

(2011) 04 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 7505 of 2010 (O and M)

Amarjit Singh Chadha

APPELLANT

Vs

Col. Jasbir Singh Likhari

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13A

Citation : (2011) 163 PLR 127

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—The question involved in this case is that ""if the specified landlord is already in possession of a portion of the

building and wanted additional accommodation by seeking eviction of the tenant, whether leave to defend should be granted in order to decide the

sufficiency and suitability of the occupied portion of the landlord"".

2. This revision petition is brought by the tenant against the order dated 04.11.2010 passed by the learned Rent Controller, U.T., Chandigarh on

an application filed by the landlord u/s 13-A of the East Punjab Urban Rent Restriction Act, 1949 [for short ""the Act""] by which he has been

ordered to vacate the demised premises.

3. In brief, the case set up by the landlord is that house No.2533, Sector 35-C, Chandigarh was once owned by him alongwith his mother to the

extent of 50% share each. His mother sold her 25% share to his wife and after the death of his mother on 10.12.2007, her remaining 25% share

was transferred to him by an order of a Lok Adalat dated 06.02.2008 and as such, the landlord became owner of the house to the extent of 75%

share and his wife become owner to the extent of 25% share. The tenant was inducted by the mother of the landlord about 15 years back in the demised premises consisting of two rooms, kitchen, toilet-cum-bathroom and terrace/balcony on the back side of the house, for the purpose of residence. The landlord was a serving Army Officer and at the time of filing, of the eviction petition, he was to superannuate on 30.11.2006, but he was allowed to continue in service after the date of his superannuation till 20.11.2010, i.e. till the attainment of age of 58 years. It is also alleged that his wife occupies the entire ground floor of the demised premises with her only son, who is a student. The first floor is being used for letting out to the paying guests by his wife to supplement her income. He filed the eviction petition u/s 13-A of the Act on the ground that he needs Sufficient accommodation after his retirement. After notice, the tenant appeared on 12.03.2010 and filed an application for seeking leave to defend on 17.05.2010 which was replied on 18.10.2010 and by the impugned order, the learned Rent Controller has declined leave to defend and also ordered eviction of the tenant. In the application for seeking leave to defend, it was alleged by the tenant that earlier mother of the landlord had filed eviction petition alongwith him on the ground of nonpayment of rent and personal necessity which was dismissed by the learned Rent Controller, Chandigarh. Thereafter, on appeal, the matter was remanded back but the eviction petition was again dismissed by the learned Rent Controller and the appeal was dismissed. It was, thus, alleged that the landlord wanted to dispossess the tenant at any cost though after the filing of the present eviction petition on 01.05.2010 he had kept seven new paying guests, therefore, there was no bona fide necessity. It is also alleged that it is not a case of necessity, rather it is a case of requirement of additional accommodation where the landlord is not out of possession of his house and for that matter the learned Rent Controller should have allowed his application to defend the eviction petition in order to contest the ground of sufficiency of accommodation.

4. The learned Rent Controller, however, dismissed the application for leave to defend by observing that insofar as the question of keeping paying guests is concerned, that has been done by the wife of the landlord and the landlord, who wanted to settle in his house after his retirement, is not to

prove anything more.

5. Aggrieved against the order of eviction, the present revision petition was preferred by the tenant in which notice of motion was issued on

18.11.2010 and dispossession was stayed.

6. During the course of hearing, learned counsel for the landlord had submitted that the tenant had vacated the demised premises but has kept it

locked, which was denied by the tenant, therefore, he was directed to file his affidavit that he is still occupying the demised premises. In pursuance

thereof, the tenant filed his affidavit dated 24.02.2011 in which he had averred that he has not vacated the demised premises and for that purposes

he asked for the appointment of a Local Commissioner by the Court to confirm it. After the filing of the affidavit, this issue was not pressed by

learned counsel for the landlord rather he alleged that the tenant has not paid the rent since the year 1999 onwards. Hence, on 14.03.2011, this

Court had directed the tenant to bring the entire arrears of rent in Court w.e.f. 01.01.1999 onwards till date to be calculated @ Rs.500/-per

month along with interest @ 6% per. annum. On 21.03.2011, the tenant tendered a sum of Rs.1,00,000/- by way of cheque dated 21.03.2011

and a sum of Rs.8,615/- in cash towards rent w.e.f. 01.04.1998 @ Rs.500/- alongwith interest @ 6% per annum. The said amount was received

by the landlord and did not raise any objection about the calculation. Thus, the amount of rent alongwith interest accrued thereon stands paid up to

date.

7. The tenant has placed on record document Annexure P-5, which he has obtained under the Right to Information Act, 2005, in order to prove

that there are eight paying guests/students living in the demised premises. This plea was taken before the learned Rent Controller also but it had

brushed it aside on the ground that there is no allegation against the landlord that he is doing the business of paying guests. Learned counsel for the

tenant has also submitted that the landlord is residing on the ground floor of the demised premises with his wife and only son, which comprises of

one drawing room, one dinning room, lobby and two bed rooms for their own use and rest of the building is regularly being let out to the paying

guests. In support of his submission, learned counsel for the tenant has relied upon the following decisions:-

- i) Mrs. Kushal Takhar Vs. Gurinder Singh, ;
- ii) Bharat Bhushan and Another Vs. Dr. K.K. Saini and Others, ;
- iii) N.N. Jain Vs. Ved Parkash Sharma, ;
- iv) Prit Pal Kaur Vs. B.S. Ahuja, ;
- v) K.G.P. Pillai Vs. Subhash Chander Pathania, .

