

Before Mahabir Singh Sindhu, J.

INDERPREET KAUR AND ANOTHER—Petitioners

versus

**MANJIT KAUR SHAHI THROUGH HER GPA-KULDEEP
SINGH—Respondent**

CR No. 236 of 2019

May 28, 2020

A. Revision petition under Article 227 of the Constitution—Punjab Rent Act, 1995—Ss.24(3), 38 (4) and (5)—Revision against interim orders by the Rent Controller declining tenant’s application for supply of a copy of the eviction petition, seeking permission to file amended leave to contest on receipt of documents attached to the petition—Rent Controller and the Appellate Authority dismissed the applications as having been filed only to delay the proceedings—Held, S.38(4) requires summons to be issued by the Rent Controller in the specified form, which requires annexation of a copy of the application—Since the grievance raised by the petitioners/tenants is non-furnishing of supporting affidavits and documents annexed to the petition, it is not in dispute that they were duly served through dasti summons—The requirements of S.38(5) that Rent Controller shall also direct service of summons by registered post, affixation on the premises door, and munadi does not mean without these formalities there shall be no service.

Held that perusal of sub-section 4, extracted above, reveals that summon(s) related to every application(s) under the Act of 1995 shall be issued by the Rent Controller in the Form specified under Schedule III, reproduced hereinabove.

(Para 12)

Held that the Form specified under Schedule III is the format for issuance of summon(s) in terms of sub-section 4 and the first paragraph of the Schedule talks about annexation of copy of application filed before the Rent Controller.

(Para 13)

Held that Sub-section 5 of Section 38 further reveals that in addition to, and simultaneously with the issuance of summon(s) for service on the opposite party, the Rent Controller shall also direct the summons to be served by registered post, acknowledgement due, under

certificate of posting to the opposite party or his agent as the case may be and shall also direct affixation of the same on the door of the premises in dispute and get a *manadi* in this behalf.

(Para 14)

Held that Sub-section 5 further says that “this shall constitute valid service of summons”. As per sub-section 5, it is discernible that in addition to the issuance of summon(s) for service of opposite party, the same be served by:-

- (i) registered post, acknowledgement due and under certificate of posting;
- (ii) affixation on the door of the premises in dispute and
- (iii) to get a *manadi*;

(Para 15)

Held that Although, sub-section 5 of Section 38 requires that summons be issued for service of the opposite party by way of modes noticed at Sr. Nos.(i) to (iii) hereinabove, but it does not mean that without above formalities, there shall be no valid service of the summons; rather the last line speaks to the effect that 'this shall constitute valid service of the summons', but it nowhere says that 'only' this shall constitute valid service of the summons.

(Para 16)

Held that concededly, both the petitioners were duly served by way of *dasti* summons and the grievance raised is that they were not supplied the copy of the petition(s), supporting affidavits along with the documents, annexed with the petition, therefore, so far as point of service of summons is concerned, the same is not in dispute; rather duly acknowledged.

(Para 17)

B. Revision petition under Article 227 of the Constitution—Punjab Rent Act, 1995—Ss.24(3), 38 (4) and (5)—S.114 illustration (e) Indian Evidence Act, 1872—Revision against interim orders by the Rent Controller declining tenant’s application for supply of a copy of the eviction petition, seeking permission to file amended leave to contest on receipt of documents attached to the petition—petitioners/tenants’ plea that there was no proper service on them as the words “a copy annexed” as per the requirement of Schedule III were not incorporated in the summons served—Held, summons were served on the petitioners along with copies of the petition—reports of

the process server have been believed to be correct by both the courts below—no material shown to the court to disagree with the conclusion—Besides, under S.114 illustration (e) Indian Evidence Act there is presumption that judicial and official acts have been regularly performed, and the petitioners have failed to show any exceptional circumstance—Further, the order of the Rent Controller dated 02.08.2018 clearly indicates directions were issued to supply copies of the petitions, PF along with other documents—it establishes the same were duly supplied by the process server—thus, there was due compliance of the statutory requirement.

Held that as already discussed, in terms of order dated 02.08.2018, summons were served to the petitioners along with the copies of the petition(s) and reports of the Process Server have been believed to be correct by both the Courts below and concurrently held to the effect that applications in question were filed just to delay the proceedings.

