



CR-4162-2011 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(227)

CR-4162-2011 (O&M)

Date of decision: - 19.03.2025

Ashok Kumar Gupta and another

....Petitioners

Versus

Gian Kaur

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. V. Ramswaroop, Advocate,
for the petitioners.

Mr. Aayush Gupta, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present revision petition is to the judgment dated 18.05.2011 vide which the application for grant of leave to contest filed by the petitioners had been dismissed on various grounds including the ground of the same having not been filed within a period of 15 days and the eviction petition filed by the respondent-landlord under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'Act of 1949') had been allowed and the petitioners had been ordered to be evicted from the premises in question within a period of two months from the date of the order.

2. Learned counsel for the petitioners has submitted that in the



present case, the eviction petition filed by the respondent-landlady was not bona fide and the said plea had been raised in the application for leave to contest. It is further submitted that the said plea had not been appropriately considered by the Rent Controller. It is stated that the respondent-landlady was one of the co-owners and a co-owner alone cannot file eviction under Section 13-B of the Act of 1949. It is stated that the objections raised in the application for leave to contest were meritorious and raised debatable issues and thus, the leave to contest should have been allowed and the impugned order rejecting the said application for leave to contest deserves to be set aside.

3. Learned counsel for the respondent on the other hand has submitted that in the present case, the application for leave to contest was not filed within 15 days of service, inasmuch as, the petitioners were served on 02.09.2007, whereas, the leave to contest had been filed on 19.10.2007 (Annexure P-2) and the same having been filed beyond the statutory period of 15 days and even no application for condonation of delay had been filed and thus, on the said ground alone, the impugned order deserves to be upheld. In support of his arguments, learned counsel for the petitioners has placed reliance upon a judgment of the Hon'ble Supreme Court in the case titled as "**Om Prakash Vs. Ashwani Kumar Bassi**", *reported as 2010(9) SCC 183*. It is further submitted that it is a matter of settled law that every co-owner can file the eviction petition and the Rent Controller has rightly rejected the said ground. It is further submitted the present petition which has been filed is bona fide



and as per settled law, the need of landlady is presumed to be genuine, as pleaded in the eviction petition, and the said presumption can only be rebutted by strong and cogent evidence and not on a mere oral case of the petitioners. It is stated that the present revision petition deserves to be dismissed.

4. This Court has heard learned counsel for the parties and has perused the paper-book and is of the opinion that the impugned judgment is in accordance with law and deserves to be upheld for the reasons stated hereinafter.

5. The respondent-landlady had filed a petition under Section 13-B of the Act of 1949 on 16.07.2007 with respect to eviction from the shop in question on the plea that the respondent-landlady was a NRI and was also a co-owner/landlady of the property in question. It was stated that the present petitioners were inducted by the respondent and her husband through their attorney on 15.08.1988 and thus, there was a relationship of the landlady and tenant between the parties. The facts that the respondent-landlady was NRI were detailed in paras 6 and 7(i) of the eviction petition. It was further pleaded that the respondent-landlady bona-fide required the tenanted premises for personal use and occupation in order to start the business. The details of bona-fide requirement, which have been mentioned in para 7(i) of the eviction petition, are reproduced herein below: -

“That the respondent is liable to be ejected from the shop in dispute which has been shown as red in the site plan attached on the



following ground:-

i) That the petitioner is NRI and has returned to India. There are 3 shops in property No. B-XV/103 G.T. Road Miller Ganj, Ludhiana, out of which one shop/hall which is in possession of M/s Vishal Engineers. The Second shop/Hall which is in possession of M/s Indian Gases the proprietor of which is Girdhan Goyal and the Third shop is in question regarding which the present petition has been filed. The petitioner is residing at BXV/103, G.T. Road, Miller Ganj, Ludhiana. Earlier the petitioner was residing at #40 Westmount Heights, Bridgewater (Nova Scotia), Canada. B4V-1M6 and the petitioner has now returned to India. The petitioner has now returned to India. **The petitioner honestly and bonafidely requires the tenancy premises which is in possession of the respondents for her personal use and occupation in order start/set up the business and as such the petitioner is entitled to recover immediate possession of the said shop. The petitioner honestly and bonafidely requires the tenancy premises which is in possession of the respondents for her personal use and occupation. The petitioner honestly and bonafidely intends to start her business of Boutique. The petitioner also intends to start readymade garments business with boutique in the shop in question. The petitioner also intends to open departmental store for the daily needs of the people in the property in question. The petitioner also intends to install computer in the show room/shop in dispute. For this purpose, the petitioner requires all the said three shops including the showroom/ shop in dispute which is in possession of the respondents to run her business smoothly. The petitioner therefore, requires the property in question urgently for her personal use and occupation for running her business. After getting the property in dispute along with other adjoining shops vacated, the petitioner will immediately start/run the business as mentioned above. It is worth mentioning here that the petitioner has rich and vast experience in the said business. There is no such business in the vicinity and in the surrounding area. Being NRI the petitioner has every right to settle at a place which the petitioner likes most and due to this reason the petitioner opted to settle at Ludhiana and to carry on the above said business and has chosen to get the eviction of the**



