

CR-5962-2007 (O&M).  
CR-3310-2012 (O&M) and  
CR-3311-2012 (O&M)

-1-

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

1. CR-5962-2007 (O&M)  
Date of decision : 19.03.2020

Krishna Ornaments ...Petitioner

Versus

Phera Singh ...Respondent

2. CR-3310-2012 (O&M)  
Date of decision : 19.03.2020

M/s Standard Watch Company ...Petitioner

Versus

Phera Singh (since deceased) through his LRs ...Respondent

3. CR-3311-2012 (O&M)  
Date of decision : 19.03.2020

M/s Ashoka Garments ...Petitioner

Versus

Phera Singh (since deceased) through his LRs ...Respondent

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.**

Present: Mr. Puneet Jindal, Sr. Advocate with  
Mr. Tajinder Singh, Advocate for the petitioner  
(In CR-5962-2007)

Mr. Divanshu Jain, Advocate for the petitioner  
(In CR Nos.3310 and 3311 of 2012)

Mr. Vikas Bahl, Sr. Advocate with  
Mr. Nitish Garg, Advocate for the respondent.

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**ANIL KSHETARPAL, J.**

By this judgment, three revision petitions bearing CR No.5962 of 2007 and CR Nos.3310 and 3311 of 2012 shall stand disposed of.

Issue which requires consideration is common. The respondent-landlord as well as the larger building from which the eviction of the tenants has been ordered in all those cases by the Rent Controller are also common.

The question argued by the learned counsel for the parties very passionately is “Whether orders of eviction passed in favour of the landlord on the ground of personal bona fide requirement in a rent eviction petition would come to an end, if the landlord dies during the pendency of appeal or revision?”.

Some facts are required to be noticed.

The landlord had filed three eviction petitions against three different tenants under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred to as “the 1949 Act”) for delivery of immediate possession on the ground that the owner is a Non-Resident Indian and wants to come back and settle in the country of his origin. The applications filed by the tenants under Section 18-A of the 1949 Act for grant of leave to contest have been declined by the Rent Controller while passing separate orders. These eviction petitions under Section 13-B of the 1949 Act were filed by the owner in the year 2007.

Although, the Act provides for expeditious disposal of the petitions so as to give immediate possession to the landlord, still 13 years have elapsed and the landlord, who has now died, could not get possession of the tenanted premises during his lifetime.

The State of Punjab added Section 13-B by Punjab Act No.9 of 2001 in the 1949 Act, which 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 to be followed by the Rent Controllers, while adjudicating the petitions filed under Sections 13-A and 13-B of the 1949 Act. Section 18-A of the 1949 Act is extracted as under:-

**“Section 18-A of the 1949 Act:-**

***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 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, 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”*

A tenant against whom a petition under Section 13-A or 13-B has been filed is required to file an affidavit and seek leave to contest the application for eviction from the Controller, failing which order of eviction is immediately passed.

This Court has heard learned counsel for the parties and with their able assistance gone through the various orders passed by the learned Rent Controller.

On the one hand, learned counsels representing the tenants-petitioners have submitted that in view of the subsequent death of the owner, the personal necessity of the owner has also come to an end and, therefore, the revision petitions should be allowed, whereas on the other hand, learned counsel representing the owner contend that once the order

of eviction has been passed by the Rent Controller, subsequent death of the landlord/owner would not have any adverse effect on the order of eviction. He submitted that the rights of the parties crystallized on the day the eviction petition was filed before the Rent Controller. He further contended that unless, it is proved that because of the subsequent development, the ground of eviction gets altogether wiped out or the entire basis of the claim ceases to exist, the delay in disposal of the petitions and suits cannot adversely affect the rights of the owner. He further submitted that once the order of eviction has been passed in favour of the landowner, it becomes part of his estate and, therefore, death of the landowner would not adversely affect the rights of the legal heirs. He further drew attention of the Court to the reply filed by the owner to the application filed by the tenants seeking leave to contest wherein it has been pleaded that the landowner and his family members have expertise in Hotel Management and they now want to come back and open a hotel in the tenanted premises. It was further pleaded that there is great opportunity to open a hotel as the demised premise is located just outside the Railway Station Bhogpur. Hence, he contended that the requirement as pleaded is not only for the personal requirement of the landowner but for his family members.