(Para 35)

Held that in such a scenario, there is neither any reason; nor material shown to this Court to disagree with the conclusion of the Courts below. Moreover, in view of the illustration (e), Section 114 of the Indian Evidence Act, 1872, there is a presumption that every judicial and official acts have been regularly performed and petitioners have failed to show any exceptional circumstance in this regard. Still further, the order dated 02.08.2018 is to be read in conjunction with the summons sent to the petitioners, which clearly indicates that there were specific directions by the learned Rent Controller to supply the copies of petitions, PF along with other documents and it is established that same were duly supplied by the Process Server. Therefore, the argument raised by learned Senior Counsel that in the format of summons, the words “a copy annexed” are missing would not be construed as non-compliance of sub-sections 4 & 5 of Section 38 or Schedule III thereof in view of the facts and circumstances of the present case. This Court has no hesitation in saying that there was due compliance of statutory requirement while effecting the service of both the petitioners and they were duly served along with the copies of petition(s) as well as its enclosures i.e. affidavit(s) and other documents, therefore, the contention raised on behalf of the petitioners regarding defect in service is liable to be rejected.

(Para 36)

C. Revision petition under Article 227 of the Constitution—Punjab

Rent Act, 1995—Ss.24(3), 38 (4) and (5)—S.114 illustration (e) Indian Evidence Act, 1872—Main eviction petition already stands allowed against the petitioners/tenants after declining their application for leave to defend—statutory appeal against that order is pending—the petitioners still filed revision against interim orders by the Rent Controller declining tenant’s application for supply of a copy of the eviction petition, seeking permission to file amended leave to contest on receipt of documents attached to the petition—Held, there was no cause of action at all for the petitioners to file the revision petition—it is well settled that in such cases interlocutory orders merge with the final order—the recourse to filing the revision petition is therefore misuse of the process of court—Further held, jurisdiction of the High Court under Article 227 is of superintendence to keep subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors—petition dismissed with Rs.25000/- as costs.

Held that curiously enough, although passing of the order dated 08.01.2019 (R-1) is conveniently disclosed by the petitioners in para 10 of present petition, but copy of the same has not been appended; rather deliberately withheld just to create non-existent cause of action. Since after declining the application for seeking leave to defend, the main eviction petition had also been allowed by the learned Rent Controller on 08.01.2019 and statutory appeal against that order is pending, therefore, there was no cause of action at all for the petitioners to file the present petition. It is fairly well settled that in such like case(s), the interlocutory order(s) will merge with the final order. As a result thereof, this Court is of the opinion that the recourse taken by the petitioners while filing the present petition is nothing, but complete misuse of the process of the Court and sans *bona fide*.

(Para 42)

Held that it is well settled that jurisdiction of this Court under Article 227 of the Constitution is of superintendence to keep the subordinate Courts as well as Tribunals “within the bounds of their authority and not for correcting mere errors”, vide Constitution Bench judgment **AIR 1954 SC 215, Waryam Singh versus Amarnath**.

(Para 43)

Held that as a result thereof, there is no hesitation to hold that petitioners filed the present petition just to stall the eviction proceedings by hook or crook and obtained the interim stay for their dispossession on 16.01.2019 without any lawful basis.

(Para 44)

Sanjeev Sharma, Senior Advocate assisted by Vivek Kathuria and Sandeep Singh, Advocates, *for the petitioners.*

Amit Jain, Advocate, for the respondent.

MAHABIR SINGH SINDHU, J.

(1) Present petition has been filed by the petitioners/tenants under Article 227 of the Constitution of India for setting aside the impugned orders dated 31.08.2018 (P-1) & 03.01.2019 (P-2), passed by learned Rent Controller as well as Appellate Authority, S.A.S. Nagar, Mohali, respectively, against the rejection of their two miscellaneous applications (P-8 & P-9).