respondents from the Show Room cum shop in dispute where she wants to start her business. The shop in dispute is most suitable accommodation for the petitioner in order to set up her business. The petitioner has sufficient balance in her possession in order to start her business. The petitioner has already filed eviction petition against the tenant M/s Vishal Engineers in the Court of Sh. Tarsem Mangla, Rent Controller, Ludhiana. The petitioner has also filed ejectment petition against the other tenant M.s Indian Gases, which is pending in the Court of Sh. Vijay Kumar Rent Controller, Ludhiana.”

6. As has been stated hereinabove, the petitioners filed an application for leave to contest after a period of 15 days of service and the said leave to contest was dismissed vide a detailed order dated 18.05.2011.

7. It is not disputed before this Court that the petitioners were served on 02.09.2007 and the application for leave to contest was required to be filed within a period of 15 days from the said date but was filed on 19.10.2007 (Annexure P-2) i.e. after a period of one month and 17 days and thus, the application for leave to contest was filed beyond the period of 15 days.

8. The Hon'ble Supreme Court of India in the case of **Om Prakash** (*supra*) had observed that there is no specific provision to vest the Rent Controller with authority to extend the time for making of the application for leave to defend and the affidavit and that the Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and therefore cannot entertain an application under Section 5 of the Limitation Act for condonation of delay since the



statute does not vest him with such power. Accordingly, in the said case, the order of the Rent Controller and the High Court, vide which the leave to contest was dismissed on the ground that there was a delay of one day in filing the same, was upheld by the Hon'ble Supreme Court. The relevant portion of the said judgment is reproduced herein below: -

1. *This Special Leave Petition is directed against the judgment and order dated 5-10-2007 passed by a learned Single Judge of the Punjab and Haryana High Court, dismissing Civil Revision Petition No.5129 of 2007 which had been filed by the Petitioner herein against an order dated 4-8-2007 passed by the Rent Controller, Ludhiana.*

2. *By his said order the Rent Controller dismissed the petitioner's application under Section 5 of the Limitation Act for condoning the delay in filing the application for leave to contest the eviction petition. Consequently, the application for leave to contest the eviction petition was also dismissed.*

3. *The respondent herein filed an application for eviction of the petitioner from the premises in question under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the 1949 Act"). Notice of the application was issued to the petitioner tenant in the prescribed form asking him to appear before the Rent Controller within 15 days from the date of service of the notice and to apply for leave to contest the petition.*

4. ***The tenant was served with the summons of the eviction petition on 19-5-2005. The 15 days' period indicated in the notice for filing the application for leave to contest expired on 3-6-2005. Such an application was subsequently made the next day on 4-6-2005 but was not accompanied by any application for condonation of the delay of one day in making the same. Thereafter, the petitioner filed an application under Section 5 of the Limitation Act for condonation of the said delay in filing the application which was dismissed by the Rent Controller on 4-8-2007, along with the application for leave to defend the eviction petition.***



5. *In dismissing the Petitioner's application under Section 5 of the Limitation Act, 1963, the Rent Controller, relying on certain judgments of the Punjab & Haryana High Court, held that the provisions of Section 5 of the Limitation Act were not applicable in proceedings before the Rent Controller, particularly, for condoning the delay in filing an application for leave to contest the eviction petition.*

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24. *Section 13-B is a power given to a non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of anyone ordinarily living with and dependent on him or her. The right has been limited to one application only during the life time of the owner. Section 18-A(2) of the aforesaid Act provides that after an application under Section 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power.*

25. *In such case, neither the Rent Controller nor the High Court had committed any error of law in rejecting the petitioner's application for seeking leave to contest the suit, since the same had been filed beyond the period prescribed in the form in Schedule II of the Act referred to in Section 18-A(2) thereof.*

26. *The special leave petition must, therefore, fail and is dismissed accordingly. However, there will be no order as to costs.*

9. No contrary judgment has been cited by learned counsel for the petitioners. Thus, on the said short ground alone, the application for



leave to contest/defend filed by the petitioners deserves to be dismissed and the impugned order deserves to be upheld.

