

Tek Chand Jain and others *v.* The State of Haryana and others  
(J. S. Sekhon, J.)

13 to the posts of Assistant Treasury Officers from Assistant Superintendents (Treasury) are hereby quashed by accepting this writ petition. Respondent No. 1 shall, however, reconsider the cases of the petitioners as well as Respondents 2 to 13 for promotion to the posts of Assistant Treasury Officers as per quota rule embodied in Rule 7(I) of 1962 Rules within 3 months of the receipt of this order. The impugned Rule 9 of the 1980 Group B Rules *qua* its application to the petitioners excepting petitioner No. 2, who are already in service before the appointed day i.e. 1st November, 1966 is held to be violative of section 82 (6) of the Punjab Reorganisation Act, 1956, on the ground of not taking prior approval of the Central Government.

(17) The writ petition stands allowed to the extent indicated above with costs against Respondent No. 1 only, which shall be paid to the petitioners proportionately. Costs are quantified as Rs. 1000.

S.C.K.

*Before : G. R. Majithia, J.*

KULDEEP KUMAR AND ANOTHER,—*Appellants.*

*versus*

HUKAM CHAND,—*Respondent.*

*Regular Second Appeal No. 2142 of 1978.*

19th December, 1990.

*East Punjab Urban Rent Restriction Act, 1949—S. 3. Haryana Control of Rent and Eviction Act, 1973—S. 24—Shop in dispute constructed in 1957—Exemption of five years under Punjab Act expired in 1971—Suit for possession filed on 16th July, 1976—Maintainability—Demised premises—Whether exempted from the provisions of Punjab Act.*

*Held*, that 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).

(Para 3)

*Regular Second Appeal from the decree of the Court of Shri Ram Saran Bhatia, Additional Distt. Judge, Jind, dated 29th September, 1978, reversing that of Shri N. C. Nahata, HCS, Subordinate Judge, IInd Class, Narwana, dated 13th September, 1977 dismissing the suit of the plaintiffs with regard for possession leaving the parties to bear their own costs.*

*CLAIM : Suit for possession of a shop situated at Railway Road, Narwana, bounded as under:—*

*North : Shop of owner; South : Shop of owners; East : Railway Road; West : Shop of House, owner of Hardeep Kumar and for recovery of Rs. 4090 as arrears of rent-interest and House tax and mesne profits from the date of institution till the delivery of possession.*

*CLAIM IN APPEAL : For reversal of order of both the Courts. Ajay Mittal, Advocate, for the Appellants.*

*Nemo, for the Respondents.*

#### JUDGMENT

*G. R. Majithia, J.*

(1) The plaintiffs have come up in second appeal against the judgment and decree of the first appellate Court partially reversing on appeal those of the trial Judge and dismissing the suit for possession of the shop in dispute.

(2) The facts :—

Appellant No. 1/plaintiff No. 1 filed a suit for recovery of possession of the shop and for mesne profits on the ground that he became the owner of the shop in a family partition. His father-plaintiff No. 2/appellant No. 2 rented out the shop to the defendant on 23rd May, 1972 at the

Kuldeep Kumar and another v. Hukam Chand (G. R. Majithia, J.)

---

rate of Rs. 30 per month exclusive of house tax. The construction of the shop was completed after March 31, 1962 and the provisions of the Haryana Control of Rent and Eviction Act, 1973 (for short 'the Act') were not applicable and the suit in the Civil Court for recovery of possession of the shop was maintainable. The trial Judge decreed the suit for recovery of possession and also for arrears of rent. On appeal by the tenant, the first appellate Court reversed the decree of the trial Judge to the extent it had passed a decree for possession with regard to the shop in dispute and in all other respects the decree of the trial Judge was maintained. The plaintiffs have come up in second appeal against the decree of the first appellate Court whereby the relief of possession regarding the shop in dispute was declined.

(3) The conclusion of the first appellate Court that the suit for possession of the shop was not maintainable in the Civil Court is correct but for different reasons. There is no dispute that the construction of shop in dispute was completed in the year 1967. The precise question which arises for determination is whether the demised premises are exempt from the purview of the Act. It is undisputed that the provisions of the East Punjab Urban Rent Restriction Act, 1949 (for short the Punjab Act) were applicable to the territories forming part of the State of Haryana before the enactment of the Act. Section 3 of the Punjab Act gave unlimited power of exemption to the State Government. In exercise of this power, the Governor of Haryana,—*vide* Notification No. 5601-S.T.A. 71/30701, dated 22nd October, 1971 exempted every building constructed during the years 1958, 1959 and 1970 from the provisions of the Punjab Act for a period of five years from the date of exemption. The demised premises were constructed in the year 1967 during the period the exemption was granted from the provisions of the Punjab Act. The Haryana Act received the assent of the Governor on April 25, 1973. Section 24 of the said Act deals with the repeal and savings. Sub Section (2) of Section 24 of the Act says that notwithstanding such repeal, anything done or any action taken under the Act so repealed (including any rule, notification or order made) which is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act as if this Act were in force at the time such thing was done or action was taken, and shall continue to be in force unless and until superseded by anything done or any action taken under

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