

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 2413 of 2011

Date of Decision: July 8, 2015

Rajbir Singh

.....Petitioner

Vs.

M/s Mech-Chem Consultants Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. M.L. Sarin, Sr. Advocate with
Ms. Hemani Sarin, Advocate
for the petitioner.

Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. G.S. Bhangu, Advocate
for the respondent.

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M.M.S. BEDI, J.

This is landlord's revision petition under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949, for short 'the Act', as applicable to Chandigarh, against the order dated March 9, 2011 dismissing the application under Section 13 B of the Act, while deciding the application for leave to defend filed by the tenant- respondent.

Section 13-B of the Act entitles a Non-Resident Indian to recover immediate possession of the residential building or scheduled building, in case it is required for his use and occupation provided that right to apply for eviction under said Section would be available only after a period of 5 years from the date of becoming owner of the building. The said right is available only once during the life time of such a owner. The procedure to deal with such an application under Section 13 B of the Act is prescribed under Rule 18 A which reads as follows:-

“Section: 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 section 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 to 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 subsection (3), shall have no right to contest the prayer for

eviction from the residential building or scheduled building and/or non residential 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 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 or the owner, who is non resident Indian of such specified landlord 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 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.”

A perusal of the above said procedure indicates that after service of summons in prescribed form the tenant shall have no right to contest the prayer for eviction unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller. In case he fails to put in appearance pursuant to the summons or fails to obtain such leave, the statement made by the specified landlord shall be deemed to be admitted by the tenant and the applicant shall be entitled to order for eviction. The provisions of Section 18-A (5) of the Act gives the power to the Controller to give leave to contest the application under Section 13 B of the Act if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or other persons mentioned in the statute from obtaining an order for the recovery of possession of the building in dispute. In case the leave is granted to the tenant, the Rent Controller is required to 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.

The Rent Controller in the present case was required to consider the affidavit of the tenant/ respondent for the purpose of grant of leave to contest. There were two options open to the Rent Controller i.e. either to grant leave to contest to the tenant on the basis of the affidavit filed by him and proceed as per provisions of Section 18 A (6) and (7) of the Act or to reject the application under Section 18 A (4) of the Act. The Rent Controller in the present case has dismissed the application holding as follows:-

“Regarding maintainability of this petition and attestation of affidavit it has been argued by the learned counsel for the applicant that the petitioner was not present in India on 26.4.2010 when the present petition was filed and the affidavit accompanying the petition was got attested from the Oath Commissioner. So, on this ground the petition is liable to be rejected. On the other hand, the learned counsel for the petitioner has argued that the affidavit was got attested in USA. So, it is attested accordingly to law. Dual attestation does not affect the authenticity and sanctity of the affidavit. The learned counsel, however, conceded that the petitioner was not in India when the present petition was filed. The learned counsel has also argued that it does not make any difference because the affidavit is duly sworn and attested in USA on 24.3.2010. But his Court does not find itself agreed with this contention because this Court is of the opinion that the petitioner has

misused the process of law by filing this petition without being present in India by making false averments regarding his presence. He is guilty of filing a false affidavit in the court. When he was not present in India how he got the attestation from the Oath Commissioner on 26.4.2010. But it seems from the circumstances of the case that he has purposely done this in order to show his presence in India on the date of filing this petition i.e. 26.4.2010 whereas in fact he was not present. The photocopy of his passport has also been perused by this Court, that also reveals that he never came to India at the time of filing this petition.

From the aforesaid discussion, it is clear that the petitioner has mislead the Court by filing false affidavit and by making false averments in the petition wherein the opening line in para No.1 is the present petition is being filed by the petitioner who is a person of Indian origin and non resident Indian. So, he has wrongly stated in the petition that the petition is being filed by him whereas he was not present in India on the date of filing the petition. Time and again it has been held by the Hon'ble Apex Court that a litigant who does not come to the Court with clean hands, does not deserve any relief from the Court and his case is liable to be thrown away at the outset."

There is no provision in the Act for dismissing the application under Section 13 B of the Act while considering the application under Section 18 A (4) of the Act. The order passed by the Rent Controller dated March 9, 2011 dismissing the application under Section 13 B of the Act is hereby set aside having been passed without the sanction of law. However, it is clarified that the order dated March 9, 2011 will be deemed to be an order allowing the application under Section 18 A (4) of the Act filed by the tenant- respondent.

With the above said clarification, this revision petition is allowed and it is directed that the Rent Controller will proceed further in the ejectment petition under Section 13 B of the Act deeming the application of the tenant for leave to defend under Section 18 A (4) of the Act having been allowed. The Rent Controller will decide the ejectment petition as per provisions of Section 18 –A (4) (6) and (7) of the Act as per procedure prescribed. All the pleas taken up by the tenant in application for leave to contest and taken up before this Court would be open to be raised before the Rent Controller. The Rent Controller is directed to decide the rent petition expeditiously without prejudice to the rights of the parties in any other pending litigation or any other order passed against or in favour of any of the parties in any other proceedings.

Parties are directed to appear before the Rent Controller on August 10, 2015 for further proceedings.

July 8, 2015
sanjay

(M.M.S.BEDI)
JUDGE