

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6397 of 2011 (O&M)

Reserved on:26.11.2014

Date of decision:07.01.2015

Arun Sharma

....Petitioner

Versus

Usha Sunderam

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Shekhar Verma, Advocate, for the petitioner.

Mr.Sumeet Goel, Advocate

Mr.Manav Bajaj, Advocate and

Mr.Sunil Fernandes, for the respondent.

G.S.Sandhawal J.

Challenge in the present revision petition, filed by petitioner-tenant, is to the order dated 29.09.2011 (Annexure P1), whereby the Civil Judge (Jr.Divn.) Gurgaon has dismissed the two applications filed under Order 7 Rule 11 and Order 6 Rule 17 CPC, as the applications had been filed on the ground that the Haryana Municipal Corporation Act, 1994, had been made applicable to the area where the suit property is situated w.e.f. 02.06.2008 and as such, the same could not effect the litigation already initiated. Reliance was placed upon the judgment of the Apex Court in **Mansoor Khan Vs. Moti Ram Harbhajan Kharat AIR 2002 SC 2396**. An earlier application had also been dismissed on 05.08.2010 and the proposed amendment in the preliminary objection No.5 could not be allowed as it would lead to framing of a new case and controvert the admission made in para No.6 of the amended written statement.

The respondent-landlady filed a civil suit on 25.07.2007 (Annexure

interests and costs along with damages for illegal use and occupation of the residential house bearing No.8003 DLF, Phase IV, Gurgaon. The property consisted of two bedrooms, two bathrooms, one drawing-cum-dining room, one kitchen and the roof thereof. It was the case of the landlady that the property had been leased out initially for a period of 24 months from 01.02.2003. The lease agreement had been mutually extended for another period of 24 months starting from 16.05.2005, vide the lease agreement executed on 04.06.2005. The rent was to be increased to Rs.8000/- from 15.05.2005 and the defendant never used to pay the rent regularly and an amount of Rs.29,600 was due till 15.05.2007. The lease agreement was not renewed *inter se* the parties and the defendant had not vacated the premises as per the assurance given, after May, 2007 and neither he had paid rent after June, 2007. The plaintiff and her husband wanted to shift to Gurgaon which was a suitable place for her sons as they also wanted to settle there and were getting job offers from the NCR region. A legal notice was issued on 30.07.2007 for termination of the tenancy which was replied on 17.08.2007 that the tenant had spent Rs.1,91,403/- on the leased premises for getting the same habitable. Accordingly, the suit was filed by specifically pleading in para No.16 that the said premises did not fall under the urban area and the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 was not applicable to the leased premises and the same were governed by the general law of land.

Written statement was filed that there was no breach of any of the conditions of the lease and the notice did not give any rise to the cause of action. The plaint did not disclose the case of *bona fide* necessity and that the landlady had not given any intimation in writing prior to the expiry of the lease. No notice had been sent as stipulated and in the absence of any breach, the legal notice was

baseless whereby the lease agreement had been terminated. The defendant-tenant

had spent a huge amount in making the property habitable. The fact that the plaintiff and her husband wanted to shift to Gurgaon was denied. Regarding the jurisdiction of the Court, there was no denial and it was submitted that the plea taken in para No.16 of the plaint is legal.

The petitioner-defendant then filed an application under Order 7 Rule 11 CPC for rejection of the plaint on account of being barred under the law on the ground that it was filed on 25.09.2007 and vide notification dated 02.06.2008, Haryana Municipal Corporation Act had been made applicable to the area and the suit itself had become not maintainable since ejectment could only be ordered under the Rent Act. The earlier application had been filed under Order 7 Rule 11 CPC on a separate ground and the second application was based on subsequent event. The respondent-plaintiff filed reply to the application and took the plea that the ground mentioned was also available when the application had been filed. The second application was a sheer abuse of the process of law. The applicant had not paid the arrears of rent and was in arrears to the tune of Rs.3,17,600/- till 15.05.2010 and the arrears were piling on and the defence was liable to be struck off on account of non-payment of arrears. It was averred that the suit was maintainable as amendment in law could take effect prospectively and not retrospectively. As noticed, the application has been dismissed leading to the filing of the present revision petition.