(2) Brief facts of the controversy are that respondent/landlord being a Non-Resident Indian (*for short 'NRI'*) filed Rent Petition No.RP-41/2018 on 02.08.2018 (P-5), under Section 24 (3) of the Punjab Rent Act, 1995 (*for short 'Act of 1995'*) for eviction of the petitioners and their family members from House No.1483, Phase 10, S.A.S. Nagar, Mohali (*hereinafter referred as 'demised premises'*) as described in the head note thereof with the averments that:-

(a) Respondent is absolute owner of the demised premises by way of registered Sale Deed dated 08.05.1998; aged 62 years, permanent resident of Norway, thus, NRI;

(b) Petitioners were inducted as tenants at monthly rent of Rs.10,500/- and tenancy was oral;

(c) In the month of October, 2017, respondent requested the petitioners to vacate the demised premises as she was planning to shift to India in January, 2018 along with her son-Gurpreet Singh Shahi and wanted to get the house renovated;

(d) Son of respondent is not mentally fit as he is suffering from Hebephrenic Schizophrenia (Epileptic Fits);

(e) In January, 2018, respondent came to India and requested the petitioners to vacate the demised premises, but instead of vacating the same, they threatened the respondent to do whatever she wants and they will not vacate the premises at any cost.

(3) Further averred that representation dated 16.02.2018 was

made to NRI Cell at Mohali in the matter and the petitioners were summoned by the officials of NRI Cell, where they stated that the demised premises shall be vacated by 30.06.2018. Despite that, petitioners did not vacate the premises; rather filed a suit for permanent injunction against the respondent. It was categorically declared in para 10 of the eviction petition that respondent is neither an owner; nor occupying any other residential property/suitable accommodation within the municipal limits of S.A.S. Nagar, Mohali and she has also not vacated any such residential property under her occupation. Still further, in Para 15 of the petition, filing of earlier Rent Petition No.30 of 2018 and its withdrawal were also disclosed.

(4) Upon receipt of notice, petitioners joined the proceedings before learned Rent Controller and filed three applications (P-8, P-9 & P-10) on 14.08.2018; gist of these are as under:-

(P-8) Application to supply copy of eviction petition, supporting affidavit, if any, and documents relied on by the respondent;

(P-9) Application for seeking permission to file amended leave to contest on receipt of documents mentioned in the application (P-8);

(P-10) Application for leave to contest the eviction petition accompanied with joint affidavit of the petitioners.

(5) Learned Rent Controller, after hearing both sides and carefully considering the report of Process Server, dismissed two applications (P-8 & P-9), vide impugned order dated 31.08.2018, while observing that these were filed just to delay the proceedings. Third application (P-10) for seeking leave to defend was adjourned to 04.09.2018 for filing reply.

(6) Aggrieved against the above order, petitioners preferred an appeal before learned Appellate Authority, but the same was also dismissed, vide impugned order dated 03.01.2019. Learned Appellate Authority also observed that there is no infirmity with the order dated 31.08.2018 and applications were filed just to prolong the eviction proceedings.

(7) Hence, the present petition.

(8) It is contended by learned Senior Counsel:-

- (a) that in view of the mandatory provisions of sub-sections 4 & 5, Section 38 of the Act of 1995 along with Schedule III thereof, there was no proper service of the petitioners; thus, the same is fatal as it goes to the root of the case. He has pertinently argued that as per the requirement of Schedule III, the words “a copy annexed” must be incorporated in the Form of summons, but in the present case, the same are missing, thus, there is a breach of the above provisions while effecting the service of the petitioners. He has also argued that when a power is given to do certain things in a certain way, then things must be done in that way or not at all and reliance is placed upon ‘Babu Verghese and others versus Bar Council of Kerala and others’, (1999) 3 SCC 422;
- (b) that attorney on behalf of the respondent was not legally authorised to file the present eviction petition, therefore, the same ought to have been summarily rejected by the learned Rent Controller;
- (c) that respondent concealed the factum of ownership of triple storey House No.3472, Sector 46-C, Chandigarh in the eviction petition;
- (d) that petitioners have been deprived the opportunity of review in terms of Section 38(7)(e) of the Act of 1995 by the learned Rent Controller while passing the eviction order dated 08.01.2019;
- (e) that the petitioners have been deprived their valuable right to defend the eviction petition and thus, caused gross miscarriage of justice.

