

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

119+223

CR No.2018 of 2015 (O&M)

Date of decision: 08.05.2017

Ganpati Hegde

....Petitioner

Versus

Dilpreet Singh Saini

...Respondent

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

Present: Ms.Ekta Thakur, Advocate, for the petitioner.

None for the respondent.

G.S. SANDHAWALIA, J. (Oral)

CM-10220-CII-2017

Dismissed as not pressed.

CR-2018-2015(O&M)

Challenge in the present revision petition, filed by the petitioner-tenant, is to the eviction order dated 24.02.2015, passed by the Rent Controller, Chandigarh, under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949, as extended to U.T., Chandigarh (for short, the 'Act'), on the ground that the leave to contest application, filed under Section 18-A, was barred by limitation.

The petition was filed in August, 2014, on the ground that the landlord was the legal heir, being the son of Iqbal Singh Saini, the original allottee, who had been allotted the tenanted premises vide allotment letter dated 11.07.1995. On account of his death on 10.08.2008, the property was mutated in favour of the present respondent on the application moved on 21.11.2008, vide letter dated 04.01.2012. It was alleged that the respondent-landlord had migrated to the United States of America and was a passport-holder of the said country and was a Non-Resident Indian, who fall within the definition of Section 2(dd) of the Act. Resultantly, the

CR-2018-2015 (O&M)

possession, as such, was sought, as he has now returned to India and wanted the demised premises for his use.

Summons of the petition under Section 13-B were issued in the prescribed format and service was duly effected upon the petitioner on 28.08.2014. The necessary application for leave to contest under Section 18-A was not filed within the prescribed period of 15 days and the same was only filed on 16.09.2014. Accordingly, an argument was raised before the Rent Controller that mutation had taken place in January, 2012 and therefore, since the property had been transferred in the year 2012, the 5 years of ownership prior to filing the petition, as such, had not accrued and therefore, eviction petition was not maintainable under Section 13-B of the Act.

The Rent Controller, however, taking into account the fact that the delay could not be condoned, in view of the judgment of the Apex Court in ***Om Prakash Vs. Ashwani Kumar Bassi AIR 2010 SC 3791***, allowed the ejectment application, while noticing that there was delay of 4 days in filing the leave to contest application and therefore, the same could not be condoned. The Apex Court, in the said case has held that the Rent Act being the complete Code, as such, the Limitation Act would not be applicable and therefore, the Rent Controller would not have jurisdiction. Relevant observation reads as under:

“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

CR-2018-2015 (O&M)

(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.”

Once the leave to contest application was not filed within the prescribed time and the same is dismissed, eviction order necessary has to follow. The Full Bench of this Court in **Anwar Ali Vs. Gian Kaur 2011 (2) RCR (Rent) 604** has also held to this effect. Even otherwise, the death of the father having taken place in 2008, succession opened up in favour of the respondent and merely because the property was mutated in 2012, would not mean that he did not have the requisite 5 years' ownership.

In such circumstances, the order dated 24.02.2015, passed by the Rent Controller does not suffer from any material irregularity or illegality or has occasioned a failure of justice which would warrant interference by this Court, in revisional jurisdiction.

Accordingly, the present writ petition is bereft of any merit and the same is, hereby, dismissed.

08.05.2017

Sailesh

Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No

(G.S. SANDHAWALIA)
JUDGE