

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

Civil Revision No.1845 of 2015 (O&M)

Reserved on: 02.03.2017

Decided on : 22.03.2017

Shashi Sharma

... Petitioner

Versus

Vimmi

... Respondent

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

Present : Mr. Rahul Sharma-I, Advocate
for the petitioner.

Mr. Prateek Pandit, Advocate
for the respondent

G.S. Sandhawalia, J.

The tenant has filed the present revision petition under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (for short the 'Act') aggrieved against the order of eviction dated 11.12.2014 passed by the Rent Controller, Jalandhar, whereby leave to contest under Section 18A of the Act has been denied. Resultantly, summary eviction has been ordered of the petitioner from the premises in question which is a flat situated on the first floor as described in the headnote of the petition filed under Section 13-B of the Act.

The reasoning given by the Rent Controller is that the landlady was an Non-Resident Indian (NRI) and owner of the property for the last 5 years prior to the institution of the proceedings and bonafide requirement was there as she wanted to return to India. Resultantly, keeping in view the principle settled by the Apex Court in '**Baldev Singh**

Bajwa Vs. Monish Saini' 2005 (4) RCR 492 SC, it was held that the presumption would be in favour of the landlady and, therefore, the eviction has been ordered. It has also been noticed that on an earlier occasion the petitioner-tenant was proceeded against ex parte vide order dated 04.06.2012 and later moved an application for setting aside the ex parte proceedings. The application was allowed on 17.04.2014. Thereafter, an application for dismissing the petition was filed on the ground that the parties have entered into an agreement to sell with the original owner. The same had been contested on the ground that the application was filed, but leave to defend was not filed within 15 days after setting aside the ex parte proceeding. The agreement to sell had been denied and the defence taken by the landlord was that within 15 days the said application has not been filed, even after setting aside of the proceedings had been directed on 17.04.2014.

The petition under Section 13B of the Act was filed on 21.12.2011 taking the plea by the respondent-landlord that she was owner vide sale deed dated 22.03.2002, which was duly executed in the office of Sub-Registrar, Jalandhar. Thereafter, the present petitioner had been inducted as a tenant before she went to United Kingdom (U.K). She being an NRI possessed a Passport issued by U.K and was residing there for the last 10 years and was a person of Indian Origin. The passport was issued on 02.06.2005 and even the fact that she had a driving license issued by the Licensing Authority, Derby was pleaded. Resultantly, being owner of the property for more than a period of requisite 5 years,

the application was filed on the ground that she had returned to India as her husband had undergone major surgery in U.K. He was alleged to belong to Tehsil Nakodar in District Jalandhar and wanted to come back and settle at Jalandhar alongwith her family on account of the medical infrastructure available. The medical facilities at Nakodar was not up to mark and the need of the petitioner was bonafide. She and her husband and children visited India frequently and had no other property/accommodation except the property at Jalandhar.

Counsel for the petitioner has vehemently argued that the matter is pending before the Apex Court regarding the issue that person having foreign passport would not fall in a definition of NRI and merely because two SLPs have been dismissed against the order passed in ***Krishan Kumar and others vs. Kamla Devi and others, 2016 (1) RCR (Rent) 525***, this Court should stay its hands.

Reliance has been placed upon the issue of the '***D.K. Trivedi and Sons and others Vs. State of Gujarat' 1986 (1) SCR 479*** to hold out that this Court should stay its hands until the matters are disposed by the Apex Court. Further contention was that the agreement to sell had been entered and, therefore, leave to contest should have been granted. Reliance has been placed upon the judgment of the Apex Court in '***R. Kanthimathi and others Vs. Mrs. Beatrice Xavier' 2000 (9) SCC 339*** to contend that leave to contest should have been granted.

Mr. Prateek Pandit, Advocate for the respondent-landlord on

the other hand submitted that even no leave to contest was filed and, therefore, the eviction has rightly been directed and the application has been filed only for the dismissal of the petition under Section 13-B of the Act. As per the requirement of the Act an affidavit had to be filed under Section 18-A stating the grounds on which the tenant sought to contest. The judgment in ***R. Kanthimathi (supra)*** was distinguished on the ground that there was an admission of agreement in the said case, whereas in the present case there is no such admission. Reliance has been placed upon the earlier judgment passed by this Court in '***Ranjit Puri Vs. Dr. Mohinder Paul Singh***' 2012 (3) PLR 309, wherein similar arguments were rejected.

Reliance is, accordingly, placed upon the judgment of the Full Bench passed in '***Anwar Ali Vs. Gian Kaur***' 2011 (2) RCR (Rent) 604 (P&H) to contend that once the tenant had been proceeded against ex parte on 04.06.2012, eviction should have been ordered forthwith and secondly when the application for dismissing the petition was rejected on 24.05.2014. Thereafter, also eviction should have been ordered forthwith, rather than delaying the proceedings for another period of 7 months.

After hearing counsel for the parties, this Court is of the opinion that the arguments raised by the counsel for the petitioner do not merit any acceptance.

