

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.2045 of 2014(O&M)

Date of decision: 18.08.2022

Harvinder Singh

..Petitioner

Versus

Avtar Krishan and others

..Respondents

C.R.No.2046 of 2014(O&M)

Harvinder Singh

..Petitioner

Versus

Avtar Krishan and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Sarin, Sr. Advocate, with
Ms. Himani Sarin, Advocate
for the petitioner.

Mr. Animesh Sharma, Advocate
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

The petitioner herein has filed two revision petitions. In Civil Revision No.2045 of 2014, he assails the correctness of the order passed by the Rent Controller refusing him leave to contest the petition filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the 1949 Act'). Whereas, in Civil Revision No.2046 of 2014, he questions the correctness of the consequential order of his ejectment.

Under Section 13-B of the 1949 Act, a non resident Indian owner can pray to recover immediate possession of one building during his lifetime. This is an opportunity granted to the Non Resident Indian (NRI) to recover the immediate possession under the special provision. Section 18-A

of the 1949 Act provides that the tenant shall be entitled to apply for leave to contest a petition filed under Section 13-B of the 1949 Act. It makes out a strong ground which would ultimately disentitle the owner from getting the order of eviction. In the present case, the tenancy commenced on 15.03.1954. The petition under Section 13-B of the 1949 Act was filed in the year 2011.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

The learned senior counsel representing the petitioner contends that the respondent no.1 was co-owner to the extent of 1/8th share and since there is a preliminary decree of partition for partitioning the shop, therefore, he has no right to maintain the petition under Section 13-B of the 1949 Act as the petitioner herein is the tenant of the complete shop not the 1/8th share. He in support of his argument relies upon the judgment passed in **Ventaka Reddy and others vs. Pethi Reddy, 1963 AIR (Supreme Court) 992**. The learned senior counsel further contends that the tenant while filing the application for leave to contest made out a strong ground for grant of leave to contest as the respondent owns various other properties.

Per contra, the learned counsel representing respondent no.1 submits that a preliminary decree does not result in the complete division of the property by metes and bounds. He submits that no final decree for partition has yet been passed. While relying upon the judgment passed in **Kewal Krishan vs. Mohan Singh, 2006 (2) R.C.R.(Civil) 442**, he contends that a preliminary decree will not result in separation of shop between the co-owners. He further contends that the respondent while filing the petition disclosed various other properties which are in the occupation of various

other tenants but the property in question is most suitable for his needs.

This Court has analyzed, evaluated and appreciated the arguments of the learned counsels representing the parties.

A preliminary decree for partition of the joint property determines the respective shares of the various co-owners. Such preliminary decree is required to be followed by a final decree in which the joint property is divided by metes and bounds. A preliminary decree is only a step towards the passing of a final decree. The preliminary decree is only final to the extent of declaring the respective shares to which the each co-sharer is entitled to.

This court has carefully read the judgment passed in **Ventaka Reddy and others (supra)**. In para 1, the Court framed question which required adjudication. In this particular case, the Court was considering the meaning to be given to the expression final decision existing in the first proviso to Section 28 of the Provincial Insolvency Act, 1920.

The learned senior counsel representing the petitioner relies upon the observations made in para 6, to contend that a preliminary decree passed in a partition suit is not a tentative decree. No doubt, the aforesaid statement of law is correct, however, a preliminary decree is conclusive only as regards the declaration of respective shares of the co-owners. At the time of passing the final decree, the Court is required to divide the property by metes and bounds and it is only thereafter, there will be the division of the property and the owners will cease to be the co-owners. In view of the aforesaid facts, the first argument of the learned senior counsel representing the petitioner cannot be accepted.

The second argument of the learned counsel is with respect to

the fact that the respondent is the owner of various other commercial properties and an application filed by the petitioner before the Rent Controller to direct the respondent to disclose the aforesaid facts was wrongly dismissed.

The aforesaid argument is required to be examined in the context of Section 13-B of the 1949 Act, which is 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.

(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."

On a careful reading of Section 13-B (1) and (2) of the 1949 Act, it is evident that the statute itself envisages that the owner shall be entitled to file a petition under Section 13-B, which is a special provision, only with respect to one building and only once during the life time. The

respondent while filing the petition has claimed that the tenanted premises is suitable to his needs. The respondent has filed a detailed reply to the application for leave to contest disclosing all the relevant facts. Hence, the dismissal of the application by the Rent Controller to direct the respondent to disclose his various other properties does not suffer from any error.

It is evident that Section 13-B of the 1949 Act provides for immediate possession to the owner. The petition was filed in the year 2011. After a passage of 11 years, the respondent has failed to get possession.

In any case, the scope of interference while hearing a revision petition under Section 18 (8) of the East Punjab Urban Rent Restriction Act, 1949, is limited. In absence of perversity or substantive error, this court does not have the jurisdiction to interfere.

Consequently, finding no merit, both the revision petitions are dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

August 18, 2022

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**(ANIL KSHETARPAL)
JUDGE**

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>