Counsel for the petitioner has limited his arguments to the application which was dismissed under Order 7 Rule 11 CPC. Reliance has been placed upon the judgment of this Court in *J.N.Katyal & another Vs. Krishan Kapur @ Bittu & another 2005 (1) PLR 558* to submit that the judgment of *Mansoor Khan* (supra) was considered by this Court and while following the judgment of the Full Bench of this Court in *Sawan Ram Vs. Gobinda Ram 1980*

Kishan @ Krishan Kumar & others Vs. Manoj Kumar & others (1998) 2 SCC 710 had also been distinguished. Reliance was placed upon a Full Bench judgment of this Court in **Sawan Ram** (supra). Reliance was also placed upon **Shah Bhojraj Kuverji Oil Mills & Ginning Factory Vs. Subhash Chandra Yograj Sinha 1961 AIR (SC) 1596** and similarly, reliance was placed upon judgment of the Apex Court in **Dilip Vs. Mohd. Azizul Haq 2000 (3) SCC 607** and **M/s Ambalal Sarabhai Enterprises Ltd. Vs. M/s Amrit lal & Co. 2001 (8) SCC 397.**

Counsel for the respondent, on the other hand, referred to a judgment rendered by a three Judges' Bench of the Apex Court in **Shri Kishan @ Krishan Kumar** (supra). Reliance was also placed upon **Saravjit Kaur Vs. Gurcharan Singh 2010 (2) RCR (Rent) 49** and **Harjit Kaur Vs. Sarabjit Kaur 2013 (1) RCR (Rent) 74** to submit that the judgment in **J.N.Katyal** (supra) has been duly considered and the judgment in **Shri Kishan @ Krishan Kumar** (supra) had been followed. He has further argued that in an application, filed under Order 7 Rule 11, for rejection of plaint, only the averments made in the plaint are to be taken into consideration and if they make out a cause of action, the plaint is not liable to be rejected. He has, thus, submitted that merely because subsequently the notification has come into force would not be a ground to reject the plaint as the Court is not required to consider the defence of the other side at such a stage.

After hearing counsel for the parties, this Court is of the opinion that no fault can be found in the order passed by the Civil Court. It is settled principle of law that rejection of the plaint is not to be done at the outset and the same is only to be done in exceptional cases, at the threshold as it entails serious consequences. Only where case is patently time-barred, frivolous and vexatious claims are put up, a resort is to be made to the said provisions. Reliance can be

placed upon the judgment of this Court in **Rajesh Grover Vs. Smt. Rita**

Khurana & others 2006 (2) PLR 244 for the said purpose. Relevant observations read as under:

“10. The Court should be circumspect in rejecting a plaint at the threshold as it entails very serious civil consequences. The Court should exercise this power only in those cases where it comes to the clear conclusion that any of the conditions enumerated in Clauses (a) to (f) are satisfied and it should be so done in exceptional-circumstances. The truthfulness of narration of facts in the plaint or the written statement are not to be judged at the stage of rejection of plaint. That is a matter of evidence which the Court shall go into at the trial of the case. The weakness or the strength of the case of the parties is not to be judged at that stage. A distinction is to be drawn between rejection of a plaint and dismissal of a suit.”

It is settled principle that at the time of rejection of the plaint, only the plaint is to be seen and the defence of the defendant is not to be taken into consideration. Reference can be made to ***Popat & Kotecha Property Vs. State Bank of India Staff Association 2005 (7) SCC 510*** wherein it has been held as under:

“17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”

In ***Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust (2006) 5 SCC 658***, an application under Order 7 Rule 11 had been dismissed by the Trial Court. The defendant challenged the same before the High Court and the revision was dismissed on different grounds and the matter was taken to the Apex Court and it was held that the question of limitation was mixed question of

law and accordingly, the reasoning given by the Trial Court that the plaint could not be rejected, was upheld.

Similarly in C.Natrajan Vs. Ashim Bai & another 2007 (14) SCC 183, the plea raised was where the suit was barred by limitation. The Trial Court rejected the application by holding that it is a mixed question of fact and law. The High Court reversed the said judgment by commenting upon the merits and holding that three years limitation has been prescribed. The decision of the High Court was set aside by holding that where the suit was barred by limitation would depend upon fact and circumstances of each case and the rejection of the plaint could only be there if the allegations made in the plaint are taken to be correct, would go on to show that the suit was barred by any law. Relevant observations read as under:

“7. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence.”

However, in Kamala & others Vs. Shri K.T.Ishwara Sa & others 2008 (12) SCC 661, the Apex Court held that if the jurisdiction of the Court is found to be barred, then the application for rejection of plaint should be considered. In the said case, the issue before the Apex Court was where an application for rejection of plaint filed had been allowed by the Trial Court and affirmed by the High Court in a suit for partition as the Courts below had passed the orders under challenge whereby the plaint had been rejected on the ground that no cause of action had been disclosed in the suit. The principle of Order 7

Rule 11(d) were examined including Section 12 of CPC and it was, accordingly,

held that each case has to be considered on its own facts and the relevance of the decision *inter se* the parties have to be noticed by the Court. Accordingly, the appeal was allowed, giving liberty to the parties to raise all objections before the Trial Court at appropriate stage. Relevant portion of the judgment reads as under:

“14. The learned Trial Judge as also the High Court proceeded to pass the impugned order relying on or on the basis of the preliminary decree dated 20.03.1963 and the appellate orders. The High Court opined that the conclusion of the learned Trial Judge directing rejection of plaint was correct having regard to the provisions contained in Section 12 of the Code read with Order 2, Rule 2 thereof. It was held that no cause of action was disclosed in the suit.

15. Order 7, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7, Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7, Rule 11 of the Code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7, Rule 11 of the Code is one, Order 14, Rule 2 is another.

16. For the purpose of invoking Order 7, Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject matter of an order under the said provision.

The principles of *res judicata*, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be

determined at that stage.

It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact of law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject matter thereof, the application for registration of plaint should be entertained.”

In *Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee 2012 (8) SCC 706*, the principles regarding rejection of plaint were considered and it was held that it was the duty of the Court to scrutinise the averments/pleas in the plaint and the written statement is not to be taken into consideration to see whether the case falls within the ambit of Order 7 Rule 11. Relevant observations read as under:

“It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial. This position was explained by this Court in [Saleem Bhai & Ors. vs. State of Maharashtra and Others](#), (2003) 1 SCC 557, in which, while considering Order 7 Rule 11 of the Code, it was held as under:

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for

deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.....”

It is clear that in order to consider Order 7 Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in [Raptakos Brett & Co. Ltd. vs. Ganesh Property](#) (1998) 7 SCC 184 and [Mayar \(H.K.\) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others](#) (2006) 3 SCC 100.”

Keeping in view the above principles laid down, the argument, which is now sought to be raised by counsel for the petitioner-defendant, on the strength of the alleged notification dated 02.06.2008, which was issued during the pendency of the suit, whereby the property came within the ambit of the Rent Act, is not to be gone into at the time of deciding the application under Order 7

the Rent Act is not applicable and in the reply filed also, it has been mentioned by the present petitioner-defendant that the said para is legal and needs no reply. A subsequent event which has now taken place was not to be noticed or taken into account by the Court below, keeping in view the principles laid down pertaining to Order 7 Rule 11. In such circumstances, this Court is of the opinion that the order which has been passed by the Civil Court does not warrant any interference as it cannot be held that the Court did not have jurisdiction when the suit was filed and whether the same was barred under any law and neither the said issue was liable to be considered at this point of time, in view of the above discussions.

However, since the issue has been raised going to the root of the matter regarding jurisdiction, the fact that the Civil Court would have jurisdiction is clear from the following precedents.

The judgment which has been referred to in J.N.Katyal (supra) was a decision rendered in a regular second appeal once the matter had been adjudicated upon by the Courts below and finding no question of law, the second appeal was dismissed. The three Judges' Bench of the Apex court in Shri Kishan @ Krishan Kumar (supra) has held that the principle of *maxim actus curiae neminem gravabit* would apply because Courts take a long time to dispose of the proceedings and when the suit was instituted, the rights of the parties had crystallised on that date and the rights have to be seen and determined on that particular date. The argument that the Courts would lose its jurisdiction and the decree could not be executed, was rejected and the appeals filed were, accordingly, dismissed. It was noticed that it is a settled principle and only a different view had been taken in Vineet Kumar Vs. Mangal Lal Wadhera (1984) 3 SCC 353 and the said judgment has been impliedly overruled in Atma Ram Mittal Vs. Ishwar Singh Punia 1988 (4) SCC 284. The Apex Court,

accordingly, taking into history the principle of law laid down in earlier

judgments by a three Judges Bench of the Apex Court, arising out of the same enactment, especially placed reliance upon judgment in **Mohinder Singh Vs. State of Haryana & another 1985 (4) SCC 221** and the three Judges Bench judgment rendered in **Suresh Chand Vs. Ghulam Chisti 1990 (1) SCC 595** and **Ramesh Chandra Vs. III ADJ & others 1992 (1) RCR 304**. It was held that the suit instituted during the period of exemption could continue and the tenant could not claim the benefits of the Rent Act as it would lead to defeating the principles of the statute and the argument that the Act would be reduced to a dead-letter, was rejected. Relevant observation reads as under:

“8. There is no provision in the Act taking away the jurisdiction of a civil court to dispose of a suit validly instituted. There is also no provision preventing the execution of a decree passed in such a suit. Section 13 (1) does not expressly refer to execution of a decree for possession. On a reading of all the provisions of the Act, it is evident that it has not prevented a civil court from adjudicating the rights accrued and the liabilities incurred prior to the date on which the Act became applicable to the building in question. If the Legislature had intended to take away the jurisdiction of the civil court to decide a suit which had been validly instituted, it would have been worded differently. The purpose for which the exemption is granted statutorily under Section 1 (3) is to encourage construction of new buildings. That purpose would be defeated if the owner of the building is deprived of his right to get possession of the building unless he gets a decree within a period of ten years from the date of its completion. In fact the logical consequence of the argument of the appellants if accepted would be that even if a decree is obtained by the landlord within ten years from its completion it cannot be executed after the expiry of the said period of ten years as such execution would not be in accordance with the provisions of the Act. It is common knowledge that a proceeding in a civil court for recovery of immovable property could be dragged on by the defendant easily for a period of ten years or more and thereby and tenant whose tenancy had been terminated validly before the suit would successfully make the proceeding infructuous by prolonging the litigation. The argument of the appellants cannot be accepted as otherwise the purpose of exemption would get

defeated.

20. Thus it is seen that this Court has been consistently taking the view that a suit instituted during the period of exemption could be continued and a decree passed therein could be executed even though the period of exemption came to an end during the pendency of the suit. The only discordant note was struck in Vineet Kumar Versus Mange Lal Wadhera (1984) 3 S.C.C. 353. We have noticed that several decisions subsequent thereto have held that Vineet Kumar is not good law. We have already construed the relevant provisions of the Act which prevents the civil court from continuing the suit and passing a decree which could be executed.

21. Learned counsel for the appellants attempted to make a distinction between the provisions of the Section 20 of the U.P. Act and Section 13 of the present Act. The wording in the former is as follows:

"Save as provided in sub-section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner."

According to the learned counsel bar against the institution of a suit would stand on a different footing from bar against eviction as such which is contained in Section 13 of the Act. In our opinion the difference in language does not help the appellants in any manner. We have already pointed out that Section 13 of the Act does not make any reference to a decree passed in a civil suit. When a suit is validly instituted and the rights of parties which had crystallised on the date of the suit are determined by a decree in that suit the execution thereof cannot be stopped by the provisions of Section 13 of the Act. Hence, we are unable to accept any of the contentions of the appellants. In the result the appeals fail and are dismissed. There will be no order as to costs. "

In *Basakha Singh Vs. Mani Ram Bhatia* 2007 (1) RCR (Rent) 384

this Court held as under:

"Keeping in view the well-settled principle that rights of the parties crystallized on the date of institution of the suit, the only construction that can be founded is that exemption would apply for a period of 10 years and continue to be available until the suit is disposed or adjudicated. Once the rights have crystallized, the

adjudication must be in accordance with law. In case immunity from operation of the Rent Act is depended upon the ultimate disposal of the case within the period of exemption, the very purpose of exemption would not be achieved, as ultimate disposal within the exempted period of 10 years would almost be impossible in reality. Unless a suit is instituted soon after the day of letting out a house, it would never be disposed of within a period of 10 years and sometimes, it may not be disposed of even thereafter. The exemption of 10 years from the date of Rent Act would, therefore, prove to be illusory. The logical consequence of argument advanced by learned Counsel for the appellant, if considered and accepted, would mean that even if a decree is obtained by the landlord within 10 years from its completion it cannot be executed after the expiry of the said period of 10 years. The ratio of law laid down by the Apex Court in the aforementioned judgments cited by learned Counsel of the respondent are fully applicable to the facts of the present case. The appeal is continuation of the suit and, therefore, similar would be the position if the Rent Act becomes applicable during the pendency of the appeal.”

