

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

-.-

CR 851 of 2018 (O&M)

Date of decision: 14.02.2018

Sehaj Singh Grewal alias Sehaj Singh

..... Petitioner

Versus

Parmjot Kaur

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Narinder Singh Dadwal, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against orders dated 30.08.2017 whereby application for leave to contest filed by the respondent was allowed and dated 09.11.2017 (Annexure P11) dismissing the application for review of order dated 30.08.2017 under Order 47 of the Code of Civil Procedure read with Sections 38 and 65 of the Punjab Rent Act, 1955.

Counsel for the petitioner has submitted that the petitioner filed application under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (in short, 'the Act'). The respondent-tenant received summons dated 18.04.2016 on 26.04.2016. The respondent appeared through her counsel on 28.04.2016 and the case was adjourned to 07.05.2016 for filing the written statement. On 14.07.2016, the respondent moved an application dated 11.07.2016 under Section 18 (4) of the Act for leave to contest and the case was adjourned to 01.08.2016 for reply to the said application. The

petitioner filed reply (Annexure P3) on 01.08.2016 and the case was adjourned on several occasions for consideration on the application. Later, on 03.02.2017, the petitioner filed application under Order 6 Rule 17 CPC for amendment. After filing of reply and having heard counsel for the parties, application for amendment was allowed vide order dated 11.05.2017 (Annexure P4). Thereafter another application for leave to contest was filed by the respondent on 15.05.2017 (Annexure P7).

It is argued with vehemence that as the respondent earlier filed application for leave to contest on 14.07.2016, he was not competent to file another application for leave to contest merely because the petitioner made formal amendment in the application for ejectment. Another submission made by counsel is that as application for leave to contest dated 14.07.2016 is barred by limitation having not been filed within 15 days from the date of service of the respondent, the same is liable to be dismissed only on the ground of being barred by limitation. In addition, it is argued that the Rent Controller has no jurisdiction to condone delay by invoking Section 5 of the Limitation Act, 1963 when otherwise, there is no provision for condoning delay in filing application for leave to contest either under the Act or The Punjab Rent Act, 1995.

I have heard counsel for the petitioner and perused the paper book particularly various annexures appended with the petition.

Be that as it may, it is undisputed position of the case that initially the petitioner filed application under Section 13-B of the Act seeking ejectment of the respondent by claiming himself to be an NRI landlord and sought eviction on the ground of personal necessity. The respondent-tenant filed the application for leave to contest but before that

application could be decided by the Rent Controller, the petitioner filed the application for amendment of the petition in order to convert the petition under Section 13-B of the Act to that of under the Punjab Rent Act, 1995. The application for amendment was allowed by the Rent Controller on 11.05.2017 meaning thereby that the petitioner withdrew his claim to seek ejection of the respondent under the provisions of the Act, therefore, he cannot derive any advantage to his contention if the earlier application for leave to contest was not filed within the prescribed period of limitation under the Act. As the respondent filed application for leave to contest on 15.05.2017 after the petitioner was allowed to amend the petition on 11.05.2017, the petitioner cannot be heard to say that merely because the amendment relates back to the date of petition, application for leave to contest filed on 15.05.2017 is barred by limitation. If such a contention of the petitioner is accepted, it would amount to taking away a valuable right of the respondent to seek leave to contest merely because the petitioner has been allowed to convert the petition filed under one Act to another Act. In this view of the matter, I do not find an error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

14.02.2018
mohan bimbra

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