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**(2011) 04 P&H CK 0369**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CR No. 5733 of 2008 (O and M)**

Anil Kumar and others

APPELLANT

Vs

Chitranjan Dev

RESPONDENT

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**Date of Decision :** 20-04-2011

**Acts Referred:**

East Punjab Urban Rent Restriction Act, 1949 — Section 13B, 18A(5)

**Citation :** (2011) 04 P&H CK 0369

**Hon'ble Judges :** Rakesh Kumar Jain, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Rakesh Kumar Jain, J.—The tenants are in revision against the order of the learned Rent Controller, Nakodar dated 05.09.2008 by which they have been ordered to vacate the demised premises on the ground of personal necessity of the landlord.

2. In brief, the respondent/landlord filed a petition u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949 [for short "the Act"] alleging that he is an NRI, owner of the demised premises for last more than 5 years and requires it for his personal use and occupation. The tenant filed an application u/s 18-A(5) of the Act in order to seek leave to defend on the grounds; i) the demised premises comprising of 4 Marias is jointly owned by the landlord and Jain Mandir, Nakodar to the extent of half share each for which the other co-owner (Jain Mandir, Nakodar) has not filed the eviction petition, ii) the demised premises was let out by the original owner Dogar Mal and as such the respondent/landlord cannot seek eviction, iii) the eviction petition is bad for mis-joinder of the necessary parties as Raj Kumar had died leaving behind his widow Chander Kanta, 3 daughters and one son, whereas Pushpa Devi wife of Hans Raj is also a tenant in the premises as per the decision rendered in Rent Petition No.26 of 1976 by Shri J.S.Chatha, District Judge-cum-Appellate Authority under the Act who has not been impleaded; iv) the landlord is in possession of one house in Mohalla Kallian

situated at a distance of 100-150 yards from the demised premises, v) the tenant is a poor illiterate widow, aged about 72-75 years and suffering from brain tumor whose husband died due to cancer, having no other place to live, and vi) the service of summon has been effected upon the tenant on 13.08.2004 by the process server who had told her the date of appearance as 08.10.2004 before the Court and had never informed her that she had to apply for leave to defend within 15 days from the date of service, therefore, the delay in filing the application for leave to defend was also not her fault.

3. Learned Rent Controller issued notice in the application for leave to defend to which reply was filed by the landlord who admitted that the demised premises is jointly owned by him with Jain Mandir, Nakodar and that he is living in Mohalla Kallian. There is no denial that the demised premises was let out by Dogar Mal and not by the present landlord who had only alleged that he is owner from the last more than 5 years. It was also alleged that Pushpa Devi daughter of Raj Kumar is living with her in-laws after her marriage and that the application has not been filed in time not due to the fact that the process server did not inform her about her right to file leave to defend within 15 days from the date of service, but because of her own fault. The learned Rent Controller, while dismissing the application for leave to defend, had observed that the landlord has filed photostat copy of the passport No.JK-914667 issued by the Canadian Government, secondly that even if the demised premises is jointly owned by Jain Mandir, Nakodar who had not come forward to file eviction petition, would hardly affect the right of the landlord to file eviction petition qua his share and the landlord even if residing in Mohalla Kallian would not loose his right to seek vacation of the demised premises for which he can always file a petition u/s 13-B of the act once in his life time. In respect of the mis-joinder of the necessary parties, it was observed that the other legal heirs of Raj Kumar were inducted as respondents on 27.03.2006 and the delay in filing the application beyond 15 days cannot be condoned in any manner.

4. In order to assail the impugned order, learned counsel for the tenant has argued that in the facts and circumstances of the case, the learned Rent Controller should have granted leave to defend. It is submitted by him that the question with regard to letting out of the demised premises by a person who is not NRI is also subjudice before this Court. Similarly the other issue that if the property belongs to two owners, one of whom is not an NRI, is also subject matter of the same revision petition, therefore, it is submitted that the eviction order could not have been passed. Besides this, he has also submitted that the summons issued by the learned Rent Controller was not in accordance with the proforma prescribed under Schedule II as there is no provision of date of hearing in the said proforma. He submits that in the summon, which has been served upon the tenant on 13.08.2004, the date of hearing/peshi is given as 08.10.2004 which is not so provided in the form of summon in Schedule II. Thus, it is alleged that the leave to defend was filed on 18.09.2004 under a bona fide mistake that the next date of hearing is 08.10.2004. He also submitted that the delay in filing

of the application was even condoned by the learned Rent Controller on 31.05.2005 and the said order was never challenged by the landlord.

5. In reply, learned counsel for the respondent has submitted that before advertng to the merits of the case, the foremost issue is as to whether the application for leave to defend was filed within the prescribed period or not? He submits that the learned Rent Controller had no jurisdiction at all to condone the delay in filing of the application for leave to defend and as such order dated 31.05.2005, which though has not been challenged, would have no effect. He further submitted that the summon was issued by the learned Rent Controller on 30.07.2004, which was admittedly served upon the tenant on 13.08.2004 and the limitation to file leave to defend was up to 28.08.2004, but it has been filed on 18.09.2004 after expiry of 21 days. There is no explanation as to why the delay has been caused. He further submitted that had the application been filed on 08.10.2004, which was the date given as a peshi, then there could have been some substance in the submission of the tenants that they were misled and had filed the application on the date of hearing, but since the application is filed on 18.09.2004, i.e. much prior to the date of peshi/hearing, it appears that they themselves had delayed the filing of application for one reason or the other and the same could not be condoned.

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

7. In this case, keeping the other facets of the case out of focus, the question of filing of application for leave to defend within limitation is to be decided first. The summon available on record is dated 30.07.2004 which is exactly as per Schedule II except for the date of peshi which is mentioned as 08.10.2004. The summons specifically provides that the tenant has to file the application for leave to defend within 15 days from the date of service before the learned Rent Controller. I am fully in agreement with the argument raised by learned counsel for the respondent that had the tenants filed application for leave to defend on 08.10.2004, i.e. on the date of hearing/peshi, then they could have some reason to say that they were misled by the date of hearing given on the summon, but since they had filed the leave to defend on 18.09.2004 and did not given any reason for that then obviously they cannot be held to have been misled by date of hearing, therefore, it is apparently time barred and now it is well settled that even the delay of a single day in filing of the application u/s 18-A(5) of the Act cannot be condoned.

8. In view of the above discussion, I need not to go in other aspects of the matter in dispute as I am holding that the application filed for leave to defend was clearly time barred and since the learned Rent Controller has no jurisdiction to condone the delay, therefore, the order dated 31.05.2005, even if not challenged, would be redundant and as such, there is no error in the order of eviction passed by the learned Rent Controller, which is hereby upheld and the revision petition is hereby dismissed, though without any order as to costs.