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**(2002) 07 P&H CK 0048**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 4288 of 1995**

Shri Sardari Lal Jain Since Deceased through his L.R. APPELLANT  
Vs  
Smt. Dhanwanti Devi RESPONDENT

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**Date of Decision :** 29-07-2002

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1  
East Punjab Urban Rent Restriction Act, 1949 — Section 13

**Citation :** (2002) 3 CivCC 638 : (2002) 2 RCR(Rent) 296

**Hon'ble Judges :** V.M. Jain, J

**Bench :** Single Bench

**Advocate :** Rakesh Garg, for the Appellant; Sumeet Mahajan, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.M. Jain, J.—This revision petition was filed by the legal heirs of the petitioner-tenant against the judgment passed by the learned Appellate Authority, accepting the appeal, setting aside the order of the Learned Rent Controller and ordering the ejectment of the tenant from the premises in question on the ground that he had ceased to occupy the same for a continuous period of four months prior to the filing of the petition without sufficient cause.

2. The facts in brief are that Smt. Dhanwanti Devi filed a petition u/s 13 of the Punjab Rent Restriction Act, 1949 (hereinafter referred to as the Act) against Sardari Lal tenant for his ejectment from the shop in question on the ground that Amar Nath Jain was the original owner of the said shop and it was rented out to Sardari Lal tenant on monthly rent of Rs. 17- and that Amar Nath Jain sold the same to Smt. Dhanwanti Devi. It was alleged that the tenant had not paid rent since 1.6.1983 and that he had ceased to occupy the shop since January, 1979 without sufficient cause and had also materially impaired the value and utility of the said building due to its non-occupation.

3. In the reply filed by the tenant, it was alleged that the previous petition for

ejectment filed by the landlady was dismissed by the learned Rent Controller on 16.1.1985 and the second petition was also dismissed on 2.3.1985 and that another petition was also dismissed by the learned Rent Controller and that the petitioner was debarred from taking of the same plea under Order 23 Rule 1 CPC. It was denied that the shop was lying closed. On the other hand, it was alleged that since he was suffering from prolonged ailment of T.B., he was unable to do any work for quite sometime from 1980 onwards and that he had never ceased to occupy the said shop for a continuous period of four months. The learned Rent Controller, vide order dated 18.9.1993, dismissed the ejectment petition on the ground that on account of dismissal of the previous ejectment petitions, the ground that the tenant has ceased to occupy the premises for a continuous period of four months without sufficient case, was not available to the landlord as the period of four months had not expired between the previous petition and the new petition. However, on merits, it was held that in fact the tenant had ceased to occupy the demised premises for more than four months prior to the filing of the present petition. The ejectment petition however was dismissed on the ground that this plea was not available to the landlord in the present petition because of the dismissal of the previous petition. The appeal filed by the landlord was accepted and it was held that the provisions of Rule 1 of Order 23 CPC were not applicable to the proceedings under the Act and, therefore, the present petition could not be held to be barred under Order 23 Rule 1 CPC and the dismissal of the previous petition would be JIG bar to the filing of the present petition. Aggrieved against this order of the learned Appellate Authority, the present revision petition was filed by Surinder Kumar, Legal Representative of Sardari Lal since Sardari Lal tenant in the meanwhile had expired.

4. At the stage of motion hearing, the question arose as to whether Surinder Kumar was legally entitled to be brought on record as the legal representative of original tenant Sardari Lal. Hence, an issue in this regard was framed on 6.2.1996. Later on, vide order dated 29.5.1996, it was observed that the learned counsel for the parties had agreed that for the purpose of motion hearing, the present revision petition may be considered without determining as to who are the LRs of the original tenant. Subsequently, the petition was admitted and was to be set down for hearing.

5. At the outset, it may be mentioned that the learned counsel for the respondent did not press his objection regarding the maintainability of the revision petition filed by the Surinder Kumar as the LR of Sardari Lal, admitting that Sardari Lal had not left behind any Class I heirs and that Surinder Kumar petitioner was the brother of Sardari Lal.

6. The learned counsel for the petitioner has submitted before me that the present ejectment petition filed by the landlady on the ground that the tenant had ceased to occupy the premises for a continuous period of four months prior to the filing of the present petition without sufficient cause, was not available to

the landlady , in view of the dismissal of the previous ejectment petitions. It was submitted that the first petition dated 16.4.1983 was dismissed as withdrawn on 16.1.1985, copy Ex.RX/6. The second petition for ejectment Ex.RX7 dated 17.1.1985 was dismissed in default on 2.3.1985. It was submitted that the third ejectment petition Ex. RX/5 dated 22.1.1985 was dismissed as withdrawn on 25.3.1985, copy Ex.RX/4. It was further submitted that the present petition is the fourth petition and is dated 27.3.1985. It was submitted that at the time when the present petition was filed by the landlady, four months period had not expired between the previous petition and the present petition and as such this ground regarding non-occupation was not available to the landlord especially when the earlier petition dated 17.1.1985, copy EX.RX/8 was dismissed as withdrawn on 25.3.1985 without seeking any permission to file a fresh petition on the same cause of action. Reliance has been placed on the law laid down by a Division Bench of this Court in the case reported as Mehtab Singh Advocate v. Tilak Raj Arora (1988)93 P.L.R. 269. Reliance was also placed on the law laid down by Full Bench of this Court, in the case reported as "Banks Ram v. Smt. Sarasti Devi"? (1977)79 P.L.R. 112 (F.B.).

