

*Before G.S. Sandhawalia, J.*

**R.K. SARIN—Petitioner**

*versus*

**BALJIT KULARIA—Respondent**

CR No. 4881 of 2011

June 1, 2012

*A. Punjab Urban Rent Restriction Act, 1949 - Ss. 13 A, 18 A(3)(a), 18 A(3)(b) and 18 A(4) - Code of Civil Procedure, 1908 - O. V - Due service - Petition under S.13A of Rent Act filed - Notice issued under registered covers - An option of dasti summons was also given - Report of Refusal received and summons also received back on refusal - Tenants summoned by way of publication in new-papers - Tenant appeared and case adjourned for filing written statement - Landlord filed application that tenant had appeared on 20.11.2010 but failed to file leave to defend within statutory period - Tenant filed reply wherein he pleaded that he was never served as envisaged under Section 18(a) of Rent Act - Summons received by him were not as per proforma given in Schedule II of the Act - Rent Controller declined leave to contest to tenant and ejection ordered - Tenant challenged eviction of ground that there was no valid service under provisions of S.18(a)(2) and (3)(a) of Rent Act - Held summons not properly served - Rent Controller was under duty to send copy of summons by registered post and acknowledgement due and another copy of summons to be affixed on conspicuous part of building - It is only where service has been validly effected that the tenant gets an opportunity to contest the prayer for eviction by filing affidavit and obtaining leave from Rent Controller - Reasoning given by Rent Controller that service has been validly effected is against statutory requirements - Hence eviction order set-aside - Petition allowed.*

*Held, that a bare reading of Section 18-A (3)(a) goes on to show that summons have necessarily to be issued under Section 18-A (3)(a) and have to be issued in the form specified in Schedule II and have to be served*

upon the tenant in accordance with the provisions of Order 5 of the First schedule of the Code Civil Procedure, 1908. In addition to that, the Rent Controller was under a duty to send a copy of the summons by registered post acknowledgment and another copy of summons had to be fixed at conspicuous part of the building. Under Sub-clause (3)(b) of Section 18-A of the Rent Act, where there is refusal to take delivery and an endorsement is to be made by the Process Server to the effect that the summons had been affixed, the Rent Controller has to make an inquiry about the correctness of the endorsement and declare that there had been a valid service on the tenant. It is only in case where service has been validly effected, the tenant has a right to contest the prayer for eviction by filing an affidavit and obtaining leave from the Rent Controller. This procedure has not been effectively carried out by the Rent Controller in the present case. The first set of summons which was issued on 04.09.2010 for 24.09.2010 was returned back with the report dated 09.09.2010 that the tenant had failed to accept the said summons. The order dated 24.09.2010 does not show that whether any registered covers was received back and whether any affixation was made by the Process Server on the building in respect of which ejection was sought as prescribed under Sub-clause (3) (a) of Section 18-A of the Act. The refusal report dated 09.09.2010 was also not witnessed by any independent witness and it is only the Process Server's endorsement which had been accepted. Order 5 Rule 17 of Code of Civil Procedure, 1908 provides that where the tenant refuses to accept the acknowledgement, the serving officer is to effect the service by affixing the summons on the outer door of the defendant or some other conspicuous part of the building and the name and address of the person, if any, by whom the house was identified should be mentioned. No such procedure seems to have been followed by the Process Server for the service which was allegedly effected on 09.09.2010. Thus the finding of the Rent Controller that the service was validly effected on 09.09.2010, cannot be upheld.

(Para 13)

*Further held*, that the next date of claimed service is alleged to be 16.11.2010 in pursuance of the order of substituted service dated 06.10.2010 reproduced above. A perusal of the summons which were sent for effecting service for 20.11.2010 go on to show that the copy of the

petition was not appended with a copy of the summons which was mandatory and were not in the prescribed performa as prescribed under Schedule II as per Sub-section (2) of Section 18-A of the Act.

(Para 14)

*Further held,* that the tenant, on the receipt of the summons, has specifically mentioned that he has received only a copy of the notice and once that was so, then there was no effective service as provided under the provisions of Section 18-A Sub-clause (2) & (3)(a) and, therefore, the reasoning given by the Rent Controller that service had been validly effected when the tenant appeared on 20.11.2010 is against the statutory requirements of the provisions. In fact, a perusal of the order dated 20.11.2010 mentions that the respondent be summoned for 12.03.2011 on filing of copies etc. and subsequently, on appearance of the tenant, the case was fixed for filing of written statement whereas the tenant who had appeared in person was not informed of his right that the application was filed under Section 13-A of the Act by a specified landlord and therefore, he had to file the application for leave to contest within 15 days. It also transpires from the record that as noticed above, 2 more applications dated 05.01.2011 and 16.02.2011 had been filed praying that ejection order be passed since the tenant had not filed the application within the statutory period though he had been served. Notice of one application was issued to the tenant for filing reply on 16.02.2011 and the reply was filed on 05.03.2011. In the reply, the tenant had very categorically mentioned that he was never served as per the provisions of Section 18-A of the Act and the summons received by the tenant was not in the performa as given in Schedule II and accordingly, it was mentioned that the judgment relied upon in Om Prakash (supra) and Suresh Kumar (supra) were not applicable and that he be allowed to contest the petition on merits. The Rent Controller, however, failed to take this reply into consideration and also failed to take into consideration the specific procedure which was laid down in Section 18-A wherein he had to declare that a valid service of summons had been effected upon the tenant and the endorsement made by the Process Server was correct and he was satisfied about the correctness of the summons. This exercise has not been carried out which would be clear from the impugned order.

(Para 15)

*Further held*, that in the present case, this Court has come to the conclusion that the service effected on 09.09.2010 and 16.11.2010 was not valid service in view of the provisions of Section 18-A.

(Para 19)

*B. Code of Civil Procedure, 1908 - S. 144 - Restitution of possession - Tenant dispossessed during pendency of revision petition before the High Court - High Court on 20.8.2011 had issued notice of motion for 20.9.2011, notice re: stay for the date fixed and a direction that notice may be given to the tenant before the eviction, while summoning the record of the courts below - After the date fixed before the High Court, executing Court proceeded to provide police help and assistance besides authorisation to break open the lock on 7.10.2011 - Warrants of possession executed - Tenant dispossessed - No notice was issued to the tenant as directed by the High Court - Executing Court was well aware that records of the case were summoned by the High Court - On 19.10.2011 the High Court had also ordered that no party would damage the property in dispute till further orders - Despite those orders landlord removed the wooden doors and windows besides smashing open the RCC roof baring the steel girders upon each and every room to make the house uninhabitable - Even water tanks had been broken to ensure that the tenant could not make the property liveable - It is nothing but blatant act on the part of the landlord violating the interim order of the High Court - In such circumstances, explanation was called twice from the Rent Controller - Application for restitution is to be allowed - Tenant entitled to take possession of the house and make necessary repairs to make the house liveable - Expenses incurred in making the house liveable shall be recoverable from the landlord - Revision petition allowed with special costs of Rs.1,00,000/- to be recovered from the landlord.*

*Held*, that the other issue which now arises for consideration is the application for restoration of the premises due to the fact that the proceedings were pending before this Court and while issuing notice of motion, the following order had been passed on 20.08.2011:

"Notice of motion for 20.9.2011.

Notice re: stay also for the date fixed.

Notice may be given to the petitioner before the eviction.

Record of the courts below be summoned for the date fixed."

