

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

CR No.1578 of 2016(O&M)

Date of decision: 10.5.2018

Jagjiwan Sharma

.....Petitioner

VERSUS

Jaswant Kaur Sehmi

.....Respondent

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Suveer Sheokand, Advocate for the petitioner.

Mr. Sharan Sethi, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 07.01.2016 passed by the Rent Controller, Chandigarh whereby application filed under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') seeking permission to leave to contest petition under Section 13-B of the Act has been dismissed and the eviction application has been allowed.

The sole submission made by counsel for the petitioner is that the respondent/landlady claiming herself to be Non Resident Indian filed the application for eviction qua ground floor of house No.2195, Sector 21-C, Chandigarh on the averments that she requires the entire house consisting of three floors when admittedly first floor having sufficient accommodation is already in possession of the respondent/landlady. It is further argued that respondent filed a separate eviction application against the tenant on the second floor of the house in question but application for leave to contest filed by the said tenant has been allowed and the matter is pending before the Rent Controller for decision on the basis of evidence to

be adduced by the parties. It is argued with vehemence that the personal requirement projected by the respondent/landlady shall not be satisfied till she is able to get eviction of the tenant on the second floor as she has alleged that she requires the whole house at her disposal. The last submission made by counsel is that since leave to contest has been allowed in favour of the tenant on the second floor, order passed by the Rent Controller rejecting petitioner's application for leave to contest and ordering his eviction cannot be allowed to sustain and liable to be set aside. In support of his contention, he has relied upon judgment of this Court **Jaswinder Singh Vs. Bakhshish Singh, CR No.6003 of 2014 along with connected case, decided on 20.04.2017** wherein this Court by relying upon judgment in **Mukand Lal Bawa Vs. Satwant Singh, 2009(3) PLR 809** set aside the orders passed by the Rent Controllers and leave to contest was granted as shops in question were part of one building.

Counsel representing the respondent/landlady would urge that judgments relied upon by counsel for the petitioner cannot be applied to the facts of the case in hand as the petitioner is a tenant on the ground floor whereas the other tenant in whose favour leave to contest has been allowed is in occupation of the second floor. The respondent is more than 70 years of age, therefore, accommodation available at the ground floor comprising of 3 bedrooms, 2 bathrooms, 1 kitchen, drawing dining and rear courtyard would be more suitable for her personal requirement. However, he has fairly informed the Court that eviction application against the tenant on the second floor has been dismissed by the Rent Controller after due contest.

I have heard counsel for the parties, perused the paper-book particularly the order impugned.

Indisputably, the respondent/landlady is in possession of first floor of the house in question whereas the ground floor and second floor are in occupation of different tenants. The petitioner is in occupation of the ground floor. As per case set up by the respondent, she requires the whole house as she wants to return permanently to India from U.K. As the respondent has raised a plea that she requires the whole house to settle permanently in India, her requirement would not be fulfilled and satisfied if tenant on the ground floor is evicted but the tenant on the second floor continues to be in occupation of that part of the property. No such plea has been raised by the respondent that accommodation on the ground floor is more suitable for her in view of her old age and health status. Under the circumstances, the respondent cannot be allowed to raise an additional plea, alien to the pleadings raised in the application for eviction. Since application for leave to contest of tenant on second floor has been allowed by the Rent Controller and later the eviction application against that tenant has failed after due contest an attempt made by counsel for the respondent to draw distinction between the referred authority and facts of the case at hand is meaningless and cannot sustain.

For the foregoing reasons, the petition is allowed. The impugned order is set aside and the application filed by the petitioner for leave to contest filed under Section 18-A of the Act is allowed. The Rent Controller is directed to dispose of the case expeditiously. No order as to costs.

MAY 10, 2018

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no