

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR NO.5063/2022 (O&M)

Date of decision: November 22 ,2022.

Pritpal Singh

.....Petitioner

Vs.

Sh.Aman Kumar

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Suresh Kumar Arya, Advocate for the petitioner/tenant.
 Mr. Divanshu Jain, Advocate for the respondent/landlord/
 Caveator.

Nidhi Gupta,J.

 This revision petition has been filed by the petitioner/tenant challenging the order dated 5.9.2022 passed by the Rent Controller, Amritsar whereby his application for leave to defend has been dismissed.

 Brief facts are that in January 2001 Kishan Chand, father of the present respondent/landlord had let out the demised premises - the same being describable as 'building No.4265/18, situated in Gali No. 4, Vijay Nagar, Batala Road, Amritsar' - to the petitioner on a monthly rent of Rs.650/-. Since then the petitioner is stated to have been running his small business in this shop 'Electrical Spare Parts' and has been regularly paying the rent. As per

petitioner's own case upon the death of Kishan Chand the petitioner has been regularly paying the rent to the present respondent/landlord.

On 28.9.2021 the respondent filed rent petition being RP/409/2021 under Section 13A of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the 1949 Act') before the Rent Controller, Amritsar, for ejectment of the petitioner *inter alia* on the ground that this shop is required for his bona fide need as after retirement he wants to run a business of Karyana shop from the demised premises. It was stated in the petition that the respondent/landlord had retired from Central Government Department, BSNL on 31.1.2020 and therefore, required this shop for his bona fide need. Notice was issued by the Rent Controller, Amritsar to the present petitioner/tenant for 14.10.2021; whereupon the petitioner/tenant appeared before the Rent Controller and filed an application for leave to defend. Respondent/landlord filed a reply to the application for leave to defend and denied all of the grounds.

The learned Rent Controller after considering all the material on record and pleadings of the parties, dismissed petitioner's application for leave to defend vide impugned order dated 5.9.2022, and held as under:-

“11. The applicant has badly failed to raise any ground in present application on the basis of which leave to contest can be granted in his favour. The applicant has failed to raise any arguable point on the basis of which he can be permitted to contest the present petition under Section 13A of the East Punjab Urban Rent Restriction Act. The present application is having no base and the same is liable to be dismissed. In view of my above discussion, the present application for leave to contest filed by the applicant is not maintainable and same is hereby dismissed”.

It is this order dated 5.9.2022 which has been challenged by way of present revision petition.

Mr. Divanshu Jain, appears on caveat on behalf of the respondent-landlord.

The primary contention of the Learned counsel for the petitioner/tenant is that as per provisions of Section 13A of the 1949 Act right to recover immediate possession is only with regard to a 'residential' or 'scheduled building'. It is submitted that the demised premises is neither a 'residential building' nor a 'scheduled building', and as such Section 13A of the 1949 Act is not applicable; and therefore, the landlord's petition before the Rent Controller was not maintainable. It was further submitted that petition under Section 13A of the 1949 Act cannot be filed with respect to a non-residential building, if building is required for a residential purpose. Even the relationship of landlord/tenant between the parties is disputed by the learned counsel for the petitioner.

In support, counsel for the petitioner placed reliance upon judgments rendered by this Court in **Ram Bilas v Amrik Singh Bedi, 2020(2) RCR (Rent)16; Gurcharan Singh v Gurnam Singh, 2007(1) RCR (Rent) 232; Sudarshan Kumar Bhati v Dharam Pal Sharma, 2009(1) RCR (Rent) 279; Dr.Jagjit Mehta v Dev Brat Sharma, 1988(1) RCR (Rent) 308; and the Hon'ble Supreme Court in Dev Brat Sharma v Dr.Jagjit Mehta, 1990(2) PLR 637.**

No other argument is raised on behalf of the petitioner/ tenant.