(Para 20)

*Further held*, that a perusal of the above order goes on to show that the Rent Controller had to issue notice to the petitioner before effecting eviction and as noticed in detail above, he was well aware that the records of the case were summoned by this Court, but while proceeding ahead with the execution, chose to provide police help and assistance on the applications of the landlord without even issuing notice to the tenant. The orders dated 07.10.2011 and 10.10.2011 in execution proceedings are reproduced below:

"Present: Decree holder in person with counsel Ms Promila Nain, Advocate  
Bailiff Avtar Singh in person.

Statement of the bailiff recorded, according to which the JD has full knowledge/notice of warrant of possession but the possession could not be delivered without police help and the JD has also threatened to put lock on the premises. He further stated that the permission for breaking open the locks with police help, is required. Heard. In view of the statement made by the bailiff, warrant of possession be again issued for 09.11.2011 in respect of the demised premises. Bailiff is authorized to break open the lock, if the same is required for handing over the possession. A letter of request to the learned District & Sessions Judge, U.T., Chandigarh for providing/ordering police help to the bailiff be sent.

Sd/-

S.K.Sharma, CJ(JD)/07.10.2011

Present : Decree holder in person with counsel Ms Promila Nain, Advocate.

File put up on the application praying for intimation/letter to the Learned Civil Judge, Senior Division, U.T., Chandigarh for providing police assistance. Heard. Let letter of request for providing police

help to the bailiff in the execution of warrant of possession, ordered vide order dated 07.10.2011, be sent. Now to come up on 09.11.2011, the date already fixed for awaiting report of the bailiff.

Sd/-

S.K.Sharma, CJ (JD)/10.10.2011"

(Para 21)

*Further held*, that as noticed above, it was in such circumstances, explanation was called twice from the Rent Controller and photographs were also placed on record along with the application to show that possession had been taken and to ensure that the tenant was not put back in possession in pursuance to the said application, the landlord had removed the wooden frames of the doors and windows so that the house could not be utilized though a lame excuse has been given that he wanted to renovate the premises in question. This Court had passed order dated 19.10.2011 wherein it was ordered that no party would damage the property in dispute till further orders. A perusal of the subsequent photographs placed on record along with an affidavit dated 23.03.2012 in CM No.8191-CII of 2012 goes on to show that the RCC roof had been smashed open baring the steel gidders upon each and every room to make the house uninhabitable and even the water tanks had been broken to ensure that the tenant could not make the property liveable. It is nothing but a blatant act on the part of the landlord violating the interim order of this Court passed on 19.10.2011. In such circumstances, the application for restitution is to be allowed under Section 144 Code of Civil Procedure, 1908 as laid down by the Hon'ble Apex Court in Sant Ram Vs. Rajinder Lal AIR 1978 (SC) 1601 which was followed by this Court in M/s Uttam Chand Ranjit Singh Vs. Ram Gopal Kalia 1982 PLR (86).

(Para 22)

*Further held*, that the tenant shall be entitled to take possession of the house in question and make necessary repairs to make the house liveable and the expenses incurred in making the house liveable shall be recoverable from the landlord after showing the appropriate proof as to the expenses involved on making the house liveable.

(Para 23)

*Further held*, that the revision petition is accordingly allowed subject to (sic) special costs of Rs.1,00,000/- to be recovered from the landlord which have to be deposited with the Rent Controller, Chandigarh and are to be paid to the tenant within a period of 2 months.

(Para 25)

Deepak Jain, Advocate, *for the petitioner*;

Promila Nain, Advocate, *for the respondent*.

### G.S.SANDHAWALIA J.

(1) The present revision petition which has been filed by the tenant under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act') is directed against the order passed by the Rent Controller, Chandigarh whereby the leave to contest under Section 18-A(4) of the Rent Act was dismissed on 06.06.2011 being time barred and in pursuance of the said order, the ejection application was allowed on 15.06.2011 and the tenant was directed to hand-over the possession of the premises in question within a period of 2 months from the said date failing which, he was liable to be evicted from the demised premises.

(2) The respondent-landlord on 03.09.2010, had filed a petition under Section 13-A of the Rent Act for eviction of the tenant from House No.3057, Sector 19-D, Chandigarh on the ground that he was the absolute owner and landlord of the house in question and was to retire from the Haryana Government service on 28.02.2011 on attaining the age of superannuation and, therefore, he was a specified landlord. The landlord pleaded that he was working as a Joint Director, Food & Supplies Department, Haryana who was residing in Government accommodation bearing House No.1, Sector 23-A, Chandigarh and was due to retire on 28.02.2011 and was not having any residential accommodation to live after retirement in Chandigarh and was a law graduate and wanted to start practice as an Advocate in the Punjab & Haryana High Court, Chandigarh. It was, accordingly, contended that the landlord and his family had made a settlement seeing the circumstances that the respondent was due to retire on 28.02.2011 and wanted to start his practice as an Advocate in Chandigarh

and had been given the house in dispute by way of family transfer/settlement so that he can live and start his practice after retirement as he could not retain the Government accommodation after retirement. A photocopy of the gift deed registered with Sub-Registrar, Chandigarh dated 27.04.2010 was relied upon and it was pleaded that the tenant was inducted by late Smt. Sarla in the house at a monthly rent of Rs. 18000/- per month on 15.02.2006 excluding electricity, water charges and property tax which was being paid by the tenant and the tenancy was extended up to 30.11.2007 on the request of the tenant that he was constructing his own house and the rent was enhanced to Rs. 20,000/- per month and the tenancy was further extended for 6 months. The tenant had stopped paying rent from February, 2008 and the landlord, Smt. Sarla, her husband, Surjit and son, Dhccraj had made number of requests for payment of rent but in vain and Smt. Sarla had expired on 22.08.2009 and her husband, Surjit and son, Dhccraj had made number of requests to the tenant for payment of rent but he had not given any reply and had not paid the rent for the premises in question onwards from February, 2008. The house in question was, accordingly, gifted through family settlement to the respondent who was in dire need of accommodation in Chandigarh and the tenant had refused to pay the rent and to vacate the premises on the ground that Smt. Sarla had died and the landlord was nobody to collect the rent and ask him for vacation of the house. Accordingly, the petition was filed on the ground that it is required for the personal use and occupation after the retirement of the landlord as the landlord was not in occupation of any other building nor he had vacated any such building and he was in dire need of the house and after necessary repairs, he was to shift in the house in question as he could not retain the Government accommodation after his retirement to practice as Advocate in the Punjab & Haryana High Court at Chandigarh. It was also pleaded that the rent had not been paid from February, 2008 onwards and the legal representatives of Smt. Sarla had authorised the landlord to recover the rent from February, 2008 till date and that the tenant was having his own house but he was not wanting to vacate the premises. The said petition was supported by an affidavit of the landlord dated 03.09.2010.