7. On the other hand, learned counsel for the landlady submitted before me that the petition dated 22.1.1985, copy Ex,RX/5 was got dismissed as withdrawn on 25.3.1985, vide copy Ex.RX.4, on the basis of the statement EX.RX/3 made by her counsel in which he had specifically stated that he wanted to file fresh petition. It was submitted that since the tenant had ceased to occupy the shop in question continuously for a period of four months prior to the filing of the present petition without sufficient cause, the tenant was liable to be ejected from the said shop on this ground. It was further submitted that the provisions of CPC were not applicable and as such the provisions of Order 23 Rule 1 CPC would be no bar to the filing of the present petition. Reliance was placed on the law laid down by a Division Bench of this Court, in the cases reported as Ram Dass v. Smt. Sukhdev Kaur and Anr. (1983)85 P.L.R. 440, "Shri Ram Dutta Gupta v. The Financial Commissioner, Haryana Chandigarh and Anr. (1978)80 P.L.R. 791 and "Ved Parkash v. Om Parkash Nirwania, 1981(2) RLR 659. It was further submitted that since there was a conflict of opinion about the applicability of Order 23 Rule 1 CPC to the petitions under the Rent Act, this Court should rely on the judgments which appear to state the law accurately, in view of the law laid down by the Full Bench of this Court, in "M/s Indo Swiss Time Limited Dundahera v. Umrao and Ors. (1981)83 P.L.R. 335 (F.B.).

8. As referred to above, the present petition was filed by Smt. Dhanwanti Devi for the ejectment of Sardari Lal u/s 13 of the Act before the Rent Controller on 27.3.1985. In the written statement filed by Sardari Lal tenant, it was specifically pleaded that the landlady was estopped by her act and conduct to file the present petition. It was alleged that she had firstly filed the petition on the same subject matter, which was dismissed by the learned Rent Controller on 16.1.1985 and that she filed the second petition on the same subject matter, which was dismissed on 2.3.1985 and she filed another petition on the same subject matter,

which was also dismissed by the learned. Rent Controller and now she was debarred from taking up the same pleas regarding which the earlier petitions were dismissed. It was alleged that the present petition was barred under Order 23 Rule I CPC and she was also estopped by her act and conduct to file the present petition.

9. Ex.AX/1 is the first ejectment petition dated 11.4.1983, which was filed on 15.4.1983 by Smt. Dhanwanti Devi against Sardari Lal tenant and Anr.. In the said petition, one of the grounds taken by her was that the tenant had ceased to occupy the tenanted premises for the last one year without any reason. It is not disputed before me that the said petition was got dismissed as withdrawn by the landlady on 16.1.1985, with permission to file a fresh petition on the same cause of action. The second petition filed by Smt. Dhanwanti Devi against Sardari Lal for his ejectment was filed on 17.1.1985, copy Ex. RX/7. One of the grounds for ejectment in this petition was that he had ceased to occupy the tenanted premises for the last more than two years without any reason. It is also not disputed before me that vide order dated 2.3.1985, copy Ex.RX/8, the said petition was dismissed for non-prosecution as no one had come present on behalf of the landlady. The third petition was filed by Smt. Dhanwanti Devi against Sardari Lal on 22.1.1985, copy Ex.RX/5. One of the grounds for ejectment in the said petition was that the tenant had ceased to occupy the shop in dispute since January, 1985 without sufficient cause. The said petition was got dismissed as withdrawn on 25.3.1985. The counsel made the statement, copy Ex.RX/3 to the effect that he did not want to proceed with the petition because there was a technical defect in this petition and that he would file a fresh petition. On the said statement having been made, the learned Rent Controller dismissed the said ejectment petition, vide order dated 25.3.1985, copy Ex.RX/4 to the effect that in view of the statement of the counsel for the petitioner, the petition is dismissed as withdrawn and file be consigned to the record room.

10. As referred to above, when the third petition was got dismissed as withdrawn on the ground that there was a technical defect and a fresh petition would be filed, no permission of any kind was taken by Smt. Danwanti Devi for filing the fresh petition on the same cause of action. That being the position, the fresh petition on the same cause of action would be barred under Order 23 Rule 1 CPC. The effect thereof would be that the landlady would not be entitled to file a fresh petition for another period of four months after the filing of the earlier petition that the tenant had ceased to occupy the shop In question for a continuous period of four months prior to the filing of the present petition without any sufficient cause.