On critical analysis of the arguments of the learned counsel for the parties, this Court now proceeds to examine the question in detail.

At the outset, it must be noticed that Section 13-B of the 1949 Act

enables a Non-Resident Indian owner to file a petition to recover immediate possession of a building for his/her own use or for the use of anyone ordinarily living with and dependent on him or her. Thus, Section 13-B of the 1949 Act itself recognizes that an owner can not only apply for recovery of immediate possession of building for his/her use but also for the use of anyone ordinarily residing with and dependent on him or her. On the other hand, Section 13 provides grounds of eviction available to the landlord against a tenant in normal cases. Under Section 13(3)(a) (i) of the 1949 Act, the words used are that “he requires for its own occupation”. Hon'ble the Supreme Court has interpreted the word “he” to include requirement of his immediate family members. The reason behind the aforesaid interpretation was to give effect to the provisions of the Act in a purposeful manner. It is for this reason that the legislature while subsequently adding Section 13-B has not only used the word “his or her use” but also included the requirements of other family members also.

The effect of death of the owner/landlord during the pendency of appeals and revision has been drawing attention of the Courts from time to time. The Courts have been making efforts to deal with the aforesaid challenge in accordance with law. First judgment brought to the notice of this Court is in **Phool Rani (Smt) and others Vs. Sh. Naubat Rai Ahluwalia, (1973) 1 SCC 688.** In the aforesaid judgment, Hon'ble the Supreme Court while taking note of various aspects in para 13, divided such cases in three categories which is extracted as under:-

*“13. Several decisions were cited before us but those falling within the following categories are to be distinguished-*

*(i) cases in which the death of the plaintiff occurred after a decree for possession was passed in his favour; say, during the pendency of an appeal filed by the unsuccessful tenant;*

*(ii) cases in which the death of the decree- holder landlord was pleaded as a defence in execution proceedings; and*

*(iii) cases in which, not the plaintiff but the defendant-tenant died during the pendency of the proceedings and the tenant's heirs took the plea that the ejectment proceedings cannot be continued against them.”*

After carving out three categories, it was held that once the case falls in Category No.1 extracted above, then, subsequent death of the landowner would not affect the rights which have already accrued in favour of landlord/landowner. Para 14 is extracted as under:-

*“14. Cases of the first category are distinguishable because the decisions therein are explicable on the basis, though-not always so expressed, that the estate is entitled to the benefit which, under a decree, has accrued in favour of the plaintiff and therefore the legal representatives are entitled to defend further proceedings, like an appeal, which constitute a challenge to that benefit.”*

Second judgment to which reference has been made is in **Shantilal Thakordass and others Vs. Chimanlal Maganlal Telwala, (1976) 4 SCC 417.** In the aforesaid case, father of three appellants was owner of the suit premises. He was also a partner in a partnership firm.

The suit was filed by son of the original owner alongwith two others. The eviction was sought for use of the premises in the business of the partnership firm in which he was partner. The trial Court allowed the petition. However, both the sides went up in appeal. During the pendency of the appeals, Thakordass died. In those circumstances, it was held after discussing the judgment in the case of Phool Rani (Supra) as under:-

*“In our considered opinion in face of the wordings of [section 14\(1\)\(e\)](#) of the Delhi Act, the view expressed in Phul Rani's case, as stated above, is not correct. If the law permitted the eviction of the tenant for the requirement of the landlord "for occupation as a residence for himself and members of his family",' then the requirement was both of the landlord and the members of his family. On his death the right to sue did survive to the members of the family of the deceased landlord. We are unable to take the view that the requirement of the occupation of the members of the family of the original landlord was his requirement and ceased to be the requirement of the members of his family on his death. After the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and the occupation of the other members of the family. Many of the substituted heirs of the deceased landlord were undoubtedly the members of his family and the two married daughters and the children of a deceased daughter in the circumstances could not be held to be not members of the family of the deceased landlord.”*