(3) The ejection petition firstly came up for hearing on 04.09.2010 and notice was issued on filing of process fee under registered covers and option of dasti summons was also given by the Rent Controller, Chandigarh



for 24.09.2010. The report of refusal was received and the summons were received back on refusal and the counsel for the landlord requested to move an application for substituted service. The application for substituted service was filed on 06.10.2010 and the respondent was summoned by way of publication in the newspaper, 'The Tribune' as well as by affixation for 20.11.2010. On 20.11.2010, court notice issued to the tenant had been received back served and the case was adjourned for 12.03.2011 on filing of copy etc. However, on the same date, file was again taken up as the respondent had appeared later and the case was adjourned to 08.02.2011 for filing written statement. The case was again taken up on the application filed by the landlord on the same date that the case be preponed to an early date in the month of December, 2010 since he was to retire on 28.02.2011 since the case had been fixed for 08.02.2011. The Rent Controller issued notice of the application for 26.11.2010 on filing of copy and on 26.11.2010, summons of the application for preponing the case was received back with the report of refusal and it was noticed that none had appeared on behalf of the tenant and the case was again adjourned for filing application for leave to defend, if any, as well as for consideration on the application for 08.02.2011. The landlord, before 08.02.2011, filed another application dated 05.01.2011 which was ordered to be put up on the date fixed in which it was pleaded that since the tenant had appeared on 20.11.2010 and had failed to file leave to defend application within the statutory period after the receipt of summons, it was mandatory as per provisions of Section 13-A of the Rent Act and therefore, eviction order may be passed. On 08.02.2011, when the case was taken up, none appeared on behalf of the tenant and the Rent Controller, noticed that there was no application for leave to contest and adjourned the case for 11.02.2011 for consideration. On 11.02.2011, counsel for the tenant appeared and filed an application seeking leave to contest by way of affidavit of the tenant and the case was fixed for 16.02.2011. On 16.02.2011, reply to the application for leave to contest under Section 18-A (4) was filed and it was pleaded that the retirement of the landlord was due on 28.02.2011 and the certificate attached was also of the competent authority and the tenant was in huge arrears of rent and having failed to apply for leave to contest within the statutory period of 15 days, was liable to be evicted and the landlord was moving another application on the same ground for passing of ejection order. On the said date, the landlord filed another application for passing eviction order on the ground that the tenant

had refused to accept the summons on 09.09.2010 and he was having the knowledge of the rent petition and he had not filed application for leave to defend within the statutory period. It was pleaded in the said application that the tenant was again served on 16.11.2010 but he did not apply for leave to contest and he put in appearance on 20.11.2010 and had not applied for leave to contest and he did not appear on 08.02.2011 and as per the provisions of Section 18-A read with Schedule II of the Rent Act, application for leave to contest had to be filed within 15 days from the receipt of the summons and the application for leave to contest had been filed after the statutory period and was time barred and in view of the law laid down in *Om Prakash versus Ashwani Kumar Bassi (1)* and *Suresh Kumar versus Ravinder Singh Jaswal (2)*, the tenant was liable to be evicted.

(4) That in leave to contest by way of affidavit, the tenant contended that the landlord was in occupation of several other properties within the urban area of Chandigarh which had been concealed by the landlord and he was owner in possession of one 10 marla 3 storeyed built-up house in Sector-38, Chandigarh and one flat in Sector-51, Chandigarh and had intentionally not mentioned these properties in his affidavit. It was, accordingly, pleaded that there was no relationship of landlord-tenant between the parties and the premises in dispute had been taken on rent from one Sarla and no notice had been issued regarding the change of ownership or about death of Sarla and the petition was not maintainable and the certificate of retirement had not been issued by duly competent authority as the same had been signed by some Deputy Director, Administration, Food Supplies Department, Haryana who was not a competent authority to remove the petitioner from service as the landlord was himself working as Joint Director in the same department and the removal order could only be signed by the Secretary of the concerned department and not by the Deputy Director and therefore, the petition was not maintainable on the basis of the said certificate and the tenant was entitled to contest the petition. It was averred that the tenant had been paying rent to Smt. Pushpa with whom he had entered into rent deed dated 15.02.2006 and as the tenant had cordial relation with Smt. Pushpa, no rent receipts were issued by her and rent

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(1) (2010) 9 SCC 183

(2) 2010 (2) RCR (Rent) 82

@ Rs.18000/- per month had been paid to Smt.Pushpa and sometimes even rent was paid through cheques with effect from September, 2009 till September, 2010 which were duly encashed. The ground of non payment of rent was a matter of evidence and had to be proved by leading evidence and the rent was never enhanced to Rs. 20,000/- per month and therefore, permission was sought to contest the petition on merits. The ownership on the basis of the gift deed was denied and the whole of the transaction of alleged family settlement had been done with the sole intention to come within the parameters of Section 13-A of the Rent Act and the landlord did not have any intention to occupy the premises as the landlord was already in occupation of several other properties in Chandigarh and his need was neither *bona fide* nor genuine. On the issue of service of notice, it was pleaded that it was not as per Schedule II of the Rent Act and notice served upon the tenant was incomplete as he had not received copy of the petition and the tenant was again summoned for 12.03.2011. The tenant was a layman and had appeared in person and the Court had directed him to file written statement but the copy of the petition was not made available to him on 20.11.2010 and thereafter, the tenant had engaged counsel on 09.02.2011 and he was thereafter, informed that the application to leave to contest was to be filed and accordingly, the said application was filed with a prayer that the same was liable to be granted as there were several triable issues which needed adjudication. The tenant also filed reply to the application dated 16.02.2011 wherein he pleaded that he was never served as envisaged under Section 18-A of the Rent Act and was entitled to contest the petition on merits. The summons received by him were not as per performa given in Schedule II of the Act and the leave to contest had been filed within the statutory period. Accordingly, the judgments referred to by the landlord were not applicable since he had never been served on 09.09.2010 nor on 16.11.2010 as alleged and therefore, he prayed that the application for passing the ejection order be dismissed.

(5) The Rent Controller, Chandigarh, after taking into consideration the provisions of Section 13-A and Section 18-A of the Rent Act, came to the conclusion that the rent petition was filed on 03.09.2010 and notice of the petition was issued on 04.09.2010 and was received with the report of refusal and the case was adjourned to 06.10.2010 to file application for substituted service under Order 5 Rule 20 Code of Civil Procedure, 1908

and on the said date, the tenant was ordered to be summoned through publication as well as by affixation for 20.11.2010 and the case was adjourned but on the same date, the tenant had appeared and the case was adjourned to 08.02.2011 for filing written statement and another application was filed by the landlord and the case was pre-poned from 08.02.2011 to 26.11.2010 and on the application for pre-ponement, no one appeared on behalf of the tenant and the case was adjourned to 08.02.2011. It was only on 11.02.2011, the tenant moved an application for leave to contest after making his appearance in the Court and therefore, keeping in view the judgment in **Om Prakash Bassi** (supra) of the Hon'ble Apex Court, the Rent Controller could only act in the terms of powers vested in him by the statute and could not entertain the application under Section 5 of the Limitation Act, 1963 for condonation of delay and accordingly, dismissed the application for leave to contest. Reliance was also placed upon *M/s Aster Publishing versus Sh. Niwas Aggarwal (3)*, to hold that delay of even one day also could not be condoned. It was further observed that the summons were received back with the report of refusal and the summons were sent in the prescribed format. Regarding the form of service, the fact had not been disputed and the tenant did not appear firstly, before the Court on 20.11.2010. Merely due to over-sight or typographical error, the case was adjourned for filing written statement and it could not be accepted that there was no need for filing an application for leave to contest. It was noted that on the next date of hearing, i.e., 08.02.2011 also, no application was filed nor his counsel had appeared and only on 11.02.2011, the application for leave to contest had been filed and therefore, the same having not been filed within 15 days, the Court did not have the power to condone the delay in filing the application and dismissed the application for leave to contest on 06.06.2011 and fixed the next date of hearing for 11.08.2011.

