

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 34 of 2015 (O&M)

DATE OF DECISION : October 06, 2015

Surinder Mohan

..... PETITIONER(S)

VERSUS

Piara Singh

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Pankaj Jain, Advocate, for the petitioner.
Mr. Vipin Mahajan, Advocate, for the respondent.

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1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO

2. To be referred to the Reporter or not? YES/NO

3. Whether the judgment should be reported in the digest? YES/NO

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ARUN PALLI, J. (Oral)

Vide order dated 28.08.2010, rendered by the Rent Controller, Gurdaspur, application moved by the petitioner-tenant seeking leave to defend the petition filed by the landlord under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act'), had since been declined. And, in reference to a decision rendered by this Court in M.R.F. Limited and another vs. S. Major Singh Purewal, 2009(3) RCR (Civil) 196, the eviction petition was posted for recording the statement of the landlord.

But eventually, not only the statement of the respondent-landlord was recorded but tenant was also afforded an opportunity to put forth his defence and lead evidence. Meaning thereby, an order of eviction of the petitioner was passed on merits. That is how, petitioner is before this Court and has assailed both the orders i.e. dated 28.08.2010 and 12.11.2014.

What has led the parties to this stage: Respondent-landlord filed a petition under Section 13-B of the Act and prayed for eviction of the petitioner from residential building/house marked as ABCD in the site plan. Petitioner was served through Munadi and affixation and he appeared before the Rent Controller on 19.10.2009. Concededly, an application seeking leave to contest the eviction petition was moved on 04.01.2010, which was apparently barred by time. As a result, his prayer for leave to contest the proceedings was declined, as even from the date he caused appearance i.e. 19.10.2009, he had failed to move the application within the prescribed period. The conclusion recorded in this regard, reads as thus:-

“Although it can be accepted that the summons to the respondent was issued not on prescribed perform as required by law. But the respondent has appeared through Munda and affixation on 19.10.2009, but from 19.10.2009 he has not filed the application for leave to contest within the prescribe period rather he filed reply to the main application on 1.12.2009. Further when the case was fixed for consideration on the main application as respondent failed to file the leave to contest. Ld. Counsel for the respondent on

the next date of hearing i.e. 4.1.2010 filed this present application for leave to contest. Hence, certainly time respondent has filed this leave to contest beyond the period of limitation. The contention of the respondent that service was not as per requirement of law hence his application for leave to contest should not be treated as time-barred. But from the facts of the case it is established that respondent has not filed an application for leave to contest within the stipulated period from the first date of knowledge of this present petition i.e. when the respondent appeared in the present case. But he has not filed application for leave to contest within time period. Hence it is to be seen whether the rent controller can condone the delay of filing an application for leave to contest or not, to this observation of Hon'ble Punjab and Haryana High Court in case title Harnek Singh vs. Praamjit Singh reported as 2009(4) RCR (Civil) 42 are important wherein it has been observed that service of summons to the respondent through Munadi, tenant not filed application for leave to contest within 15 days of service of notice leave to contest cannot be condone as provision of limitation act are not applicable for seeking condonation of delay for filing the application for leave to contest under the Act. Hence in view of the observation of Hon'ble Punjab and Haryana High Court as the limitation act is not application to the East Punjab Urban Rent Restriction Act. Hence the present application of the respondent for leave to contest is beyond the period of limitation and is hereby dismissed."

However, despite having declined leave to the petitioner to contest the proceedings, in reference to the decision of this Court in M.R.F. Limited (supra); "Refusal of leave

to defend to tenant would by itself does not entitle the landlord to decree of eviction. Rent Controller is required to record the statement of landlord and then pass an order if there is a ground for evicting the tenant”, the matter was adjourned for recording the statement of the landlord.

But, the Rent Controller not only recorded the statement of the respondent-landlord, who appeared as AW1 and his witnesses, but even allowed the petitioner-tenant to lead his evidence and contest the proceedings. The matter was tried on merits and vide order dated 12.11.2014, ejectment of the petitioner was ordered. It was concluded that the landlord was fully entitled to seek eviction of the petitioner under Section 13-B of the Act, as he indeed required the premises for his personal bona fide need. The conclusion recorded in this regard, reads as thus:-

“17. In view of the evidence on file, discussion made above and the fact the despite the refusal to the tenant to contest the application he has been allowed to contest it, yet, he has not been able to rebut the claim of the applicant. When the respondent tenant is liable to ejected from the property in question as detailed and described in the head note of the application under the provisions of Section 13-B of East Punjab Urban Rent Restriction Act as being prayed for. This issue is decided against the respondent and in favour of the applicant NRI landlord.”

I have heard learned counsel for the parties and perused the record.

No doubt, in reference to the decision rendered by

this Court on 04.05.2009 in M.R.F. Limited (supra), the Rent Controller despite having declined leave, posted the matter for recording the statement of the landlord. But not only that he proceeded to record the evidence of the witnesses of the landlord but also of the petitioner-tenant. The eviction petition was contested on merits. Thus, proceedings post recording of landlord's statement were a nullity. (Particularly, when the petitioner never even assailed the order dated 28.08.2010, vide which he was declined leave to contest the proceedings.) So much so, subsequently, the decision in M.R.F. Limited (supra) was examined by the Full Bench of this Court in Anwar Ali vs. Gian Kaur, 2012(1) RCR (Civil) 290, and the ratio of law laid down by the Full Bench reads as thus:-

“The above discussions would lead us to the conclusion that in a situation where under Section 13-B of the Act, leave is refused to the tenant to defend the proceedings brought by the N.R.I. landlord, eviction of the tenant has to be ordered as an automatic consequence.”

It would be apposite to point at this juncture that the Full Bench's decision was rendered on 09.11.2010, i.e. much before the Rent Controller ordered eviction of the petitioner on 12.11.2014, preceded by a full length trial. Thus, Rent Controller was not required in law to provide opportunity to the petitioner to contest or defend the lis on merits. But as indicated above, post ejectment, petitioner has even assailed the order dated 28.08.2010, after almost 4½ years.

Be that as it may, learned counsel for the petitioner

could not point out as to how the order rendered by the Rent Controller on 28.08.2010, vide which his application for leave to contest the proceedings was declined, being barred by time, was either contrary to the position on record or suffers from any material illegality. For, petitioner had caused appearance on 19.10.2009, before the Rent Controller and an application under Section 18-A of the Act, was moved on 04.01.2010, though, concededly, it was required to be moved within 15 days of service of the notice. The position of law is not *res integra*, as Division Bench of this Court in Ashwani Kumar Gupta vs. Shri Siri Pal Jain, 1998(2) RCR (Rent) 222 (P&H), held as thus:-

“In our opinion, the question relating to applicability of Section 5 of the Limitation Act must be answered against the petitioner because, as observed herein above, Section 13A of the Act is a Code unto itself and it constitutes a special provision not only *vis-a-vis* other provisions of the Act but also any other law for the time being in force. This naturally displaces the applicability of any other law which is inconsistent with the provisions of Section 13A read with the form prescribed for issuance of summons under Section 13A (2) of the Act. Therefore, neither the tenant can invoke the provisions of Limitation Act nor can the Controller mis-use Section 5 thereof for condoning the delay in the filing of application under Section 13-A (4). As a logical corollary, it must be held that the Rent Controller does not have the discretion and jurisdiction to condone the delay in the filing of the application or to extend the period specified in the form. If at all the Legislature wanted to make the provisions of Limitation Act applicable or confer some element of discretion upon the Rent

Controller, nothing prevented it from incorporating an express provision to that effect. In the absence of such express provision, we do not find any rhyme or reason to import the applicability of the provisions of Limitation Act or implied vestige of discretion with the Rent Controller to condone the delay in the filing of the application or to extend the period of 15 days.”

Even otherwise, it could not be pointed out as to how the conclusion recorded by the Rent Controller, even on merits, was either erroneous or contrary to the record.

That being so, no interference is warranted in exercise of revisional jurisdiction under section 15 (5) of the Act. Petition being devoid of merit is, accordingly, dismissed.

OCTOBER 06, 2015
Kang/Manoj Bhutani

(ARUN PALLI)
JUDGE