8. On the contrary, learned counsel for the landlord has submitted that in a petition filed u/s 13-A of the Act, the question as to whether the

accommodation with the landlord after taking possession from one of the tenants is sufficient for his personal requirement or not is not to be seen

because this right has been given to the landlord, in case where he does not own any other suitable accommodation, to recover possession of his

residential building. In this regard, he has relied upon the following decisions:

- i) Zenobia Bhanot Vs. P.K. Vasudeva and another, ;
- ii) Paramjit Sabharwal Vs. Narinder Pal and Others, ;
- iii) Deepak Suri v. Commodore K.S. Sandhu, 2003(1) RCR 698; and
- iv) B.D. Sharma Vs. Narinder Kumar Arya, .

9. I have heard both learned counsel for the parties and perused the record.

10. In this case, there is no dispute about the relationship of landlord and tenant between the parties and that the landlord himself is occupying

ground floor of the demised premises and is having a very small family comprising of his wife, and son. The landlord has been continuously letting

out other portion of the demised premises for keeping as many as eight paying guests/students, may be, for the purpose of getting some extra

income, but the question arises as to whether, in these circumstances, the tenant can claim a trial in order to prove before the Court that the

landlord had sufficient accommodation which could cater to his needs?

11. In Mrs. Kushal Takhar's case (supra), a petition u/s 13-A was filed in which it was held that it is a case of claim of additional accommodation

and the Court had observed that ""the object of enactment of Section 13-A 6f the Act is to provide immediate abode to the retiree employee.

Vacation of Government accommodation should not make retiree landlord vagabond. But, in case there is accommodation available as in present

case, landlord has entire first floor and second floor in his occupation, for

vacation of ground floor, landlord cannot be provided with summary

mechanism, especially when first floor and front and back lawns is replica of ground floor.

12. In *Bharat Bhushan and another's case* (supra), it was held that in case of requirement of additional accommodation by the landlord, "question

of leave to defend to be granted or not would depend upon the facts and circumstances of each case, but where the landlord is already in

possession of a portion of the accommodation, the summary procedure as provided by Section 13-A of the Act may not be a good option

because it can afford to brook delay as there would be no real hurry to settle the retiree.

13. In *N.N Jain, Advocate's case* (supra), it was held that if a part of the demised premises is already in possession of the landlord, the question of

suitability of accommodation has to be determined which can be decided only after the leave to defend is granted.

14. In *Pritpal Kaur's case* (supra), it was held that if the landlord seeks an ejectment on the ground that he requires more accommodation for his

residence and the accommodation in his occupation is neither sufficient nor suitable and if the tenant disputes that assertion, then this point of

controversy is to be decided by the Rent Controller only after granting leave to defend to the tenant.

15. In *K.G.P. Pillai's case* (supra), the specified landlord was keeping ground floor and wanted additional accommodation. The Division Bench of

this Court held that leave to contest is to be granted to prove that the landlord had no requirement for additional accommodation because this

would not be a case of "sufficiency" of "insufficiency" but of additional accommodation as the landlord is already in possession of the ground floor.

16. As against the judgments cited by learned counsel for the tenant, in *Zenobia Bhanot's case* (supra), it was held by the Supreme Court that

Section 13-A gives a right to the landlord to seek eviction of the tenant in a summary procedure if he does not own or possess any other suitable

accommodation. Basically, in this judgment, it was held that if the building is let out in parts, possession of any or all such parts can be recovered

since the part or parts let out, form part of the building.

17. In *Paramjit Sabharwal's case* (supra), the tenant was already granted leave

to defend and then the matter was decided, therefore, this judgment is not applicable to the facts and circumstances of the present case.

18. In Deepak Suri's case (supra), the landlord was seeking eviction of the tenant from a house at Chandigarh and the tenant had alleged that he had a flat in Bombay. It was held that it is not a valid ground to decline the relief to the landlord.

19. In B.D. Sharma's case (supra), it was held that the requirement of Section 13-A of the Act is that the landlord is to file an application within one year after the date of his retirement and further he has to prove that he does not own or possess any other suitable accommodation in the locality or area in which he intended to reside.

20. After the detailed discussion of the facts and circumstances of the present case as well as the judgments which have been relied upon by both the learned counsel for the parties, the question, which has been posed by learned counsel for the tenant, is answered in his favour and it is held that where the specified landlord is already in possession of the demised premises and the tenant is in possession of some part of the demised premises, then it would be a case of claim of an additional accommodation and as the landlord would not hanker for immediate shelter after his retirement, the delay in deciding the eviction petition otherwise than by way of the summary procedure, which is provided u/s 13-A of the Act, would not cause any harm and the question of sufficiency and suitability of the accommodation in possession of the landlord can be decided after the trial.

21. With the aforesaid observations, the present revision petition is found to be meritorious and as such, the same is hereby allowed and the impugned order is set aside. In the facts and circumstances of the case, the parties are directed to bear their own costs.