

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7388-2015

Decided on:-12.09.2022

M/s JAY CEE Press Pvt. Ltd and othersPetitioners

vs.

Mohinder Paul Chamdal and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Manuj Nagrath, Advocate, for the petitioners.
Mr. Amit Dhawan, Advocate, for the respondents.

HARKESH MANUJA J.

By way of present revision petition, the petitioners have challenged the order dated 17.01.2015, whereby an application for grant of leave to defend filed on their behalf has been dismissed by the learned Rent Controller, Jalandhar.

2. Facts leading to the present petition are that a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "Act") was filed by respondents No.1 to 3 regarding tenanted premises being portion of property No. ER-40, Hind Samachar Street, Near PNB Chowk, Jalandhar, also having Municipal No. B-IX-1/249/4, known as Sudama Niwas, Pucca Bagh, Jalandhar City. In the said petition, landlord-respondents No.1 to 3 sought eviction on the ground of their personal necessities, stating that they normally visit India but have no permanent place to live, as such, require the premises in question alongwith 1st floor for their personal use and occupation for residence.

3. An application for leave to contest was filed on behalf of the petitioners seeking permission to contest eviction petition *inter-alia* on the following grounds:-

- (i) *Previously, an eviction petition was filed at the instance of parents of respondents No.1 to 3, which got dismissed in default on 04.08.2009, the same was never got restored either by the parents or by respondents No.1 to 3, as such fresh petition was not maintainable;*
- (ii) *earlier two eviction petitions were filed by the parents of respondents No.1 to 3 against two others tenants, to whom leave to contest was allowed by the learned Rent Controller, vide order dated 17.07.2008;*
- (iii) *the petitioners could not invoke Section 13-B of the Act as they are not owners of the premises for the last 5 years prior to the institution of the eviction petition in the year 2011 having inherited the property after the death of their father, somewhere in the year 2009.*

4. Respondents No.1 to 3 filed their reply to the application moved by present petitioners. Vide impugned order dated 17.01.2015, the learned Rent Controller, Jalandhar, dismissed the same, declining them the liberty of leave to defend.

5. Challenging the aforesaid order dated 17.01.2015, learned counsel for the petitioners reiterates the grounds taken in the application for leave to contest and submits that once the parents of landlord- respondents No.1 to 3 filed eviction petition under Section 13-B of the Act, which was got dismissed in default, no fresh petition could have been and that they were entitled for restoration of the petition previously filed at the instance of their parents. He further submits that once, the father of respondents No.1 to 3 expired in 2009, they cannot be said to have fulfilled the basic ingredient of Section 13-B of the Act, which requires the landlord to be the

owner of tenanted premises for a period of preceding 5 years as on the date of filing of eviction petition. He also relies upon order dated 17.07.2008, whereby leave to contest was granted in favour of two other tenants.

6. On the other hand, learned counsel for respondents No.1 to 3 argues that the dismissal of previous petition filed at the instance of their parents would not be a bar for invoking Section 13-B of the Act, as the previous petition was never decided on merits. He also contends that as the property has been inherited by way of natural succession from the parents deceased father who himself happened to be an NRI, the inheritance shall continue without disruption even for the purpose of Section 13-B of the Act.

7. Having heard learned counsel for the parties and having gone through the records of the case, I find that the learned Rent Controller, Jalandhar did not commit any error on facts and law while declining the prayer made by the petitioners for leave to defend. The previous eviction petition filed at the instance of parents of respondents No.1 to 3 was never decided on merits as it was merely dismissed in default, the benefit under Section 13-B of the Act could not be said to have been availed. Even otherwise, the previously filed eviction petition was for the personal need of the parents, whereas, by way of present eviction petition, respondents No.1 to 3 have sought eviction of the tenanted premises on account of their own personal necessity i.e. based on a fresh cause of action. Still further, the plea that respondents No.1 to 3 could not be held to be as owners for a period of 5 years preceding the date of filing of eviction petition, has no merits. It is settled proposition of law that the inheritance never remains in abeyance. Once, respondents No.1 to 3 inherit the property from their

father by virtue of natural succession, the ownership shall remain vested in them in continuity and shall relate back to the ownership of their deceased-father. Moreover, as in the present case, the father of respondents No.1 to 3 also happens to be an NRI, the opening of succession after his death may not affect the right of respondents No.1 to 3 to seek eviction as NRI by clubbing the period of ownership of their predecessor/ father, for the purposes of fulfilling the minimum requirement of ownership of five years before institution of the eviction proceedings.

8. The aforesaid reasoning find support from the observations made by a Division Bench of this Court, in case, titled as “**Yogesh Kumar Walia vs. Joginder Singh**” 2012(4) Law Herald 3109 and relevant para 14 thereof, is reproduced hereunder for reference:-

“14. The expression five years from the date of "becoming the owner of such a building" has different connotation in respect of acquiring of right as an NRI for the first time and as legatee of an NRI. The opening of succession will not affect the right of an owner to seek eviction as an NRI by clubbing the period of ownership of the predecessor and the present owner, if both happen to be NRIs. But where the predecessor as in the present case is not an NRI and the legatee seeks benefit of summary eviction then he can avail such right only after a period of five years from the date of becoming the owner of such a building.”

As regards the leave to contest having been granted in favour of two other tenants, vide order dated 17.07.2008, the same may not come to the rescue of the petitioners. A perusal of the order dated 17.07.2008 shows that in the said case, the tenants also raised the plea of having purchased a part of the property vide registered sale deed, whereas, no

such plea has been raised by the petitioners in the present case. No other point has been argued before this Court.

9. In view of the reasoning recorded herein above, I do not find any merit in the present revision petition so as to interfere in the impugned order dated 17.01.2015 passed by the learned Rent Controller, Jalandhar. Accordingly, the petition is dismissed with no order as to costs.

10. Pending application(s), if any, shall also stand disposed of.

12.09.2022
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/ No