10. A perusal of the impugned order would show that all the arguments sought to be raised by the learned counsel for the petitioners have been considered on merits also and have been validly rejected by the Rent Controller. It has been observed that status of the respondent being NRI, or a landlady or being the owner of the property for the last five years has not been contested. The said facts have also not been contested before this Court. It has also been rightly observed by the Rent Controller that any one of the co-owners, more so, when she is also a landlady, can file an eviction petition under Section 13-B of the Act of 1949

11. In the case of “**Bachan Kaur and others Vs. Kabal Singh and another**”, **reported as 2011(2) RCR (Civil) 886**, the Division Bench of this Court had answered the two questions referred, in favour of the landlord. The said questions, which had been referred to a Larger Bench, are reproduced herein below:-

“The following questions have been referred to Larger Bench vide order dated 29.9.2010 passed by the learned Single Judge:-

1. Whether NRI/landlord who is a co-owner with the other landlords, who do not have the same status, as that of NRI can maintain a petition for eviction of the tenant from the property jointly owned by all of them?

2. Whether the premises from which eviction is sought under Section 13-B of the Act is to be let out by NRI/landlord or his duly authorized person acting on his behalf, or it can also include the letting by some other co-owner or predecessor-in-interest in their own right and not under the authority of NRI/landlord?”



With respect to question No.1, it was observed that an act of the co-owner of inducting a tenant binds all other co-owners and that after a tenant has been inducted, he is a tenant under all the co-owners and a co-owner who has not inducted a tenant can also seek eviction of such tenant. The relevant para No.19 of the said judgment on the said aspect is reproduced as under: -

*“Examining the proposition from another angle, it may be noticed that the tenancy rights are indivisible and a co-owner is competent to induct tenant in part of whole of the building. The tenant cannot be evicted from part of the tenant premises. An act of the co-owner of inducting a tenant binds all other co-owners. **After a tenant has been inducted, he is a tenant under all the co-owners. Therefore, a co-owner who has not inducted a tenant can seek eviction of such tenant. The right and liabilities of the co-owner creates a legal fiction of tenancy against all co-owner.**”*

12. In the present case, it is not disputed that the relationship of landlady and tenant exists. Moreover, merely because the respondent is a co-owner of the premises, as argued by learned counsel for the petitioners, the same would not disentitle the landlady from seeking eviction, moreso, when the other co-owners had not objected to the present eviction petition.

13. Even the plea of the petitioner that the requirement of respondent-landlady is not bona-fide has been rightly rejected by the Rent Controller, inasmuch as, it was observed that the need of landlady is presumed to be genuine, as pleaded in the eviction petition, and the presumption requires rebuttal with strong and cogent evidence and mere



vague averments on behalf of the tenant would not rebut the said strong presumption in favour of the respondent-landlady. The Co-ordinate Bench of this Court in the case of “**Jagdish Lal Vs. Devi Dayal Sharma**”, ***reported as 2004(2) RCR (Rent) 97*** had observed that it is well settled that it is for the landlord to choose the place of his stay and the courts cannot substitute their own opinion or judgment in place of that of the landlord and that the provisions of Section 13-B of the Act provide for only once in a life time opportunity to an NRI-landlord to get the rented building vacated in a summary manner. Reference in the said judgment was made to the judgment in the case of “**Prem Kumar Patel Vs. Inderjit Singh Grewal**”, ***reported as 2002(2) RCR (Rent) 203 (P&H)***, in which it was observed that Section 13-B of the Act provides for recovery of possession of one entire building and once it is claimed by the Non-Resident Indian that he requires it for his own use, then, the objection raised on behalf of the tenant that a portion of the building is sufficient for his requirement is of no consequence and the NRI owner would still be entitled to the possession of the one whole building.

14. It is also a matter of settled law that in the proceedings initiated by an NRI/landlord under Section 13-B of the Act for eviction of the tenant, the Court shall presume that the need pleaded in the petition is genuine and bona fide and the said presumption is subject to the right of tenant to rebut it with strong and cogent evidence and a heavy burden lies on the tenant to prove that the requirement of the landlord is not genuine. The tenant to succeed would be required to give all the necessary facts



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and particulars, which would be required to be supported by documentary evidence as mere assertion on his part would not be sufficient to rebut the strong presumption in favour of the landlord. No contrary judgment has been cited by learned counsel for the petitioners on the said aspect. Moreover, from the averments made by the respondent-landlady with respect to bona-fide requirement, which have been reproduced herein above, it is *prima facie* proved that the requirement of the respondent-landlady is genuine and bona-fide. Nothing has been pointed out by learned counsel for the petitioners to suggest that the said requirement is not bona-fide.

15. Keeping in view the above-said facts and circumstances, this Court is of the view that the impugned judgment has been correctly passed and deserves to be upheld and the revision petition being meritless, deserves to be dismissed and is accordingly, dismissed.

March 19, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes