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

**1. Civil Revision No.1666 of 2016
Date of decision: 27.01.2017**

Prem Lal Gill

...Petitioner

Versus

Sushila Kumari and another

...Respondents

2. Civil Revision No.1761 of 2016(O&M)

Sushila Kumari

...Petitioner

Versus

Prem Lal Gill and another

...Respondents

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

Present: Mr.S.P.Soi, Advocate for the petitioner
(in CR No.1666 of 2016) and for respondent
(in CR No.1761 of 2016).

Mr. Ramesh Sharma, Advocate for the petitioner
(in CR No.1761 of 2016) and for respondent
(in CR No.1666 of 2016).

G.S.SANDHAWALIA, J. (Oral)

This order shall dispose of Civil Revision Nos.1666 and 1761 of 2016 since the impugned order dated 21.1.2016 passed by the Rent Controller, Kapurthala interse the parties is common.

Mr. Prem Lal Gill, petitioner-landlord in CR No.1666 of 2016 is aggrieved against grant of leave to contest qua Anil Kumar @ Montu-respondent no.2 whereas Ms. Sushila Kumari, petitioner in CR No.1761 of 2016 is aggrieved against declining of the leave to contest.

The reasoning which prevailed with the Rent Controller, Kapurthala was that Sushila Kumari was served on 23.3.2015 and therefore,

Pardeep Kumar, J.
Adv. & Co.
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Punjab and Haryana High Court,
Chandigarh

the application for leave to contest was barred by limitation on account of delay of two days in filing the application. Since the Rent Controller had no power to condone the delay after 15 days and due to the non applicability of the Limitation Act, 1963 to the rent proceedings, the leave to contest was declined.

However, leave to contest was granted on account of the fact that there was a dispute regarding relationship of landlord and tenant between the petitioner and applicant- Anil Kumar @ Montu, respondent no.2, who was the nephew of the landlord being son of Sushila Kumari. Resultantly, leave to contest was granted on the ground that he had denied the tenancy and alleged that the disputed property was in possession of the mother on the basis of Section 8 of Hindu Succession Act, 1956.

Counsel for the landlord has accordingly contended that once the leave to contest had been declined on the ground of limitation to Sushila Kumari, Anil Kumar @ Montu has no such vested right as he was not legal heir of Sunder Lal @ Surjan Ram, his maternal grand father.

However, another relevant factor which has to be noticed and the same had not been considered by the Rent Controller, Kapurthala. The same in the opinion of this Court is to justify the leave to contest interse the parties since the eviction petition was filed on the ground that the landlord had retired from the office of Government of India, Ministry of Labour and Employment, Labour Bureau, Chandigarh alleging that his father had purchased the property on 5.3.1958 from one Pritam Singh. On the basis of registered will dated 29.7.1994, he claimed his right in his favour and his brother Parmodh Gill. It is the case of the landlord himself that Harbhajan

Ram, who was brother-in-law of the petitioner and husband of Sushila Kumari and father of Anil Kumar @ Montu had filed a suit for permanent injunction against Sunder Lal and the petitioner and his brother. In the said suit he had taken a plea that he was tenant which had not been accepted and by holding that it was a permissible possession being close relative and resultantly injunction had been declined. Thereafter, it was alleged that Harbhajan Ram again had approached to let the property out on rent which had been acceded to. Thus, apparently prima facie the stand of the petitioner itself in the earlier civil suit inter se the parties was that possession as such of Harbhajan Ram was permissible in nature and not by way of a tenancy. Thus, triable issue as such had been rightly raised and the pleadings as such itself would show that there was such an issue which could only be decided after leading evidence and therefore, impugned order dated 21.1.2016 of the Rent Controller, Kapurthala is justified though on a different ground.

However, this Court feels that the order declining the leave to contest to Sushila Kumari is justified in the facts and circumstances of the case since it has been laid down by this Court that application for leave to contest is to be filed within a period of 15 days and the said period cannot be extended. Reference can be made to a Division Bench judgment in **Ashwani Kumar Gupta Vs. Siri Pal Jain 1998(3) PLR 170**. In such circumstances, challenge to the same by Sushila Kumari is not justified in the facts and circumstances.

19. Three of the last four decisions have been relied upon by Shri Nabhwala in support of his contention that the Rent Controller has the discretion to condone the delay, but with

great respect we are unable to subscribe the opinion expressed in these decisions because in none of the cases the learned Single Judges dealt with the issue relating to interpretation of [Section 13-A](#) of the Act and the period of 15 days specified in the form appended to the Act. A careful reading of these judgments shows that the learned Judges proceeded on the assumption that the Rent Controller is vested with the discretion to condone the delay and dealt with individual cases on their own facts. In our considered view, these decisions cannot be read as laying down a proposition of law that [Section 5](#) of the Limitation Act can be invoked for condonation of delay in the filing of application by the tenant for grant of leave to contest the prayer made by the landlord under [Section 13-A](#) of the Act or that the Rent Controller is vested with the discretion to extend the time specified in the form appended to the Act. Rather, we express our complete agreement with Hon'ble H.S. Bedi, J. that the observations made in Gian Singh Gandhi's case and Pooran Singh's case are contrary to the express wording as also to the spirit of [Section 13-A](#) of the Act and hold that the provisions of [Section 13-A](#) of the Act constitute a special legislation and in view of sub-section (11) thereof the provisions of [Limitation Act](#), 1963 cannot be invoked for dealing with the applications filed under that Section. We also hold that the Rent Controller does not have the jurisdiction to extend the period of 15 days specified in the form appended to the Act and if the tenant fails to make an application within 15 days of the service of summons, he cannot be granted leave to contest the petition filed by the landlord under [Section 13-A](#) of the Act.”

Accordingly, keeping in view the above discussion, both the revision petitions are dismissed.

However, keeping in view the fact that it is an ejectment application under [Section 13-A](#) of the East Punjab Urban Rent Restriction

Act, 1949, the Rent Controller, Kapurthala shall make efforts to dispose the
ejectment application as expeditiously as possible preferably by 31.12.2017.

A photocopy of this order be placed on record of connected
case file.

January 27, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No