
(2011) 11 P&H CK 0154
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 4716 of 2010 (O and M)

Punjab National Bank and another

APPELLANT

Vs

Sh. Ender Pal Singh Sahota

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13A, 13B, 18A(9)
East Punjab Urban Rent Restriction Act, 1949 — Section 13, 13A, 2

Citation : (2012) 1 RCR(Civil) 302

Hon'ble Judges : Rakesh Kumar Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—This is tenant's revision petition challenging the impugned order dated 11.6.2010 of Rent controller, Phillaur, whereby while rejecting the prayer of the petitioner for grant of leave to contest a petition filed u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act"), his eviction has been ordered from the demised premises.

2. The respondent-landlord filed a petition u/s 13 of the Act for ejectment of the petitioner from the demised premises claiming himself to be an NRI and co-owner to the extent of half share of the demised premises making further averments that there exists a relationship of landlord and tenant between the parties and he wants to now settle in India and spend his remaining life in the mother land and for this purpose he wants to start business in the premises in dispute, and thus is in bona fide need of the same.

3. The petitioner filed an application for leave to defend on the ground that provisions of section 13-B of the Act, were not applicable in the present case, as the respondent-landlord was not an NRI and owner of the suit property. It was further averred that he does not require the premises in dispute and wants to re-let the same at higher rate of rent. It was further stated that service of notice as

per the prescribed procedure have not been effected upon the petitioner and the present petition was misuse of the provisions of law. The respondent landlord is not in need of the premises in dispute as he has no intention to return to India.

4. The said application of the petitioner was contested by the respondent landlord.

5. While dismissing the application for leave to contest the Rent Controller found that application for leave to contest was filed by the petitioner beyond the prescribed period of 15 days from the date of service of notice upon him, as from the record it was found that notice was duly received by the petitioner on 8.5.2009, whereas, the petitioner had filed this application for grant of leave to defend on 1.6.2009 which is beyond the period of 15 days. Not only this, Rent Controller further found that the respondent landlord who is of Indian origin has admittedly gone abroad and, thus, falls within the definition of an NRI as mentioned in section 2(dd) of the Act. The other contentions of the petitioner to the effect that need of the respondent was not bona fide, was also rejected holding that a mere assertion on the part of tenant would not be sufficient to rebut the presumption in landlord's favour with regard to his bona fide need. Another contention of the petitioner, that Bhupinderjit Singh Sahota was not duly constituted attorney of respondent, was also rejected. Thus, by rejecting the prayer of the petitioner it was held that no triable issue arises in the said case. The petitioner was further directed to hand over the vacant possession of the demised premises within two months from the date of the said order.

6. It may be relevant to mention at this stage that along with the ground of revision, petitioner has also filed an application before this Court making a prayer for condoning the delay of seven days in filing the application for leave to contest before the Rent Controller. Thus, admitting that there was a delay of seven days in filing the application for leave to contest before the Rent Controller. It has been averred in the said application that the petitioner bank was served with the ejectment application on 8.5.2009 and the application for leave to defend was ready on 16.5.2009, however, they have come to know with regard to the filing of the said application after a delay of seven days (after expiry of statutory period of fifteen days) only on passing of the impugned order and the said unprofessional act of the counsel was never to their knowledge and the petitioner should not suffer for the negligent of their lawyer.

7. It is well settled that Court has no jurisdiction to condone the delay in filing the application for seeking leave to contest and in case application for leave to contest is declined eviction order has to follow. Moreover, despite making averments with regard to the negligence of their counsel, the petitioner has not brought on record any material to show that even any complaint was made against the counsel or that the petitioner tenant has taken any other action in this regard against his counsel. Even no affidavit of the said counsel admitting his fault has been placed on record of the case. Moreover, in the application for leave to defend no such facts were pleaded before the Rent Controller by the

petitioner and have been pleaded only before this Court. The stand of the petitioner that they could come to know about the delay in filing of the application for leave to defend only after passing of the impugned is falsified from the fact that in reply to their application for leave to defend, the respondent landlord had raised specific objection regarding the delay in filing of the application. Thus, in the face of the aforesaid fact the stand taken by the petitioner bank cannot be accepted.