On casual reading thereof, it appears that the judgment passed by Hon'ble the Supreme Court in the case of Phool Rani (Supra), has been reversed. However, on careful reading thereof, it is apparent that the judgment passed in the case of Phool Rani (Supra) was never reversed in entirety.

This is exactly what has been explained by the Hon'ble Supreme Court in a subsequent judgment i.e. judgment in **Shakuntla Bai and others Vs. Narayan Dass and others, (2004) 5 SCC 772**. Hon'ble Supreme Court after discussing the previous judgments in the cases of Phool Rani (Supra) and Shantilal Thakordass (Supra), held that the bona fide requirement of the landlord has to be examined as on the date of institution of the proceedings before the first Court and if a decree of eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will not make difference as his heirs are entitled to defend the estate. The Supreme Court also held that the judgment passed in the case of Phool Rani (Supra) has not been overruled. The operative part of the judgment passed reads as under:-

*“10. The effect of death of a landlord during the pendency of the proceedings has been considered in several decisions of this Court. In **Smt. Phool Rani v. Naubat Rai Ahluwalia 1973 RCR (Rent) 364 (SC)**, the landlord filed an ejectment application under **Section 14(1)(e)** of the Delhi Rent Control Act and eviction of the tenant was sought on the ground that the premises were required by the plaintiff "for occupation as a residence for himself and*

*members of his family". The Additional Rent Controller dismissed the application on a preliminary ground that the notices to quit were not valid, without examining the case on merits. The plaintiff died during the pendency of the appeal preferred by him and his heirs were substituted. The case was remanded and the Rent Controller passed an order of eviction. In appeal a contention was raised that the right to sue did not survive to the heirs of the plaintiff, which was rejected by the Rent Control Tribunal but was accepted in appeal by the High Court. This court held that different result may follow according to the stage at which the death occurs. One of the situations considered in para 13 of the reports is as under :*

*"13.(i) cases in which the death of the plaintiff occurred after a decree for possession was passed in his favour, say, during the pendency of an appeal filed by the unsuccessful tenant."*

*10.1 With regard to this category of cases, it was held that the estate is entitled to the benefit which, under a decree, has accrued in favour of the plaintiff and, therefore, the legal representatives are entitled to defend further proceedings, like an appeal, which constitute a challenge to that benefit. Even otherwise this appears to be quite logical. In normal circumstances after passing of the decree by the trial Court, the original landlord would have got possession of the premises. But if he does not and the tenant continues to remain in occupation of the premises it can only be on account of the stay order passed by the appellate Court. In such a situation, the well known maxim 'actus curiae neminem gravabit' that 'an act of the Court shall prejudice no man' shall come into*

*operation. Therefore, the heirs of the landlord will be fully entitled to defend the appeal preferred by the tenant and claim possession of the premises on the cause of action which had been originally pleaded and on the basis whereof the lower Court had decided the matter and had passed the decree for eviction. However in regard to the case before the court it was held that the requirement pleaded in the ejectment application on which the plaintiff founded his right to relief was his personal requirement and such a personal cause of action must perish with the plaintiff. On this ground it was held that the plaintiff's right to sue will not survive to his heirs and they cannot take the benefit of the original right to sue.*

*11. In [Shantilal Thakordas v. Chimanlal Maganlal Telwala](#) 1976 (4) SCC 417, a larger Bench overruled the decision rendered in *Phool Rani v. Naubat Rai Ahluwalia* (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. **The ratio of this decision by larger Bench does not in any manner affect the view expressed in *Phool Rani* (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are***

*entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of Shantilal Thakordas (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In Kamleshwar Prasad v. Pradumanju Agarwal, 1997(1) RCR (Rent) 591 (SC): 1997(4) SCC 413 it was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In Gaya Prasad v. Pradeep Srivastava, 2001(1) RCR (Rent) 221 (SC) : 2001(2) SCC 604 it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bonafide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in G.C. Kapoor v. Nand Kumar Bhasin, 2002 (1) RCR (Rent) 407 (SC) : 2002(1) SCC 610. Therefore, the legal position is well settled that the bonafide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is*

*passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate.*

12. *The High Court in the present case no doubt noticed the decisions rendered in Phool Rani (Supra) and Shantilal Thakordas (supra), but chose to rely upon a decision by two Judge Bench rendered in [P.V. Papanna v. K. Padmanabhaiah, 1994\(1\) RCR \(Rent\) 504 \(SC\) : 1994 \(2\) SCC 316](#). In this case the trial Court had passed a decree for eviction which was challenged by the tenant by filing a revision in the High Court which was dismissed but four years time was granted to vacate the premises. The special leave petition preferred by the tenant was also dismissed. During the pendency of this period of four years, the landlord died leaving a will in favour of his brothers. When the tenant did not vacate the premises after the expiry of four years, the appellants applied for execution of the decree. The execution petition was allowed by the trial Court and order for eviction was passed but the order was reversed by the High Court in a revision filed by the tenant on the ground that the cause of action did not survive on the death of the landlord and the appellants (legatees-claiming as legal representatives of the deceased landlord) could not execute the decree for eviction which was purely personal. After examining several earlier decisions, the Court held as under :*

*"18. For the foregoing discussion, we must hold that events which take place subsequent to the filing of an eviction petition under any [Rent Act](#) can be taken into consideration for the purpose of adjudication until a decree is made by the final court determining*

*the rights of the parties but any event that takes place after the decree becomes final cannot be made a ground for reopening the decree. The finality to the dispute culminating in the decree cannot be reopened by the executing court for readjudication on the ground that some event or the other has altered the situation. As a corollary thereto it must also be held that once the decree becomes final it became a part of the estate of the landlord and therefore the appellants as legal representatives of the deceased landlord are entitled to execute the same."''*

Other judgments referred to are in **Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LRs, (1997) 4 SCC 413, Usha P. Kuvelkar and others Vs. Ravindra Subrai Dalvi, (2008) 1 SCC 330,** interpreting the law on the similar lines. The attention of this Court has also been drawn to the judgment passed in **Smt. Darshna Devi Vs. Kewal Krishan, 2015 (2) RCR (Rent) 285.**

Keeping in view the judgments passed by Hon'ble the Supreme Court, it is apparent that once the Statute itself recognizes the necessity of not only the owner but also of the persons ordinarily residing and dependent on him or her, death of the landowner during the pendency of the revision petition would not adversely affect the rights of his heirs. As noticed in the present petitions, the order of eviction has already been passed and the landowner has died during the pendency of the present revision petitions.

This aspect can be examined from another perspective. While hearing revision petitions, which of course is a statutory right under sub-Section 5 of Section 15 of the 1949 Act, this Court is required to examine legality and correctness of the order which has been passed by the Rent Controller. The Statute uses the words that the High Court may call for and examine the record relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order in relation thereto as it may deem fit. In other words, the jurisdiction of the High Court while hearing revision petitions against the order of eviction is limited and subsequent event unless it completely wipes away or removes the entire basis of the claim, the High Court in exercise revisionary jurisdiction would be slow to reverse the order of eviction on this ground.

With these observations, this Court does not find any good ground to interfere.

Accordingly, all these revision petitions are ordered to be dismissed.

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

**19.03.2020**

*Pawan*

**(ANIL KSHETARPAL)**  
**JUDGE**

**Whether speaking/reasoned:-**  
**Whether reportable:-**

**Yes/No**  
**Yes/No**