

CR No.6067 of 2014 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR No.6067 of 2014 (O&M)
Date of decision:20.01.2015**

Savitri Jain

...Petitioner

Versus

K.K.Garg

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Aman Priye Jain, Advocate,
for the petitioner.

Mr. Rakesh Gupta, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 07.08.2014 passed by the Rent Controller, Chandigarh by which his application for seeking leave to defend the petition filed under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (here-in-after referred to as the “Act”) was dismissed on the ground that it was filed after the expiry of 15 days from the date of service of notice.

In brief, the facts of the case are that the respondent filed a petition under Section 13-A of the Act in which notice was issued to the petitioner. The next date of hearing in the said notice was 23.05.2014. She moved an application on 23.05.2014 for extension of time to engage an advocate for filing the written statement but the application for seeking

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leave to defend was filed on 01.07.2014. The Rent Controller dismissed the application on the ground that the period of 15 days cannot be extended in any case as no jurisdiction vests with him to extend the time and the 15 days' period, counted from the date of service of summons dated 17.05.2014, had expired on 01.06.2014, whereas the application was filed on 01.07.2014.

Learned counsel for the petitioner has argued that the Rent Controller has erred in dismissing her application observing that if the Court was closed in summer vacations, even then the petitioner could have filed the application for seeking leave to defend before the Vacation Judge or even could have filed the application after 23.05.2014 to 31.05.2014 when the time was made available to her. It is submitted that 15 days' time for filing the application for leave to defend was expiring on 01.06.2014 and on that day, the Civil Courts were closed because of summer vacations and when it opened on 01.07.2014, the application was filed. It is further submitted that as per Clause 4, Volume 1, Chapter 1, Part A of the Punjab and Haryana High Court Rules and Orders, Civil Suit and appeals are not allowed to be taken up during the vacation on a holiday, therefore, as per Section 4 of the Limitation Act, 1963, the petitioner had a right to file the application on the re-opening day, i.e. 01.07.2014. It is also submitted that once the Legislature had provided 15 days' time to the petitioner, she could have exhausted her right even on the last date of the said period and his application could not have been dismissed by the Rent Controller with the observation that the petitioner had the time to file the application for

seeking leave to defend between 23.05.2014 to 31.05.2014. In support of his submissions, he has relied upon the following judgments:-

1. **M/s Flowmore Private Ltd., New Delhi v. Mr. Keshav Kumar Swarup**, 1982(2) R.C.R. (Rent) 520;
2. **Lakhibir Singh v. Meena Sharma**, 1993(2) R.C.R. (Rent) 681; and
3. **State of Punjab v. Harbans Singh**, 1996(2) SCT 89.

On the other hand, counsel for the respondent has argued that the limitation to file the application for seeking leave to defend cannot be extended even for a day and has relied upon the following judgments:-

1. **Prithipal Singh v. Satpal Singh (dead) through its LRs.**, 2010(1) R.C.R. (Rent) 53;
2. **Ashwani Kumar Gupta v. Siri Pal Jain**, 1998(2) R.C.R. (Rent) 222;
3. **Babu Ram v. Naresh Kumar**, 2006(2) R.C.R. (Rent) 249;
4. **Smt. Savitri Devi v. Shri Nathu Ram**, 1982(2) R.C.R. (Rent) 95; and
5. **Shyam Lal Bansal v. Chander Mohan**, 1999(3) R.C.R. (Civil) 231.

He has also reiterated the observations made by the Rent Controller that even if the Courts were closed for vacation, the application could have been filed before the Vacation Judge or even between the period from 23.05.2014 to 31.05.2014, therefore, the period of 15 days has expired

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and could not be extended in any manner.

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

There is no dispute to the fact that the application for leave to defend by the tenant has to be filed in a case filed under Section 13-A or 13-B of the Act within a period of 15 days from the date of service of summons and also from the judgments relied upon by learned counsel for the respondent, the said period cannot be extended even for a day.

However, the question involved in this case is as to whether the Rent Controller is justified in observing that the petitioner could have filed her application before the Vacation Judge or at least between the period from 23.05.2014 to 31.05.2014, if 01.06.2014 happened to be the first day of summer vacations.

As a matter of fact, the Civil Courts were closed for summer vacations from 01.06.2014 till 30.06.2014 and reopened on 01.07.2014. Clause 4, Volume 1, Chapter 1, Part A of the Punjab and Haryana High Court Rules and Orders says that *“Civil Suits and appeals ought not, as a rule, to be taken up during the vacation or on a holiday; but any civil suit or appeal may be legally heard, by consent of the parties during the vacation or on a holiday, if the Presiding Officer of the Court thinks it expedient, for any reason to keep his Court open for the purpose, provided that the District Judge and in his absence any Additional District Judge or Subordinate Judge specially authorized by the District Judge in this behalf may entertain any urgent civil matter (suit) appeal or application during*

the period when the civil courts are closed for vacation". The application for seeking leave to defend is in no manner an urgent matter which could have been taken up during vacations or there was no consent between the parties that their case could be taken up by the Court who would have thought it expedient for a reason to keep the Court open for that purpose.

Since the application for seeking leave to defend was not an urgent matter which could have been taken up during the summer vacations, the application filed by the petitioner on 01.07.2014 after re-opening of the Courts is squarely covered by Section 4 of the Limitation Act which provides that "*where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens*". It is further provided in the explanation that "*a Court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day*".

The observation of the Rent Controller that the petitioner could have filed the application for seeking leave to defend between 23.05.2014 when she had filed the application before the Rent Controller that she needs time to engage an advocate for filing the written statement till 31.05.2014 i.e. the last day on which the Courts were closing due to summer vacations is also not correct because the petitioner had 15 days' time on her disposal to file the application for seeking leave to defend which could have been filed by her even on the last day i.e. 01.06.2014 as on that day, the Courts were closed because of summer vacations, the petitioner has rightly filed the

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application on 01.07.2014 when the Courts were reopened after the summer vacations. Had the application been filed on 02.07.2014, definitely the petitioner would have lost her right to file the application in view of the judgments relied upon by learned counsel for the respondent but as far as the judgments relied upon by learned counsel for the petitioner is concerned, these all are in her favour as in **M/s Flowmore Private Ltd.'s case (supra)**, the time for filing application for seeking leave to defend had expired during vacations and the application was filed on the reopening day which was found to be in order. Similarly, in **Lakhbir Singh's case (supra)** and in **State of Punjab's case (supra)**, the same view has been expressed by this Court.

Thus, in view of the aforesaid discussion, the present revision petition is found to be meritorious and hence, the same is hereby allowed and the impugned order passed by the Rent Controller is set aside.

January 20, 2015
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(**Rakesh Kumar Jain**)
Judge