(6) Thereafter, the landlord filed an application on 13.06.2011 alleging that leave to contest had been dismissed and the case was fixed inadvertently for 11.08.2011 and no further proceedings were required and the ejectment order was to be passed and the landlord was suffering undue hardship as he had retired on 28.02.2011 and he could not retain the Government accommodation after his retirement beyond a period of 4 months and accordingly, prayed that the application be allowed and the case

be taken up for hearing and the eviction orders be passed forthwith. The said application was put up on 15.06.2011 before the Rent Controller and the Rent Controller, after taking into consideration the judgment of *Kamlesh Kumar* versus *Yoginder Pal & others (4)*, held that since the leave to contest had been dismissed on 06.06.2011, the Court was left with no other option but to pass the eviction order. Accordingly, the ejection application was allowed without issuing notice of the application to the tenant and the tenant was directed to hand-over the possession of the premises in question within a period of 2 months failing which he would be liable to be evicted from the premises in question. It was further incorporated that the landlord shall inform the tenant about the order immediately.

(7) The tenant filed the present revision petition on 11.08.2011 which came up for hearing on 12.08.2011 and notice of motion was issued for 20.09.2011 by a Co-ordinate Bench of this Court. It was further ordered that notice regarding stay be also issued for the date fixed and records of the Courts below were summoned for the date fixed. The landlord, in the meanwhile, filed an application for execution of the ejection order before the trial Court which was supported by an affidavit dated 26.08.2011. The said application came up for hearing before the Civil Judge (Jr. Division)/Rent Controller on 17.09.2011 and it was ordered that the execution be checked and registered and the case was adjourned to 21.09.2011. On 20.09.2011, in the present revision petition, none had appeared on behalf of the tenant and counsel for the landlord had put in appearance and the case was adjourned to 07.12.2011. On 21.09.2011, the executing Court had noticed that the decree holder had filed an application for warrants of possession and it was supported by an affidavit dated 21.09.2011 that no stay had been granted by the High Court against the orders passed by the Rent Controller on 15.06.2011 and accordingly, warrants of possession were issued for 09.11.2011 and the case was adjourned for awaiting the report of the Bailiff. Thereafter, an application was filed before the executing Court for providing police help by breaking open the locks in which notice was issued for 07.10.2011. On the said date, statement of the Bailiff was recorded and permission was given to break open the locks and it was ordered to be put up on the file for 09.11.2011. On 04.10.2011, another application was filed that the tenant was quarreling and

refusing to hand-over possession, and therefore, police assistance be provided. The said application was accordingly, put up on 10.10.2011 before the Rent Controller and was allowed in view of the earlier order dated 07.10.2011 and the case was fixed for 09.11.2011 for awaiting the report of the Bailiff. Accordingly, in pursuance of the said orders, possession was delivered on 17.10.2011 with police help to the landlord.

(8) CM No.25268-CII of 2011 was filed for restoration of possession in the present eviction petition as well as stay for further construction on the ground that the case was fixed for 20.09.2011 and the possession was subsequently taken on 17.10.2011. Notice in the application was issued to counsel for the landlord who was present in the Court and accepted notice and the order of eviction was stayed on 19.10.2011 and parties were directed to maintain status quo with regard to possession of the demised premises and that no party would damage the property in dispute till further orders. The comments of the Rent Controller/Excuting Court along with the records were also called for vide the said order and the case was to be heard on 21.10.2011 by the Co-ordinate Bench. On 21.10.2011, an undertaking was taken from the counsel for the landlord that status quo regarding possession would be maintained and the Rent Controller accordingly, submitted his comments in pursuance of the orders dated 19.10.2011 and he was again asked to give further comments in view of the fact that order dated 15.06.2011 was passed in violation to the principles of natural justice and at the back of the tenant without calling him. Comments of the Rent Controller was received on 31.10.2011 and he replied that he had given 2 months time to hand-over the premises and the landlord was to inform regarding the eviction order immediately and no review petition had been filed and he had discharged the judicial functions in consonance with the provisions of law and up-holding the canons of justice. An additional affidavit was filed with CM No.26586-CII of 2011 which was taken on record on 09.11.2011 wherein the tenant deposed that the landlord had removed the entire wooden frames of the doors and windows from the house and damaged the roof so that possession cannot be restored and the tenant cannot utilize the same and appended photographs to show that the wooden frames of the house in question had been pulled-out and so it could not be locked in any manner. It was also pleaded in the application that the intention of the landlord was *mala fide* and he had

manipulated the documents from the beginning and he had obtained a gift deed six months prior to retirement under the garb of family settlement.

(9) The case was taken up for arguments and the record was thoroughly perused with the help of the counsel for the parties. Additional photographs were placed on record along with an affidavit of the tenant in CM No.8191-CII of 2012 to contend that the roof (lintel) above the bedroom and living room besides balcony in the front have been broken and on the ground floor, lot of malba was lying due to the huge damage done to the property. The said application was replied by filing CM No.8397-CII of 2012 on the same date which were taken on record and the arguments were heard.

(10) Counsel for the petitioner has argued that the order dated 06.06.2011 whereby the leave to contest had been dismissed being time barred and the subsequent order dated 15.06.2011 are not sustainable since the tenant had been condemned un-heard by the Rent Controller, solely on the ground that the application to contest was time barred. He has contended that the reasoning adopted by the Rent Controller is not correct wherein, it has been held that the tenant had appeared on 20.11.2010, and therefore, if the case had been wrongly adjourned on 20.11.2010 due to over-sight or typographical error, it would not mean that the tenant's right to leave to contest was time barred due to non-filing of the application. It was contended that he had appeared on the basis of affixation on 16.11.2010 in pursuance of the order dated 06.10.2010 and it was not proper service as there was no copies of the summons served upon him which was mandatory under the provisions of Section 18-A (3)(a) of the Rent Act and the summons have to be as per Schedule II apart from a copy of summons which have to be sent by registered post-AD and affixation. He also pointed out that because of this, fresh summons were issued for 12.03.2011 by the Rent Controller itself and on the same day, i.e. 20.11.2010, on appearance by the tenant, the case was adjourned for filing of the written statement. Similarly, it is submitted that the earlier refusal on 09.09.2010 had been obtained wrongly by the Process Server as there was no witness of service, no affixation and registered covers had not been sent. Reliance was placed upon a Division Bench judgment of this Court in *Jagat Ram Hamir Chand versus Shanti Sarup (5)*, to contend that what was the first hearing

after due service. Similarly, reliance was placed on *Sushil Kumar Sabharwal* versus *Gurpreet Singh (6) & Harwinder Pal Kaur & another* versus *Kuldeep Singh Gurm @ Kuldeep Singh & others (7)*.

(11) It was contended that the gift deed in favour of the landlord was a set up document and no right had been transferred to the landlord and neither he had been declared owner by the Estate Officer and the address of the landlord and the donee was the same. The counsel for the tenant contended that the certificate of retirement was also not proper as there was no address of the office mentioned and the certificate was on a plain piece of paper without any memo and stamp and the same was not issued by the duly competent authority as the same had been signed by some Deputy Director (Administration), Food & Supplies Department, Haryana whereas the landlord himself was working as Joint Director in the same Department. The second certificate dated 14.02.2011 was after the filing of the petition and could not be taken into consideration. It was further contended that leave to contest was liable to be granted as the specified landlord owned other properties in Chandigarh, and therefore, triable issues were raised and the reply filed to leave to contest application was vague and the eviction had been ordered solely on the basis that it was time barred. The manner in which the Rent Controller had conducted the proceedings was also highlighted to show that firstly, proper summons were not issued and thereafter, various applications were filed for pre-ponement which were accepted at the back of the tenant and now, possession had been delivered in spite of the fact that the Bailiff was aware that the records had been called for by this Court while issuing notice of motion and in spite of status quo order being passed with a direction that the property shall not be damaged, the orders of this Court were being flouted and contended that restitution should be ordered during the pendency of the revision petition and subsequent events could be taken into consideration.

