

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 3047 of 2012 (O & M)

Date of decision: 25.05.2017

Santosh Rani and another

....Petitioner(s)

Versus

Jasbir Singh and another

...Respondent(s)

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

Present: Mr. R.S. Chauhan, Advocate,
for the petitioner.

None for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition by the tenants is directed against the order of the Rent Controller dated 31.01.2012 whereby, they were ordered to be ejected under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') on the account that on an earlier occasion, an application for leave to contest had been filed, which was barred by limitation. The application under Section 5 of the Limitation Act, 1963 had been filed which was accordingly dismissed. Resultantly, the eviction order has been passed after taking into account the evidence led by the respondent landlord.

The law stands settled in '*Om Parkash Vs. Ashwani Kumar Bassi*' (2010) 9 SCC 183 and in the judgment rendered by the Full Bench of this Court in '*Anwar Ali Vs. Gian Kaur* 2011 (2) RCR (Rent) 604 that once leave to contest has been declined, eviction order has but to follow. The relevant observations in *Om Parkash's case (supra)* reads thus:-

“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 relevant observations in *Anwar Ali's case (supra)* reads thus:-

“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 subsection 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.”

While issuing notice of motion on 18.05.2012, counsel had taken one year's time for vacation of the premises in question. The said order reads thus:-

“Learned counsel for the petitioner does not press the petition. However, submits that one year time be granted to him for vacation of the premises.

So, notice of motion to that extent only for 07.08.2012.

In the meantime, operation of impugned order stands stayed subject to deposit of entire arrears of rent within the month from today and the petitioner shall continue to pay the rent on or before 10th of every month.”

A period of more than 5 years have gone by and now more time is sought. Accordingly, keeping in view the above, the present revision petition stands dismissed since as per the stand taken by the counsel sufficient time has been given.

25.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No