> in-law claim that she has a right to live in that particular property irrespective of the fact that the father-in-law subsequently is no longer a Minister and the property reverts entirely to the Government" Certainly not. It is only in that property in which the husband has a right, title or interest that the wife can claim residence and that, too, if no commensurate alternative is provided by the husband"

(25) Keeping in view the larger interests of the family and to avoid further cases of domestic violence in the family, petitioner No.1 shall arrange adequate rented accommodation for the respondent, subject to the satisfaction of the respondent and pay rent for the same. The needful shall be done within three months from today. Respondent may also look for the rented accommodation and submit proposal to petitioner No.1. If order is not complied with by petitioner No.1 within stipulated period, respondent will be at liberty to move appropriate application before this Court. Till the suitable accommodation is arranged for the respondent, petitioner No.1 shall continue to pay rent at the rate of ₹6,000/- per month to the respondent.

(26) Accordingly, impugned order dated 03.11.2012 (Annexure P-2) passed by learned Additional Sessions Judge, Fatehgarh Sahib is modified and petition stands disposed of in above terms.

J.S. Mehndiratta

Before K. Kannan, J.

PUNJAB NATIONAL BANK—*Petitioner*

versus

RAJ KUMARI—*Respondent*

CR No. 508 of 2012 (O&M)

April 30, 2015

East Punjab Rent Restriction Act, 1949— Ss.13-B and 18-A— Code of Civil Procedure, 1908— S. 151, O.5 Rl.2, O.9 Rl. 6, O.37 Rls. 1 & 3—Valid service of petition—Tenant contended that only a copy of petition was served with notice and it was not accompanied with copies of documents purported to have been filed along with petition—Ultimately, tenant was ordered to be evicted by lower Court— Tenant contended that since it was case of a person claiming

to be an NRI and was seeking for fast-tracking of proceedings for a summary ejectment, tenant was bound to be informed of documents which landlady was relying on Landlady, only gave a statement in Court that all documents were annexed with petition—Held, that service could not be taken as sufficient at all to compel tenant to join issue on claim for eviction and to apply to court for leave to defend—Order passed by lower Court without assuring to itself that documents had been supplied was an irregular exercise of jurisdiction which goes to root of matter and vitiate order of eviction—Order was to be set aside—Copies of documents filed along with petition was to be supplied to the tenant by the landlady.

Held, that Section 18-A of the Act provides for a special procedure for disposal of applications filed under section 13-A or Section 13-B. Clause *(3)(a)* of the said section requires that summons shall be served on the tenant in accordance with the provisions of Order V of the First Schedule of the Code of Civil Procedure, 1908. Clause (4) of section 18-A provides that a tenant, on whom the service of summons has been declared to have been validly made, shall have no right to contest unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons, the statement made by the specified landlord or the NRI, as the case may be, shall be deemed to be admitted and the applicant shall be entitled to an order of eviction. Schedule-II of the Act prescribes the form of summons that will be issued where recovery of possession is sought under section 13-B. The summons provides for a period of 15 days to apply to the court for grant of leave to contest. Admittedly, the petition for grant of leave had not been filed.

(Para 3)

Further held, that it would be evident that the court was making reference to Order 9 Rule 6(1)(c) CPC that the service of summon ought not to be taken as merely the physical act of serving the summon, but it would be taken as a complete, only when service shall such as to enable the defendant to appear and answer on the date fixed in the summon, failing which, the court will postpone the date of hearing to a future date. That was precisely done in this case, as well, when the court was passing an order on 7-4-2011 directing the landlord to file reply to the application filed by the tenant for production of records urging him to file a reply and for production. The landlord ought to have complied with the direction and if she chose not to comply, she

must be taken as not having effectively served the summons to make possible a tenant to file even a petition for grant of leave. The landlord herself could not have known the factual situation unless she brought the bailiff to prove that the documents had indeed been served.