(12) On the other hand, counsel for the landlord highlighted that initially service was effected on 09.09.2010 and the period of limitation would count from that date and there was rather no need for affixation as the tenant had received the notice and there was no application filed for supply of copies and he had put in appearance on 20.11.2010 and again

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(6) 2002 (3) RCR (Civil) 431

(7) 2011 (3) PLR 34



appeared on 08.02.2011 and it was only on 11.02.2011, application for leave to defend had been filed and on what basis the said application was filed when the copy of the petition was not delivered to him as alleged and the judgments cited were not applicable since the tenant was well served and he had 2 months time but he had not filed any application for leave to defend. The provisions of Order 5 Rule 10 Code of Civil Procedure, 1908 were referred to and it was submitted that the summons under Schedule II were partly incomplete but it did not prejudice the tenant in any manner. The tenant once had put in appearance on 08.02.2011 and never inspected the record and in the grounds of revision before this Court, it had been alleged that the copy was supplied by the Reader from the Court file on 08.02.2011 whereas he had never appeared in the Court on 08.02.2011 and thus, para No.10 of the application for leave to defend is contrary to para No.8 of the present revision petition. It was argued that there was no application for condoning the delay and the certificate had been issued by the competent authority who is the Deputy Director and the certificates dated 14.02.2011 & 16.02.2011 were also on record and it was accordingly, contended that no triable issues arose and reliance was placed upon the judgment passed in *Bachan Lal versus Yogeshwar Lal Mehta (8)*. It was accordingly submitted that the tenant was very casual in his approach and rather negligent and even though the order of ejection had been passed on 15.06.2011 and 2 months time had been given to him to vacate, he had only got the revision petition preferred on 11.08.2011. Reference is also made to *Indu Bhushan versus Munna Lal & another (9)*, to contend that the Process Server and his endorsement was sufficient and that the tenant having appeared, the Court issuing summons in the prescribed format was unnecessary and therefore, the vacation order was justified. Reliance was placed upon *Hardev Singh Sokhi versus Varsha Sehgal (10) & Paramjit Singh versus Amarjit Singh Walia & others (11)*, to contend that once service had been effected, order of eviction was justified. Reliance was also placed upon *State of Haryana versus Jasmohinder Singh (12)*,

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(8) 2006 (2) Local Acts Reporter 123

(9) 2007 AIR SC 1114

(10) 2010 (2) RCR (Rent) 356

(11) 2006 (4) Law Herald 3033

(12) 2011 (3) RCR (Civil) 748

**Om Prakash** (supra) & **Vijay Kumar** versus **Surinder Tamna** (13), **Baldev Krishan & another** versus **Shiv Kumar Saggar** (14). On merits of the case, it was pleaded that there is a presumption in favour of the landlord that his requirement was real and genuine and reliance was placed upon **Gurdial** versus **Kabul Singh Nagla** (15), **Ranjit Kaur Madaan** versus **Surinder Singh Pelia** (16). Similarly, it was contended that the gift deed being registered and even the landlord having purchased the premises only a day before his retirement, is entitled for ejection under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 and reliance was placed upon **Deepak Suri** versus **Commodore K.S. Sandhu** (17) & **Chander Bhushan Anand** versus **Devender Kumar Singla** (18), **Pritibha Jhangi** versus **Devinder Kumar Singla** (19) & **Baijnath Prasad Sain** versus **Daya Shankar Sain** (20). Accordingly, it is contended that the certificate of retirement could not be gone into and reference was made to **Surinder Gupta** versus **Hukam Chand** (21). It was accordingly submitted that once the leave to defend had been rejected, the order dated 15.06.2011 was a natural sequence and there was no need to issue notice and reliance was placed upon **Anwar Ali** versus **Gian Kaur** (22) and accordingly, the orders passed were held to be justified.

(13) The whole issue, thus, boils down on as to whether service was duly effected upon the tenant as prescribed under Section 18-A (3)(a) of the Rent Act and whether the Rent Controller followed the procedure as prescribed under the said Section since the leave to contest application had been dismissed solely on the ground that the tenant had been served and he had filed the present application only on 11.02.2011 and he had put in appearance earlier on 20.11.2010 and he had refused to accept the notice of the application for pre-poning of the date which was fixed for

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(13) 2007 (2) Law Herald (P & H) 1458

(14) 2007 (1) Law Herald (P & H) 501

(15) 2010 (4) Law Herald (P & H) 2841

(16) 2010 (2) Law Herald (P & H) 1185

(17) 2003 (1) RCR (Rent) 698

(18) 2011 (3) PLR 30

(19) 2010 (2) RCR 124

(20) AIR 1991 (M.P.) 132

(21) 2009(1) RCR (Rent) 541

(22) 2012 (1) RCR (Civil) 290

26.11.2010. The Rent Controller has itself, in its order, come to the conclusion that there was a oversight and typographical error when the case was adjourned on 20.11.2010 when it was fixed for filing of written statement. If the Rent Controller had not followed the special procedure as laid down under Section 18-A of the Act, then necessarily the tenant is to succeed and it is in this context, the records have to be examined. The provisions of Section

18-A of the Rent Act read as under: "18-A. Special procedure for disposal of applications under Section 13-A or Section 13-B -- (1) Every application under section 13-A or section 13-B shall be dealt with in accordance with the procedure specified in this Section.

(2) After an application under section 13-A or 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II.

(3) (a) the summons issued under sub-section (2) shall be served on the tenant as far as may be in accordance with the provisions of Order V of the First Schedule of the Code of Civil Procedure, 1908. The Controller shall in addition direct that a copy of the summons be also simultaneously sent by registered post acknowledgement due addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and that another copy of the summons be affixed at some conspicuous part of the building in respect whereof the application under Section 13-A or Section 13-B has been made.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article and an endorsement is made by a process server to the effect that a copy of the summons has been affixed as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as he deems fit, is satisfied about the correctness of the endorsement, he may declare that there has been a valid service of the summons on the tenant.

(4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building and/or nonresidential building, as the case may be, 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 or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grand-child or widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian from obtaining an order for the recovery of possession of the residential building or scheduled building and/or non-residential building, as the case may be, under Section 13-A or Section 13-B.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the date on which the leave granted to the tenant to contest and shall hear the application from day-to-day till the hearing is concluded and application decided.

(7) Notwithstanding anything contained in this Act, the Controller shall while holding an inquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any residential building or scheduled building and/or non-residential building, as the case may be, made by the Controller in accordance with the procedure specified in this Section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Save as otherwise provided in this section, the procedure for the disposal of an application for eviction under Section 13-A or section 13-B shall be the same as the procedure for the disposal of applications by the Controller.”

The zimni orders passed in the present case are reproduced below:

“Present: Ms Sofia Rana, counsel for the petitioner.

Petition received by entrustment. It be checked and registered. Notice of the petition be given to the respondent on 24.09.2010 on filing of P/F/RC copy etc. Dasti summons be given if so desired.

Sd/-

RC/04.09.2010

Present: Counsel for the petitioner.

Summons sent to the respondent received back with the report of refusal. Learned counsel for the petitioner has stated that she wants to moved an application for substituted service U/o 5 Rule 20. She requested adjournment for filing the same. Now to come up on 06.10.2010.

Sd/-

RC/24.09.2010

Present: Counsel for the petitioner.

An application for substituted service U/o 5 Rule 20 not filed. Same be filed on 20.11.2010.

Sd/-

RC/06.10.2010

At this stage, learned counsel for the petitioner has moved an application U/o 5 Rule 20 CPC. Let respondent be summoned for 20.11.2010 the date already fixed on publication in the newspaper "The Tribune" as well as affixation.

Sd/-  
RC/06.10.2010

Present: None for the parties.

Court notice issued to the respondent received back served. Let respondent be summoned for 12.03.2011 on filing of copy etc.

Sd/-  
RC/20.11.2010

At this stage file taken up again as the respondent has appeared. Now the case is adjourned to 08.02.2011 for filing WS.

Sd/-  
RC/20.11.2010

Present: Counsel for the petitioner.

File taken up on an application for preponing the date from 08.02.2011 to some date in December, 2010. Let notice of this application be given to the respondent for 26.11.2010 on filing of copy etc.

Sd/-  
RC/20.11.2010

Present: Counsel for the parties.

None for the respondent.

Notice of the application for preponing the case received back with the report of refusal. Case called up many times but none has appeared on behalf of respondent. Now to come up on 08.02.2011 for filing leave to defend if any as well as consideration on application.

Sd/-  
RC/26.11.2010

Present: Petitioner in person with Ms.Promila Nain, Adv.,  
None for the respondent.

Learned counsel for the petitioner has stated that no application for leave to contest has been filed by the respondent and therefore the petitioner being the specified landlord is entitled for the eviction and the respondent from the demised premises. Heard. File perused. Therefore no application for leave to contest on the file. Now to come up for consideration on 11.02.2011.

Sd/-  
RC/08.02.2011

Present: Petitioner in person with counsel

Ms. Promila Nain, Adv.,

Sh.Rajesh Sood, Adv., counsel for the respondent.

Learned counsel for the respondent has moved an application seeking leave to contest. Copy supplied. Now to come up for filing its reply as well as arguments on 16.02.2011.

Sd/-  
RC/11.02.2011

Present: Petitioner in person with counsel Ms.Promila Nain, Adv.,  
Sh.Rajesh Sood, Adv., counsel for the respondent.

Learned counsel for the petitioner has moved an application for passing the eviction order of respondent tenant. Heard. Now to come up on 05.03.2011 for filing its reply and consideration.

Sd./-  
RC/16.02.2011

Present: Petitioner in person with Ms.Promila Nain, Adv.,  
Sh.Bhupinder Rana, Adv., proxy counsel for respondent.

Reply to the application for passing eviction order filed. Copy supplied. Learned proxy counsel for the respondent has stated that the main counsel for the respondent is out of station and requested adjournment for argument on the application for passing eviction order. Learned counsel for the petitioner has stated that the respondent

is prolonging the case on one pretext or the other. Now to come up for arguments on application for passing eviction order on 14.03.2011.

Sd/-

RC/05.03.2011”

A bare reading of Section 18-A (3)(a) goes on to show that summons have necessarily to be issued under Section 18-A (3)(a) and have to be issued in the form specified in Schedule II and have to be served upon the tenant in accordance with the provisions of Order 5 of the First schedule of the Code Civil Procedure, 1908. In addition to that, the Rent Controller was under a duty to send a copy of the summons by registered post acknowledgment and another copy of summons had to be fixed at conspicuous part of the building. Under Sub-clause (3)(b) of Section 18-A of the Rent Act, where there is refusal to take delivery and an endorsement is to be made by the Process Server to the effect that the summons had been affixed, the Rent Controller has to make an inquiry about the correctness of the endorsement and declare that there had been a valid service on the tenant. It is only in case where service has been validly effected, the tenant has a right to contest the prayer for eviction by filing an affidavit and obtaining leave from the Rent Controller. This procedure has not been effectively carried out by the Rent Controller in the present case. The first set of summons which was issued on 04.09.2010 for 24.09.2010 was returned back with the report dated 09.09.2010 that the tenant had failed to accept the said summons. The order dated 24.09.2010 does not show that whether any registered covers was received back and whether any affixation was made by the Process Server on the building in respect of which ejection was sought as prescribed under Sub-clause (3) (a) of Section 18-A of the Act. The refusal report dated 09.09.2010 was also not witnessed by any independent witness and it is only the Process Server's endorsement which had been accepted. Order 5 Rule 17 of Code of Civil Procedure, 1908 provides that where the tenant refuses to accept the acknowledgement, the serving officer is to effect the service by affixing the summons on the outer door of the defendant or some other conspicuous part of the building and the name and address of the person, if any, by whom the house was identified should be mentioned. No such procedure seems to have been followed by the Process Server for the service which was allegedly effected on 09.09.2010. Thus the finding of the Rent Controller that the service was validly effected on 09.09.2010, cannot be upheld.



(14) The next date of claimed service is alleged to be 16.11.2010 in pursuance of the order of substituted service dated 06.10.2010 reproduced above. A perusal of the summons which were sent for effecting service for 20.11.2010 go on to show that the copy of the petition was not appended with a copy of the summons which was mandatory and were not in the prescribed performa as prescribed under Schedule II as per Sub-section (2) of Section 18-A of the Act. Schedule II reads as under:

“SCHEDULE II

[See sub-section (2) of Section 18-A]

Form of summons in a case where recovery of possession of residential building or scheduled building is prayed for under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949.

(Name, description and place of residence of the tenant) Whereas Shri \_\_\_\_\_ has filed an application (a copy of which is annexed) for your eviction from \_\_\_\_\_ (here insert the particulars of the residential building or scheduled building under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949; Now, therefore, you are hereby summoned to appear before the Controller within fifteen days of the service thereof and to obtain the leave of the Controller to contest the application for eviction under Section 13-A of the said Act, in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said residential building or scheduled building. Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of the Section 18-A of the said Act. Given under my hand and seal this.....day of .....19  
Controller”

(15) The tenant, on the receipt of the summons, has specifically mentioned that he has received only a copy of the notice and once that was so, then there was no effective service as provided under the provisions of Section 18-A Sub-clause (2) & (3)(a) and, therefore, the reasoning given by the Rent Controller that service had been validly effected when the tenant appeared on 20.11.2010 is against the statutory requirements of the

provisions. In fact, a perusal of the order dated 20.11.2010 mentions that the respondent be summoned for 12.03.2011 on filing of copies etc. and subsequently, on appearance of the tenant, the case was fixed for filing of written statement whereas the tenant who had appeared in person was not informed of his right that the application was filed under Section 13-A of the Act by a specified landlord and therefore, he had to file the application for leave to contest within 15 days. It also transpires from the record that as noticed above, 2 more applications dated 05.01.2011 and 16.02.2011 had been filed praying that ejection order be passed since the tenant had not filed the application within the statutory period though he had been served. Notice of one application was issued to the tenant for filing reply on 16.02.2011 and the reply was filed on 05.03.2011. In the reply, the tenant had very categorically mentioned that he was never served as per the provisions of Section 18-A of the Act and the summons received by the tenant was not in the performa as given in Schedule II and accordingly, it was mentioned that the judgment relied upon in **Om Prakash** (supra) and **Suresh Kumar** (supra) were not applicable and that he be allowed to contest the petition on merits. The Rent Controller, however, failed to take this reply into consideration and also failed to take into consideration the specific procedure which was laid down in Section 18-A wherein he had to declare that a valid service of summons had been effected upon the tenant and the endorsement made by the Process Server was correct and he was satisfied about the correctness of the summons. This exercise has not been carried out which would be clear from the impugned order.