8. It may also be relevant at this stage that vide C.M.No. 25718- CII of 2011 an affidavit of Shri Bhupinder Singh, Senior Manager in Punjab National Bank at Atta Goraya, has been placed on record. The relevant averments of the said affidavit reads thus :-

That the petitioner restricted the arguments, in view of change interpretation of some of the relevant points of law, only on two issues i.e. Whether the Rent Petition filed by an attorney, signed by an attorney fulfilled the criteria of proof and evidence as laid down by the Hon"ble Supreme Court in Janki Vashdeo Bhojwani v. Indusind Bank Ltd 2004(2) R.C.R.(Civil) 613 : 2005 2 P.L.R. 1, and by the Hon"ble Court in Hardev Singh v. Surjit Kaur 2008 (3) R.C.R.(Civil) 631 : 2008 3 P.L.R 477, and Basant Kaur v. Ramesh Deora 2008(2) R.C.R.(Civil) 176 : 2008 (1) R.C.R.(Rent) 296:2008 4 P.L.R. 313, :

Whether Authorities under the East Punjab Urban rent Restriction Act, 1949 have the jurisdiction to entertain a petition for eviction during the subsisting Lease in view of the law as interpreted by the Hon"ble Court in State of Himachal Pardevsh v. Ram Piari 2009 RCR Civil 648,. "That during the course of arguments it was found necessary to peruse the Power of Attorney executed by the Landlord in favour of the attorney who has filed and prosecuted the eviction petition before the Ld. Trial Court. The true copy of the deed of attorney is annexed herewith as Annexure P- II

9. Keeping in view the aforesaid prayer of the petitioner, I have heard learned counsel for the parties, perused the impugned order and other relevant documents placed on record of the instant revision petition.

10. The counsel for the petitioner has argued that the settled proposition of law is that where a party does not appear in witness box and state his own case on oath and does not offer himself to be cross examined by other side, a presumption would arise that the case set up by him is not correct, and has relied upon the judgment of the Hon"ble Supreme Court in Janki Vashdeo Bhojwani v. Indusind Bank Ltd, 2005 2 P.L.R. 1, Harder Singh v. Surjit Kaur, 2008 3 P.L.R. 477 and Bas-ant Kaur V. Romesh Deora, 2008 4 P.L.R. 313, to contend that since attorney cannot depose on behalf of the principal, the instant petition filed on behalf of the NRI landlord by his attorney is not maintainable. The contention as raised by the petitioner, as noticed above, is misconceived and does not arise in the facts and circumstances of the case. There is no dispute with the proposition of law as laid down in the judgments as referred by the

learned counsel for the petitioner. However, the issue in the instant case is not with regard to the competence of an attorney to give evidence on behalf of his principal but maintainability of a petition filed by an attorney of a NRI landlord u/s 13-B of the Act. It may also be relevant to refer to the judgment of this Court in the case of *Mrs. Jatinder Kaur v. Sh. Rohit Chopra*, 2011 (2) RCR (Rent) 262, wherein it has been held that in a petition filed u/s 13-B of the Act, filing of an affidavit in support of the petition is not an essential requirement. The relevant part of the aforesaid judgment reads thus :-

