

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

**Civil Revision No.4835 of 2014 (O&M)
Decided on : 27.03.2017**

Surinder Narang @ Billu

... Petitioner

Versus

Mohinder Kaur Singh @ Lisa

... Respondent

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

Present : Mr. S.K. Sandhir, Advocate
for the petitioner.

Mr. Vaibhav Sehgal, Advocate
for the respondent.

G.S. Sandhawalia, J. (Oral)

The present revision petition is directed against the order dated 28.02.2014 passed by the Rent Controller Ludhiana, whereby eviction has been ordered on the ground that leave to contest had been filed beyond the period of limitation and the application under Section 5 of the Limitation Act had already been dismissed on 11.04.2013. The relevant portion of the order dated 11.04.2013 reads as under:-

“The Hon'ble Punjab and Haryana High Court in Vijay Kumar's case (supra) in which the law point involved in Mukri Gopalan vs. Cheppilat Puthnpurayil Aboobacker (supra) has been discussed, has clearly held that the Rent Controller does not have the jurisdiction to extend the period of 15 days specified in the form appended to the Act and if the tenants fails to make an application within 15 days of the service of summons, he cannot be granted leave to contest the petition filed by the landlord under Section 13-B of the Act. Therefore, the delay in filing the application for leave to defend by the applicant/respondent cannot be condoned.

Accordingly in view of above discussion, there is no merits in the

present application and same stands dismissed without being merits.”

Accordingly, in view of the judgment of the Full Bench in '**Anwar Ali Vs. Gian Kaur**' 2011 (2) RCR (Rent) 604 (P&H) eviction had to follow there and then, but was not done at that point of time.

Counsel for the petitioner has vehemently argued that since eviction was sought under Section 13-B of East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act) on account of the fact that the respondent-landlady was an Australian citizen and, therefore, the present petition was not maintainable. He has further argued that there is a dispute regarding the co-sharer aspect and that he has purchased part of the tenanted premises.

Admittedly, the petition was filed on 20.05.2009 under Section 13-B of the Act. Service was effected upon the tenant on 27.05.2009. As per Section 18-A leave to contest has to be filed within 15 days of the service. No such application was filed within the prescribed period and it was only filed on 10.07.2009. Thereafter, the application under Section 5 of the Limitation Act was filed on 22.02.2010 which was dismissed on 11.04.2013. The said order has become final *inter se* the parties and has not been challenged. In spite of that the Rent Controller kept the proceedings pending though the Full Bench of this Court in the case of **Anwar Ali (supra)** has specifically held that once the application for leave to defend has not been filed within the prescribed period eviction has but to follow and there is nothing else to contend.

The 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. 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.”

Counsel for the petitioner, however, has submitted that triable issues as such are made out in the eviction petition in view of the

fact the NRI issues are still pending consideration.

The same does not merit consideration. The Apex Court in **'Om Parkash Vs. Ashwani Kumar Bassi' 2010 (9) SCC 183**, has held that the Rent Controller has no jurisdiction and power to condone the delay as the statute does not vest any such power. The relevant portion reads as under:-

“12. From the materials on record it is clear that the application for leave to contest the application under Section 13-B of the 1949 Act has to be made within 15 days from the date of service of the summons. In this case, the application for leave to contest the application was made one day after the said period had expired. The issue for consideration before us is whether the Rent Controller was right in rejecting the application on the ground that he had no jurisdiction to condone the delay under the Act. The matter was considered at length by the High Court, which, as indicated hereinabove, came to the conclusion that Section 18-A of the 1949 Act would have an over-riding effect on all other laws inconsistent therewith and that Sub-Section (8) of Section 18-A of the 1949 Act and Section 17 of the Presidency Small Causes Courts Act, 1882, were not attracted to the facts of the case.

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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 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.

19. The Special Leave Petition must, therefore, fail and is dismissed accordingly. However, there will be no order as to costs.”

Once the application itself was time-barred, it is apparent that the Rent Controller was well justified in passing of the order of eviction. Any argument which has to be raised will have to be considered in consequence to the right to file a application under Section 18-A of the Act. Once the tenant himself had opted not to file application for leave to contest within the prescribed period raising a triable issue, the eviction has but to follow. Even otherwise, this Court the matter has been settled beyond a anvil of doubt in ***Baldev Singh Bajwa vs. Monish Saini, 2005 (4) RCR (Civil) 492, Swami Nath vs. Nirmal Singh, 2010 (10) SCR 1002*** and in ***'Kamaljit Singh Vs. Sarabjit Singh' 2014 (4) PLR 828*** , whereby it has been held Section 13-B is a beneficial piece of legislation and a speedy process for the NRI to get the eviction of the tenant from the demised premises.

Even otherwise, the argument now raised that the petitioner has purchased part of the property also does not find mention in the

application under Section 18-A and otherwise also it is settled that if the tenant has purchased some part of the property, firstly he has to surrender the eviction and then agitate for his rights.

Resultantly, the present revision petition is dismissed.

MARCH 27, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No