

Stereo.HCJDA-38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

W.P. No.17643 of 2020

Waqar Ali
v.
Addl. District Judge and others

JUDGMENT

Date of Hearing	25.1.2023
Petitioner by	Syed Alay Ali Naqvi, Advocate
Respondent No.3 by	Syed Ishtiaq Hussain, Advocate

Rasaal Hasan Syed, J. This Constitutional petition calls into question orders of the forums below in terms whereof petitioner's application for setting aside of ex parte proceedings order was dismissed, an ex parte ejection order was passed, and the order was affirmed in appeal.

2. Sajjad Ahmad/respondent No.3, on 30.11.2018 filed an ejection petition under section 19 of the Punjab Rented Premises Act, 2009 (the "Act") for the eviction of the petitioner from a house, inter alia on the ground of expiry of lease; default in payment of rent and use of property for different purposes. Notice was issued whereafter on the report of Process Server about service, ex parte proceedings order was passed against him on 10.1.2019. An application for setting aside of ex parte proceedings order dated 10.1.2019 was moved which was followed by applications for leave to contest and for condonation of delay. The applications were

declined vide order dated 16.5.2019 and an ex parte ejectment order was passed on 27.5.2019. These orders were challenged in appeal which was dismissed by the learned Addl. District Judge vide order dated 27.2.2020. In the instant petition these orders are under challenge.

3. Learned counsel submits that the provisions of section 21 of the Act ibid. were completely misread and misinterpreted; no notice as per schedule attached to the Act along with the relevant documents was ever served upon the petitioner; the petitioner was never personally served with any notice; the signatures on the report of the Process Server did not mention CNIC number, nor the name of the person who allegedly identified the petitioner or his residence or in whose presence the notice was allegedly delivered was recorded; that there was no legal service and that the petitioner acquired knowledge of the ex parte proceedings only when the commission came to inspect the site in terms of order of Rent Tribunal; the application was within time from the date of knowledge and that the leave to contest application was also not considered in accordance with law on merits; the entire proceedings were illegal and that the relationship of landlord and tenant did not exist between the parties; civil litigation was pending in respect of the property; the rule of natural justice requires that the case be heard and tried on merits after giving opportunity of leave to contest. Contrarily respondent's learned counsel supported the impugned order and maintained that the petitioner had

knowledge of the proceedings who did not turn up and that no sufficient cause was shown for the setting aside of ex parte proceedings order and that the application for setting aside of ex parte proceedings order was not accompanied with an application for leave to contest and that the forum below rightly declined to set aside the impugned order and also the consequential orders passed by the forum below.

4. Points raised for and against have been considered, copies of the material documents and order-sheet have been examined. In the instant case the petitioner was proceeded against ex parte by the Rent Tribunal; his application for setting aside of ex parte proceedings orders was dismissed; leave to contest was not considered on merits and an ex parte order of eviction was passed against him. The foundational objection of the petitioner qua the ex parte proceedings order was that no notice as contemplated by the provisions of section 21 of the Act was ever served or delivered to the petitioner and that the petitioner did not receive any notice which was purportedly sent through Process Server and that the petitioner came to know about the proceedings when he appeared before the local commission who visited the site in terms of the subsequent order of the Rent Tribunal whereupon he moved the application for setting aside of ex parte proceedings and also moved an application for leave to contest.

5. Application for eviction was instituted under section 19 of the Act which mandates that the same shall contain a

concise statement of facts, the relief claimed and shall be accompanied by copies of all relevant documents in possession of the applicant and if the application is for the eviction of tenant, the landlord shall submit his affidavit and affidavits of not more than two witnesses along with the eviction application. Section 21 of the Act provided for the procedure to be followed in the matter of service of tenant. In terms thereof the notice shall be issued to the respondent in the form prescribed in the schedule, for appearance on the date not later than ten days through Process Server, Registered Post A.D. and courier service. Sub-section (3) of section 21 of the Act provides that the notice if not served, the service of notice may be secured through affixation of notice at a conspicuous part of the rented premises and by publication in the press, electronic media or any other mode. The Rent Tribunal can proceed ex parte only after the notice was served in accordance with the provisions of law. It is discernible from the file that the eviction application was instituted on 30.11.2018; Rent Tribunal directed the deposit of 10% of annual value of rent as penalty in the Government Treasury in terms of section 9(b) of the Act vide order dated 30.11.2018; on 12.12.2018 notice was ordered to be issued to the respondent through Registered Post A.D., T.C.S. and Process Server for 10.1.2019 and on the said date the respondent was proceeded against ex parte. In the order it was observed that “... *As per report the service of respondent has been effected personally but neither respondent nor any one*

