

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

**Civil Revision No.2837 of 2015 (O&M)
Decided on : 09.05.2017**

Raju

... Petitioner

Versus

Gurdeep Singh

... Respondent

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

Present : Mr. Chandan Deep Singh, Advocate
for the petitioner.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate for the respondent.

G.S. Sandhawalia, J. (Oral)

The challenge in the present revision petition is to the order dated 03.01.2015, whereby the Rent Controller has directed eviction on the ground of the application for leave to contest having been filed after a delay of almost 4 years. It has been recorded that the respondent had appeared in the present case through *munadi* and there is no jurisdiction to allow the condonation of delay and resultantly eviction has been ordered. Reliance was placed upon the judgments passed in '***Punjab National Bank Vs. Inderpal Singh Sahota 2012 (1) RCR (Civil) 302*** and ***2010 (supp.) CCC 431 (P&H)*** to hold that an NRI landlord had a right to get one property vacated of his choice under the provisions of Section 13-B of Rent Act. The application for leave to contest as such did not disclose any ground on which leave to contest should be allowed and keeping in view the judgment of Full Bench passed in '***Anwar Ali Vs. Gian Kaur 2011 (2) RCR (Rent) 604***, the eviction petition was allowed.

It was also noticed that notice had been issued to the respondent for 07.12.2007, 08.02.2008, 07.04.2008, 07.08.2008, 06.01.2009, 06.03.2009, 19.05.2009, 14.09.2009, 09.02.2010, 21.05.2010 and 14.09.2010 and, thereafter, *munadi* was ordered for 25.11.2010, 23.03.2011, 02.08.2011, 27.09.2011, 21.11.2011 and 12.12.2011 and resultantly, on the ground that the application was barred it has also been dismissed, on that account.

The said reasoning by the Rent Controller cannot be faulted in any manner. The Apex Court in '***Om Parkash Vs. Ashwani Kumar Bassi***' (2010) 9 SCC 183 has held that the leave to contest can only be filed within the prescribed period of 15 days, which is from the date of service of summons. The 1949 Rent Act being a complete code in itself, it was held that there is no power to condone the delay in filing the application for leave to contest. It has been further held that once the same has filed beyond the period prescribed in the form of Schedule II in Section 18-A, the order of eviction has to follow as a matter of course. The relevant observations reads as under :-

“9. The High Court further held that under the circumstances, there was no statutory obligation upon the Rent Controller to frame issues or to try the eviction petition by calling upon the petitioner to lead evidence. The High Court further held that refusal to grant leave to contest amounts to admission of the contents of the eviction petition and if the eviction petition itself satisfies the requirements of Section 13-B of the 1949 Act, an order of eviction has to follow as a matter of

course.

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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.”

The Full Bench in **Anwar Ali (supra)** has held that once

leave is refused, the eviction of the tenant has to be an automatic consequence. The relevant observations 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.”*

A perusal of the record would go on to show that in the present case that summons were sent for 14.09.2010 and the Rent Controller noticed that service has been duly effected. Instead of proceeding *ex parte*, the *munadi* was ordered alongwith the affixation for 25.11.2010. The order dated 14.09.2010 reads as under:-

“Summons of respondent received back with the report of refusal. Respondent has proper knowledge regarding this case but he intentionally did not appear in the Court. So, respondent be summoned through munadi and affixation for 25.11.2010 on filing munadi fee within 5 days.”

It is apparent that, the tenant was duly served for the said date. As per the provisions of Section 18-A on service he was to file an application immediately within 15 days. He chose to stay back and took a risk for automatic eviction. The Rent Controller further gave him latitude, which was not permissible and deferred the proceedings and eventually passed the order of eviction five years later.

As per the law discussed above, the leave to contest is to be filed within 15 days from the date of service and eviction had but to necessarily follow on the application not having been filed.

In such circumstances, the order passed by the Rent Controller does not suffer from any infirmity, which would warrant interference by this Court. Accordingly, the present revision petition stands dismissed.

MAY 09, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No