(9) On the other hand, learned Counsel for the respondent opposed the above contentions while submitting that application for leave to defend filed by the petitioners had already been rejected and even the eviction petition of the respondent was also allowed by learned Rent Controller, vide common order dated 08.01.2019 (Annexure R-1), thus, every interim order including rejection of the applications (P-8 & P-9), vide order dated 31.08.2018, merged in the final order. Further argued that petitioners, deliberately, neither annexed the copy of eviction order dated 08.01.2019 with the present petition; nor filed the statutory appeal against that order at the relevant time; rather rushed to this Court while invoking jurisdiction under Article 227 of the Constitution without any basis, obtained *ex parte* stay of dispossession

on 16.01.2019. Still further argued that present petition is nothing, but complete misuse of the process of the Court and liable to be dismissed with exemplary costs. Also argued that subsequently i.e. on 12.02.2019, an appeal was preferred by the petitioners against the order dated 08.01.2019 and all the points raised in the present petition have been taken as specific grounds, mentioned in para 2 of the appeal and he has produced the complete copy of the appeal, which is stated to be pending before learned Appellate Authority. Lastly argued that the impugned orders, passed by both the Courts below, are self speaking, perfectly legal and justified as the petitioners were duly served with complete paper-book, but just to delay the eviction proceedings, the applications in question (P-8 & P-9) were filed with *mala fide* intention.

(10) Heard learned Counsel for the parties and perused the record of the case carefully.

(11) Before proceeding with the matter, it would be appropriate to extract sub-sections 4 & 5 of Section 38 along with Schedule III specified under the Act of 1995:-

38. Procedure to be followed by Rent Authority:-

(1)

(2)

(3)

(4) The Rent Authority shall issue summons in relation to every application under this Act in the form specified in Schedule III to this Act.

(5) The Rent Authority shall, in addition to, and simultaneously with the issue of summons for service on the opposite party, also direct the summons to be served by registered post, acknowledgement due, under certificate of posting addressed to the opposite party or his agent authorised to accept the service at the place where the opposite party or his agent actually and voluntarily resides or carries on business or personally works for gain, and shall also direct affixing of the same on the door of the premises in dispute and get a manadi in this behalf. This shall constitute valid service of summons.

SCHEDULE-III

[See sub-section (4) of section 38]

Form of Summons

(Name, description and place of residence of the tenant)
Whereas Shri _____ has filed an application (a copy annexed) _____ on the grounds specified in section _____

You are hereby summoned to appear before the Rent Authority within () days of the service hereof and file a reply within _____ days in default whereof the matter shall be heard and disposed of ex parte.

You are to obtain the leave of the Rent Authority to contest the application for eviction on the ground _____ in default whereof the applicant 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 premises.

Leave to appear and contest the application may be obtained on an application to the Rent Authority supported by an affidavit as is referred to in clause (b) of sub-section (7) of section 38.

Given under my hand and seal of the Rent Authority or Additional Rent Authority;

This _____ day of _____ 20

Rent Authority/
(Seal)
Additional Rent Authority.

To be filled in
Strike off portion not applicable.

Notes:-

For cases covered under clauses (d) and (e) of sub-section (2) of section 20 and sections 21, 22, 23, 24 and 31 indicate fifteen days and for other cases indicate thirty days.

For only cases covered under clause (a) of sub-section (8) of Section 38.

(12) Perusal of sub-section 4, extracted above, reveals that summon(s) related to every application(s) under the Act of 1995 shall be issued by the Rent Controller in the Form specified under Schedule

III, reproduced hereinabove.

(13) The Form specified under Schedule III is the format for issuance of summon(s) in terms of sub-section 4 and the first paragraph of the Schedule talks about annexation of copy of application filed before the Rent Controller.

(14) Sub-section 5 of Section 38 further reveals that in addition to, and simultaneously with the issuance of summon(s) for service on the opposite party, the Rent Controller shall also direct the summons to be served by registered post, acknowledgement due, under certificate of posting to the opposite party or his agent as the case may be and shall also direct affixation of the same on the door of the premises in dispute and get a *manadi* in this behalf. Sub-section 5 further says that “this shall constitute valid service of summons”.

(15) As per sub-section 5, it is discernible that in addition to the issuance of summon(s) for service of opposite party, the same be served by:-

- (a) registered post, acknowledgement due and under certificate of posting;
- (b) affixation on the door of the premises in dispute and
- (c) to get a *manadi*;

(16) Although, sub-section 5 of Section 38 requires that summons be issued for service of the opposite party by way of modes noticed at Sr. Nos.(i) to (iii) hereinabove, but it does not mean that without above formalities, there shall be no valid service of the summons; rather the last line speaks to the effect that 'this shall constitute valid service of the summons', but it nowhere says that 'only' this shall constitute valid service of the summons.

