

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

**Civil Revision No.4336 of 2017(O&M)
and other connected matters
Date of Order:13.03.2020.**

Harish Kumar Bansal and another

...Petitioners

Versus

Kanwal Thakar Singh

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arshdeep Bhullar, Advocate,
for the petitioners (in CR-4336 and 4341-2017)

Mr. Ranjit Singh Ghuman, Advocate,
for the petitioner (in CR-4543-2017)

Mr. Ashwani Kumar Chopra, Sr. Advocate,
with Mr. Divanshu Jain, Advocate,
for the petitioner(s) (in CR-6760-2017 and CR-107-2016)

Mr. Vikas Bahl, Sr. Advocate, with
Mr. Nitish Garg, Advocate,
for the petitioners (in CR-6761-2015 and
CR-6762-2015).

Mr. Phool Chand Dhiman, Advocate,
for the petitioners (in CR-7410-2015)

Mr. M.L.Sarin, Sr. Advocate, with
Ms. Himani Sarin, Advocate
for the respondent.

ANIL KSHETARPAL, J.

By this order, Civil Revision Nos.4336, 4341, 4543, 6760 of 2017, 107 of 2016, 6761, 6762 of 2015 and 7410 of 2015 shall stand disposed of. In all these petitions, the order passed by the learned Rent Controller declining leave to contest to the respective tenants-petitioners on various grounds has been challenged. Landlady is common in all the petitions and the petitioners are tenants of various portions of a building situated in Sector 17, Chandigarh.

Urban tenancies in Union Territory, Chandigarh are regulated by the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act'), The legislature by Punjab Act No.9 of 2001, dated 31.05.2001 inserted Sections 13-B and Section 18-A in the 1949 Act. Sections 13-B and 18-A of the 1949 Act are extracted as under:-

"13-B. Right to recover immediate possession of residential building or scheduled building and or non-residential building 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 or required for his or her use, or for the use of any one ordinary 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.

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 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 acknowledgment 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 acknowledgment 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 urporting 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 5 [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 6 [or the owner, who is 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 7 [or the owner, who is non resident Indian] of such specified landlord 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 I3-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] 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.”

Recently a 3 Judges Bench of the Hon'ble Supreme Court in **Ram Krishan Grover and others vs. Union of India and others** has upheld notification dated 09.10.2009 extending the Amendment Act to area falling in the Union Territory of Chandigarh by an executive action in exercise of powers under Section 87 of the Reorganisation Act, 1966 in Civil Appeal No.8597 of 2019, decided on 14.11.2019.

This Court has heard learned counsels for the parties at length and with their able assistance gone through the respective paper books.

At this stage, it would not be appropriate to elaborately discuss the merits and de-merits of the case lest it prejudices the case of any of the parties. At this stage, only issue which requires consideration is “whether the tenants are entitled to leave to contest the application for eviction, so as to enable the tenants to contest the case with opportunity to lead evidence or not?

Sub-section 4 of Section 18-A of the 1949 Act enables the

learned Rent Controller to grant leave to contest the application for eviction on filing of an affidavit stating the grounds on which the tenants seeks to contest the application for eviction.

In the present case, keeping in view the detailed arguments of learned counsels for the parties, this Court is of the considered view that the leave to contest deserves to be granted to the tenants on following brief grounds:-

- (1) As per the proviso to sub-Section (1) of Section 13-B of the 1949 Act, the right to apply in respect of such a building is available to the Non Resident Indian only once during the life time of such an owner. In Civil Revision Nos. 4336, 4341 and 4543 of 2007, 3 petitions under Section 13-B of the 1949 Act have been filed against the tenants who are the petitioners herein on 18.12.2015. Whereas remaining eviction petitions were filed against 5 tenants on 24.04.2013 and application for leave to contest was declined/rejected by the learned Rent Controller on 10.09.2015. Thus, it is doubtful as to whether subsequent petition under Section 13-B of the 1949 Act with respect to a part of the building would be maintainable?

This Court in the judgment passed in **Balvir Chand vs. Jatinder Singh** (Civil Revision No.3811 of 2018) has elaborately examined the aforesaid issue.

- (2) Some of the co-owners have already filed an application before the learned Rent Controller that they are not

interested in evicting the tenants.

- (3) A similar eviction petition was filed seeking ejectment of another tenant of the same building-Renu Banerjee, leave to contest was allowed which was challenged before this Court. The respondent-owner, thereafter withdrew the petition filed under Section 13-B with leave to file a fresh petition. However, petition under Section 13 of the 1949 Act has been filed and not under Section 13-B of the 1949 Act. In a petition under Section 13 of the 1949 Act, tenants gets an opportunity to contest the petition.
- (4) Respondent has also filed ejectment application on the same day under Section 13 of the 1949 Act against some of the tenants of the building.

Under Section 13 of the 1949 Act, ejectment of the tenant can be sought by the landowner on various grounds specified therein. In a petition under Section 13 of the 1949 Act, the tenant is not required to seek leave to contest. The tenant is permitted to contest the petition in accordance with law. Thus, eviction of one of the tenant of the premises is sought by filing a petition under Section 13 and not under Section 13-B of the 1949 Act.

Various applications have been filed during the pendency of the present revision petitions for the production of various documents as well as for determining the amount of mesne profit for use and occupation of the premises, the same shall stand disposed of in terms of the main order.

Keeping in view the aforesaid brief reasons, these petitions are

allowed. Leave to contest applied by each of the tenant is granted. As provided under Section 18-A of the 1949 Act, the learned Rent Controller shall commence the hearing on day to day basis and conclude the same positively within 6 months.

Parties through their respective counsels are directed to appear before the respective Courts of Rent Controller on 26.03.2020.

13th March, 2020
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No