

this Act. By virtue of this provision, the notification issued under the Punjab Act exempting certain buildings from the purview of that Act was not inconsistent with the provisions contained in the Haryana Act or the rules made thereunder. The enforcement of the Haryana Act with effect from April 25, 1973 would not adversely affect the validity of the notification issued under the Punjab Act. The construction of the demised premises was completed in the year 1967 during the period the premises were exempted from the provisions of the Punjab Act for a period of five years. The suit for possession of the shop could be filed within the exemption period which expired in the year 1971. The instant suit was filed on 16th July, 1976 after the expiry of exemption period. The plaintiffs did not file the suit during the period when the provisions of the Punjab Act stood excluded. After expiry of period of exemption the remedy lay only under the Haryana Act (Haryana Urban Control of Rent and Eviction Act, 1973). The appeal, is therefore, devoid of merits and is dismissed but with no order as to costs.

P.C.G.

Before : A. L. Bahri, J.

BIJENDER SINGH.—*Petitioner.*

*versus*

RAMBIR SINGH AND OTHERS,—*Respondents*

*Civil Revision No. 2737 of 1990*

18th January, 1991

*Code of Civil Procedure (V of 1908)—O. 9, rl. 7 & 13—Setting aside of ex parte proceedings—Due service not effected—Irregularity in service of summons under O. 9, rl. 13 and non-service as regards O. 9, rl. 7—Distinction drawn.*

*Held*, that the principle laid down in rule 13 of Order 9 C.P.C. that on account of irregularity in the matter of service of summons, the *ex parte* decree is not to be set aside, is not attracted to the applications filed under Order 9 rule 7 of the Code of Civil Procedure. The case of irregular service or defect in the service would stand at par with the case of non-service as regards Order 9 rule 7 of the Code of Civil Procedure. Non-appearance on the date fixed on account of

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non-service of summons in the suit would be a good cause for setting aside order proceedings *ex parte*. Such a defendant on his appearance on showing good cause would be entitled to contest the suit by filing written statement taking all the pleas available to him.

(Paras 8 & 9)

*Revision petition under section 115 CPC against the order of the Court of Shri N. L. Pruthi, Senior Sub Judge, Sonapat dated 24th August, 1990, rejecting the application for setting aside ex parte order dated June 8, 1988.*

*CLAIM : Application for setting aside the Ex parte order against defendant No. 4 Bijender Singh.*

*CLAIM IN PETITION : For setting aside the order of the court below.*

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

I. D. Singla, Advocate, for the Respondent.

#### JUDGMENT

A. L. Bahri, J.

(1) This revision petition is directed against order dated August 24, 1990 passed by the Senior Subordinate Judge, Sonapat, rejecting application for setting aside *ex parte* order dated June 8, 1988 whereby Bijender Singh, one of the defendants in the suit, was proceeded against *ex parte*.

(2) A suit for pre-emption was filed against Bijender Singh and others. The address of Bijender Singh was given of village Juan, Tehsil and District Sonapat. The report was that he was not residing in the village. On another set of summons sent to Bijender Singh at his Delhi address, the report was of refusal. Thereafter, service was effected by proclamation by beat of drum in the village and for non-appearance of Bijender Singh on June 8, 1988 he was ordered to be proceeded against *ex parte*.

(3) In the application for setting aside the *ex parte* order, it was asserted by Bijender Singh that he was resident of Delhi where he was in service and he never refused any summons. He was not duly served. On coming to know of the pendency of the suit he

moved the application. This application was contested and the following issues were framed :—

(1) Whether order, dated 13th May, 1988 (in fact 8th June, 1988) is liable to be set aside as alleged ? OPA

(2) Relief.

(4) After both the parties adduced evidence, the impugned order was passed.

(5) The very fact that the plaintiffs took summons in the name of Bijender Singh giving Delhi address shows that at the relevant time he was not residing in the village, but was in Delhi. Thus, subsequent orders obtained from the Court for his substitutive service by proclamation by beat of drums in the village was against facts. Such proclamation cannot in any manner be treated as due service on Bijender Singh.

(6) AW-3 Bijender Singh has stated that for the last eight years, he has been residing in Delhi. Earlier he was a student and thereafter he is in service. No doubt, during cross-examination, it was put to him that he had not brought any documentary evidence regarding his residence and he had replied that he would produce the same but no documents were produced by him. As already stated above, since it was the case of the plaintiffs also that Bijender Singh was residing in Delhi, that summons were obtained in his name, it is not significant now that he did not produce his ration-card or other documents indicating his residence there. The report of refusal was not proved when parties were called upon to lead evidence on the issues framed. The factum of refusal was disputed and it was incumbent upon the plaintiffs to produce Process Server who had presented summons to Bijender Singh and he had refused the same. In the absence of such evidence, his report *per se* being on the record could not be treated as evidence to hold that in fact he had refused the acceptance of summons. In this state of affairs, there was no other conclusion to hold that Bijender Singh was not duly served in the suit.

(7) It has been asserted on behalf of the respondents that the petitioner being brother of other defendants, knowledge could be attributed to him about the pendency of the suit. In a given set of circumstances, such a presumption may be raised but in the present

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case I do not find that any other circumstances are brought on the record to raise such a presumption more so when other defendants are not residing in Delhi. In the impugned order, the trial Court placed its reliance on Ex. R1 the application moved before the revenue authorities on behalf of Bijender Singh giving his village address. However, much importance cannot be attached to this fact and that evidence of Shri R. S. Hooda, Advocate, (R/W2) that he had drafted the application for Bijender Singh. No doubt, Bijender Singh is originally resident of village, Juan where he and his brothers have property and if in the matter of partition proceedings relating to land between the brothers, village address was given, it cannot have any effect on the decision of the present application.

(8) The principle laid down in rule 13 of Order IX C.P.C. that on account of irregularity in the matter of service of summons, the *ex parte* decree is not to be set aside, is not attracted to the applications filed under Order 9 rule 7 of the Code of Civil Procedure. Rule 7 of Order 9 reads as under :—

“Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.”

(9) Case of irregular service or defect in the service would stand at par with the case of non service as regards Order 9 Rule 7 of the Code of Civil Procedure. Non-appearance on the date fixed on account of non-service of summons in the suit would be a good cause for setting aside order proceedings *ex parte*. Such a defendant on his appearance on showing good cause as above would be entitled to contest the suit by filing written statement taking all the pleas available to him.

(10) For the reasons recorded above, this revision petition is allowed with no order as to costs. The impugned order is set aside and the application filed by the petitioner for setting aside order proceedings *ex parte* against him is allowed. The parties through their counsel are directed to appear before the trial Court on February 11, 1991 for further proceedings in the suit.

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**R.N.R.**