(Para 4)

Further held, that reading Section 18-A(3) along with the provisions of the CPC in the light of the judgment of the Supreme Court, I have no doubt in my mind that service could not be taken as sufficient at all to compel the tenant to join issue on the claim for eviction and to apply to the court for leave to defend. The learned counsel for the respondent states that the procedure prescribed under Section 18-Aenjoins that a tenant could join proceedings only by filing a petition for leave to defend. That leave could have included even a ground that the tenant was not served with the documents as a justification for grant of leave. I would find that such a contention is too fragile for acceptance. A leave to defend is not an empty formality to delay proceedings. It must provide a basis to act whether there was anything material for the tenant to urge in order that such a leave can be granted. A mere statement by a tenant that he had not been served with copies of documents could not be effective defence at all for claiming leave, though it could have been one of the grounds. If the tenant, on the other hand, moved on the first date of hearing that the documents had not been served, the simplest response from the landlord without much obfuscation could have been to merely supply the documents and put the onus on the tenant to come with pleas that could provide for justification for grant of such leave. The landlady has adopted a needless refractory approach that has done no good for her own cause for a quick decision.

(Para 6)

Further held, that there are other provisions under the CPC itself that contemplate a leave to defend before a statement could be permitted to be filed. Order 37 Rule 1 CPC is one such provision which provides for summary procedure and allows for summons for judgment to be delivered in the first date of hearing, if the defendant does not apply to the court for leave to defend within 10 days from the date of service of summons. This court had an occasion to consider the effect on defendant, who did not seek for such a leave, on a plea by him that the summons had been served without copies of documents. The question, therefore, was whether the physical service of summons alone could be deemed as sufficient to compel the defendant to apply for

leave and the effect of his failure to do so in the absence of documents being served on him. This court held in ***Nand Kumar*** *versus* ***Sheela Devi-1996(3) PLR 756*** that if summons accompanied by a plaint but without annexures had been made, it cannot be taken as an effective service. The court was holding that in a summary proceeding for recovery of money the purpose of Order 5 Rule 2 CPC was to give opportunity to the defendant to make payment and the compliance of Order 5 Rule 2along with Order 37 Rule 3 CPC was mandatory in so far as it requires documents filed along with the plaint to be served on the defendant. The court ruled that the service of summons with out documents was not a valid service and the decree passed despite objection by the petitioner that the documents had not been filed, was not valid and it was liable to be set aside. Without reference even to a summary procedure, the court was holding in yet another case in ***Ram Kumar*** *versus* ***Chelu Ram-1986(2) PLR 219*** that the documents appended with a plaint become part of the pleading and they would require to be served on the defendant.

(Para 7)

Further held, that in this case, I cannot sustain the order already passed. The order passed by the court without assuring to itself that the documents had been supplied was an irregular exercise of jurisdiction which goes to the root of the matter and vitiate the order of eviction. The order is set aside. I direct the landlord to supply therefore copies of documents filed along with the petition within 2weeks from the date of receipt of copy of this order and the landlady may secure to herself or its representative an acknowledgement of such service of documents. The tenant will take the service of documents and will file a leave to defend within 15 days which will be counted from the date of service of documents. If such a leave is sought, the court will consider the same in accordance with law and proceed further.

(Para 8)

Jagdish Marwaha, Advocate, *for the petitioner.*

H.S. Awasthi, Advocate, for the respondent.

K.KANNAN, J. (ORAL)

(1) The tenant, who has been ordered to be evicted in the proceedings initiated under Section 13-B of the East Punjab Rent Restriction Act, 1949 (for short, the Act), is before this court to complain that there was no valid service at all of the petition and there was no occasion for him to file even a petition for seeking for leave to

defend in the manner contemplated under Section 18-A of the Act. The contention is that when a notice was served on 25.03.2011, he had been served only a copy of the petition and it was not accompanied with copies of documents purported to have been filed along with the petition. Since it was a case of a person claiming to be an NRI and was seeking for fast-tracking of proceedings for a summary ejectment, the tenant was bound to be informed of the documents which the landlord was relying on. The first date of hearing, as per the summons served, was 07.04.2011 and on the same day, the petitioner had filed a petition, contending that the note in the last page of the petition made reference to the fact that the documents were attached, but in fact, no document was attached to the petition. He was, therefore, making an application which contained a prayer to direct the landlord to supply copy of the documents relied on by her in the interest of justice. This application was presented by the counsel for the Bank. The Rent Controller passed an order on 07.04.2011 as follows:-

> "Received by transfer, it be checked and registered. Sh. K.S. Bhatia, Advocate filed power of attorney on behalf of defendant and moved an application under Section 151 CPC for direction to supply the documents. Copy supplied. For filing of reply and documents as mentioned in the application to come up on 20.05.2011.
>
> Sd/-
> CJ(JD)/7.4.2011"

The landlord gave a statement on the adjourned date as follows:-

> "I do not want to file reply to the application 151 CPC as all the document are annexed with the petition and intentionally not taken by the respondent to delay the proceeding.
>
> Sd/- Sd/-
> RO&AC 20.5.11 RC/20.5.11

(2) It would be evident that when the tenant was complaining that the documents were not being served, the landlord was prepared to rest contended by not filing a reply but reiterating that the records had already been sent and the tenant was needlessly delaying the proceedings. The court did not pass any order directing the copies of documents to be supplied but instead, it ordered ejectment, since no leave to sue has been obtained.

(3) Section 18-A of the Act provides for a special procedure for disposal of applications filed under Section 13-A or Section 13-B.

Clause (3)(a) of the said Section requires that summons shall be served on the tenant in accordance with the provisions of Order V of the First Schedule of the Code of Civil Procedure, 1908. Clause (4) of Section 18-A provides that a tenant, on whom the service of summons has been declared to have been validly made, shall have no right to contest unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons, the statement made by the specified landlord or the NRI, as the case may be, shall be deemed to be admitted and the applicant shall be entitled to an order of eviction. Schedule-II of the Act prescribes the form of summons that will be issued where recovery of possession is sought under Section 13-B. The summons provides for a period of 15 days to apply to the court for grant of leave to contest. Admittedly, the petition for grant of leave had not been filed.

(4) The learned counsel appearing on behalf of the tenant would contend that when he was contending on the very first hearing on 07.04.2011, that is, even within a period of 15 days, that the documents had not been served and urging the landlord to supply the documents, the landlord did no more than give a statement in court on 20.05.2011 that all the documents were annexed with the petition and the tenant was only attempting to delay the proceedings. According to the counsel, the documents purported to have been filed along with the petition had not been annexed and, therefore, it cannot be taken as a valid service within the definition of Section 18-A and the requirement of filing a leave to defend had still not arrived so long as the service was not valid. The counsel would refer to the fact that Section 18-A(3) provides that summons ought to be issued in accordance with the provisions of Order 5 of CPC. The Supreme Court has held in ***M/s Nahar Enterprises*** *versus* ***M/s Hyderabad Allwyn Limited and another***[1] that Order 5 Rule 2 CPC that prescribes the manner of service of summons would be taken to be fulfilled only when along with the summons a copy of the plaint, other documents appended thereto are also served. The Supreme Court was holding in para 10 of the said judgment as follows:-

> "10. The learned Judge did not address itself the question as to how a defendant, in absence of a copy of the plaint and other documents, would be able to file hi written statement. The Court, furthermore, in our opinion, committed a

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[1] 2007(9) SCC 466

manifest error in so far as it failed to take into consideration that the summons having been served upon the appellant after the date fixed for his appearance, it was obligatory on its part to fix another date for for appearance and filing written statement and direct the plaintiff to take steps for service of fresh summons. This legal position is explicit in view of the provisions of Order 9 Rule 6(1)(c) of CPC which reads:-

> "when summons served but not in due time.-If it is proved that the summon was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant."

It would be evident that the court was making reference to Order 9 Rule 6(1)(c) CPC that the service of summon ought not to be taken as merely the physical act of serving the summon, but it would be taken as a complete, only when service shall such as to enable the defendant to appear and answer on the date fixed in the summon, failing which, the court will postpone the date of hearing to a future date. That was precisely done in this case, as well, when the court was passing an order on 07.04.2011 directing the landlord to file reply to the application filed by the tenant for production of records urging him to file a reply and for production. The landlord ought to have complied with the direction and if she chose not to comply, she must be taken as not having effectively served the summons to make possible a tenant to file even a petition for grant of leave. The landlord herself could not have known the factual situation unless she brought the bailiff to prove that the documents had indeed been served.