11. In Mehtab Singh, Advocate v. Tilak Raj Arora, (1988)93 P.L.R. 269 the question that was referred to the Division Bench was as to whether the second petition for ejectment of the tenant would be competent on a ground on which earlier petition was got dismissed as withdrawn without liberty to file second petition. After considering various judgments, the Division Bench answered the

reference in the affirmative and it was held that the second petition for the ejectment of the tenant on the ground on which the earlier petition was got dismissed as withdrawn without liberty to file a fresh petition would be barred and not maintainable. While coming to the aforesaid conclusion, the Division Bench of this Court had also considered the judgment referred to as Ram Dass v. Sukhdev Kaur (1981)83 P.L.R. 440 (supra), which has been relied upon the learned counsel for the respondents. After referring to Ram Dass v. Sukhdev Kaur (1981)83 P.L.R. 440 (supra), it was held by the Division Bench that no considered opinion was expressed as to whether the Rent Controller or the Appellate Authority could invoke the principle contained in Order 23 or various other provisions of the CPC in deciding such petitions and as such this decision would provide no guidance in the matter in issue. After considering various judgments as referred to above, it was held by the Division Bench that second petition for the ejectment of the tenant on the same ground on which the earlier petition was got dismissed as withdrawn without liberty to file a fresh petition, would be barred and not maintainable.

12. In view of the law laid down by the Division Bench of this Court, in my opinion, it could not be said that the present petition filed by the landlady for the ejectment of the tenant on the same ground that he had ceased to occupy the premises continuously for a period of four months prior to the filing of the petition without sufficient cause, would be maintainable. However, the position would be different if the period of four months referred in the earlier petition was different from the period referred to in the present petition. However, as referred to above, the earlier petition which was filed on 22. 1.1985 also contained a period which was common with the period referred to in the present petition and as such the present petition on the same cause of action would be barred under Order 23 Rule I CPC.

13. As referred to above, in 1977 RLR 417 (supra), the Hon"ble Full Bench of this Court had held that even though all the provisions of the CPC were not applicable to the proceedings in applications for eviction under the Act, but the principles which are the basis and foundation for the administration of justice would undoubtedly be applicable to these proceedings also.

14. The authorities Sh. Ram Dull Gupta v. The Financial Commissioner Haryana Chandigarh (1976)78 P.L.R. 791 (supra), Ved Parkash v. Om Parkash Nirwania 1981(2) RLR 659 (supra) and Ram Das v. Sukhdev Kaur (1981)83 P.L.R. 440 (supra) relied upon by the learned counsel for the respondent, in my opinion would be of no help to the respondent. Similar would be the position in respect of the authority. "Mrs. Anju Sharma v. Krishan Kumar and Ors. (1996) 118 P.L.R. 549. It was also relied upon by the learned counsel for the respondent inasmuch as in the said authority, reliance was placed on the law laid down in the case reported as Ram Dass v. Smt. Sukhdev Kaur (1981)83 P.L.R. 440 (supra). However, the law laid down in the subsequent authority in Mehtab Singh, Advocate v. Tilak Raj Arora, (1988)93 PLR 269 (supra) was not considered in this

judgment.

15. The authority M/s Indo Swiss Time Limited, Dundahera v. Umrao and Ors. (1981) 83 P.L.R. 335 (F.B.) (supra) relied upon by the learned counsel for the respondent, in my opinion, would also be of no help to the respondent. As referred to above, it is not a case where there is a direct conflict between two decisions of co-equal Benches and cannot possibly be reconciled. In Mehtab Singh Advocate v. Tilak Raj Arora (1988)93 P.L.R. 269 (supra), the earlier judgment referred as Ram Dass v. Sukhdev Kaur (1981)83 P.L.R. 440 (supra), was considered and it was thereafter that the Division Bench answered the reference to the effect that second petition would not be maintainable. Under these circumstances, it could not be said that there was any conflict between the two judgments which could not be reconciled.

16. The learned counsel for the respondent has also submitted before me that the provisions of the CPC could not be made applicable to the provisions under the Rent Act, in view of the judgment of the Hon'ble Supreme Court reported as New India Assurance Co. Ltd. Vs. R. Srinivasan, . However, I find no force in this submission of the learned counsel for the respondent. The reported case pertained to the applicability of the CPC under the Consumer Protection Act, 1986. It was held by the Hon'ble Supreme Court that where the first complaint was dismissed in default, the second complaint on the same facts and cause of action was not barred. However, in my opinion, the law laid down by the Hon'ble Supreme Court in this authority, would have no application to the provisions of the East Punjab Urban Restriction Act, 1949,

17. No other point has been urged before me by the learned counsel for the parties.

18. For the reasons recorded above, the present petition is allowed and the judgment dated 10.10.1995, passed by the learned Appellate Authority is set aside and the ejectment petition filed by the landlady is dismissed with an order as to costs.