

Civil Revision No. 5202 of 2018 (O&M)

Date of decision : August 13, 2018

Avtar Chand

.....Petitioner

Versus

Malhar Singh

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILLPresent: Mr. G.S. Goraya, Advocate
for the petitioner.

LISA GILL, J.

This revision petition has been filed challenging order dated 01.05.2018 passed by the learned Rent Controller, Gurdaspur. Respondent – landlord filed a petition under Section 13-B of East Punjab Urban Rent Restriction Act, 1949 (for short – 'the Act') seeking eviction of the petitioner from the demised premises i.e. a shop as detailed in the petition. The petitioner was admittedly served on 03.04.2017 but he did not appear on the said date neither was he represented through counsel. Service of the petitioner was directed through Munadi for 22.05.2017. The petitioner appeared on 22.05.2017 through his counsel. The matter was adjourned to 30.05.2017 and thereafter to 14.07.2017. An application for leave to defend was filed by the petitioner on 14.07.2017, which was dismissed by the learned Rent Controller, Gurdaspur vide impugned order dated 01.05.2018 while holding that the same is time barred.

Learned counsel for the petitioner contends that the petitioner is a layman, having no knowledge about the technicalities and niceties of law. In case, the lawyer failed to file an application for leave to defend within the stipulated time of 15 days, the petitioner cannot be held liable and made to suffer for no fault of his own. It is further contended that respondent –

landlord has not placed anything on record to indicate that he is a Non Resident Indian. Therefore, delay of 39 days in filing the said application should be condoned and impugned order dated 01.05.2018 be set aside.

I have heard learned counsel for the petitioner and have gone through the application dated 14.07.2017 filed by the petitioner (the said application was furnished during the course of hearing).

It has been held by the Hon'ble Supreme Court in **Om Parkash versus Ashwani Kumar Bassi 2010 (9) SCC 183** that,

“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.”

In the case of **Om Parkash** (supra), there was a delay of one day in the filing of the application for leave to defend. The Hon'ble Supreme Court held that the same could not be condoned by the Rent Controller who had no other option but to pass an order of eviction. The learned Rent

Controller in the present case has rightly dismissed the petitioner's application for leave to defend. Argument raised by learned counsel for the petitioner that the respondent – landlord is not even a Non Resident Indian is being noticed only to be rejected. A perusal of the application dated 14.07.2017 reveals that no such ground had ever been raised by the petitioner. Even in the present revision petition, no such plea has been raised.

Learned counsel for the petitioner is unable to point out any illegality or perversity in the impugned order dated 01.05.2018 passed by the learned Rent Controller, Gurdaspur, which calls for any interference.

Present petition is, accordingly, dismissed.

August 13, 2018
rts

(Lisa Gill)
Judge

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No