(16) This Court in *Gursharan Singh* versus *Sat Pal* (23), while dealing with a similar situation regarding due service, noticed that the provisions of Section 18-A for a specified landlord was a special procedure and it was required to be followed since grave consequences entailed in the nature of the ejection. In the said case also, the application for leave to contest had been dismissed as time barred without recording that the summons had been validly served. The relevant paragraphs of the judgment reads as under:

*"8. A special provision has been made in the Act for specified landlords so seek immediate possession of the premises on their retirement and such applications are required to be disposed of*

*in the manner detailed in the Act. Special procedure for disposal of the applications has been provided in Section 18-A, as reproduced above. Sub-section (2) of Section 18-A specifically provides that on receipt of an application under Section 13-A, the Controller shall issue summons for service of the tenant in the form specified in Schedule II appended to the Act which further clearly provides that the tenant should appear and seek leave to contest the application within a period of 15 days from the date of service of such notice. No other form of service of notice contains such a provision. Sub-Section (3) further provides that the Controller shall in addition direct that a copy of summons be also simultaneously sent by registered post acknowledgement due addressed to the tenant. Latter procedure was not at all followed though ordered by the Rent Controller at the initial stage. Sub-Section (4) provides that once it is declared that the tenant has been duly served he shall have no right to contest the prayer for eviction from the residential or the scheduled building as the case may be, unless he files an affidavit stating the ground on which he seeks to contest the application for eviction and obtains leave from the Controller in that behalf. Leave to contest is granted if the application seeking such permission discloses such facts as would disentitle the specified landlord to recover immediate possession of the building. The aforesaid provisions, in my view, clearly lead to the conclusion that the special procedure prescribed for seeking immediate possession of the tenanted premises by specified landlords is mandatory in nature. In the present case, such a procedure was not adopted and thus it is difficult to hold and declare that the tenant had been validly and duly served under subsection (3) of Section 18-A of the Act. The procedure contemplated by the Act is required to be followed, especially when grave consequences follow in the nature of an order of ejection in case the tenant does not appear and seek leave to contest within 15 days of the service of notice. The tenant is thus in some cases required to appear before the Rent Controller even before the date fixed and notified to him for appearance in Court when the difference between the date of appearance and service is more than 15 days.*

*12. Looked in the above perspective, it is difficult to uphold the order of the Rent Controller. The application seeking leave to contest could be dismissed as barred by time only after it had been recorded that the summons had been validly served."*

(17) This provision has also been examined thereafter recently in *Harwinder Kaur Pal* versus *Kuldeep Singh Gurm* (24), wherein it has been held that all the 3 modes of services have to be effected since the Legislature has specifically provided the tenant the right of knowledge that he has to face a petition under Section 13-A or 13-B. Relevant portion of this judgment reads as under:

11. Section 13-B of the Act, is a special provision in the Statute which confers a right upon a Non Resident Indian of immediate possession of the demised premises which is owned by him for over a period of five years and he has returned or intends to return to India to claim the demised premises let out by him for personal occupation of one premises which right is not exercised by him earlier and where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of five years from the date of taking possession otherwise the evicted tenant can be re-inducted by the learned Rent Controller. Since extraordinary right has been conferred upon Non Resident Indian to seek possession immediately, the tenant of such a owner of the demised premises is given a chance to 'leave to defend' by showing that the petition filed under Section 13-B of the Act is not maintainable as the eviction petition does not fulfill the requirement enshrined under Section 13-B of the Act as a very limited right is granted to the tenant. Entire effort was made by the Law Makers to ensure service upon the tenant in such petitions filed under Section 13A and 13-B of the Act, so that he could know that he is facing a petition under Section 13-B and after service is found to be complete in terms of provisions of Section 18-A(3)(a)(b) of the Act, the learned Rent Controller is required to declare the valid service of the summons on the tenants and thus a very limited time is granted to the tenant to show cause so that he may not unnecessarily delay the matter by taking unnecessary adjournment in the name of filing

application for to 'leave to defend'. Thus, sine qua non in these proceedings is the service upon the tenant, so that unscrupulous landlord may not get a walk over the tenant by showing the order served in connivance with the process serving agency. The Legislature has specifically provided in Section 18-A (2) of the Act the form of summons in which it is categorically provided that it would inform the tenant to appear before the Rent Controller within 15 days of service to obtain 'leave to contest', otherwise after the expiry of the said period of 15 days, the landlord would be entitled to obtain the order of eviction against the tenant. The form also provides that an application for 'leave to defend' is to be in the form of an affidavit. Section 18-A (3) (a) provides that summons prescribed under Section 18-A (2) of the Act shall be served in accordance with the provisions of Order 5 of the First Schedule of Code of Civil Procedure, 1908 (for short, 'CPC'). In addition, the Controller shall also direct that a copy of summon be also simultaneously sent by registered post acknowledgement due addressed to the tenant or his agent and another copy of summons is required to be affixed on some conspicuous part of the building in respect of which an application is filed under Section 13-A or 13-B of the Act. Section 18-A (3) (b) further provides that an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered articles containing the same is received back with an endorsement purported to have been made by a postal employee to the effect that the tenant or his agent has refused to take the delivery of the registered article and an endorsement is made by a Process Server to the effect that copy of the summons has been affixed, as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as to the summons and on being satisfied about the correctness of the endorsement, would declare that there is a valid service of summons on the tenant. Thus, to my mind, the Legislature has provided all possible ways and means for ensuring the service of summons upon the tenant so that he may know of his right which could be jeopardised for not filing application for 'leave to defend' within 15 days from the date of service. Section 18-A (b) of the Act provides that summon has to be issued in terms of Order 5 of CPC and in addition thereto, by registered post and by affixing

another copy of the summons on the conspicuous part of the building in dispute. Accordingly, the Controller has to follow all the three methods. He would be satisfied about the service if he receives the acknowledgment of receipt and in case of refusal of summons which is delivered through the Process Server if there is an endorsement to the effect that copy of the summon has been affixed on the conspicuous part of the building. This provision is in tune with Order 5 Rule 17 of CPC, whereas Order 5 Rule 19 of CPC provides for procedure to judge the veracity of the Process Server about the report of refusal.

12. Interestingly, in the present case, no such procedure, as directed under Section 18-A (3) (a) and (b) has been followed by the learned Rent Controller, who has simply relied upon the report of refusal without recording anything as to service upon the tenant by way of registered post or by way of affixation by Process Server in case of refusal, nor given any chance to verify the question of refusal on the part of the tenant and has dismissed the application simply on the ground that Dimple son of Surinder Singh (petitioner No. 1/tenant) has admitted to have refused service. To my mind, the finding of the learned Rent Controller in this regard is patently erroneous and cannot be sustained to hold that service upon the tenant was validly effected on 17.7.2009. Accordingly, the application filed by the tenant for 'leave to defend' was within limitation."

