

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

CR No.2949 of 2016 (O&M)
Date of decision: 24.05.2016

Parveen Mehta

.... Petitioner

versus

Tejwant Singh Bal

.... Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. A.P.S.Sandhu, Advocate
for the respondent.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Ajay Tewari, J.(Oral)

On 28.04.2016, this Court passed the following order:

"Learned counsel for the petitioner has firstly argued that the respondent is a Canadian citizen and secondly that the eviction petition filed after coming into the force of the Act of 1995 could have been proceeded only under the said Act and not under the 1949 Act.

Notice of motion.

Mr. A.P.S. Sandhu, Advocate has entered appearance on behalf of the respondent and seeks an adjournment.

To come up on 19.05.2016 for arguments.

In the meantime, the dispossession of the petitioner shall remain stayed."

As regards the first ground, the same has been held against the petitioner in CR No.3509 of 2014 decided on 09.05.2016 and consequently against the tenant first ground is rejected. As

regards the second ground, in Civil Revision it has been held as follows:

*"In my considered opinion the provisions of the 1995 Act as detailed above, are to say the least, confusing. In view of the anomalous position a landlord can not be blamed for not having understood the true import and the interplay between the two Acts. In this situation the only equitable decision on this aspect can be that those NRIs-Landlords who filed petitions after the coming into force of the 1995 Act and made the averments required under the said Act would be entitled to file formal applications for amendment of number of the Section and the title of the Act mentioned therein. However, these tenants would be entitled to the statutory benefits conferred by the 1995 Act in so much as they would have the right to file an application for review against the order declining leave to defend as well as the right to file an appeal against an order of eviction. Such landlords who have not made the necessary averments required by Section 24 of the 1995 Act would however have to be non-suited though they would have the right to file fresh petitions conforming to the requirements of the 1995 Act. Moreover once it is held that the 1995 Act is applicable, it would be incumbent upon the Rent Controller to first pass an order on the application for leave to defend and after allowing the aggrieved party time to file a review application, then pass a separate final order. It has been argued that a Full Bench of this Court in **Anwar Ali Vs. Gian Kaur, 2011 Vol.2 RCR (Rent), 604** had laid down that in the case of NRIs the order of eviction is a consequential order to an order declining leave to defend. However that ruling came on an analysis of the Act of 1949 and would not be applicable to proceedings under the 1995 Act for the reason that now a provision has been made for filing a review against the order declining an application for leave to defend. In the*

circumstances, the petition is allowed and the impugned order whereby leave to defend has been rejected and eviction has been allowed, is set aside. The landlady would be required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to re-decide the application for leave to defend under the 1995 Act."

Learned counsel for the respondent points out that in the petition filed the necessary ingredient of Section 24 was specifically mentioned. In this case in these circumstances, formal amendment will be allowed. Learned counsel for the respondent has further argued that another reason for which an application for leave to defend was rejected was that the petitioner-tenant had not filed it within a period of 15 days i.e. limit prescribed under the East Punjab Rent Restriction Act, 1949. As per him, the provision of Section 38 read with Schedule III of the 1995 Act are in pari materia with the provisions of Section 18 (A) read with Schedule III of the 1949 Act and consequently, merely because the landlord had mentioned the wrong section in the wrong Act the petitioner cannot be granted any benefit thereof and even if the Rent Controller has to decide the application for leave to defend under the new Act, the dates of service (upon him) and his filing of application for leave to defend cannot be changed for his benefit.

Learned counsel for the petitioner, on the other hand, has argued that once the eviction application is being amended fresh notice would be deemed to have been issued to the petitioner and he would be permitted to file a fresh application for leave to defend which would have to be decided afresh under the 1995 Act.

In my opinion, it would not be appropriate for this Court to pre-judge this issue and consequently, leave it to the Rent Controller to take a reasoned view on these competing contentions. However, the impugned order is set aside and six weeks time is granted to the non-applicant/petitioner to move an application for formal amendment and Rent Controller is directed to decide the case in accordance with law.

May 24, 2016
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(AJAY TEWARI)
JUDGE