

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 6302 of 2017 (O&M)****Date of Decision: 03.08.2023**

Jiwan Lal

... Petitioner(s)

Versus

Joginder Singh Hayer

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Onkar Rai, Advocate
for the petitioner(s).

Mr. Sanjeev Kumar Bawa, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The petitioner herein is a tenant who was ordered to be evicted by the Rent Controller on 08.02.2017. The relevant facts, in brief, are required to be noticed in order to comprehend the issue involved in the present case.

2. The respondent has filed a petition under Section 13B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the 1949 Act”) for immediate delivery of possession of a hotel located at G.T.Road, Goraya. Section 13B of the 1949 Act is a special provision, which was subsequently added by the Amendment Act No. 9 of 2001 in the 1949 Act enabling the Non-Resident Indian to get immediate delivery of possession of their rented properties if they wish to come back to the country of their origin. In this case, the petition under Section 13B of the 1949 Act

was filed on 28.10.2016. The petitioner (tenant) did not contest the same.

He appeared on one of the hearings, but, thereafter, absented himself. Thereafter, an *ex parte* order was passed which is the subject matter of challenge before this Court. An application for setting aside the *ex parte* proceedings and decree has also been dismissed by the Rent Controller.

3. The learned counsel representing the petitioner contends that the petition under Section 13B of the 1949 Act was filed on 07.01.2016, whereas the 1949 Act was substituted by the Punjab Rent Act, 1995 (hereinafter referred to as “the 1995 Act”) w.e.f. 30.11.2013. Hence, the petition under Section 13B of the old 1949 Act was not maintainable.

4. This Court has considered the submissions and analyzed the arguments of the learned counsel. Undoubtedly, the 1995 Act was enforced w.e.f. 30.11.2013, however, there was litigation with regard to the powers of the Rent Controller. Subsequently, the Punjab Rent (Amendment) Act, 2014, was made applicable w.e.f. 29.08.2014. Moreover, in Section 24 of the 1995 Act, there is a parallel provision authorizing the Non-Resident Indian to file a petition for immediate delivery of possession. However, the tenant has not suffered any prejudice. Even if the petition was filed under the new Act, the same would have been tried by the same Rent Controller. Even under the new Act, the tenant is required to seek leave to contest. Therefore, it can be made out from the circumstances that the tenant has not suffered any prejudice. Moreover, the Courts must always grant leave in favour of substantive justice rather than rejecting the petitions merely on the grounds of technical objections. This Court has analyzed this particular question in its decision in *M/s Green Roadways/Green Carriers v. Darshan Singh*

Bhambra (Civil Revision No. 4308 of 2015, decided on 28.02.2020). The

relevant portion is extracted as under:-

“At the outset, it must be noticed that Punjab Rent Act, 1995 was enforced with effect from 30.11.2013. However, powers of Rent Controller were given to the Executive Officers. Thus, a writ petition was filed in this regard. During the pendency of the writ petition, the eviction petitions before the Rent Controller were being filed in the entire State of Punjab, as per the interim order passed by this court, under the provisions of the 1949 Act. Thereafter, Division Bench disposed of the writ petition after noticing that Punjab Rent (Amendment) Act, 2014 has been enforced, conferring powers upon the Subordinate Judges Ist Class as Rent Authorities and the District & Sessions Judges as Appellate Authorities. The order passed by the Division Bench is extracted as under:-

“Bar Council of Punjab and Haryana has filed this Public Interest Litigation (PIL) wherein they have prayed for issuance of a writ in the nature of certiorari quashing of Chapter Nos. V and VI of the Punjab Rent Act, 1995 being unconstitutional.

The main grievance raised in the present petition was with regard to the powers conferred under section 74 of the said Act of Rent Authorities and Additional Rent Authorities on Sub Divisional Magistrates, Sub Registrars and Joint Sub Registrars as per Rule 5 as also qua constitution of the Rent Tribunal as per Rule 7. The

*challenge to the aforesaid provision was made on the ground that it is in clear violation of the constitutional mandate of separation of powers between the judiciary and the executive and in this regard reliance was placed on the judgment of the Hon'ble Supreme Court in **Namit Sharma v. Union of India 2012 AIR SCW 5523**. Upon notice, the respondents put in appearance.*

On the last date of hearing, learned counsel appearing for the State had made a statement that the matter has been reconsidered and an amendment has been passed by the Vidhan Sabha for conferring the powers of Rent Authorities and Rent Tribunals on the judicial officers instead of Sub Divisional Officers etc. It was further stated that the bill is pending before the Governor for assent.

Mr. Amit Sethi, Addl. Advocate General, Punjab today states that assent of the Governor has been received and the amendment has become as Punjab Rent (Amendment) Act, 2014. As per the amended Act, the judicial powers have now been conferred upon the Subordinate Judges Ist Class as Rent Authorities and the District & Sessions Judges as Appellate Authorities. It is further stated that the amended Act has been notified on 29.08.2014.

In view of the fact that the judicial powers have

now been conferred to the Subordinate Judges Ist Class as Rent Authorities and the District & Sessions Judge as Appellate Authorities, the writ petition has rendered infructuous and is accordingly disposed of.”

In view thereof, the rent petition filed under the 1949 Act is maintainable, particularly when it was filed before 29.08.2014.

Still further, it is not in dispute that such special right available to the Non Resident Indians-land owners has also been provided under the Punjab Rent Act, 1995 under Section 24 of the Act. Therefore, it would not be appropriate to reject the petition at the stage of revision without any evidence of the fact that the tenants has suffered any prejudice. At the most, it is well settled that merely because a wrong provision of law has been referred to would not debar the court from passing appropriate orders in accordance with law in absence of proof of prejudice caused to the party aggrieved.”

Hence, there is no merit in the first argument of the learned counsel.

5. The learned counsel representing the petitioner further submits that the petitioner is a co-owner in the land on which the hotel has been constructed and he also entered into partnership with the respondent.

6. On the other hand, the learned counsel representing the respondent submits that the hotel has been constructed over a land measuring 1 kanal which exclusively belongs to the respondent and the

tenant is only an owner of the land measuring 3 marlas, which is in his

possession. He further submits that the respondent has never entered into any partnership with the petitioner.

7. As the petitioner herein was *ex parte*, therefore, no document in this regard has been produced before the Rent Controller. In a revision petition, this Court cannot permit the petitioner to put-forth a point which was not taken up before the Court below, particularly when it is a question of fact which is required to be proved by leading evidence.

8. Keeping in view the aforesaid peculiar facts, no ground is made out to interfere. Hence, the present revision petition is dismissed.

9. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

August 03, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No