

## **G.P. Srivastava vs Shri R.K. Raizada & Ors on 3 March, 2000**

**Equivalent citations: AIR 2000 SUPREME COURT 1221, 2000 (3) SCC 54, 2000 AIR SCW 887, 2000 ALL. L. J. 863, (2000) 2 JT 569 (SC), 2000 (2) ALL CJ 1390, (2001) 1 CGLJ 34, 2000 SCFBRC 185, 2000 (2) JT 569, 2000 (3) SRJ 421, 2000 (1) UJ (SC) 594, (2000) 2 PUN LR 544, 2000 (125) PUN LR 544, (2000) 2 CIVILCOURTC 714, (2000) 3 LANDLR 542, (2000) 3 CIVLJ 187, (2000) 2 RECCIVR 161, (2000) 2 ALL WC 1294, (2000) 1 RENCRC 238, (2000) 39 ALL LR 110, (2000) 4 ANDHLD 54, (2000) 1 ALL RENTCAS 542, (2000) 1 ORISSA LR 485, (2000) 2 SCALE 198, (2000) 2 SUPREME 104, (2000) 3 BLJ 325, (2000) 2 ICC 111, (2000) REVDEC 325, (2000) 3 MAD LW 231, (2000) 2 SCJ 30, (2000) ILR (KANT) 2921, (2000) 1 RAJ LW 125, (1999) 1 RAJ CRI C 688, (1999) 2 CAL HN 555, (2000) 1 CURCC 281, (2000) 2 ALLCRILR 617**

**Bench: S.Saghir Ahmad, R.P. Sethi**

CASE NO.:

Special Leave Petition (civil) 17942-43 of 1999

PETITIONER:

G.P. SRIVASTAVA

Vs.

RESPONDENT:

SHRI R.K. RAIZADA & ORS.

DATE OF JUDGMENT:

03/03/2000

BENCH:

S.Saghir Ahmad. & R.P. Sethi.

JUDGMENT:

SETHI,J.

L...I...T.....T.....T.....T.....T.....T.....T.....T..J Leave granted.

On his failure to appear in the Court either personally or through his Advocate, the suit for arrears of rent, ejectment and damages filed against the appellant was decreed ex-parte on 10.3.1983. The

application for setting aside the ex-parte judgment and decree filed on 7.4.1983 in terms of Order 9 Rule 13 of the Code of Civil Procedure was dismissed by the Trial Judge on 14.5.1985. The revision petition No.73 of 1985 filed by the appellant was dismissed by the High Court vide the order impugned on 23rd September, 1999 on the ground that the appellant had failed to establish any just or sufficient cause for his non appearance on the date fixed when the ex-parte proceedings were initiated against him.

We have heard the learned counsel for the parties and perused the papers.@@ JJJJJJ The facts of the case are that respondent-landlord filed a suit for ejection and recovery of the arrears of rent on 5.8.1981 alleging therein that as the tenanted premises was new construction, the same is not covered under U.P. Act No.30 of 1972. The appellant-defendant-tenant was alleged to have failed to pay the rent since June, 1980 and he was in arrears amounting to Rs.4,000/-. A notice under registered cover dated 29th May, 1981 was sent by the respondent on the address of the appellant terminating his tenancy. Despite service of the notice the appellant was stated to have neither vacated the tenanted portion nor paid the arrears of rent or damages which necessitated the filing of the suit. The appellant-defendant resisted the suit mainly on the ground that the entire plot of land of Lane No.21, Shanker Nagar, Nirala Nagar, Lucknow was let out to him in the month of February, 1997 and he was permitted to raise construction thereon. In pursuance to the aforesaid permission, the appellant claimed to have constructed the entire portion of the tenanted premises after incurring an amount of Rs.25,000/-. Monthly premium of Rs.300/- was settled to be paid. The competence of the respondent-plaintiff to file the suit was also challenged alleging that he was not the landlord of the appellant. On 10th March, 1983 the case was called on for hearing by the Court in the early hours but as no-one appeared on behalf of the appellant, the same was again taken up at 2 p.m. As none appeared at that time also, the suit was decreed ex-parte on the basis of evidence produced in the case. In his application under Order 9 Rule 13 of the Code of Civil Procedure, praying for setting aside ex-parte judgment and decree, the appellant submitted that he was posted as Assistant Engineer in the Irrigation Department and on account of the construction of the bridges over the casual drains he had to remain at the site in the interests of public. He became indisposed in the evening of 8th March, 1982 at the site which was about 85 kilometers away from Lucknow and could not move or return back to Lucknow till 11.3.1983 which prevented him to appear in the Trial Court on 10th March, 1983. Unfortunately, the young nephew of the counsel of the appellant met with an accident on 10.3.1983 and expired which prevented his counsel also to appear in the Court on that date. It was contended that the absence of the appellant and his counsel in the Trial Court was on account of the aforesaid circumstances and not intentional. The application was supported by his affidavit and a medical certificate. The Trial Court did not accept the pleas raised by the appellant and found that the absence of the appellant or his counsel in the Court on 10.3.1983 was not for just or sufficient cause. The filing of the medical certificate was not disputed but the same was not relied on as it was found to have been obtained from a private doctor and not from a Government doctor. The High Court also did not accept the contentions of the appellant and noticing his previous conduct rejected the revision petition refusing to set aside the ex-parte decree passed against him. Under Order 9 Rule 13 C.P.C. an ex-parte decree passed against a defendant can be set aside upon satisfaction of the Court that either the summons were not duly served upon the defendant or he was prevented by any 'sufficient cause' from appearing when the suit was called on for hearing. Unless 'sufficient cause' is shown for non-appearance of the defendant in the case on the date of