(5) I have already extracted the statement given by the landlord on 20.05.2011. She asserted what she was capable of asserting and nothing more. The assertion was the documents were annexed with the petition at the time of presentation of the petition. There was no way how she could vouch that the documents annexed to the petition at the time of filing had also been served on the tenant. If the tenant was denying the service of documents, the tenant was not expected to prove the negative more than his own assertions that the documents were not received. The onus was on the landlord who was bound to serve the documents to elicit through appropriate evidence that the documents

had been served. Indeed I have no reason to suspect what the public sector bank could say as untrue. There is hardly anything suspicious in the application moved by the tenant on the first date of hearing to doubt the veracity of the contentions that the documents were not served.

(6) Reading Section 18-A(3) along with the provisions of the CPC in the light of the judgment of the Supreme Court, I have no doubt in my mind that service could not be taken as sufficient at all to compel the tenant to join issue on the claim for eviction and to apply to the court for leave to defend. The learned counsel for the respondent states that the procedure prescribed under Section 18-A enjoins that a tenant could join proceedings only by filing a petition for leave to defend. That leave could have included even a ground that the tenant was not served with the documents as a justification for grant of leave. I would find that such a contention is too fragile for acceptance. A leave to defend is not an empty formality to delay proceedings. It must provide a basis to act whether there was anything material for the tenant to urge in order that such a leave can be granted. A mere statement by a tenant that he had not been served with copies of documents could not be effective defence at all for claiming leave, though it could have been one of the grounds. If the tenant, on the other hand, moved on the first date of hearing that the documents had not been served, the simplest response from the landlord without much obfuscation could have been to merely supply the documents and put the onus on the tenant to come with pleas that could provide for justification for grant of such leave. The landlord has adopted a needless refractory approach that has done no good for her own cause for a quick decision.

(7) There are other provisions under the CPC itself that contemplate a leave to defend before a statement could be permitted to be filed. Order 37 Rule 1 CPC is one such provision which provides for summary procedure and allows for summons for judgment to be delivered in the first date of hearing, if the defendant does not apply to the court for leave to defend within 10 days from the date of service of summons. This court had an occasion to consider the effect on defendant, who did not seek for such a leave, on a plea by him that the summons had been served without copies of documents. The question, therefore, was whether the physical service of summons alone could be deemed as sufficient to compel the defendant to apply for leave and the effect of his failure to do so in the absence of documents being served on him. This court held in ***Nand Kumar*** *versus* ***Sheela Devi***[2] that if

[2] 1996(3) PLR 756

summons accompanied by a plaint but without annexures had been made, it cannot be taken as an effective service. The court was holding that in a summary proceeding for recovery of money the purpose of Order 5 Rule 2 CPC was to give opportunity to the defendant to make payment and the compliance of Order 5 Rule 2 along with Order 37 Rule 3 CPC was mandatory in so far as it requires documents filed along with the plaint to be served on the defendant. The court ruled that the service of summons without documents was not a valid service and the decree passed despite objection by the petitioner that the documents had not been filed, was not valid and it was liable to be set aside. Without reference even to a summary procedure, the court was holding in yet another case in ***Ram Kumar*** *versus* ***Chelu Ram***[3] that the documents appended with a plaint become part of the pleading and they would require to be served on the defendant.

(8) In this case, I cannot sustain the order already passed. The order passed by the court without assuring to itself that the documents had been supplied was an irregular exercise of jurisdiction which goes to the root of the matter and vitiate the order of eviction. The order is set aside. I direct the landlord to supply therefore copies of documents filed along with the petition within 2 weeks from the date of receipt of copy of this order and the landlord may secure to herself or its representative an acknowledgment of such service of documents. The tenant will take the service of documents and will file a leave to defend within 15 days which will be counted from the date of service of documents. If such a leave is sought, the court will consider the same in accordance with law and proceed further.

(9) Parties shall appear before the court on 18.05.2015. The service of documents and the leave to defend will follow the procedure which I have outlined above and the appearance of parties before the court will have no relevance to the commencement of the period of limitation.

(10) The civil revision is allowed on the above terms.

S.S. Sandhu

[3] 1986(2) PLR 219