

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.8260 of 2018 (O&M)
Date of Decision : 04.12.2018

M/s Sham Lal Textiles Traders and another

..... Petitioners

Versus

Gagandeep Singh

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present: Mr. Anupam Bhardwaj, Advocate
for the petitioners.

AJAY TEWARI, J. (Oral)

This petition has been filed against the order of the Rent Controller allowing an application under Order 6 Rule 17 CPC for amendment of the eviction petition.

The respondent had filed an eviction petition under Section 13-B of the East Punjab Urban Rent Restriction Act (for short 'the Act') on 25.02.2016. It may be mentioned here that the new Punjab Rent Act had been notified in the year 1995. In **CR No.3509 of 2014** decided on 09.05.2016 this Court held as follows :-

“Apart from these procedural aspects, the three material changes in the substantive law as regards NRI between the Act of 1949 and the 1995 Act are that under the Act of 1949 the NRI need not return to India for permanent residence while under the 1995 Act he has to return to India permanently. Secondly under the Act of 1949 there was a stipulation that the

NRI should have owned the building for five years while there was no such requirement under the 1995 Act. Thirdly under the Act of 1949 a further condition was laid down to the effect that the right of summary eviction would be available only once in a life time and this limitation is imposed upon Landlords mentioned in Section 24(1) of the 1995 Act but is not applicable to NRIs. In sum, one additional condition (viz permanent residence) has been imposed by the 1995 Act, while two conditions (viz ownership for 5 years and the one time in life restriction) have been removed. The next major change is with regard to the remedy provided against an order passed by the Rent Controller. Under the Act of 1949 the remedy of appeal was taken away and under Section 18(A) only a revision lay before this Court. Under the 1995 Act Section 38 (7) (e) provides a remedy to a tenant to file an application for review against an order declining leave to defend and Section 50 permits an appeal against any final order.

Coming to the averments of the present case, in her eviction petition the landlady averred that she is an old lady aged 72 years and in the evening of her life, wants to stay permanently in India with her husband. Resultantly, as regards the additional condition imposed, learned counsel for the tenant is not in a position to deny that the necessary averment that the landlady wants to come back permanently to India is present in the petition. Therefore, the issue which survives before this Court is whether the landlady can be non-suited for the reason that though the substantive requirement of the 1995 Act has been met yet the petition has been filed under the Act of 1949.

In my considered opinion the provisions of the 1995 Act as detailed above, are to say the least, confusing. In view of the anomalous position a landlord can not be blamed for not

having understood the true import and the interplay between the two Acts. In this situation the only equitable decision on this aspect can be that those NRIs-Landlords who filed petitions after the coming into force of the 1995 Act and made the averments required under the said Act would be entitled to file formal applications for amendment of number of the Section and the title of the Act mentioned therein. However, these tenants would be entitled to the statutory benefits conferred by the 1995 Act in so much as they would have the right to file an application for review against the order declining leave to defend as well as the right to file an appeal against an order of eviction. Such landlords who have not made the necessary averments required by Section 24 of the 1995 Act would however have to be non-suited though they would have the right to file fresh petitions conforming to the requirements of the 1995 Act.

*Moreover once it is held that the 1995 Act is applicable, it would be incumbent upon the Rent Controller to first pass an order on the application for leave to defend and after allowing the aggrieved party time to file a review application, then pass a separate final order. It has been argued that a Full Bench of this Court in **Anwar Ali Vs. Gian Kaur, 2011 Vol.2 RCR (Rent), 604** had laid down that in the case of NRIs the order of eviction is a consequential order to an order declining leave to defend. However that ruling came on an analysis of the Act of 1949 and would not be applicable to proceedings under the 1995 Act for the reason that now a provision has been made for filing a review against the order declining an application for leave to defend.*

In the circumstances, the petition is allowed and the impugned order whereby leave to defend has been rejected and eviction has been allowed, is set aside. The landlady would be

required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to redecide the application for leave to defend under the 1995 Act.”

It was on the basis of this decision that the respondent moved an application praying that he may be permitted to make a formal amendment by changing the number of the Section and the particulars of the Act. This application having been allowed, the petitioner is before this Court.

Counsel has argued that infact this is not a case where only formal amendment had to be allowed because in the original petition the landlord had not pleaded that he had 'returned to India permanently' and therefore this amendment was impermissible.

In my opinion, if the landlord has not made any necessary averment it would be at his own risk and cost and the tenant can well take the plea that aforesaid essential averment had not been made but the application for amendment can not be declined.

In the circumstances, the petition is dismissed.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

04.12.2018
Pooja sharma-I

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No