(17) Concededly, both the petitioners were duly served by way of *dasti* summons and the grievance raised is that they were not supplied the copy of the petition(s), supporting affidavits along with the documents, annexed with the petition, therefore, so far as point of service of summons is concerned, the same is not in dispute; rather duly acknowledged.

(18) It transpires that initially, respondent/landlord filed Rent Petition No.30 of 2018 dated 19.05.2018 (P-3), under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (*for short '1949 Act'*) for eviction of the petitioners from the demised premises, but the same

was withdrawn with liberty to file fresh one under Section 24(3) of the Act of 1995 on 16.07.2018 in the following manner:-

“An application under Order 23 rule 1(3) of CPC has been moved by the petitioner seeking permission to withdraw the present petition with liberty to file a fresh one on the same cause of action. It has been pleaded that in view of the decision of the Hon'ble High Court of Punjab & Haryana, Chandigarh in CR No.3509 of 2014, the petitioner may be granted permission to withdraw the petition and file a fresh one as per the provisions of the Punjab Rent Act, 1995 instead of East Punjab Urban Rent Restriction Act, 1949.

Heard. The petitioner has also suffered a statement regarding the aforesaid request. In view of the application and the statement of petitioner, present petition is hereby dismissed as withdrawn with liberty to file fresh one on the same cause of action. File be consigned to the record room.”

(19) In terms of the above order, present eviction petition was filed on 02.08.2018, under Section 24(3) of the Act of 1995 by the respondent through her brother-in-law, namely, Kuldeep Singh as G.P.A.

(20) Undisputedly, contents of both the petitions are verbatim except that:-

(a) earlier petition was filed under Section 13-B of 1949 Act, whereas present petition is under Section 24(3) of Act of 1995;

(b) earlier petition was filed by the respondent herself, but the present petition has been instituted by her through GPA.

(21) Learned Rent Controller on 02.08.2018 while issuing notice of the eviction petition to the petitioners passed the following order:-

“Petition received by entrustment. It be checked and registered. Notice of the petition be issued to the respondents for 24.08.2018 on filing of PF and copies of petition, etc. Dasti process be also issued if required.”

(22) In pursuance of the above order, summons were issued for service of both the petitioners and they were served on 07.08.2018 and 08.08.2018, respectively, by way of *dasti* process and even the

affixation was also done at the demised premises.

(23) As per reports of the Process Server, made on the summons (P-6 & P-7), petitioner No.1-Inderpreet Kaur was served on 07.08.2018; whereas service of petitioner No.2-Gurpreet Singh Chahal was effected on 08.08.2018 through his wife (petitioner No.1) due to the reason that he was away from home at that point of time. Copies of petition(s) along with the summons were duly received by petitioner No.1 for herself as well as on behalf of her husband (petitioner No.2) and both the reports made by Process Server read as under:-

Re: Inderpreet Kaur:-

Respected Sir,

It is respectfully submitted that by visiting at the given address, service was effecting by giving one copy of summons and of case to Inderpreet Kaur. Report submitted please.

Re: Gurpreet Singh Chahal:-

Respected Sir,

It is respectfully submitted that for the purpose of effecting service, I visited the given address but Gurpreet Singh was not present there. At the above address, his wife Inderpreet Kaur met me and orally disclosed that he has gone out for performing his job and at her responsibility, she received one copy of summons and copy of case. Service effected.

(24) Perusal of the summons, received on behalf of the petitioners, nowhere reveal that any endorsement or objection was made by petitioner No.1 while receiving the summons on 7th and 8th of August, 2018 to the effect that copy of petition(s) along with enclosures was/were not supplied to her at that time.

(25) After six days, i.e. on 14.08.2018, petitioners filed three different applications as referred in para No.2 of this order and learned Rent Controller dismissed two applications (P-8 & P-9), vide order dated 31.08.2018, viz. for supply of copy of eviction petition(s) along with documents; and permission to file amended leave to defend the eviction petition. Learned Rent Controller observed that the petitioners have been duly served along with copy of eviction petition(s) and found that both the applications were filed just to delay the proceedings being

abuse of the process of law.