It is not disputed that on 04.06.2012 on being served, the

tenant had not put in appearance and was proceeded against ex parte. The same was set aside on 17.04.2014 on an application being filed. No application was filed within 15 days under Section 18-A of the Act duly supported by the affidavit, which is the requirement under Section 18-A (4) and in the absence of any such application having been filed within the prescribed period, the eviction should have been ordered. It has been settled by the Apex Court that the Rent Controller has no jurisdiction to extend the period beyond the prescribed period.

In '**Om Parkash Vs. Ashwani Kumar Bassi**' 2010 (9) SCC 183, it has been held that the period provided is under the Rent Act and the provisions of the Limitation Act, 1963 could not be applied. The relevant portion reads as under:-

“24. Section 13-B is a power given to a Non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of any one ordinarily living with and dependent on him or her. The right has been limited to one application only during the life time of the owner. Section 18-A(2) of the aforesaid Act provides that after an application under Section 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, entertain an application under Section 5 of

the Limitation Act for condonation of delay since the statute does not vest him with such power.

25. In such case, neither the Rent Controller nor the High Court had committed any error of law in rejecting the Petitioner's application for seeking leave to contest the suit, since the same had been filed beyond the period prescribed in the form in Schedule II of the Act referred to in Section 18- A(2) thereof.

26. The Special Leave Petition must, therefore, fail and is dismissed accordingly. However, there will be no order as to costs.”

It is further pertinent to notice that once the order had been set aside on 17.04.2014, no application was filed for leave to contest, rather the application was filed for dismissing the petition which is dated 03.05.2014 and was also beyond the prescribed period of 15 days, even if it is to be read as under Section 18-A and was also thus barred.

The said application was dismissed vide order dated 24.05.2014 by the Rent Controller noticing that an agreement to sell did not create any right, title or interest in the property. No suit for specific performance had been filed by the tenants and, therefore, relationship still stood subsisted and even it is considered as leave to contest, the same was also time barred. The relevant portion of the order dated 24.05.2014 passed by the Rent Controller reads as under:-

“6. From the perusal of the court file, it reveals that the exparte proceedings against the respondent were set aside on 17.04.2014 and thereafter, no leave to contest as requirement of East Punjab Urban Rent Restriction Act was filed within the stipulated period of 15 days but the present application has been filed. The applicant/respondent is relying upon one agreement to sell allegedly executed by petitioner in his favor. It is worth mentioning here that mere agreement to sell does not create any

right, title or interest in the property, more so there is a candid admission on the part of respondent/applicant that no suit for specific performance has been filed till today. As such, even by going through the contents of the application, the respondent/applicant falls within the definition of tenant. Moreover, the relationship of landlord and tenant does not come to an end even if by mere execution of agreement to sell. There subsists a relationship of landlord and tenant, particularly when no suit for specific performance has been filed. Moreover, even if the application for dismissal is considered as leave to contest, the same is time barred and being in capacity of Rent Controller, this Court has no power to extend the time for filing any kind of leave to contest.

7. The present application in hand is devoid of any merits and deserves dismissal and is hereby dismissed, without expressing any opinion on the merits of the case. Now the case is adjourned for consideration on 26.05.2014.”

Thus, it is apparent that at that point of time, eviction had to follow, keeping in view the dicta of the Full Bench in **Anwar Ali's case (supra)**, which reads as under:-

“2. A conjoint reading of the aforesaid two provisions of the Act would go to show that the legislature in its wisdom thought it is necessary to engraft provisions for expeditious disposal of petitions for eviction filed by Non- residential landlord. Under Section 13-B, leave to defend, has to be sought by a tenant and only upon such leave being granted, it would be open for the tenant to contest the claim of the landlord with regard to his requirement of the tenanted premises. Once leave is refused, Section 18-A (4) introduces a deeming provision by which the claim of the landlord with regard to the need for the premises is to be presumed.

*3. Apart from the specific provisions of the Act, reproduced above, particularly those contained in sub-section 4 of Section 18-A, the Apex Court in **Baldev Singh Bajwa v. Monish Saini**,*

2005(2) R.C.R.(Rent) 470 : 2005(4) R.C.R.(Civil) 492 : AIR 2006 Supreme Court 59 had occasion to deal with the very same provisions of the Act. After an elaborate discussion, which is available in the text of the judgment, the Apex Court came to a conclusion that the provisions of Section 13-B wafid-require the tenant to bring on record evidence of a very strong character to rebut the legal presumption that is inbuilt in Section 18-A of the Act with regard to the need of the N.R.I. landlord in respect of the tenanted premise. Only upon such convincing evidence being laid i before the Rent Controller, leave to defend can be granted, failing which, obviously, the legal presumption with regard to the need of the landlord would continue to hold the field.

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5. The above discussions would lead us to the conclusion that in a situation where under Section 13-B of the Act, leave is refused to the tenant to defend the proceedings brought by the N.R.I. landlord, eviction of the tenant has to be ordered as an automatic consequence.”

