

In the High Court of Punjab and Haryana at Chandigarh

CR- 4645 of 2016

Date of Decision: 5.12.2018

Krishna Kumari

---Petitioner

versus

Prem Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Ashish Gupta, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition directs challenge against order dated 15.12.2015 passed by the Rent Controller, Hoshiarpur whereby petition under Section 19(2-B) of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) read with Section 144 of the Code of Civil Procedure (in short “the Code”) for restoration of possession of demised shop bearing No. B-3-765, situated at Phagwara road, Hoshiarpur, has been dismissed.

A brief backdrop of the case is that the respondent filed eviction application under Section 13-B of the Act that culminated in eviction order dated 3.8.2010 passed by the Rent Controller, Hoshiarpur. The revision petition preferred by the petitioner-tenant was dismissed by this Court and accordingly the eviction order attained finality. Indisputably, actual possession of tenancy premises was delivered to the landlord on 7.5.2011. The petitioner-tenant filed the instant petition seeking restoration

of possession primarily on the ground that the landlord had not occupied the shop in question for a period of three months with effect from 7.5.2011, therefore, he is liable to restore the petitioner in the same position as she was before possession of the shop was delivered to the respondent-landlord

I have heard counsel for the petitioner and perused the paper book particularly the order impugned.

The petitioner has invoked Section 19(2-B) of the Act read with Section 144 of the Code to assert her right for restoration of possession. A relevant extract from Section 19(2-B) of the Act, reads as follows:-

“The owner, who is a Non-resident Indian and who having evicted a tenant from a residential building or a scheduled building and/or non-residential building in pursuance of an order made under section 13-B, does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person, other than the tenant in contravention of the provisions of sub-section (3) of section 13-B, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may be extended to one thousand rupees or both.”

A bare perusal of the aforesaid extract leaves no manner of doubt that it does not envisage any right being conferred upon a tenant to seek restoration of possession in case an NRI landlord does not occupy the building in question for a period of three months from the date of such eviction order or lease out wholly or any part of the building from which the tenant was evicted to any person other than the tenant in contravention of

proviso to sub Section 3 of Section 13-B of the Act. On the contrary, Section 19(2-B) only envisages that such a landlord shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1000/- or both. That being so, the petitioner cannot assert for restoration of possession by invoking Section 19(2-B) of the Act.

So far as plea seeking restoration of possession under Section 144 of the Code, all the provisions of the Code are not applicable to rent proceedings. This apart, the order of eviction that has attained finality upto this Court has not been set aside by a higher court in order to attract provisions of Section 144 of the Code. In this view of the matter, I find myself unable to accept contention of the petitioner that order impugned suffers from an error much less illegality that would call for intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

5.12.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No