

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-725-2019 (O&M)
Reserved on: 23.09.2020
Pronounced on: 08.10.2020

Ashwani Kumar

....Petitioner

Versus

Sandeep Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.A.N.Walia, Advocate, for the petitioner.

Mr.A.P.S.Sandhu, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

Challenge in the present revision petition, filed by the petitioner-tenant is to the orders dated 16.10.2018, passed by the Rent Controller, Amritsar and upheld in appeal filed under Section 52 of the Punjab Rent Act, 1995 (for short, the 'Act') on 04.01.2019, whereby the eviction order passed on the ground of having not filed any affidavit along with the leave to contest application, has been upheld.

Counsel for the tenant has vehemently submitted that under the Act, the legislature has provided that a Non-Resident Indian has to return to India for permanent residence under Section 24(3) of the Act and then only he is entitled for recovery of immediate possession of a residential or non-residential premises let out by him on or prior to the commencement of the Act which are required for his or her own use. It is submitted that in the absence of such necessary ingredients having been pleaded in the eviction petition filed, the leave to defend should have been granted and the eviction order was not justified. It is, accordingly, submitted that as per the provisions of Section 13-B of the East Punjab Urban Rent Restriction Act,

1949, the words were 'Returned to India' and therefore, the judgments relied upon by the Rent Controller passed under the earlier Act could not be applicable as the words 'permanent residence' had not been used.

Counsel for the landlord, on the other hand, has submitted that the necessary ingredients had been pleaded that the landlady was trying to settle permanently in Amritsar and even an affidavit had been filed by the landlady to this extent before the Rent Controller. It was accordingly, argued that no specific ground was taken as per the requirement under Section 38(7)(b) of the Act which provided that an affidavit had to be filed by the tenant stating the grounds on which he seeks to contest the application for eviction. Leave had to be obtained from the Rent Authority and in default in not obtaining the said leave, the statement made by the landlord in the application for eviction was deemed to be admitted by the tenant and the applicant was entitled for an order of eviction on the grounds aforesaid. It was further submitted that as per Sub-clause (c) the affidavit filed by the tenant should disclose such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises and the Rent Authority would then only give the tenant leave to contest. Thus, once the affidavit itself had not been filed, the tenant had rightly been ordered to be evicted.

A perusal of the impugned order would go on to show that both the Courts below have come to the conclusion that in the application filed under Section 24(3) of the Act, the landlady had stated that she is an NRI and is residing in USA. The property had been let out by her mother

to the present petitioner and she had become a co-owner of the portion and being a non-resident Indian was entitled to get a order of eviction under Section 24(3) of the Act. The requirement was on account of frequent visits to India along with her children and grand-children and she had to depend upon her other sisters and relatives for her stay in India, which was causing inconvenience. It was submitted that the applicant was trying to settle permanently in Amritsar and therefore the present application had been preferred for possession of the portion in question.

The petitioner-tenant had put in appearance on 27.08.2018 and mentioned no specific ground for leave to defend and neither filed any affidavit in support of the application.

It was, accordingly, held that no specific ground had been taken on which the petitioner-tenant wanted to contest the petition and neither any affidavit had been filed in support of the application which was an implied admission on behalf of the tenant. Same view was taken by the Appellate Authority while dismissing the appeal on 04.01.2019.

A perusal of the petition filed under Section 24(3) of the Act would go on to show that the landlady had specifically stated that she is trying to settle permanently in Amritsar and being a co-owner after the death of her father and being the landlady, required the property so that she along with her children and grand-children had not to be dependent upon other relatives. The petition was duly supported by an affidavit of the landlady dated 16.08.2018 executed at Amritsar itself. Relevant

portion of the petition reads as under:

“1. The Applicant is co-owner and landlord of the portion as shown in the site plan and being non-resident Indian she is entitled to get it vacated the portion of the property in question under section 24(3) of the Punjab Rent Act, 1995 as amended upto date (Punjab Act no.13 of 2012 w.e.f. 30.11.2013) from the respondent. The respondent is tenant under the applicant and the applicant bona-fide requires the portion in question for her own use an occupation as the applicant frequently visit to India herself or along with her children and grandchildren and she has to depend upon her other sisters and relatives for her stay in India, thus causing her inconvenience. Moreover, the applicant planning to settle permanently in Amritsar thus, the instant ejectment application is being filed by her for immediate possession of the portion in question because of legal right has been given to the applicant under section 24(3) of the Act IBID. The applicant wants to reside in the portion fallen under her share. The applicant wants to return to Amritsar and the property in question is the only place to reside in Amritsar and as such, the immediate possession of property in question needed by the applicant and for this very purpose it is required that an eviction order with immediate effect may be passed in favor of the applicant without any delay.”

A cursory application for leave to contest dated 04.09.2018 was filed by the petitioner-tenant. Admittedly, the said application was not supported by any affidavit. The application does not show as to what was the specific ground or reason on which account the tenant wished to contest the eviction petition. Same reads as under:

“1. That the above noted Petition is pending in this Honble Court and is fixed for 7.9.2018.

2. That the present respondent is filing the present Petition for

granting permission to contest the Petition, for which necessary permission may kindly be granted to respondent/applicant.

3. That there are sufficient reasons for acceptance of present prayer of respondent/applicant.

4. That the present application is being filed within period of limitation.

It is, therefore, prayed that present application may kindly be granted to respondent/applicant to contest the Petition in the interest of justice, equity and fair play.”

The provisions of Section 38(4) and (7) provide the procedure to be followed by the Rent Authority, which read as under:

“38. Procedure to be followed by Rent Authority. -

xxxx xxxx xxxx

(4) The Rent Authority shall issue summons in relation to every application under this Act in the form specified in Schedule III to this Act.

xxxx xxxx xxxx

(7) (a) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (d) or clause (e) or clause (g) of sub-section (2) of section 20 or under section 21, or under section 22 or under section 23 or under section 24 or under section 31 shall be dealt with in accordance with the procedure specified in this sub-section.

(b) The tenant on whom the summons is duly served in accordance with sub- section (5) in the Form specified in Schedule III to this Act shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Authority as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord 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 on the ground aforesaid.

(c) The Rent Authority shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises.

(d) Where leave is granted to the tenant to contest the application, the Rent Authority shall ordinarily commence the hearing of the application within seven days of the grant of such leave and shall provide day to day hearing and shall dispose of the application within thirty days of starting of such hearing failing such commencement of hearing or disposal of application within such time, the Rent Authority shall inform the [Appellate Authority] the reasons therefor.

(e) Where the leave to contest under clause (c) is denied to the tenant he may file an application for review before the Rent Authority within ten days of such denial and the Rent Authority shall endeavour to dispose of such application within seven days of its filing.

(8) Every application made to the Rent Authority shall be heard as expeditiously as possible and, subject to the provisions of sub-section (6) and (7), endeavour shall be made to conclude the hearing and to dispose of the application within six months of its being filed.”

A reading of the above-said provision would go on to show that the procedure to be followed by the Rent Authority while dealing with an application under Section 24, which is duly provided. As per Section 38(4)&(7)(b), the tenant should be served summons in accordance with sub-section (5) in the form specified in Schedule III. The form of summons-Schedule III reads as under:

“Schedule III

[See sub-section (4) of section 38]

Form of Summons

(Name, description and place of residence of the tenant)

Whereas Shri _____ has filed an application (a copy annexed) _____ on the grounds specified in section _____

You are hereby summoned to appear before the Rent Authority within () days of the service hereof and file a reply within _____ days in default whereof the matter shall be heard and disposed of *ex parte*.

You are to obtain the leave of the Rent Authority to contest the application for eviction on the ground

_____ in default whereof the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said premises.

Leave to appear and contest the application may be obtained on an application to the Rent Authority supported by an affidavit as is referred to in clause (b) of sub-section (7) of section 38.

Given under my hand and seal of the Rent Authority or Additional Rent Authority;

This _____ day of _____ 20 .

(Seal)

Rent Authority/
Additional Rent Authority.

To be filled in

Strike off portion not applicable.

Notes :-

For cases covered under clauses (d) and (e) of sub-section (2) of section 20 and sections 21, 22, 23, 24 and 31 indicate fifteen days and for other cases indicate thirty days.

For only cases covered under clause (a) of sub-section (8) of Section 38.”

A perusal of the above would go on to show that to contest the petition for eviction, application for leave is to be specific stating the grounds on which he seeks to contest the petition for eviction. He has to obtain leave from the Rent Authority and in default of his appearance or obtaining such leave, the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant, who shall be entitled to get an order of eviction on the grounds aforesaid. The Rent Authority, thus, under sub-section (c) is to give leave to contest if the affidavit discloses such facts as would disentitle the landlord from

obtaining an order of eviction of the premises. Sub-section (d) further provides that such applications have to be heard in a time-bound frame if leave is to be provided and endeavor is to be made to conclude the proceedings in 6 months under Sub-section (8). Thus, it is a special procedure prescribed for petitions filed under Section 24(3) pertaining to recovery of immediate possession to a widow, a handicapped person, old persons, freedom fighters and Non-Resident Indians. Section 24 reads as under:

“[24. Right to recover immediate possession of premises to accrue to widows, handicapped persons, old persons freedom fighters and non-resident Indians. - (1) Where the landlord is,-

(a) a widow and the premises let out by her, or her husband; or

(b) a handicapped person and the premises let out by him or her; or

(c) a person who is of the age of sixty-five years or more and the premises let out by him or her; or

(d) a freedom fighter, his widow or dependent son or daughter and the premises let out by him or her;

is required by him or her for his or her family or for any one ordinarily living with him or her for residential or non-residential use, he or she may apply to the Rent Authority for recovery of immediate possession of such premises.

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

Explanation I. - For the purposes of this section "handicapped person" shall mean a person who is, as being an assessee, entitled for the time being to the benefits of deduction under

section 80U of the Income Tax Act, 1961.

Explanation II. - The right to recover possession under this section shall be exercisable only once in respect of each for residential and for non-residential use.

(3) Where an owner is a non-resident Indian and returns to India for permanent residence, he or she may apply to the Rent Authority for recovery of immediate possession of residential or/and non-residential premises let out by him or her on or prior to the commencement of this Act, which are required for his or her use, or for the use of any one ordinarily living with and dependent on him or her.

Explanation. - "non-resident Indian" means a person of Indian origin, who is either permanently or temporarily settled outside India, in either case-

- (i) for or on taking up employment outside India; or
- (ii) for carrying on a business or vocation outside India; or
- (iii) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period.]”

A Three Judges Bench of the Apex Court in **M/s Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal** 1982 (3) SCC 270, while examining the provisions of the Delhi Rent Control Act, 1958, came to the conclusion that the affidavit of the tenant is the only relevant document at the stage of granting leave and has to be filed. It was, accordingly, held that the Rent Controller was to give the tenant leave to contest if the affidavit filed by the tenant discloses such facts which would disentitle the landlord from obtaining the order of recovery of possession. It was held that there was a purpose upholding the enactment and the construction adopted must be meaningful and innovative. The legislation was introduced to mitigate the hardship of the

landlord who was in bona fide requirement of the premises and therefore, a summary procedure had been provided that the tenant shall have to plead the grounds specifically in the affidavit to the application for leave to contest. The purpose was to prevent taking of frivolous pleadings for protracting the trial and defence of negative character. Relevant paras reads as under:

“12. The manifest error committed in the procedure followed at present by the Controller under Section 25B may be pointed out. The tenant has to file an affidavit stating the grounds on which he seeks to contest the application. The Controller may accept an affidavit in reply if landlord chooses to file one. So far there is no difficulty. There then follow affidavit in rejoinder and sur-rejoinder and the documents are produced and when this procession ends the Controller proceeds to examine the rival contentions as if evidence produced in the form of the affidavits untested by cross-examination and unproved documents are before him on the appreciation and evaluation of which he records an affirmative finding that the facts disclosed in the affidavit of tenant are not proved and therefore leave to contest should be refused. In our opinion, this is wholly impermissible. The regular trial required to be held by a Court of Small Causes as contemplated by sub-sec. 6 read with sub-sec. 7 of [section 25B](#) is not to be substituted by affidavits and counter-affidavits at the stage of considering tenant's affidavit filed for obtaining leave to contest the petition under sub-sec. 4. Sub-[section 6](#) enjoins a duty on the Controller where leave is granted to the tenant to contest the application to commence the hearing of the petition as early as practicable and sub-[section 6](#) prescribes procedure to be followed as if the Controller is a Court of Small Causes. The Court of Small Causes follows the summary procedure in the adversary system where witnesses are examined and cross-

examined and truth of averment is decided on the touchstones of cross-examination. A speedy trial not conforming to the well-recognised principle of arriving at truth by testing evidence on the touchstone of cross-examination, should not be easily read into the provision at a stage not contemplated by the provision unless the statute positively by a specific provision introduces the same. The scheme of [section 25B](#) does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by subsection (4) of [section 25B](#).

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19. It is indisputable that while examining the affidavit of the tenant filed under Section 25B (4) for the purpose of granting or refusing to grant leave to contest the petition the landlord who has initiated the action has to be heard. It would follow as a necessary corollary that the landlord may controvert the averments made in the affidavit of the tenant but the decision to grant or refuse leave must be based on the facts disclosed in the affidavit. If they are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible. It is not the stage of proof of facts, it is only a stage of disclosure of facts. Undoubtedly, the rules of natural justice apart from the adversary system we follow must permit the landlord to contest affidavit filed by the tenant and he can do so by controverting the same by an affidavit. That would be an affidavit in reply because tenant's affidavit is the main affidavit being treated as an application seeking leave to contest the petition. But, the matter should end there. Any attempt at investigating the facts whether they appear to be proved or disproved is beyond the scope of sub-s. (5) of Section 25B. Viewed from this angle the decision in Mohan Lal's case rendered by the Full Bench of the Delhi High Court is far in excess of the requirement of Section 25B (5) and the

view taken therein does not commend to us.

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23. What then follows. The Controller has to confine himself indisputably to the condition prescribed for exercise of jurisdiction in sub-section (5) of [section 25B](#). In other words, he must confine himself to the affidavit filed by the tenant. If the affidavit discloses such facts- no proof is needed at the stage, which would disentitle the plaintiff from seeking possession, the mere disclosure of such facts must be held sufficient to grant 'leave because the statute says on disclosure of such facts the Controller shall grant leave'. It is difficult to be exhaustive as to what such facts could be but ordinarily when an action is brought under [section 14\(1\)](#) proviso (e) of the Act whereby the landlord seeks to recover possession on the ground of bona fide personal requirement if the tenant alleges such facts as that the landlord has other accommodation in his possession; that the landlord has in his possession accommodation which is sufficient for him; that the conduct of the landlord discloses avarice for increasing rent by threatening eviction; that the landlord has been letting out some other premises at enhanced rent without any attempt at occupying the same or using it for himself; that the dependents of the landlord for whose benefit also possession is sought are not persons to whom in eye of law the landlord was bound to provide accommodation; that the past conduct of the landlord is such as would disentitle him to the relief of possession; that the landlord who claims possession for his personal requirement has not cared to approach the Court in person though he could have without the slightest inconvenience approached in person and with a view to shielding himself from cross-examination prosecutes litigation through an agent called a constituted attorney. These and several other relevant but inexhaustible facts when disclosed should ordinarily be deemed to be sufficient to grant leave.”

This Court in **Sham Lal Khera Vs. Sudarshan Kumar Rai 2011 (4) PLR 656** and **Amarjit Singh Vs. Amarjit Kaur 2012 (4) PLR 726**, has held that leave to contest has to be within parameters raised under Section 18-A(4) & (5) of the 1949 Act on the filing of the application along with the affidavit. Once the requisite affidavit had not been filed by the petitioner-tenant, he cannot now turn around and submit that the application for leave to contest is to be per-se allowed and therefore, the findings recorded by the Rent Authority and the Appellate Authority are justified. It was the bounden duty of the tenant to follow the procedure prescribed under the provisions of Section 38(7) and having failed to do so, he cannot now turn around and submit that leave to contest should have been granted as the claim for permanent residency is missing in the pleadings under Section 24(3). The Rent Authority could only examine the tenant's entitlement to contest within the limited aspect whether he had a right to defend the claim by the disclosure of such facts as would disentitle the landlord from obtaining an order for recovery of possession. The tenant's right to contest the application in summary proceedings would be restricted to the parameters of Section 24(3) and he cannot widen the scope of his defence. It was for him to raise the said issue before the Rent Authority in the said format and having failed to do so within the prescribed period, the benefit of summary eviction had necessarily to follow.

The legislative intent of summary procedure was noticed by the Apex Court in **Baldev Singh Bajwa Vs. Monish Saini (2005) 12**

SCC 778 while examining the provisions of Section 13-B & 18-A of the 1949 Act that the Controller was to examine the necessary facts and particulars to support the plea in the affidavit itself. The relevant portion of the judgment reads as under:

“19. From the aforesaid decisions the requirement of the landlord of the suit accommodation is to be established as genuine need and not a pretext to get the accommodation vacated. The provisions of [Sections 18-A\(4\)](#) and (5) concede to the tenant's right to defend the proceedings initiated under [Section 13-B](#) showing that the requirement of the landlord is not genuine or bona fide. The legislative intent for setting up of a special procedure for NRI landlords is obvious from the legislative intent which has been deliberately designed making distinction between the ordinary landlords and special category of landlords. The Controller's power to give leave to contest the application filed under [Section 13-B](#) is restricted by the condition that the affidavit filed by the tenant discloses such fact as would disentitle the landlord from obtaining an order for recovery of possession. It is needless to say that in the summary proceedings the tenant's right to contest the application would be restricted to the parameters of [Section 13-B](#) of the Act. He cannot widen the scope of his defence by relying on any other fact which do not fall within the parameters of [Section 13-B](#). The tenant's defence is restricted and cannot go beyond the scope of the provisions of the Act applicable to the NRI landlord. Under [Section 13-B](#) the landlord is entitled for eviction if he requires the suit accommodation for his or her use or the use of the dependant, ordinarily lives with him or her. The requirement would necessarily to be genuine or bona fide requirement and it cannot be said that although the requirement is not genuine or bona fide, he would be entitled to the ejectment of the tenant nor it can be said that in no circumstances the tenant will not

be allowed to prove that the requirement of the landlord is not genuine or bona fide. A tenant's right to defend the claim of the landlord under [Section 13-B](#) for ejectment would arise if the tenant could be able to show that the landlord in the proceedings is not NRI landlord; that he is not the owner thereof or that his ownership is not for the required period of five years before the institution of proceedings and that the landlord's requirement is not bona fide.

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22. The golden rule of construction is that when the words of legislation are plain and unambiguous, effect must be given to them. The basic principle on which this rule is based since the words must have spoken as clearly to legislatures, as to judges, it may be safely presumed that the legislature intended what the words plainly say. The legislative intent of the enactment may be gathered from several sources which is, from the statute itself, from the preamble to the statute, from the statement of objects and reasons, from the legislative debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where they may be allowed. Record may be had from legislative history and latest legislation also. But the primary rule of construction would be to ascertain the plain language used in the enactment which advances the purpose and object of the legislation. No doubt the legislative intent in enacting [Section 13-B](#), is to provide for immediate possession of the accommodation owned by the NRI but it cannot be assumed that the legislature wants the NRI landlord/ owner, to get the possession of the accommodation from the tenant even if he does not require it and the need pleaded is proved to be a mere pretext to get the accommodation vacated. Had that not been the intention of the legislatures, the phrase 'required' by the NRI landlord would not have been used in [Section 13-B](#). The classified landlords are given the benefit of summary trial under [Section](#)

18-A of the Act. The summary trial is in two parts. Sub-s. 4 provides that after the service of summons the tenant has no right to contest the prayer for eviction from the residential building, or schedule 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 provided in Sub-s. 5 of Section 13-B to contest the matter. If the tenant defaults to appear in pursuance of summons or when he does not get leave to contest, the controller shall presume the statements made by the NRI in his petition have been admitted by the tenant and pass an order of eviction. This eventuality is contemplated when a tenant does not appear in pursuance of the summon issued and served or where the leave to contest has not been granted by the Controller.”

Thus, the orders passed by the Rent Controller and the Appellate Authority do not suffer from any infirmity which would require a re-look under the supervisory jurisdiction of this Court. Resultantly, the present revision petition is dismissed. The tenant is given 3 months time to vacate the premises.

08.10.2020
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*