From the resume of the aforesaid provisions of law under which the Rent Controller acts as persona designata evolving its own procedure as provisions of the Code of Civil Procedure, 1908 (for short "CPC") are not strictly applicable, the requirement of filing of an affidavit along with the eviction petition filed u/s 13-B of the Act is there or not, is to be decided. I have found that except for a petition filed u/s 13-A of the Act, the requirement of filing of an affidavit is conspicuous by its absence in sections 13 and 13-B of the Act. In a petition to be filed u/s 13-A of the Act, the affidavit is only required to be filed to the effect that the specified landlord does not own and possess any other suitable accommodation in the local area in which he intends to reside by recovering possession of his residential building or scheduled building as the case may be, for his own occupation. The underlying idea of filing of this affidavit is that the specified landlord should candidly declare in his petition of not having any suitable accommodation one year prior or one year after the date of his retirement and may not exercise his special right u/s 13-A of the Act as a ploy to seek eviction of a tenant under the summary procedure. Had there been the similar the similar intention of the Legislature, the affidavit would have been provided in section 13-B as well, but it was not provided because the Non- Resident Indian is already having a shelter for him unlike the specified landlord who occupies the government accommodation and is obliged to restore it to the department concerned after his retirement for the next incumbent to take over which could eventually make him a vagabond. Thus, it is held that for a petition to be filed u/s 13-B of the Act, an affidavit is not an essential requirement to support the application in the absence of which the Rent Controller can hold that it gives right to the tenant of a trial of the petition as if it is filed u/s 13 of the Act, it is also made clear that the provisions of section 18-A(9) of the Act deals with the procedure for disposal of the application by the Rent Controller and has no connection with the procedure for the filing of application under Sections 13-A and 13-B of the Act.

11. Thus, in view of the law laid down as aforesaid the contention raised by the learned counsel for the petitioner is without any merit and is rejected.

12. Another contention raised on behalf of the petitioner before this Court is to the effect that initially the period fixed for the lease was five years commencing from the date of execution i.e. 30.6.2004, with an option for continuing the lease for a further period of five year son the same terms and conditions but with

increase in rent at the rate of 15% after five years as herein contained and the lesser was not entitled to refuse the extension of five years if the petitioner had exercised that option within one month before the expiry of the original terms of five years, provided that in the absence of notice for the exercise of the option the lease will be deemed to have exercised the same. According to the learned counsel, in view of the aforesaid condition the lease of the demised premises in favour of the petitioner-bank is deemed to be continuing till 30.6.2014 and during the subsisting of the said lease the ejectment petition filed against the petitioner is not maintainable.

13. So far as ratio of law as laid down by the judgment in *State of Himachal Pradesh v. Ram Piari*'s, 2009 R.C.R. Civil 648, is concerned, there is no dispute. However, the aforesaid question does not arise in the instant case. The contention of the petitioner that the lease is subsisting and that during the subsisting lease, the eviction petition was not maintainable is liable to be rejected simply on the ground that no such grievance was raised by the petitioner-bank in its application for leave to defend and the said ground has been raised only before this Court. Even no such lease deed on the basis of which continuation of lease is claimed was placed before the Rent controller. Even before this Court, the alleged lease deed has not been produced. Not only this, the question whether the landlord had the jurisdiction to entertain a petition for eviction during the subsisting lease can be taken only if leave to defend is granted to the petitioner as the same touches the interpretation of a lease deed which admittedly was executed in the year 2004 for a period of five years only. Whether the said lease deed is deemed to be extended at the option of the petitioner bank alone is a matter which can be considered only if any such material was placed before the Rent Controller. It may be noticed at this stage that a Full Bench of this Court in the case of *Anwar Ali v. Gian Kaur*, Civil revision No. 1493 of 2010, decided on 9.11.2010, has authoritatively laid down that in a situation where u/s 13-B of the Act, leave to contest is refused to the tenant brought by the NRI landlord. Eviction of the tenant has to be ordered and is an automatic consequence.

14. Admittedly, in the instant case application for leave to defend was filed after seven days of expiry of the period of 15 days as provided under the Act, and the same was rightly rejected being time barred, as the Rent Controller has no jurisdiction to extend the limitation period for making an application for leave to defend, and thus no interference is warranted in the impugned order.

15. No other point was argued.

16. For the reasons recorded above, I find no merit in this petition and the same is dismissed.