

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

**Civil Revision No.7830 of 2015 (O&M)
Decided on : 25.04.2017**

Akaljot Singh

... Petitioner

Versus

Gulshan Rai

... Respondent

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

Present : Mr. Naveen Batra, Advocate
for the petitioner.

Mr. Satbir Rathore, Advocate
for the respondent.

G.S. Sandhawalia, J. (Oral)

The present revision petition has been filed by the tenant aggrieved against the order dated 14.10.2015 (Annexure P-6), whereby the application leave to defend was dismissed. In spite of the leave to contest having been declined, the Rent Controller did not even pass the ejectment order immediately, though it was required to pass one, in view of the judgment of the Full Bench passed in '*Anwar Ali Vs. Gian Kaur*' 2011 (2) *RCR (Rent)* 604 (P&H).

However, leaving that apart, this Court is of the opinion that the manner in which the leave to contest has been declined is not appropriate, as the basic issue of the ownership aspect of 5 years prior to the filing of the eviction petition under Section 13-B of the East Punjab Urban Rent

Restriction Act, 1949 was never redressed in the petition which was filed on 22.12.2012.

A perusal of the record would go on to show that eviction petition was filed for seeking eviction from the shop shown in the red colour marked by letters A, B, C and D and the ownership was claimed on the basis of *Fard Jamabandi* attached with the petition. Accordingly, it was pleaded that shop was in possession of the occupation of the present petitioner and the brother of the landlord was accepting the rent on his behalf. The shop in question was required as the landlord wanted to shift and permanently settle in India and he was Non-Resident Indian as defined in Section 2 (dd) of the Punjab Act No.9 of 2001 and wanting to do the business of selling electronics goods.

In the application seeking leave to defend the plea taken by the petitioner was that the shop in dispute had been taken on rent by the present petitioner and as per the agreement dated 02.02.1989 (Ex.R1). It was further pleaded that only a part of the *Jamabandi* pertaining to the shops had been brought on record and other pages of *Jamabandi* showing more than 2 kanals of land adjoining to shop had been concealed. The complete latest *Jamabandi* of the entire ownership had been attached alongwith other co-sharers. Loan had been raised by the petitioner and the brother of landlord had issued NOC showing that he was the owner and the possession as such was with the tenant. On account of being annoyed, the brother was misusing the provisions, since one social worker had collected the information regarding the actual rent received

by him. Other shops were lying vacant and as per the information received under the RTI Act, 14 shops of same size and dimensions were at site. The site plan was incorrect and the complete site plan was attached as Ex.R79.

In the reply filed to the application for leave to defend by the present petitioner, it was alleged that the rent note was a forged and fabricated document and shop was rented out to Baldev Singh brother of the petitioner, namely, Akaljot singh vide rent deed dated 11.02.1989. The present petitioner had joined his business and both the brothers jointly started doing the business and Baldev Singh had left the business. As per the *Fard Jamabandi* Kamal Krishan was the co-owner with the petitioner alongwith some other joint properties. No objection certificate of the brother was also attached. The *Jamabandi* for the year 2010-2011 showed that 7 kanals 11 marlas including the *Gair Mumkin* shop which was part of the area 1 kanal and other *Jamabandi* had no relevancy with the shop in question. It has been submitted that the brother of the petitioner, namely, Kamal Krishan was only accepting the rent on behalf of the petitioner as the petitioner was residing abroad and, therefore, he was a tenant under the landlord. The bonafide requirement was again pleaded.

The Rent Controller took into consideration the *Jamabandi* for the year 1995-1996 and 2010-2011 that the name of the petitioner had been recorded as joint owner of the property and by holding that he was a co-owner, allowed the petition, keeping in view the fact that co-owner

could file the application.

Resultantly, keeping in view that the landlord was the best judge and the passport showed that he was NRI as he was born at Rajpur and he was settled at Italy, it was held that he would come within the ambit of Section 2 (dd) and he was the owner of the property in question for more than five years prior to the date of institution of petition, keeping in view the *Jamabandi* for the year 1995-1996.

Unfortunately, the Rent Controller had failed to take into consideration that as per the site plan (Annexure R-79) itself it has been shown that there are various other shops and one of the shops was a vacant shop. The said aspect has not been noticed by the Rent Controller. Even otherwise the pleadings as such were not specifically clear as to whether title there was regarding the 5 years of ownership which was the pre-requisite condition as such. The rent deed itself also showed that the relationship of the landlord and tenant was also with the brother and also the fact that the brother had himself issued a written NOC (Annexure R-77) to the Manager, State Bank of Patiala that he had given the shop to the present petitioner. Even the aspect of part of the *Jamabandi* having been appended which was for the year 1995-1996 and 2010-2011 was not properly discussed.

Resultantly, triable issues as such were made out and it was not a case where summary eviction should have been ordered in the manner, which has been done without examining the application under Section 18-A in its proper perspective. Accordingly, this Court is of the

opinion that triable issues having been made out, the Rent Controller was not justified in dismissing the application for leave to contest.

The Apex Court in '***Precision Steel and Engineering Vs. Prem Deva Niranjana Deva Tayal***' 1983 (1) SCR 498 held that only the affidavit of the tenant has to be taken into consideration and if triable issue is made out, it would be obligatory to grant leave and the plausibility of the defence is not to be taken into consideration.

Accordingly, the present revision petition is allowed. The leave to contest is granted.

Keeping in view the fact that the petition was filed in the year 2012, it would be appropriate if the proceedings are culminated by 31.03.2018.

APRIL 25, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No