

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4286 of 2014 (O&M)

Date of Decision: 31.01.2020

Krishan Lal Dua

... Petitioner(s)

Versus

Shander Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Mandeep Singh Sachdev, Advocate
for the petitioner(s).

Mr. Saurav Bhatia, Advocate
for Mr. S.S.Rangi, Advocate
for the respondent.

Anil Kshetarpal, J.

The tenant/petitioner has filed the present revision petition assailing the order passed by the learned Rent Controller, Jalandhar rejecting an application for leave to contest the eviction petition, filed in an eviction petition by the respondent-landlord under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the Act”).

At the outset, it is appropriate to notice that Section 13-B of the Act enables the Non-Resident Indians (a separate category created) to recover immediate possession of the residential building or scheduled building and/or non-residential building provided he/she/they fulfil the conditions specified in the Act, which is extracted as under:-

“13-B. 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 subsection 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 Act lays down the procedure for disposal of applications filed under Section 13-A or Section 13-B of the Act. Sub Section (4) of Section 18-A of the Act provides that a tenant would have no right to contest the prayer for eviction filed by the owner of the building unless he files an affidavit stating the grounds on which he seeks to contest the application seeking his eviction and successfully obtains a leave from the Court of the learned Rent Controller. The Hon'ble Supreme Court, in ***Baldev Singh Bajwa v. Monish Saini 2005(12) SCC 778***, has laid down that a mere assertion on the part of the tenant would not be "sufficient to rebut strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine". The Court went on to hold that the leave to contest should not be granted unless the tenant makes out a strong case for leave to contest.

As noticed above, in the present case, an application for grant of leave to contest filed by the petitioner-tenant was dismissed by the learned Rent Controller.

For the last four years, the revision petition was kept pending on the ground that the landlord holds a British Passport being a British citizen, therefore, he does not come within the definition of "Non Resident Indian". However, now at the time of final hearing, aforementioned aspect has not been pressed.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the documents filed as also the

record requisitioned from the Rent Controller.

Learned counsel for the petitioner has contended as under:-

- I) The petition under Section 13-B of the 1949 Act, cannot be filed through a power of attorney;
- II) There are two buildings. The landowner has filed four different petitions on same ground. He, hence, submitted that the landlord is only entitled to eviction of one tenant from one building under Section 13-B of the 1949 Act.
- III) Previous petition filed by the landlord under Section 13-B of the 1949 was dismissed for non-prosecution on 22.11.2008, hence, second petition under the same provision is not maintainable.

On the other hand, learned counsel appearing for the respondent has pointed out that Section 13-B of the Act does not debar filing of the petition through a power of attorney holder. He submitted that once a person has been appointed as attorney through a duly executed power of attorney, the petition is deemed to have been filed by the owner himself. He further submitted that the tenants did not seek leave to contest on aforesaid ground, hence, the tenant cannot be permitted to raise the aforesaid arguments. He further submitted that the entire building is one unit constructed on plots No.3 & 4 which consists of five shops on the ground floor and equal number of shops constructed on the first floor. The landlord is owner of two shops on the ground floor and two shops on the first floor, which are all part of one and same building. He further drew attention of the Court to the definition of

“building” as defined in Section 2(a) of the Act which lays down that the

building means any building or part of any building let out for any purpose. He, hence, submitted that the landlord is entitled to seek eviction of all the tenants for one building as interpreted by the Hon'ble Supreme Court. He further submitted that the petitioner in para 6(e) of the petition filed under Section 13-B has specifically disclosed that the previous petition was dismissed for non-prosecution. He has further drawn attention of the Court to the order passed by the learned Rent Controller on 20.11.2008. A reading of the aforesaid order shows that the previous petition was dismissed under Order IX Rule 8 CPC because the counsel for the owner failed to deposit the process fee. Hence, he submitted that the second petition under Section 13-B is not barred.

Now let us examine the first argument of learned counsel for the petitioner. Learned counsel for the petitioner failed to draw attention of the Court to any restriction/prohibition/bar for the land owner to file a petition under Section 13-B of the Act through its power of attorney holder. Every person has a right to appoint an agent for any purpose except in cases where the act required to be performed is personal in character or because of a public office held by him, he is debarred from getting it done through a power of attorney or it is an act involving fiduciary obligation. The power of attorney is in essence based on law of agency. Subject to above mentioned exceptions, the agent is authorized to take steps whatever a principal himself can take. The execution of power of attorneys in the country are regulated by the Power of Attorney Act, 1882. This is a pro-independence Act which was amended in the year 1982. The aforesaid Act does not debar filing of a plaint or a petition under the Rent Act through a

power of attorney holder. It will be noted here that the filing of the petitions through power of attorney is well recognized practice and in absence of any prohibition or restriction or mandatory requirement of presentation of the petition in person, it would not be appropriate to hold that petition under Section 13-B of the 1949 Act cannot be filed through power of attorney.