(18) The Hon'ble Apex Court in *Sushil Kumar Sabharwal* versus *Gurpreet Singh (25)*, while dealing with the procedure under Order 5 Rule 17 and 18 and finding that there were several lapses on the part of the Process Server, set aside the *ex parte* decree against the tenant and relegated the parties back to the trial after taking into consideration that the casual approach on the part of the Court would result in depriving in the rights of the tenant for participation in the hearing. A Co-ordinate Bench of this Court has also noticed the manner in which the Rent Controller had proceeded against the tenant and also called for comments twice whereby the fact that the final ejectment order had been passed on 15.06.2011 without even issuing notice to the tenant though the case was fixed for

11.08.2003. A perusal of the order dated 15.06.2003 goes on to show that after passing the ejectment order and recording the fact that memo of cost has to be ordered and file has to be consigned after due compliance, the Rent Controller has further incorporated the words "petitioner shall inform the respondent about this order immediately." This incorporation which is in hand seems to be obvious in view of the fact that this Court had, while issuing notice of motion, directed that notice may be given to the petitioner before the eviction and once the report of the Officer was called for, it seems that the said incorporation had been done.

(19) Reliance placed by the landlord in the case of **Bhajan Lal** (supra) would not be applicable as that was on the question of dispute of the certificate issued by the competent authority. In the present case, at this point of time, this Court is not examining the issue on merits as to whether the leave to contest was liable to be granted or not and is only deciding the issue as to whether the tenant had been duly served as per procedure prescribed under Section 18-A of the Act and the action of the Rent Controller in dismissing the application for leave to contest being timebarred would not arise if service was not effected in the proper manner. Judgment relied in the case of **Indu Bhushan** (supra) is also not applicable as the Hon'ble Apex Court has come to the finding that no material had been placed before the trial Court or the High Court to show that the endorsement made before the Court was false or erroneous. In the present case, this Court has come to the conclusion that the service effected on 09.09.2010 and 16.11.2010 was not valid service in view of the provisions of Section 18-A. In **Hardev Singh Shekhon** (supra) the Delhi High Court was considering the fact where leave to contest had not been filed at all and there was misreading regarding the date which was fixed for appearance. Similarly, in **Paramjit Singh** (supra), the finding was that the tenant was validly served and in such facts and circumstances, the ejectment order was upheld and in **State of Maharashtra** (supra), the issue before the Court was where the State had been served and had been proceeded *ex parte* and the delay of 3407 days for setting aside the said order was not condoned. In **Vijay Kumar** (supra), the applicability of Section 5 of the Limitation Act for proceedings under Section 18-A of the Act was rejected and similar was the position in **Baldev Krishan** (supra) case wherein the tenant forgot to file the application and had gone out of station. Reliance

upon **Gurdial** (supra) is also not applicable since it pertains to the provisions of Section 13-B of the Act wherein it was held that there was presumption in favour of the landlord that his requirement was real and genuine. **Deepak Suri** (supra), **Chander Bhushan Anand** (supra), **Pradheep Jhangi** (supra) and **Baijnath Prasad Singh** (supra) only talk about the right of the landlord to become a specified landlord and even purchase of property a day earlier before the retirement was held to be good to entitle the landlord to make a claim for being a specified landlord. **Surinder Gupta's** case (supra) again pertains to the case of certificate of retirement and whether the correct certificate had been furnished or not and since this Court is not going into the merits of the case which is yet to be judged by the Rent Controller, the said judgment has no applicability. The proposition laid down in **Anwar Ali's** case (supra) also pertains to the fact that an ejection order has to be passed straightway once the leave to defend application has been declined and in fact, shows that the Rent Controller had initially failed to pass the order of ejection while dismissing the application and thereafter, had postponed the date to pass the order of ejection without notice to the tenant.

(20) The other issue which now arises for consideration is the application for restoration of the premises due to the fact that the proceedings were pending before this Court and while issuing notice of motion, the following order had been passed on 20.08.2011:

“Notice of motion for 20.9.2011.

Notice re: stay also for the date fixed.

Notice may be given to the petitioner before the eviction.

Record of the courts below be summoned for the date fixed.”

(21) A perusal of the above order goes on to show that the Rent Controller had to issue notice to the petitioner before effecting eviction and as noticed in detail above, he was well aware that the records of the case were summoned by this Court, but while proceeding ahead with the execution, chose to provide police help and assistance on the applications of the landlord without even issuing notice to the tenant. The orders dated 07.10.2011 and 10.10.2011 in execution proceedings are reproduced below:

“Present: Decree holder in person with counsel Ms Promila Nain,  
Advocate

Bailiff Avtar Singh in person.



Statement of the bailiff recorded, according to which the JD has full knowledge/notice of warrant of possession but the possession could not be delivered without police help and the JD has also threatened to put lock on the premises. He further stated that the permission for breaking open the locks with police help, is required. Heard. In view of the statement made by the bailiff, warrant of possession be again issued for 09.11.2011 in respect of the demised premises. Bailiff is authorized to break open the lock, if the same is required for handing over the possession. A letter of request to the learned District & Sessions Judge, U.T., Chandigarh for providing/ordering police help to the bailiff be sent.

Sd/-

S.K.Sharma, CJ(JD)/07.10.2011

Present: Decree holder in person with counsel Ms Promila Nain,  
Advocate.

File put up on the application praying for intimation/letter to the Learned Civil Judge, Senior Division, U.T., Chandigarh for providing police assistance. Heard. Let letter of request for providing police help to the bailiff in the execution of warrant of possession, ordered vide order dated 07.10.2011, be sent. Now to come up on 09.11.2011, the date already fixed for awaiting report of the bailiff.

Sd/-

S.K.Sharma, CJ (JD)/10.10.2011"

(22) As noticed above, it was in such circumstances, explanation was called twice from the Rent Controller and photographs were also placed on record along with the application to show that possession had been taken and to ensure that the tenant was not put back in possession in pursuance to the said application, the landlord had removed the wooden frames of the doors and windows so that the house could not be utilized though a lame excuse has been given that he wanted to renovate the premises in question. This Court had passed order dated 19.10.2011 wherein it was ordered that no party would damage the property in dispute till further orders. A perusal of the subsequent photographs placed on record along with an affidavit dated 23.03.2012 in CM No.8191-CII of 2012 goes

on to show that the RCC roof had been smashed open baring the steel gidders upon each and every room to make the house uninhabitable and even the water tanks had been broken to ensure that the tenant could not make the property liveable. It is nothing but a blatant act on the part of the landlord violating the interim order of this Court passed on 19.10.2011. In such circumstances, the application for restitution is to be allowed under Section 144 Code of Civil Procedure, 1908 as laid down by the Hon'ble Apex Court in *Sant Ram versus Rajinder Lal* (26), which was followed by this Court in *M/s Uttam Chand Ranjit Singh versus Ram Gopal Kalia* (27).

(23) The tenant shall be entitled to take possession of the house in question and make necessary repairs to make the house liveable and the expenses incurred in making the house liveable shall be recoverable from the landlord after showing the appropriate proof as to the expenses involved on making the house liveable.

(24) The Rent Controller, Chandigarh shall decide the application for leave to contest on merits expeditiously within a period of 4 months from the date of receipt of a certified copy of this order since this Court has come to the conclusion that service was never validly effected as per the provisions of Section 18-A and Sub-clauses (2) & (3)(a), and therefore, the order of the Rent Controller dismissing the application on the ground of limitation was not justified.

(25) The revision petition is accordingly allowed subject to special costs of Rs.1,00,000/- to be recovered from the landlord which have to be deposited with the Rent Controller, Chandigarh and are to be paid to the tenant within a period of 2 months.

(26) Accordingly, keeping in view the above facts and circumstances, the present revision petition is allowed in the above terms. A copy of this order be sent to the Rent Controller, Chandigarh through District Judge, Chandigarh for necessary compliance.

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*V. Suri*

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(26) AIR 1978 (SC) 1601

(27) 1982 P.L.R. (86)