In respect of that the Rent Controller stayed its hands and has passed impugned order only on 11.12.2014, which order is non-questionable in view of the fact that the necessary ingredients of being the owners 5 years prior to the institution of the petition is not disputed. It is not disputed that the respondent is a NRI being a person of Indian Origin, whose husband also belongs to the State of Punjab. The averments have been duly made that she wants to return to India and, therefore, the bonafide aspect having been made out, the presumption would be in favour of the landlord as has been held by the Apex Court in the case of **Baldev Singh Bajwa (supra)**.

The issue of the matter pending before the Apex Cout also does not warrant much consideration, since the said matters have been

adjourned on various occasions on account of the fact that it was pointed out by the counsels that the matter was pending reconsideration before the Apex Court pertaining to Section 13-B of the East Punjab Urban Rent Restriction Act, 1949. However, in **Krishan Kumar and others vs. Kamla Devi and others, 2016 (1) RCR (Rent) 525**, the matter was sought to be re-agitated before this Court that the matter was pending consideration before the Apex Court pertaining to Section 13-B of the Act. The said argument was repelled by noticing that the view in **Baldev Singh Bajwa vs. Monish Saini, 2005 (4) RCR (Civil) 492** had been followed by the three Judges Bench in **Swami Nath vs. Nirmal Singh, 2010 (10) SCR 1002** wherein, it had been held that a restrictive definition was not justified. The said view has been further upheld by the Apex Court whereby, it dismissed two appeals i.e. SLP Nos.15366 and 15367 of 2016, which arose out of the judgment in **Krishan Kumar's case (supra)** on 11.01.2017.

On an subsequent occasion, the Apex Court in '**Kamaljit Singh Vs. Sarabjit Singh' 2014 (4) PLR 828** has also held that Section 13-B of the Act has been intended to provide a speedy remedy being a beneficial legislation while reversing the decision of the Rent Controller, whereby he had dismissed the petitions on the ground that the sale deeds could not be co-related to the property in question. It was held that the an NRI was the owner and the possession was for the last 10 years with the tenant and the justification given by the Rent Controller, thus, was

without any basis, apart from the fact that the right of the tenant to deny the issue of title under the Evidence Act, 1872 was clearly barred. The relevant portion reads as under:-

“16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property. Section 116 clearly lends itself to that interpretation when it says:

"116. Estoppel of tenant; and of licensee of person in possession. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

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18. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in

the Act.”

Similar arguments had been raised in ***Ranjit Puri's case (supra)***, by the tenants for stay of further proceedings on the ground that issue of the definition of NRI was pending before the Apex Court. Apart from that it was also argued that the notification as such which had been extended to Chandigarh regarding Section 13-B was also pending before the Apex Court. Accordingly, it was held that merely because there was a stay of eviction of tenants in particular cases, the issue as such could not be put to hold by this Court. The operation of law cannot be put to stop in view of the pendency of the matters before the Apex Court, in the absence of any interim order.

As noticed in contrast, the SLPs of some of the tenants have also been dismissed on 11.01.2017 and, therefore, the arguments raised by the counsel for the petitioner that the matter should be kept pending is not justified.

Accordingly, keeping in view the fact that there is no reference as such to a three Judges Bench of the Apex Court, merely because the matters have gone to the Apex Court on merits in each case and in some cases there is pendency and whereas some petitions have been dismissed, the arguments as such raised that this Court should stay its hands and await the decision of the Apex Court is without any basis.

The judgment passed in the case of ***D.K. Trivedi (supra)*** would not be applicable, since in that case, the validity of the notification as such was under challenge and, therefore, it was held that the petition

should not be dismissed.

In the present case, as noticed counsel has not placed on record any material that the matter had been referred to a three Judges Bench and that there is a doubt regarding the judgment passed in the case of ***Baldev Singh Bajwa (supra)***. As noticed the three Judges Bench subsequently in the case of ***Swami Nath (supra)*** has also approved the earlier view and, accordingly, the said argument awaiting the disposal by the Apex Court is rejected,

Similarly, the arguments raised that the tenant had entered into an agreement to sell and, therefore, the eviction is liable to be set aside is without any basis. In the said case in ***R. Kanthimathi (supra)*** it was the case of the landlady herself that she had agreed to sell the premises and a breach had been committed regarding the payment of the total sale consideration. In the agreement also there was a specific averment that the possession had already been surrendered to the tenant and keeping in view this background that a substantial sum had been received, the Apex Court held that when landlady herself has accepted the sum she actually acts under this agreement and the acceptance preceeded by agreement of sale changes the relationship. In such circumstances, the eviction order was set aside.

In the present case as noticed, in the reply to the application for dismissing the petition under Section 13-B of the Act, it has been specifically denied that the landlady had ever entered into an agreement

to sell with the respondent either by herself or through her attorney, which was the case of the petitioner-tenant. Once there is a dispute as such regarding the agreement to sell itself, then the judgment is not applicable to the facts and circumstances of the present case. As noticed no proceedings for specific performance have also been preferred for the agreement details of which had never been furnished.

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

MARCH 22, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>