(26) Aggrieved against the above order, an appeal was preferred by the petitioners and due to the summoning of original record, proceedings before learned Rent Controller remained dormant till the decision of the appeal.

(27) Record reveals that before learned Appellate Authority also, the petitioners were again supplied the copies of petition(s) along with documents and reference in this regard can be made to order dated 13.09.2018, which reads as under:-

“POA on behalf of respondent POA holder of Manjit Kaur filed by Sh. G.S.Sidhu Adv. Ld. Counsel for the respondent suffered the statement that he has already supplied the copies of plaint along with documents and annexures to the appellants/tenants and today also he is supplying complete set of copy of eviction petition along with documents to the appellants/tenants in the court. Case stands adjourned to 15.09.2018 for consideration.”

(28) Learned Appellate Authority after hearing both sides and perusing the material available on record found that both the petitioners were duly served and they were supplied copies of petition(s) along with documents, thus, the applications were filed just to delay the proceedings. Consequently, learned Appellate Authority did not find any infirmity with the order of learned Rent Controller and dismissed the appeal being without any merit while passing the impugned order dated 03.01.2019 and the relevant observations made in para 10 of the said order are extracted as under:-

“Taking into account the facts and circumstances of the present case, I am of the considered view that the main petition for eviction of the present appellants was moved by the present respondent before the trial Court on 2.8.2018 and notice to the respondents/present appellants was issued by the trial Court for 24.8.2018 and perusal of the copy of summon of respondent No.1 Inderpal kaur available on the lower Court record shows that it was duly served upon respondent No.1 Inderpal Kaur and it is specifically mentioned in the report made by the concerned Process Server that service has been effected by supplying the copy of the petition/plaint to respondent No.1 Inderpal Kaur. Whereas perusal of the copy of summons issued to

respondent No.2 Gurpreet Singh Chahal available on lower Court record shows that it is reported by the concerned process server that respondent No.2 Gurpreet Singh was not found available on his residence, whereas his wife Inderpal Kaur found available and she had received the summons along with copy of plaint/petition on her responsibility. It is pertinent to mention here that the service upon the respondents was effected on 8.8.2018 and it was specifically mentioned in both the summons that “You are to obtain the leave of the rent authority to contest the application for eviction on the ground mentioned in the petition in default whereof the applicant will be entitled at any time after the expiry of said period of 15 days to obtain an order for your eviction from the said premises”. In this manner the respondents had required to file application for leave to contest the eviction petition upto 23.8.2018 from the date of their service. The respondents/present appellant had appeared on 14.8.2018 and had moved an application to leave to contest the eviction petition along with an application for permission to file amended leave to defend after receiving copies of petition, supporting affidavit and documents if any and they had also filed another application for directing the petitioner to supply copy of the eviction petition and documents if any relied upon by the petitioner. It is pertinent to mention that it has been specifically mentioned by the concerned Process Server in his report on the summons served upon the present appellants before the trial Court that copy of petition/plaint has been supplied to them. Process Server had done his official duty as required under law. No malafide has been attributed by the present appellant against the Process Server, rather allegations are that the respondent had malafidely not served copies of petition/documents upon them. It need to mention here that process is served through agency of Court along with copies of plaint/petition etc., and in the present case, Process Server had specifically made a report of service and supplying copy of plaint. He had also reported that Gurpreet Singh Chahal was not available, thus he was served through his wife. Service of present appellants have not been denied.”

(29) Learned Appellate Authority further opined that the applications have been filed “only to delay the proceedings”.

(30) Upon receipt of the original record from learned Appellate Authority, the application for leave to contest was heard by learned Rent Controller along with the eviction petition. After taking into consideration the rival contention of both sides and perusal of record, learned Rent Controller did not find any substance in the application for seeking leave to contest, thus, dismissed the same. The eviction petition filed by the respondent was allowed and consequently, petitioners were directed to be evicted from the demised premises, vide order dated 08.01.2019 (R-1).

(31) Despite the above factual position, instead of challenging the eviction order dated 08.01.2019, the petitioners resorted to the remedy under Article 227 before this Court while challenging the interim order dated 31.08.2018, passed by learned Rent Controller as well as order dated 03.01.2019 of learned Appellate Authority.

(32) Case file reveals that present petition came up for hearing on 16.01.2019 and a co-ordinate Bench of this Court passed the following order:-

“Heard.