Per contra learned counsel for the respondent/landlord appearing on caveat, submits a preliminary objection to the argument made on behalf of the petitioner (to the effect that eviction under Section 13A of the 1949 Act can be sought only against a residential or scheduled building), stating that this ground has not been raised by the petitioner before the learned Rent Controller

in his application for leave to contest. It is submitted that accordingly, this plea is not available to the petitioner at this belated stage. In support of his contention, learned counsel for the respondent relies upon judgment of this Court in **Harjit Singh v Hav. Amb/Assistant, Puran Singh (Retd.) 1991(2) RCR (Rent)480**, wherein it has been held that:

“East Punjab Urban Rent Restriction Act, 1949, Sections 13A and 18A(5)-Specified landlord seeking ejectment of tenant- Tenant filing affidavit seeking leave to contest-Subsequently tenant raised a plea that the landlord was not the owner and the two other persons were the owners- No such contention was raised in the affidavits-Case has to be decided on basis of affidavits and ejectment of tenant ordered.

11.....In fact when the learned counsel for the tenant was confronted with the pleadings of the affidavit, he could only answer by saying that it was a case of inept handling of the matter before the Rent Controller. Be that as it may permission to the tenant to defend the eviction petition has necessarily to be decided in view of the affidavit filed by the tenant before the Rent Controller and if the grounds on which permission is sought in this Court are not mentioned in the affidavit either because of inept handling of the case or otherwise, such permission shall have to be refused”. (Emphasis supplied)

The second contention on behalf of counsel for the respondent is that under Section 18A of the 1949 Act, a special procedure for disposal of applications under section 13 A and section 13 B has been laid out. Ld. Counsel made a specific reference to Sections 18A(5) and 18A(8) of the 1949 Act. In support of his submissions, Ld. Counsel placed reliance upon judgment of this Court in case of **Dr. Madan Lal v Rattan Singh, 2010(4) RCR (Civil) 203**.

Further reliance has been placed by Ld. Counsel for the respondent on **Shamshad Ahmad and others vs. Tilak Raj Bajaj (deceased) through LRs and others, 2008(2) RCR(Rent)346**, as also upon paras 18 and 19 of

judgment in **M/s Trehan Auto Parts v Kuldip Singh Sahi 2010(1) Rent LR 248.**

Learned counsel for the respondent also refers to the site plan of the demised premises to submit that the petitioner's contention to the effect that demised premises is commercial in nature is incorrect, as the site plan clearly shows that it is a residential house with a room, *deori*, bathroom, kitchen etc., and that only a small portion thereof is in possession of the petitioner/ tenant in which he is running a shop.

I have heard learned counsel for the parties. I find merit in the arguments advanced on behalf of learned counsel for the respondent.

First and foremost, it is an established position in law that parties cannot go beyond the pleadings. This is especially true and stringent in case of applications seeking leave to defend. There are plethora of judicial pronouncements holding that the affidavit of the tenant is the only relevant document to be seen by the Controller at the stage of granting leave.

In the present case a perusal of the affidavit/ application for leave to defend filed by the petitioner (Annexure P3) shows that primarily only the following five grounds have been raised therein:

- i) the summons of ejectment petition have not been served upon the tenant on prescribed proforma;
- ii) that provisions of Section 13A of the 1949 Act are not attracted in the case in hand;
- iii) that the provisions of Section 13A of the 1949 Act are not applicable to the present case after the enforcement of the Punjab Rent Act, 1995 (for short the 1995 Act);

- iv) that the ostensible bona fide requirement of the landlord is false as he (landlord) has no experience in running a Karyana shop; and
- v) that the landlord's assertion that he does not own or possess any other property in the urban area is false and untrue.

Clearly, the submission that 'Section 13-A of the 1949 Act is applicable only to 'residential' and 'scheduled buildings'', does not form part of the petitioner's application for leave to defend before the ld. Rent Controller. Accordingly, in my considered view, said ground is not available to the petitioner at this belated stage. In this regard, besides the aforementioned judgment of this Court relied upon by the respondent in case of **Harjit Singh (supra)**, observations made by Hon'ble Supreme Court in case of **Precision Steel and Engineering Works v Prem Deva Niranjana Deva Tayal, (1982) 3 SCC 270**, in para 9 thereof, are applicable:

“.....While examining the question whether leave to defend ought or ought not to be granted the limited jurisdiction which the Controller enjoys is prescribed within the well defined limits and he cannot get into a sort of trial by affidavits preferring one set to the other and thus concluding the trial without holding the trial itself. Short circuiting the proceedings need not masquerade as a strict compliance with sub-section (5) of section 25B. the provision is cast in a mandatory form. Statutory duty is cast on the Controller to give leave as the legislature uses the expression 'the controller shall give' to the tenant leave to contest if the affidavit filed by the tenant discloses such fact as would disentitle the landlord for an order for recovery of possession. The Controller has to look at the affidavit of the tenant seeking leave to contest. Browsing through the affidavit if there emerges averment of facts which on a trial, if believed, would non-suit the landlord, leave ought to be granted. Let it be made clear that the statute is not cast in a negative form by enacting that the Controller shall refuse to give to the tenant leave to contest the application unless the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order etc....”

Accordingly, it is an unequivocally well-entrenched position in law that leave to contest is to be granted by the Controller, only if the affidavit of the tenant discloses such facts as would disentitle the landlord from obtaining recovery of the demised premises. In my considered view, the petitioner's Civil Revision can be summarily dismissed on this short ground itself. However, I shall examine each ground raised by the petitioner.

Ld. Counsel for the petitioner has very vehemently denied his omission and would submit that he has veritably taken the abovesaid plea in para 3(ii) of his application for leave to defend. Para 3(ii) of the leave to defend application states thus: -

“provisions under Section 13-A of the 1949 Act are not attracted in the case in hand and the ejectment application has framed under the said provision of law is legally not maintainable. Even otherwise, only NRI is entitled to file ejectment application under the 1949 Act”.

It is submitted by ld. Counsel that the abovesaid averment has to be construed to mean that right to recover immediate possession u/s 13A is only with regard to a 'residential' or 'scheduled building'. In my view such a construction on the above said averment would be far-fetched, and deserves to be outrightly rejected.

Moving on, even if the petitioner's contention (that relief under S. 13A is limited only to residential and scheduled buildings), was to be accepted, the same would have to be rejected in view of the related statutory provisions; as also the interpretations thereof by way of judicial pronouncements.

It would be helpful at this juncture to look at the relevant provisions

of the 1949 Act.

Section 13A is as follows:

[13-A. Right to recover immediate possession of residential or scheduled building to accrue to certain persons. – Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applies to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract (whether expressed or implied), custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord in the case of death of such widow or widower, a child or a grand-child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this Section to the Controller,-

- (a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 within one year of such commencement,
- (b) in the case of death of such specified landlord, after such commencement but before the date of his retirement, within one year of the date of his death;
- (c) in the case of death of such specified landlord, after such commencement and the date of his retirement, within one year of the date of such retirement.

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant.

Provided further that nothing in this Section shall be so construed as conferring a right, on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts:

Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord or, as the case may be, the widow,

widower, child, grand child or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

Explanation. - For the purpose of this section, the expression “retirement means termination of service or a specified landlord otherwise than by resignation.]

‘Specified landlord’ has been defined in S. 2(hh) of the 1949 Act as follows:

[(hh) “specified landlord” means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State.]

A perusal of the abovesaid provision shows that under Section 13-

A only three ingredients have to be seen namely (a) whether the application under Section 13-A has been filed within one year or not after his retirement; (b) whether certificate is available indicating the date of retirement; and (c) that landlord has filed affidavit to the effect that he does not own and possess any other suitable accommodation in the local area or not in which he intends to reside and he wants possession of accommodation for his own use. In the present case it is not in dispute that all the above three ingredients are satisfied, and accordingly as per law laid down by this Court in **Rajinder Kumar Vs. Kamaljeet Singh 2019 (1) RCR (Rent) 474**, nothing more is required to be seen, and the application of the petitioner-tenant to contest has to necessarily be denied.

Further, the procedure for the right to recover granted in S. 13A, has been comprehensively laid down in S. 18A of the 1949 Act. S. 13A can therefore, not be read in isolation, and has to be read in conjunction with Section 18A, which is reproduced hereinbelow: -

[18-A. Special procedure for disposal of applications under [section 13-A or section 13-B].- 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 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 of 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 acknowledgment 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 statements 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 disposal of applications by the Controller.

A conjunctive reading of the above said provisions, in particular sub-sections (1), (5) and (8) of Section 18A makes it clear beyond doubt that the right to recovery granted under S. 13A is not limited to residential or scheduled buildings only. Section 18A unambiguously broadens the scope of S. 13A by including ‘Any residential building’ and ‘non-

residential building' within its purview. In the considered view of this Court, the Legislative intent in broadening the nomenclature is a most apposite and sagacious inclusion, in order to save the resultant violation of Article 14 if the said provisions were to be limited only to residential building. It is also pertinent that in the Proviso to this Section it is stipulated that this Court in Civil Revision cannot go beyond the scope of Section 18A.

I am supported in my aforestated view by judgment of the Hon'ble Supreme Court in **Harbilas Rai Bansal v State of Punjab (SC) Law Finder Doc Id# 17871** wherein Their Lordships have enunciated the scope of the above said provisions as follows:

“A. East Punjab Urban Rent Restriction Act, 1949, Section 13(3)(a) as amended by Amending Act 29 of 1956 - Non-residential premises - bonafide requirement - Landlord can seek ejectment of tenant from non-residential building on ground that he requires the same for his own use - Amendment made in Section 13(3)(a) by Amending Act 29 of 1956 which deprived the landlords of their right to seek ejectment from non-residential premises struck down as violative of Article 14 of Constitution of India and original provisions of Section 13(3)(a) restored - Classification created by amendment has not reasonable nexus with the object sought to be achieved.

11. The Scheme of the Act, unmistakably aims at regulating the conditions of tenancy, controlling the rents and preventing unreasonable and mala fide eviction of tenants of the residential and non-residential buildings. For the advancement of these objects, tenants are invested with certain rights and landlords are subjected to certain obligations. These rights and obligations are attached to the tenants and the landlords of all buildings, residential or non-residential. None of the main provisions of the Act, to which we have referred, make any serious distinction between residential and non-residential buildings.

16. In **Gian Devi's** case the question for consideration before the Constitution Bench was whether under the Delhi Rent Control Act, 1958, the statutory tenancy in respect of commercial premises was heritable or not. The Bench answered the question in the affirmative. The above quoted observations were made by the Bench keeping in view that hardship being caused to the landlords of commercial premises who cannot evict their tenants even on the ground

of *bonafide* requirement for personal use. The observations of the Constitution Bench "bonafide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial" fully support the view, we have taken, that the classification created by the amendment has no reasonable nexus with the object sought to be achieved by the Act. We, therefore, hold that the provisions of the amendment, quoted in earlier part of the judgment, are violative of Article 14 of the Constitution of India and are liable to be struck-down."

Even this Court in case of **Dr. Madan Lal v Rattan Singh, 2010(4)**

RCR (Civil) 203, has laid down that:

"A. East Punjab Urban Rent Restriction Act, 1949, Section 13-A-Haryana Urban (Control of Rent and Eviction) Act, 1973, Section 13A-Specified landlord-bonafide requirement-A specified landlord whether can seek eviction of tenant from non residential premises on ground of bonafide requirement (yes)-Contention that specified landlord could seek eviction of tenant from residential premises only and not commercial premises- Contention not tenable-Held:-

Landlord can seek eviction of a tenant from a non-residential building on the ground that he requires it for his own use though this is not a ground. 2010(1) RCR 63 (S.C.), 2009 (4) RCR(Civil) 272 (P&H).relied.

13.....If the petition were to be under Section 13A and an argument would have been raised by the learned counsel for the respondent that it is the landlord who had been prejudiced procedurally, then it could be understandable, but is not such a case and it is the petitioner who is making a grievance that the petition having been styled under Section 13A could have only been answered *qua* the premises which were residential in nature. I am afraid, even this plea is a failing plea. To the mind of this Court, after the decision of the Supreme Court in *Harbilas Rai Bansal v. State of Punjab, 1996(1) R.R.R. 69: 1995(2) RCR (Rent) 672 (S.C.)* and also subsequent judgments, the effect of such a distinction between residential and non-residential building stands acutely watered down. In any eventuality, as observed earlier, the petition lingered on for seven years and thereafter before the Appellate Authority for four years. The petitioner was given sufficient opportunities to put forward his case and to meet the objections of the respondent which he failed to do. Not even an iota of evidence was produced by him which could suggest that the plea of the respondent was not *bonafide*. It is in evidence that he retired from service on 30.4.1988 and have no other premises in Amritsar. There is also positive

pleadings and evidence to show that the demised premises belonged to his father which was partitioned *inter se* between the successors. In these circumstances, if the respondent wanted to get the demised premises vacated and that too in the evening of his life, it can hardly be said that need was not *bonafide*.

.....

16. It was then contended by the learned counsel for the petitioner that the demised premises were commercial in nature and the respondent was not entitled to get the same vacated on the ground of personal necessity, but this contention is being noticed only to be rejected. As observed earlier, now in view of the various judicial pronouncements, there is no distinction between residential and commercial premises in so far as the *bonafide* need of a landlord is concerned. In a recent judgment in *Ashok Kumar v. Ved Parkash & Ors.* (supra), the Apex Court held that a landlord can seek eviction of a tenant from a non-residential building on the ground that he requires it for his own use though this is not a ground under the Haryana Rent Act.” (Emphasis supplied)

From a reading of the above said pronouncements it is clear that classification of buildings between residential, non-residential, commercial, scheduled has been watered down/ is not permitted. Primacy has been given only to the bona fide requirement of the landlord, irrespective of the nature of the building, be it residential, non-residential, scheduled, or commercial. In the present case, as per the findings returned by the learned Rent Controller, the respondent landlord has been able to establish his bona fide requirement of the demised premises.

As regards the petitioner’s submission that the bona fide requirement of the respondent is false as he has no experience in running a Karyana shop, learned counsel for the respondent relies upon judgment of the Apex Court in **Ram Babu Agarwal v Jay Kishan Das, 2010 (1) SCC 164** wherein, Their Lordships have held that:

“Landlord wanted premises to start business in which he had no experience-Eviction petition cannot be dismissed on this ground.

A person can start a new business even if he has no experience in the new business.

6. However, as regards the question of *bonafide* need, we find that the main ground for rejecting the landlord's petition for eviction was that in the petition the landlord had alleged that he required the premises for his son Giriraj who wanted to do footwear business in the premises in question. The High Court has held that since Giriraj has no experience in the footwear business and was only helping his father in the cloth business, hence there was no *bonafide* need. We are of the opinion that a person can start a new business even if he has no experience in the new business. That does not mean that his claim for starting the new business must be rejected on the ground that it is a false claim. Many people start new businesses even if they do not have experience in the new business, and sometimes they are successful in the new business also.”

As such, in view of the abovesaid judgment, this contention too of the petitioner deserves to be rejected. I have also perused the judgments relied upon by the petitioner and the same are distinguishable and reliance upon them is misplaced as they are not applicable to the facts and circumstances of the present case.

Further, a perusal of the impugned order shows that the learned Rent Controller has cogently dealt with each and every ground raised by the petitioner in his application for leave to contest. The Id. Rent Controller has given a finding that the petitioner was served the summons as specified in the Act. There is no dispute regarding the fact that respondent landlord is a ‘specified landlord’ as defined in the Act. It is the petitioner’s own case in the revision petition that inception of present tenancy was in January 2001 @ Rs.650/- per month. As such the present case is clearly covered by the 1949 Act as the tenancy was created prior to 30th November, 2013. Nothing has been placed on record by the petitioner in support of his contention that the

respondent owns any other commercial and non-commercial property within the urban area.

In view of the above discussion, I find no merit in this revision petition, and the same is hereby dismissed. Order dated 5.9.2022 passed by the ld. Rent Controller, Amritsar is accordingly, upheld. Pending application(s), if any, stand disposed of.

November 22 ,2022
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No