

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

**CR NO. 979 of 2011(O&M)
Date of decision:19.02.2015**

Amarjeet Singh

..... **Petitioner**

versus

Ramesh Kumar

.....**Respondent**

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Karan Nehra, Advocate
for the petitioner.

Mr. Rajesh Goyal, Advocate
for the respondent.

Rakesh Kumar Jain, J.(Oral)

The petitioner landlord is aggrieved against the order dated 18.12.2010, allowing the application of the tenant, seeking leave to defend an ejectment petition filed by him under Section 13-A of the Haryana Urban (Control of Rent and Eviction) Act 1973(for short, the Act).

In short, the petitioner has retired from the Indian Air force on 31.01.2007. He filed a petition under Section 13-A of the Act to recover possession of the demised premises(shop) from the respondent on the ground of personal necessity. The respondent filed an application under Section 10 of the Code of Civil Procedure, 1908(for short, CPC) on 13.09.2007. In para 2 of the said application, it was averred that he had received the application for ejectment with the summons and came to know about the eviction petition pending before the Rent Controller. This application, however, was withdrawn by the respondent on 14.03.2009 but by that time no application for leave to contest was filed. After the expiry of about 1 ½ years, the respondent filed another application on 14.03.2009, seeking leave to contest the ejectment petition. This application was contested by the petitioner by filing reply but ultimately it was allowed by

the impugned order.

While referring to paragraph Nos. 6 and 7 of the impugned order, learned counsel for the petitioner has submitted that the Rent Controller has observed that neither the petitioner has placed on record any family settlement to show that he has become the owner of demised premises nor the summons were served upon the respondents on a form, appended with the Schedule in the Act, in terms of Section 13-A(2). It was also observed that a specified landlord cannot seek eviction of the respondent from a commercial property and placed reliance upon a single Bench judgment of this Court rendered in the case of ***Lt. Col. Suraj Parkash (Retd) versus Bhoop Singh Chaudhary 2009(2) R.C.R.(Rent) 470***. Learned counsel for the petitioner has submitted that though it has been admitted in the application dated 13.09.2007, filed by the respondent that he had received the petition filed for his eviction with the summons, but the leave to defend filed after about 1 ½ years is not maintainable in view of the period of 15 days provided in the form given in the Schedule under Section 13-A(2) of the Act, yet if it is considered to be an ordinary summon and the application has rightly been entertained by the learned Rent Controller, leave to defend still could not have been granted because the Rent Controller has committed an error on facts as the petitioner has already placed on record the family settlement, map, farad and two affidavits. In this regard, he has referred to the zimni orders passed by the Rent Controller on 3.06.2010 which read as follows:-

“ Rent Petitioner No. 39 RBT of 2007
Amarjeet Singh versus Ramesh Kumar
Statement of Maninder Singh, Advocate Stated
that I have received the copy of family settlement, Map,

FARD and two affidavits. Now I do not press the application dated 18.9.99.

RO&AC
Sd/-Maninder Singh, Advocate
3.6.10

Sd/-3.6.10
Addl.CivilJudge(Sr.Divn)
Ambala Cantt

Order

Present: Shri S.P.Chawla, Advocate for the
petitioners
Shri Tajinder Singh Teji, Advocate
for the respondent

Photocopy of family settlement handed over to counsel for the respondent Shri Maninder Singh, Advocate and he does not press application dated 18.9.2009. As such application stands dismissed. Now to come up on 6.8.2010 for arguments on the application for seeking leave to contest.”

It is further submitted by him that the relationship of landlord tenant has already been established between the parties because in the past, the petitioner had filed an application under Sections 4 and 5 of the Act for fixing fair rent of demised premises. The said application was filed in the year 2004, when the petitioner was in service and even at that time no issue was asked for by the respondent that there is no relationship between them as landlord and tenant. It is also submitted that Section 13-A of the Act only talks of the application to be filed on behalf of landlord and not by the owner. In respect of the maintainability of the eviction petition by the petitioner, in respect of commercial property, he has referred to a Division Bench judgment of this court rendered in the case of **“Vinod Kumar Jain versus M/s Harindera Scientific Works, GurBasar, Sadar, Ambala, Cantt 2012(1) RCR.Rent(10)36”** in which the judgment in the

case of **Lt. Col. Suraj Parkash(Retd.)** supra has been specifically overruled.