Notice of motion for 29.04.2019.

In the meantime, status quo regarding possession over the tenanted premises be maintained.”

(33) It is necessary to mention here that above *status quo* order was extended from time to time and is still continuing.

(34) It is noteworthy that learned Rent Controller while passing the order dated 02.08.2018 (as reproduced in para 7 of this order) mandated that notices be issued to the petitioners for 24.08.2018 on filing of PF and copies of petition, etc. Dasti process was also ordered to be issued.

(35) As already discussed, in terms of order dated 02.08.2018, summons were served to the petitioners along with the copies of the petition(s) and reports of the Process Server have been believed to be correct by both the Courts below and concurrently held to the effect that applications in question were filed just to delay the proceedings.

(36) In such a scenario, there is neither any reason; nor material shown to this Court to disagree with the conclusion of the Courts below. Moreover, in view of the illustration (e), Section 114 of the Indian Evidence Act, 1872, there is a presumption that every judicial

and official acts have been regularly performed and petitioners have failed to show any exceptional circumstance in this regard. Still further, the order dated 02.08.2018 is to be read in conjunction with the summons sent to the petitioners, which clearly indicates that there were specific directions by the learned Rent Controller to supply the copies of petitions, PF along with other documents and it is established that same were duly supplied by the Process Server. Therefore, the argument raised by learned Senior Counsel that in the format of summons, the words “a copy annexed” are missing would not be construed as non-compliance of sub-sections 4 & 5 of Section 38 or Schedule III thereof in view of the facts and circumstances of the present case. This Court has no hesitation in saying that there was due compliance of statutory requirement while effecting the service of both the petitioners and they were duly served along with the copies of petition(s) as well as its enclosures i.e. affidavit(s) and other documents, therefore, the contention raised on behalf of the petitioners regarding defect in service is liable to be rejected.

(37) It is necessary to mention here that while making one more desperate attempt, the petitioners moved fourth application (P-15) on 08.01.2019 i.e. at the time of final argument itself before learned Rent Controller for rejection of the eviction petition while raising a plea that GPA dated 09.07.2018 was not valid and thus, the attorney holder was not duly authorised to institute the eviction petition.

(38) Learned Rent Controller carefully considered the fourth application and after hearing both sides, dismissed the same on 08.01.2019 while observing that “*Bare perusal of GPA in favour of Kuldeep Singh executed by the petitioner Manjit Kaur Shahi on 09.07.2018 reveals that the GPA shall have the power to present and sign pleadings, appeal or petition or any other document at all stages. In view of the same, this court finds that the application filed by the respondents is baseless and without any premise. Accordingly, the application stands dismissed.*”

(39) Although, before this Court also, the point regarding validity of GPA dated 09.07.2018 is raised, but as discussed above, this issue was considered by learned Rent Controller while passing the eviction order on 08.01.2019 and that has been challenged by way of statutory appeal, which is pending for consideration.

(40) A cursory glance of the eviction order dated 08.01.2019 (R-1), but without going into the legality and validity thereof, it is clearly discernible that all the contentions were raised on behalf of the

petitioners and dealt with by learned Rent Controller. Concededly, the statutory appeal against the eviction order is pending before learned Appellate Authority. Still further, all these points have been raised by the petitioners in their appeal and reference in this regard can be made to sub-paras (a to f) of para 2 of the appeal, which are as under:-

- a) That from the contents of para no.15 of the Rent Petition it is abundantly clear that earlier the respondent/landlady filed Rent Petition No.30 of 2018 which was later withdrawn vide order dated 16.07.2018. It is further clear from the contents of Power of Attorney dated 09.07.2018 attached with the Rent Petition as Annexure P-7, that the attorney of respondent/landlady had not been authorised to file any Rent Petition in as much as the attorney pertained to **prosecution of Court Cases pending in any Court throughout India**, whereas the present petition was not pending on the date of execution of attorney dated 09.07.2018, the present petition having been filed on 02.08.2018.
- b) That the respondent concealed factum of having right, title and interest in respect of triple storey House No.3472, Sector 46-C, Chandigarh. It is worth mentioning here that respondent alongwith her father Sh. Balaura Singh purchased H.No.3472, Sector 46-C, Chandigarh from its allottee Sh. Ram Kumar. Agreement, GPA & Will were executed by allottee in favour of father of respondent whereas SPA was executed in favour of respondent. This fact is evident from the information collected by the petitioners from Chandigarh Housing Board, Chandigarh. True typed information supplied by Chandigarh Housing Board, Chandigarh vide letter dated 25.10.2018 is annexed herewith as **Annexure A-1**. In as much as Sh. Balaura Singh died intestate in the year 2012/2013, therefore, the respondent being Class-I legal heir of her father has right, title and interest in H.No.3472, Sector 46-C, Chandigarh.
- c) That refusal to allow the appellants right to defend goes to the root of the matter and has caused serious miscarriage of justice.
- d) That the impugned order is a result of complete suppression of facts which the respondent was duty

bound to disclose and thus, the impugned order is based on deceit practiced by the respondent. No one can be allowed to benefit from deceitful conduct and hence the petition ought to have been dismissed on this account alone.

- e) That in the absence of proper service of petition, the appellants were subjected to irreparable prejudice and this has led to complete miscarriage of justice.
- f) That the appellants have further been denuded of their right to file application for review in terms of Section 38(7)(e) of the Punjab Rent Act.

(41) Above all, perusal of both the applications in question (P-8 & P-9) clearly reveals that grievance of the petitioners was regarding non-supply of copies of petition(s), supporting material as well as other documents and for seeking amendment of leave to defend after receipt of the above documents. Thus, the petitioners are unnecessarily trying to stretch the scope of present petition by raising the irrelevant arguments like parallel proceedings to their pending appeal and which cannot be permitted.

(42) Curiously enough, although passing of the order dated 08.01.2019 (R-1) is conveniently disclosed by the petitioners in para 10 of present petition, but copy of the same has not been appended; rather deliberately withheld just to create non-existent cause of action. Since after declining the application for seeking leave to defend, the main eviction petition had also been allowed by the learned Rent Controller on 08.01.2019 and statutory appeal against that order is pending, therefore, there was no cause of action at all for the petitioners to file the present petition. It is fairly well settled that in such like case(s), the interlocutory order(s) will merge with the final order. As a result thereof, this Court is of the opinion that the recourse taken by the petitioners while filing the present petition is nothing, but complete misuse of the process of the Court and sans *bona fide*.

(43) It is well settled that jurisdiction of this Court under Article 227 of the Constitution is of superintendence to keep the subordinate Courts as well as Tribunals “within the bounds of their authority and not for correcting mere errors”, vide Constitution Bench judgment *Waryam Singh versus Amarnath*¹.

¹ AIR 1954 SC 215

(44) As a result thereof, there is no hesitation to hold that petitioners filed the present petition just to stall the eviction proceedings by hook or crook and obtained the interim stay for their dispossession on 16.01.2019 without any lawful basis.

(45) Still further, all other contentions were not germane to the applications (P-8 & P-9) in question; rather as discussed above, the same have already been considered and decided by learned Rent Controller while passing the eviction order dated 08.01.2019 and subject to further consideration before learned Appellate Authority, therefore, it would not be appropriate for this Court to express any further opinion in this regard as this would amount to pre-judging the merits of the appeal. Resultantly, the remaining contentions on behalf of the petitioners are rejected being totally irrelevant for the purpose of deciding the present petition, but shall not be construed as an adverse circumstance in any manner while deciding the appeal of the petitioners.

(46) This Court fully respect the law laid down by the Hon'ble Supreme Court in *Babu Verghese's case (supra)* being binding precedent, but the same is distinguishable due to the facts and circumstances of the present case. As in that case, there was a breach of Rule 6 of the Bar Council of India's Rule, but in the present case, this Court has come to the conclusion that there is due compliance of sub-sections 4 & 5 of Section 38 of the Act of 1995 as well as Schedule III thereof and there is no violation of any legal provision(s) while effecting the service of the petitioners, therefore, the judgment (*supra*) is not helpful to the petitioners in any manner.

(47) In view of the above, this Court does not find any substance in the present petition and the same deserves to be dismissed with costs of Rs.25,000/-, payable to the respondent for unnecessarily dragging her to the avoidable litigation.

(48) Ordered accordingly.

(49) It is clarified that learned Appellate Authority shall not be influenced in any manner by the conclusion recorded in this order.

Tribhuvan Dahiya