

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

**Civil Revision No.1955 of 2016**

**Date of decision: 9.5.2017**

Chikori Ram(deceased) through his L.Rs.

**...Petitioner**

**Versus**

Harbans Lal

**...Respondent**

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

Present: Mr. Vijay Rana, Advocate for the petitioner.

Mr. K.S.Dhillon, Advocate for the respondent.

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**G.S.SANDHAWALIA, J. (Oral)**

The tenant is in revision against order of eviction dated 2.1.2016 passed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the 1949 Act”) on account of leave to contest having been declined under Section 18-A and an order of ejectment having been passed.

The petition was filed under the 1949 Act on 9.7.2015 which has been repealed after the Punjab Rent Act, 1995 (hereinafter referred to as “the 1995 Act”) has come into force on 30.11.2013.

Counsel for the petitioner has raised a legal issue to which Mr. K.S.Dhillon, Advocate could only counter the said argument by submitting that the same was never raised before the Rent Controller and therefore, now he cannot be allowed to raise for the first time before this Court.

The said issue being a legal issue goes to root of the matter as the petition itself was filed on 9.7.2015 after coming into force the 1995Act, and therefore, the petition was not maintainable under the 1949 Act. A

coordinate Bench in **Krishan Kumar Vs. Kamla Devi** 2016(1) R.C.R.

**(Rent) 525** has dealt with the provisions of both the Acts interse and held in view of the fact that the landlords who filed petitions after the coming into force of the 1995 Act could be permitted to amend the petitions as certain benefits were given to the tenants also under the said Act. The relevant paragraph reads as under:-

“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.”

Accordingly, keeping in view the above observations, this Court is of the opinion that the impugned order dated 2.1.2016 passed by the Rent Controller (NRI Cases), Jalandhar cannot sustain and the matter has to be remanded back for fresh consideration on filing of amended petition by the respondent/landlord.

Accordingly, impugned order dated 2.1.2016 passed by the Rent Controller (NRI Cases), Jalandhar is set aside with liberty to respondent/landlord to take appropriate steps in accordance with law.

The parties are directed to appear on 31.5.2017 before the Rent Controller, Jalandhar who is entrusted with the cases of NRIs.

With the aforesaid observations, the present revision petition is disposed off.

**May 09, 2017**  
**Pka**

**(G.S.SANDHAWALIA)**  
**Judge**

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No