Learned counsel for the respondents, however, submits that the Rent Controller has rightly granted leave to defend to contest the eviction petition because it is yet to be decided as to whether the petitioner is the land lord of demised premises or not. It is submitted that no doubt, the decision in the case of **Lt. Col. Suraj Parkash(Retd.)** supra has been overruled by this Court but the Rent Controller can still look into his application for leave to defend to decide as to whether there exists a relationship of landlord and tenant between the parties. Prima facie, the Rent Controller has decided in his favour that there is no family settlement in favour of the petitioner by which the property in dispute has been transferred to him. In respect of the fair rent petition, it is submitted that in that case also he had taken the plea that the petitioner is not his landlord but it could not be decided as there is no issue framed about the relationship between the parties. Learned counsel for the respondent has also submitted that there is another suit pending between the parties in which it is yet to be established as to whether there is any relationship between the parties.

I have heard learned counsel for the parties and after examining the record, I am of the considered opinion that the impugned order is erroneous and is liable to be set aside.

As per Section 13-A of the Act, a member of the armed forces of Union of India can file an application for seeking eviction of the tenant within a period of one year prior to or after the period of retirement or discharge. There is complete procedure prescribed for filing the application and limited right has been given to the tenant to contest the litigation after

seeking permission of the Court. The Court has to find out, after considering the application and the affidavit on the ground on which the leave to contest has been sought as to whether there is some substance in it or not. It is also provided in the Act that whenever an application is filed under Section 13-A of the Act, a special summon has to be served upon the respondent on a prescribed form in terms of 13A(2) of the Act in which the defendant would be informed that he has to appear before the Rent Controller within 15 days of his service and obtain leave of the controller to contest the application. In the present case, the learned counsel for the petitioner is not sure as to whether the summon served upon the respondent was in terms of Section 13A(2) of the Act. However, be that as it may, even if it is taken to be an ordinary summon and the application has been filed after 1 ½ years of the service upon him, learned counsel for the petitioner has argued that he would not mind if the present case is decided on merits and the respondent may not be debarred on the ground of limitation.

In view of the above, I am proceeding further with the decision of this case to decide as to whether there is sufficient ground, even prima facie, with the respondent to contest the eviction petition while seeking the leave of the Court. As far as, the question as to whether the landlord can file eviction petition under Section 13(A) of the Act in respect of Commercial property is concerned, that question has already been decided by an authoritative decision of this Court and the judgment relied upon by the Rent Controller has been overruled. Therefore, it is held that in view of the

decision of this Court in ***Vinod Kumar Jain's case*** supra, the specified landlord in terms of Section 13(A) of the Act can maintain a petition in

respect of a commercial property as well. Now the question arises as to “whether, there is a dispute with regard to relationship of the landlord and tenant between the parties”. Though, learned counsel for the respondents is crying hoarse that there is no relationship of landlord and tenant and this issue of the fact can be decided only after he is granted permission to contest and allowed to lead the evidence but respondent has failed to answer as to why in the earlier petition, filed in the year 2004 by the same petitioner/landlord for fixing the fair rent of the demised premises, the issue regarding relationship of landlord and tenant between them was not highlighted or the petition was not contested on the ground that he is not liable to pay any rent to the petitioner much less the fair rent. Once that order has become final between the parties, it cannot be raked up again in the future proceedings. In view, thereof, argument raised by learned counsel for the respondent that the petitioner is not the landlord is totally misconceived and the finding recorded by the Rent Controller that there is no document on record is also contrary to the record because of the Zimni Order's recorded by the Rent Controller on 3.06.2010. Thus, in view of the aforesaid discussion, the present petition is hereby allowed and the impugned order is set aside.

19th February, 2015
Shivani Kaushik

[Rakesh Kumar Jain]
JUDGE