.R. 380.

(3) 1974 R.C.R. 47.

after the expiry of the said period, vacant possession will be handed over to the landlord.

N.K.S.

Before J. V. Gupta, J.

KUNDAN SINGH AND OTHERS,—Appellants.

versus

GURNAM SINGH AND OTHERS,—Respondents.

Second Appeal from Order No. 66 of 1984.

May 22, 1985.

Code of Civil Procedure (V of 1908)—Order 1 Rule 8—Representative suit—Notice of the suit not issued to all the residents either by personal service or by public advertisement—Suit allowed to proceed and subsequently dismissed—Decree—Whether liable to be set aside on the ground of non-compliance with the provisions of order 1 Rule 8—Such provisions—Whether mandatory.

Held, that where the Court failed to comply with the provisions of Order 1 Rule 8 of the Code of Civil Procedure, 1908, the decree passed in the suit would be liable to be set aside. The said provision of law is mandatory in nature and in the absence of any notice, the provision of sub-rule (2) would become redundant and grave injustice may result therefrom in the form of a decree against persons who were never told that a case was pending against them. The issue of a notice under Order 1 Rule 8 is not a mere empty formality but a *sine qua non* for the applicability of the rule.

(Para 3)

Petition under Section 43 Rule 1 (U) C.P.C. for revision from the order of the Court of Mrs. Gurdial Singh, Additional District Judge, Amritsar, dated the 29th day of September, 1984, reversing that of Shri Surjit Singh, PCS, Sub-Judge, 1st Class, Amritsar, dated the 21st day of December, 1981, allowing the appeal and setting aside the impugned judgement/decree and remanding the case to the trial court for disposal in accordance with law and further ordering remand the trial court shall re-admit the suit, issue notice of the institution of it to the inhabitants of the village Wadala Johal at the expense of the plaintiff either by personal service or where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement as it may direct, and then to proceed and try the suit.

H. S. Mattewal, Advocate, for the Appellants.

Bhagirath Dass, Advocate with Ramcsh Kumar, Advocate, for the Respondent.