Now let us examine the next argument of learned counsel for the petitioner. It would be noted here that the word “building” has been defined in Section 2(a) of the Act. It is apparent from reading thereof that the building means any building or a part of building. Hence, the definition of “building” includes the entire building as also a part of a building. In the present case, the learned Rent Controller has found that all the premises in possession of the various tenants are part of the same building and, therefore, covered by the definition of a building. Hence, the landowner is entitled to maintain the various petitions filed against various tenants of the same building.

Now let us examine the next argument of learned counsel for the petitioner. In first blush, the argument of learned counsel for the petitioner appears to be attractive on casual reading of the provision, however, on closure scrutiny found to be without substance. On careful reading of Section 13-B (extracted above), it is apparent that proviso to sub-Section (1) deals with the aforesaid point. What has been provided is that a Non-Resident Indian owner has a right to apply in respect of such a building after a period of five years from the date of becoming the owner of such a building and shall be available only once during his life time. On careful reading of the provisions, it becomes clear that an owner has a right to apply

in respect of such a building and such right is available only once during his life time. Sub Section (2) provides that the owner has to make a choice if he or she or they has/have let out more than one residential building or scheduled building and/or non-residential building from each category of buildings. Literally, on conjoint reading of the provisions, it is apparent that an owner has been given right to avail the benefit under this special provision once during the life time of an owner. However, this provision cannot be read in the manner as is being suggested by the learned counsel for the petitioner. It is not in dispute that the previous petition filed under Section 13-B by the landlord was dismissed for non-prosecution under Order 9 Rule 8 CPC. Although, strictly the provisions of the Code of Civil Procedure are not applicable to the proceedings under the Act, however, the broader principles of the Code of Civil Procedure would be applicable. As per the Code of Civil Procedure, second petition/suit on the same cause of action is maintainable if the previous suit or petition was dismissed in default in the absence of both the parties.

Still further, a right to apply cannot be read with “once during the life time of such an owner”. The proviso has been segregated in two parts. First part provides that an owner has right to apply only with respect to the building owned by him for the last five years before filing the petition under Section 13-B of the Act. Whereas second part provides that such right is available only once during the life time of such an owner. The argument of learned counsel for the petitioner is liable to be rejected on two counts, the first petition was never adjudicated upon merits. Secondly, a right to apply under Section 13-B of the Act has not been restricted to only once.

The distinction has to be made between a right to apply and order on merits, whether allowed or dismissal of the eviction petition has been passed in the first petition. If the owner has already availed a right under Section 13-B once during the life time, he certainly cannot file a second petition or avail the right once again. However, once the previous petition has been dismissed for non-prosecution and there is no bar to the maintainability of the second petition, it would not be appropriate to hold that an owner is debarred from filing a second petition. In the present case, first petition was dismissed on 24.11.2008 as the owner did not file a registered cover with an acknowledgment due for service of notice on the tenant. Hence, second petition would not be barred.

Further, before interpreting a statutory provision, it is necessary to read the provision in entirety while keeping in view the scheme of the Act. Section 13-B was inserted by Punjab Act No. 09 of 2001. Sub Section (2) of Section 13-B provides that a Non-Resident Indian is entitled to file a petition under Section 13-B by selecting one building of each category i.e. residential or scheduled and/or non-residential buildings. Thus, it is obvious that if such an owner is owner of more than one building in a particular category then he has option or right to elect/select one building from each category for the purpose of availing right under Section 13-B of the Act. Now in that context, if the proviso to Section 13-B is read, it would become apparent that the legislature has made a provision or in other words, enabled such Non-Resident Indian owners to apply in respect of such a building only once during the life time. If the intention of the legislature was to restrict a Non-Resident Indian owner to apply once in life time irrespective of the fact

that first petition is dismissed in default, it would have clearly provided in the Act. The golden rule interprets a Statute is to assign meaning to each word used therein and thereafter, harmonize the same so as to give effect to the object sought to be achieved. Keeping in mind the aforesaid goal, if the proviso is read, to me it means that a right to apply cannot be read in conjunction with the word “once” as is sought to be argued. The proviso to Sub-Section (1) of Section 13-B is in the context of a building owned. The proviso to Section 13-B (1) in substance lays down that Non-resident owner can avail such right after a period of five years from the date of becoming owner only once during his/her/their life time.

In view of the aforesaid discussion, there is no substance in the arguments of learned counsel for the petitioner.

Keeping in view the aforesaid facts, there is no ground to interfere. Hence, dismissed.

(Anil Kshetarpal)
Judge

January 31, 2020
“DK”

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