

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2384 of 2014 (O&M)

Roop Lal		Petitioner
	Versus	
Onkar Bhatarah		...Respondent

CR No.3008 of 2014 (O&M)

Onkar Bhatarah		Petitioner
	Versus	
Roop Lal		...Respondent

Date of decision: 24.05.2017

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

Present: Mr.Ramesh Sharma, Advocate, for the tenant.

Mr.Divanshu Jain, Advocate, for the landlord.

G.S. SANDHAWALIA, J. (Oral)

The present revision petitions, filed both by the tenant and the landlord, are directed against the order dated 22.01.2014, whereby the Rent Controller, Nakodar has dismissed the application under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), on the ground that it was barred by limitation, having not been filed within the prescribed period of 15 days from the date of service. Resultantly, the tenant is aggrieved against the said order on the ground that he should have been given an opportunity to contest the matter.

The landlord, on the other hand, is aggrieved on the ground that the Rent Controller, instead of ordering eviction, has come to the conclusion that the landlord had failed to establish his ownership over the demised premises for more than 5 years as on the date of filing of the present petition and therefore, was not entitled to summary eviction of the tenant and the enquiry was to continue. It is the case of the landlord, accordingly, that

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once leave to contest had been declined, summary eviction had to follow.

The law is well settled on the above-said principles by the Apex Court in ***Om Prakash Vs. Ashwani Kumar Bassi AIR 2010 SC 3791***, and by the Full Bench of this Court in ***Anwar Ali Vs. Gian Kaur 2011 (2) RCR (Rent) 604***. The provisions of Section 18-A(4) & (5) have been held to be mandatory in nature whereby the tenant would have no right to seek protection from eviction unless he files an affidavit to contest the application and obtains leave. The Controller is to grant leave to contest the application, if the affidavit filed by the applicant discloses such facts as would disentitle the landlord. Sub-clause (2) further provides that the summons for service of tenant have been specified in Schedule 2. In Schedule 2, it is provided that the leave is to be taken within 15 days of the service and the leave of the Controller is to be obtained to contest the application for eviction.

In the present case, eviction petition under Section 13-B was filed on 25.03.2013 and the summons were served upon the tenant on 16.04.2013, which specified that the leave to contest is to be filed within a period of 15 days. Initially, the tenant had failed to put in appearance and to file the leave to contest application and he had filed only an application for leave to defend on 29.05.2013, which was beyond the period of 15 days. Accordingly, the Rent Controller dismissed the application that the delay could not be condoned as the application was beyond the period of limitation prescribed, while placing reliance upon the judgment in ***Harnek Singh Vs. Paramjit Singh 2009 (2) PLR 421*** and ***Vinod Kumar Mittal & another Vs. Jagdeep Singh Rana 2010 (4)***

PLR 690.

The Apex Court in **Om Prakash** (supra) has also held to the same effect and has gone on to hold that the Rent Act being a composite statute, as such, Section 5 of the Limitation Act, 1963 would not be applicable and the Rent Controller would have no such power to condone the delay. Accordingly, it was held that once leave to contest is not filed, the competent authority has no option but to pass the eviction order, since there was delay in filing the leave to contest. Relevant para reads as under:

“16. The instant case stands on a different footing and, in our view, is covered by the decision of this Court in Gaya Prasad Kar's case (supra), wherein it was held that the Competent Authority had no other option but to pass an order of eviction since it had no power to condone the delay in filing an application for leave to contest.

17. [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

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application under [Section 5](#) of the Limitation Act for condonation of delay since the statute does not vest him with such power.

18. 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.”

Regarding the other contention raised by the landlord as to the fact that whether the trial was to proceed ahead or not or an automatic order of eviction was to follow, the position is also covered in favour of the landlord, in view of the binding precedent of the Full Bench in **Anwar Ali** (supra), wherein it has been held that once leave is refused, it introduces a deeming provision by which the claim of the landlord with regard to the need of the premises is to be presumed and eviction of the tenant has to be ordered as an automatic consequence. Relevant observations read 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.

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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.”

Resultantly, this Court is of the opinion that the revision petition filed by the landlord (CR-3008-2014), thus merits acceptance. Accordingly, the order of the Rent Controller, Kapurthala, whereby it proceeded to commence the trial, is set aside. The Rent Controller shall, accordingly, pass a formal order of eviction, forthwith, in view of the settled principles. CR-2384-2014, filed by the tenant is, accordingly, dismissed.

Revision petitions stand disposed of, accordingly.

24.05.2017

Sailesh

Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No

(G.S. SANDHAWALIA)
JUDGE