In **Sarvjit Kaur** (supra), this Court has held as under:

“7. The suit was instituted on 15.09.2003. On that date, Radaur was admittedly Gram Panchayat and therefore, provisions of the Haryana Rent Act were not applicable to the demised property. Consequently, civil court had jurisdiction to try the ejectment suit. Rights of the parties had to be determined at the time of the institution of the suit. In this context, it may be noticed that even in urban areas, provisions of the Haryana Rent Act are not applicable to a building for ten years after its completion. If ejectment suit is filed during the said period of ten years, civil court continues to have jurisdiction to pass ejectment decree in such a suit, even if provisions of the Haryana Rent Act become applicable to the demised property during the pendency of the suit, on expiry of the initial period of ten years from the date of completion of the building. On the same analogy, in the instant case, provisions of the Haryana Rent Act were not applicable when the suit was instituted and therefore, applicability of provisions of the Haryana Rent Act during the pendency of the suit on declaration of Radaur as municipal town would not divest the civil court of its jurisdiction to try the suit.”

In Harjit Kaur (supra), the judgment in J.N.Katyal (supra) etc. had also been distinguished by another Bench of this Court and it was held as under:

“9. I have carefully considered the rival contentions. Judgments of this court in the cases of J. U. Katyal & another (supra) and Ram Narain & others (supra) do support the contention of learned senior counsel for the defendant-appellant. However, the same cannot be followed in view of judgment of Hon'ble Supreme Court in the case of Shiri Krishan @ Krishan Kumar (supra). In that case, eviction suit was filed in Civil Court while the premises were exempted from the provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short, the 'Haryana Rent Act'). However, exemption period lapsed during pendency of the suit and provisions of the Haryana Rent Act became applicable to the demised property. In these circumstances, the Supreme court held that eviction decree passed by Civil Court after expiry of exemption period and after provisions of the Haryana Rent Act became applicable to the demised property, could be executed. In view of this categorical judgment of Hon'ble Supreme Court, in the instant case, Civil Court had jurisdiction to pass the ejectment decree, notwithstanding that the Rent Act became applicable to the demised shop during pendency of the suit, and such a decree can be executed. The Rent Act was not applicable to the demised shop when the suit was filed. Consequently applicability of the Rent Act to the demised shop during pendency of the suit, would not divest the Civil Court of jurisdiction and would not make the consequent decree of ejectment inexecutable.

10. For the reasons aforesaid, I find no merit in this second appeal. The only question of law raised in the second appeal as noticed hereinbefore stands answered authoritatively by Hon'ble Supreme Court in the case of Shri Krishan @ Krishan Kumar (supra) against defendant/tenant/appellant and in favour of plaintiffs/respondents/landlords. Hence the instant appeal is dismissed.”

It has also been held by the Apex Court in Gaya Prasad Vs. Pradeep Srivastava AIR 2001 SC 803 that the crucial date is the date of filing and not the subsequent event. The observations came in the case of personal necessity and it was held that subsequent events would not take away the right which had accrued

at the time of filing of the eviction petition. Relevant portion of the order reads as under:

“10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.”

Reliance upon **Shah Bhojraj Kuverji Oil Mills & Ginning Factory** (supra) which pertain to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, would, thus be without any basis since the Apex Court has specifically examined the provisions of Haryana Rent Act in various cases referred to in **Shri Kishan @ Krishan Kumar** (supra).

Apex Court, while considering the provisions of Delhi Rent Control Act, had granted the landlord the right to choose one of the remedies by holding that the tenant's protective umbrella could not be enlarged to the vested rights of the landlord but the landlord's rights under the repealed Rent Act would save the pending proceedings before the Rent Controller.

Similarly, the binding provisions of the Full Bench of this Court in Sawan Ram (supra) case stand diluted in view of the three Judges Bench of the Apex Court in Shri Kishan @ Krishan Kumar (supra), which has elaborately discussed the history of the litigation, in such circumstances.

Keeping in view the abovesaid observations, this Court is of the opinion that subsequent notification which came into force, would not take away the right of the landlord to continue with the eviction proceedings instituted at a prior point of time and in such circumstances, the argument raised is without any basis.

Accordingly, finding no merit in the present revision petition, the same is dismissed.

07.01.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE