

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

CR-1996-2016 (O&M)

Date of decision : 20.02.2020

Sushil Kumar (since deceased) through his LRs and another

...Petitioners

Versus

Poonam Prashar

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sham Lal Bhalla, Advocate for the petitioners.

Mr. Jagdish Manchanda, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The tenants-petitioners have filed the present revision petition against the order passed by the learned Rent Controller declining leave to contest.

Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the 1949 Act”) enable a Non-Resident Indian to recover immediate possession of residential or scheduled and/or non-residential building from the tenants. Section 18-A of the 1949 Act, prescribes the procedure for dealing with such petitions. Section 13-B and Section 18-A of the 1949 Act are extracted 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:-

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”

The landlady-respondent filed the present petition on 30.10.2015 seeking eviction of the respondent under Section 13-B of the 1949 Act. An application for leave to contest filed under Sub-Section 4 of Section 18-A of the 1949 Act has been declined by the Court.

Learned counsel for the petitioner contends that the petitioner

has purchased the property from her father vide sale deed dated 23.12.2005, registered on 02.01.2006 whereas remaining property was sold by the father to someone else. Hence, he submitted that the sale is only to file the present petition. He further submitted that the petitioner has not returned to India and, therefore, the petition is not maintainable.

On the other hand, learned counsel for the respondent while drawing attention of the Court to Section 13-B of the 1949 Act, has submitted that the landlord/landlady/owner can file the petition under Section 13-B only if he/she is owner for a period of five years before filing of the petition. In the present case, such condition stands fulfilled as the sale deed is of the year 2005 whereas the petition was filed in the year 2015. He further submitted that the petitioner is interested in coming back to the country of her origin and wants to settle here. It was submitted that the petition filed under Section 13-B of the 1949 Act was supported by an affidavit.

On analysis of the arguments of learned counsel for the parties, this Court is of the considered view that there is no substance in the present revision petition.

First argument of learned counsel does not have any substance because registered sale deed is of the year 2005. The respondent waited for a period of 10 years before filing the petition. Thus, she fulfills the requirement as provided in Section 13-B of the 1949 Act.

With regard to sale of other property by the father, the right accruing in favour of the petitioner would not be defeated. Still further,

the tenants have failed to show that how the bona fide requirement as pleaded by the landlady does not exist.

By now it is well settled that it is not necessary for the owner to first come back to India and thereafter file a petition and wait for the orders of the Court which may take years. The mere intention to return to home country supported by an affidavit is sufficient. It is not the requirement of law that the landlord before filing the petition under Section 13-B of the 1949 Act must return for good to India. Hence, there is no ground to interfere.

Accordingly, the present revision petition is dismissed.

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

CM-21451-CII-2016

Dismissed as not pressed.

20.02.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No