

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1627-2017(O&M)
Date of decision: 10.02.2020

Ram Bilas

.....Petitioner

Versus

Amrik Singh Bedi

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Ms. Rupinder Kaur Thind, Advocate for the petitioner

Mr. Rakesh Chopra, Advocate for the respondent

ANIL KSHETARPAL, J.

The tenant-petitioner has filed the present revision petition assailing the correctness of order passed by learned Rent Controller, Phagwara dated 9.1.2017 while dismissing application filed by the tenant seeking leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the '1949 Act').

At the outset it must be noticed that the respondent-landlord has filed a petition seeking ejectment of the tenant under Section 13-A of the 1949 Act with assertion that he is owner of the shop and such shop is required for his bona fide need as he wants to run a business of confectionery from the premises in dispute. The landlord claimed that since he has retired on 8.4.2015 from the office of Sub Registrar, Phagwara as Junior Assistant, therefore, he is entitled to maintain the petition under Section 13-A.

At this stage, it would be significant to note that a special provision has been added under Section 13-A of the 1949 Act for the specified landlords enabling them to seek eviction of their tenant by following a summary procedure. Section 13-A of the 1949 Act is extracted as under:-

“Section 13-A. Right to recover immediate possession of residential or scheduled building to accrue to certain persons:- Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of **his residential building or scheduled building**, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such

specified landlord and in the case of death of such widow or widower, a child or a grand-child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death, shall be entitled to make an application under this Section to the Controller:-

(a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, within one year of such commencement.

(b) in the case of death of such specified landlord, after such commencement but before the date of his retirement, within one year of the date of his death;

(c) in the case of death of such specified landlord, after such commencement and the date of his retirement, with one year or the date of such retirement;

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be which belonged to such specified landlord at the time of his death shall accrue to the applicant.

Provided further that nothing in this section shall be so construed as conferring a right, on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts;

Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord or as the case may be, the widow, widower, child, grand-child or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may

extend such time so as not to exceed three months in the aggregate.

Explanation:-For the purposes of this section, the expression “retirement” means termination of service of a specified landlord otherwise than by resignation.”

Section 18-A of the 1949 Act lays down the procedure for the Rent Controller to decide such petitions. Section 18-A of the Act, 1949 is extracted as under:-

“18-A. 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 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 of 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 sub-section (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, grandchild or the 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.”

This Court has heard learned counsel for the parties at length and with their able assistance has gone through the order passed by the learned Rent Controller. On the one hand, learned counsel for the tenant-petitioner has submitted that the petition under Section 13-A was not maintainable with respect to a non-residential building particularly when the alleged requirement of the landlord is also for being used for non-residential purpose whereas on the other hand, learned counsel for the respondent-landlord has defended the order passed while relying upon a judgment passed in the case of **Dr. Madan Lal vs. Rattan Singh'** 2010 (2) RCR (Rent) 276.

At this stage, it is relevant to note that some Courts have developed a practice of extracting headnote/caption of the judgment as projected by editors of the law journals. Such captions/headnotes are not the judgments of the Court. This is basically a summary prepared by editorial staff of a law journal, after examination of the judgment. The editorial staff prepares the short notes/captions as per their understanding. It has been found that there are number of cases where the captions/headnotes of the law report are not true reflection of what has been held in the judgment. Therefore, Courts are advised to carefully read the entire judgment before basing their judgment/order on the caption of the judgment cited. It is expected that the Presiding Judges of the Courts would thoroughly read the judgment cited before proceeding to rely upon.

Now let us examine the respective contentions of the learned counsel for the parties. From the plain reading of Section 13-A of the

1949 Act, it is apparent that a special right under Section 13-A is available to the landlord is with respect to a residential building or scheduled building. This right is not available with respect to a non-residential building. The terms “building”, “non-residential building”, “residential building” and “scheduled building” are defined in Section 2 of the 1949 Act, which are extracted as under:-

“Section 2(a) “building” means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house.

2(d) “non-residential building” means a building being used solely for the purpose of business or trade:

Provided that residence in a building only for the purpose of guarding it shall not be deemed to convert a “non-residential building” to a “residential building”;

2(g) “residential building” means any building which is not a non-residential building.

2(h) “scheduled building” means a residential building which is being used by a person engaged in one or more of the professions specified in the (Schedule I) to this Act, partly for his business and partly for the residence.”

Non-residential building is a building which is being used solely for the purpose of business or trade. Whereas residential building means any building which is not a non-residential building. Scheduled building is concerning a residential building which is being used by a

person engaged in one or more profession specified in schedule 1 of the Act, partly for a business and partly for his residence.

Thus, there is a clear distinction between residential and non-residential building. Further, in the present case, the eviction has been sought for a commercial purpose whereas right under Section 13-A is available if the landlord intends to reside in his residential building or scheduled building. Thus, statutory provision is explicitly clear. There does not appear to be any room for doubt.

Now let us examine the judgments which have been relied upon by learned counsel for the parties. Learned counsel appearing for the respondent has relied upon a judgment passed in the case of Dr. Madan Lal(supra). On a careful reading of the aforesaid judgment, it becomes clear that the Court was examining as to whether after leave to contest has been granted to the tenant and procedure as prescribed under Section 13 of the 1949 Act has been followed. In those facts, it was held that since the tenant has failed to draw attention of the Court to any prejudice caused either procedurily or substantively hence, the Court dismissed the petition. However, as a proposition of law it was never laid down that the petition under Section 13-A of the 1949 Act is maintainable even with respect to non-residential building. A “ratio decidendi” in a judgment is binding and not obiter dicta. In the case of Dr. Madan Lal (supra) it is not even observed as a obiter dicta that such petition under Section 13-A of the 1949 Act is maintainable seeking eviction of a tenant from a non-residential building.

On the other hand, learned counsel for the petitioner has

relied upon a judgment passed by Division Bench in case of '**Vinod Kumar Jain vs. M/s Harindera Scientific Works**' 2012 (1) RCR (Rent) 36. No doubt, the aforesaid judgment is concerning a parallel provision in Haryana Urban (Control of Rent and Eviction) Act, 1973 however, the provisions of the 1949 Act were also considered and the distinction between the 1949 Act and Haryana Urban (Control of Rent and Eviction) Act, 1973 was noticed in para 12 which reads as under

“12. Before we consider the provisions of the Act, we may notice that the provisions of the parent Act i.e East Punjab Urban Rent Restriction Act, 1949 as amended by Punjab Act No. 2 of 1985 conferred summary right of eviction to a “specified landlord” only in respect of a residential building or a scheduled building. The provisions of Section 13-A of the Punjab Act is complete Code in itself i.e the grounds of eviction and the procedure. While interpreting the provisions of the Punjab Act, this Court in numerous judgments have taken the view that the right of eviction is available only in respect of a residential building or a scheduled building, which is also a residential building. In the Haryana Act, the expression “specified landlord” is not used and that the Section 13-A of the Act provides for summary right of eviction but is not an independent right of eviction. Such right of eviction is by reference to the

provisions of Section 13(3) (a)(i) of the Act.

Therefore, the provisions of Section 13(3)(a)(i) of the Act, as interpreted by the Hon'ble Supreme Court have to be considered while considering the scope of summary right of eviction conferred under Section 13-A of the Act.”

Further, various Benches have also held that the petition under Section 13-A of the Act cannot be filed with respect to a non-residential building if the building is required for a non-residential purpose. Reference in this regard can be placed on '**Gurcharan Singh vs. Gurnam Singh**' 2007(1)RCR (Rent)232 and '**Sudarshan Kumar Bhatia vs. Dharam Pal Sharma**' 2009 (1) RCR (Rent)279.

Keeping in view the aforesaid facts, the revision petition is allowed. The order of eviction is set aside.

10.02.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No