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

**1. CR-2004-2009 (O&M)
Decided on: 06.03.2020**

SUDARSHAN KUMAR AND ANOTHER

.....Petitioners

V/S

BALWANT SINGH @ BANT SINGH AND ANOTHER

.....Respondents

**2. CR-2005-2009 (O&M)
Decided on: 06.03.2020**

M/S LOVAL PRINTERS AND ANOTHER

.....Petitioners

V/S

BALWANT SINGH @ BANT SINGH AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. M.L. Sarin, Sr. Advocate with
Ms. Himani Sarin, Advocate for the petitioners
(In both the petitions)**

**Mr. Sunil Chadha, Sr. Advocate with
Mr. Divanshu Jain, Advocate for respondent No. 1.
(In both the petitions)**

ANIL KSHETARPAL, J. (Oral)

**By this order, two revision petitions bearing CR Nos.2004 and
2005 of 2009 shall stand disposed of.**

**The tenants-petitioners have filed two separate revision
petitions against a common impugned order. The respondent-landlord filed**

a petition under Section 13 (B) of the East Punjab Urban Restriction Act, 1949 (hereinafter to be referred as “the 1949 Act”) praying for delivery of immediate possession of the tenanted premises. Section- 13 (B) of the 1949 Act was added by the legislature in the year 2001. Section 13 (B) of the 1949 Act reads as under:-

“Section 13-B of the 1949 Act:-

Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian:-

-(1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:

Provided that a right to apply in respect of such a building under this Section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building

under this Section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.”

Section-18 A of the 1949 Act lays down the procedure for the Rent Controller to be followed which reads as under:-

“Section 18-A of the 1949 Act:-

Special procedure for disposal of applications under Section 13-A or Section 13-B:- (1) Every application under section 13-A or section 13-B shall be dealt with in accordance with the procedure specified in this section.

(2) After an application under section 13-A or section 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II.

(3) (a) The summons issued under sub-section (2) shall be served on the tenant as far as may be in accordance with the provisions of Order V of the First Schedule to the Code of Civil Procedure, 1908. The Controller shall in addition direct that a copy of the summons be also simultaneously sent by registered post acknowledgement due addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and that another copy of the summons be affixed at some conspicuous part of the building in respect

whereof the application under section 13- A or section 13-B has been made.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article and an endorsement is made by a process server to the effect that a copy of the summons has been affixed as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as he deems fit, is satisfied about the correctness of the endorsement, he may declare that there has been a valid service of the summons on the tenant.

(4) The tenant on whom the service of summons has been declared to have been validly made under subsection (3), shall have no right to contest the prayer for eviction from the [residential building or scheduled building and/or non residential building], as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord [or the owner, who is a non resident Indian] in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of

the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grand- child or widowed daughter-in-law of such specified landlord [or the owner, who is a non resident Indian] from obtaining an order for the recovery of possession of the [residential building or scheduled building and/or non-residential building], as the case may be, under [section 13-A or section 13-B].

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the date on which the leave granted to the tenant to contest and shall hear the application from day-to-day till the hearing is concluded and application decided.

(7) Notwithstanding anything contained in this Act, the Controller shall while holding an inquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any [residential building or scheduled building and/or non residential building, as the case may be] made by the Controller in accordance with the procedure specified in this Section:

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect

thereto as it thinks fit.

(9) Save as otherwise provided in this section, the procedure for the disposal of an application for eviction under [section 13-A or section 13- B] shall be the same as the procedure for the disposal of applications by the Controller”

In the present case, an application alongwith affidavit as required for grant of leave to contest was filed within the prescribed time, however dismissed by the learned Rent Controller.

The landlord prays for immediate possession on the ground that he wishes to start a business of sale, purchase and manufacture of furniture.

In the application for leave to contest, it was pointed out that landlord has already recovered possession for adjoining shops by filing the petition under Section 13 of the 1949 Act and same are lying vacant.

An application for leave to contest was also filed on various other grounds.

In these cases, if any detailed order is passed, it is likely to prejudice the interest of one party or the other. In the present case, the landlords have not disclosed that they have already taken the possession of adjoining shops. It is also not the case of the landlords that the aforesaid shops are not in their possession. It is also not in dispute that first floor of the tenanted premises is in the possession of the bank against which no eviction petition has been filed.

Keeping in view the aforesaid facts, this Court is of the considered view that the tenants, in the facts and circumstances of the present case, are entitled to leave to contest so as to enable them to lead

their evidence and prove their cases. In the application for leave to contest certain material facts have been asserted which require adjudication.

Keeping in view of the aforesaid facts, the impugned orders passed by the learned Rent Controller in both the petitions are set aside. Learned Rent Controller is requested to proceed with the case after grant of leave to contest.

Needless to observe that the Rent Controller, proceeds with the rent petition in accordance with mandate of Section 18-A (6) of the 1949 Act. It is clarified that observation made by this Court would not prejudice the case of any of the party and the learned Rent Controller would decide the case uninfluenced by this order.

Both the parties through their counsel are directed to appear before the Rent Controller on 01.04.2020

In view of the above both the revision petitions are disposed of.

All the pending miscellaneous applications, if any, are disposed of, in view of the above said judgment.

06.03.2020
monika*

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No