appeared on behalf of the respondent despite service. Let the ex parte proceedings are hereby (sic) initiated against the respondent. Now to come up for ex parte petitioner evidence for 31-1-2019". It was the case of the petitioner that he did not receive any notice nor any notice in terms of section 21 of the Act was ever issued or served along with requisite documents. Perusal of the report of Process Server placed at page 29 of this petition reveals that it lacked compliance with the mandatory provisions of law. The Process Server reported that he went at the address, inquired about the petitioner, who met him and received the notice. Perusal of the report shows that it does not indicate as to who identified the petitioner and in whose presence the notice was delivered. So much so, no CNIC of the addressee is mentioned nor any copy of the same was secured. Obviously, the Process Server did not claim that he knew the petitioner. It was necessary for him to have mentioned the name of person who had identified the addressee and in whose presence he had allegedly delivered the notice. Similarly, the report does not indicate if any document as contemplated by section 21 of the Act was ever delivered. The notice was on a printed form which did not contain any handwritten note of Ahlmaid about the annexures, if annexed with the notice. A copy of the postal receipt in respect of registration of the notice was placed on record but no "acknowledgement due" showing any service of the notice was placed on record. The Rent Tribunal did not deem it necessary to examine the Process Server with a view to

satisfy the manner in which he allegedly delivered the notice and to whom it was delivered and casually proceeded to pass an order for ex parte proceedings. It is a settled law that all possible efforts should be made to ensure and satisfy that the opposite side in a case was actually served so as to enable the said party to defend himself and take necessary measures to protect his rights in the proceedings. In this case neither any statement of Process Server was recorded nor any acknowledgement due was placed on record nor any publication was made instead the ex parte proceedings order was passed in a routine manner which could not be approved.

6. Petitioner's case was that he came to know about the pending proceedings before the Rent Tribunal when the local commission inspected the site. With a view to consider this plea it will be necessary to examine the subsequent events. Order-sheet reveals that on 04.3.2019 ex parte documentary evidence of the respondent was received, and case was adjourned for final arguments. On 14.3.2019 the Rent Tribunal passed the following order:

"Final arguments heard. Record perused.

2. Perusal of the record shows that instant ejectment petition has been filed on the basis of written agreement of tenancy and the agreement of rent is not registered and unregistered documents does not create any right in-favour of parties. On the other hand, respondent has been ex-parte proceeded. Being Rent Tribunal at first this court has to satisfy itself that the dispute is regarding tenancy between landlord and tenant. Keeping in view hardship of innocent people and for satisfaction of this court local inspection of demise property is necessary, therefore, by invoking power under section 26 of PRPA 2009, Mr. Farman Ahmad Bhatti Advocate Cell No. 0307-6949866 is appointed as local commission. Local commission is directed to visit the suit

property after sending prior notices to both the parties and submit his report on the following points:

- (i). Who is in possession over demise property?
- (ii) What is the status of the demised premises?
- (iii) Under what capacity he is in possession?

3. Fee of local commission is fixed Rs. 15,000/- which shall be paid by the petitioner within two days. Local commission is also directed to capture the photograph of demise property, prepare site plan & record statements of parties and persons of locality.

4. Now to come up also for report of local commission on 25.3.2019".

7. Pursuant to the order of the Rent Tribunal the Local Commission visited the site, recorded the statement of petitioner Waqar Ahmad, respondent Sajjad Ahmad and other witnesses. In his statement petitioner deposed that he was owner of the house, he had not sold the same, the sale deed claimed by the respondent was forged one; the petitioner was never a tenant in the property and that the ejection petition was baseless and that he would appear before the Rent Tribunal on 25.10.2019 and will affirm that he had not sold his house nor he was a tenant of anyone. In his report dated 04.4.2019 the Local Commission reported that he visited the site on 21.3.2019, recorded the statements of the parties and the witnesses and that as per the stance of the petitioner Waqar Ali he had not received any notice of ejection petition and that he had not sold the property and was in possession as owner and not as tenant and that the sale deed was forged one.

8. Deeper analysis of the circumstances noted supra, shows that there was serious issue as to the service of notice

and also the legality of the proceedings by the Rent Tribunal in as much as the petitioner had denied receipt of notice; the delivery of any notice along with documents in terms of the provisions of section 21 of the Act and claimed acquisition of knowledge of the proceedings only when the Commission inspected the site on 21.3.2019 whereafter he moved an application for setting aside of ex parte proceedings order. The application was, therefore, filed within 04 days from the acquisition of knowledge. An application for leave to contest was also moved on the next date along with application for condonation of delay. It is also observed that the Process Server did not mention the name of the identifier who had identified the addressee; the report is not witnessed by any person; the report does not indicate as to how the Process Server came to know that the person whom he was delivering the notice was the petitioner and that no CNIC number was mentioned in the report. In the peculiar circumstances, the Rent Tribunal was under obligation to have had recorded statement of the Process Server to find out the manner in which the report was made about the service of the petitioner; but such exercise was not undertaken. So much so that the postal receipt of the registered notice was placed on the record but no “acknowledgement due” was either placed on record or claimed to have been received by the Rent Tribunal after due service. In these circumstances, there was no legal or proper service of the petitioner on which the Rent Tribunal could casually proceed ex parte against him. Even otherwise

the fact that the Rent Tribunal after recording ex parte evidence was not satisfied with the existence of tenancy and as such proceeded to pass an order for the appointment of local commission to visit the site and report as to who was in possession of the property; what was the status of the demised premises; and under what capacity the person who is occupying the property was in possession and in his report the local commission reported that he had recorded the statement of the petitioner who had denied the tenancy, disputed the sale deed, termed the same as forged and claimed to be in occupancy of property as owner in possession and stated that he would appear before the Rent Tribunal on the date fixed i.e. 25.3.2019 and will explain the true state of affairs at site which he did. The petitioner filed the application with affidavit for setting aside of ex parte proceedings order on 25.3.2019 which on the face of it was not barred by time. The facts stated and circumstances as appear on record, would show that there were sufficient reasons for setting aside of ex parte proceedings order; more so when the respondent claimed to have purchased the property through the petitioner and also claimed him to be his tenant and the response of the petitioner was that he had never executed any sale deed nor sold the property nor executed the Rent Note while the respondent was claiming the alleged execution of rent deed on 02.8.2016 and the sale deed in his favour on 12.1.2017. Obviously, the execution of Rent Note was claimed by respondent on a date when no sale

deed had been executed in his favour. All these circumstances and facts constituted a case for grant of leave to contest to the petitioner. The Rent Tribunal assumed the knowledge on the basis of a statement allegedly made by the respondent in other proceedings of the civil suit in the presence of a counsel without claiming the petitioner's presence in the court at that stage or without formally bringing the documents in evidence and by confronting the petitioner with the same. In any case the foundational order of ex parte proceedings being illegal and violative by law, the application for setting aside of ex parte order could not be rejected on erroneous assumption as to the knowledge. The requirements of the provisions of section 21 of Act have been considered in number of cases by this Court wherein it was observed that if the notice has not been served actually upon the tenant in the manner as prescribed by schedule annexed to the Act and along with the documents like pleadings, affidavits and other appended documents, the opposite side could not be non-suited on the plea that application was not accompanied by the application for Leave to Contest or filed later. Reference can be made to the cases of "Mureed Hussain v. Additional District Judge and others" (2018 MLD 162), "Bakht Munir v. Qadir Khan and another" (PLD 2014 Lah. 87), "Babar Ali v. Additional District Judge, Sargodha and 2 others" (2012 YLR 2933) and "Younas Siddique v. Mst. Tahira Jabeen" (PLD 2009 Lah. 469).

9. For the reasons above, this petition is allowed, impugned orders are declared to be illegal and without lawful authority and violative of law and are accordingly set aside. In result, the ejectment petition shall be deemed to be pending which shall now be decided by the Rent Tribunal after giving opportunity of evidence to both sides in accordance with law and on merits.

**(RASAAL HASAN SYED)
JUDGE**

Announced in open Court on 07.2.2023.

Judge

Approved for reporting

Judge

Rabbani