

**(1996) 05 P&H CK 0012**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 1905 of 1996**

|                                     |            |
|-------------------------------------|------------|
| The Punjab and Sind Bank and Others | APPELLANT  |
| Vs                                  |            |
| Kashmir Singh Bhullar               | RESPONDENT |

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**Date of Decision :** 20-05-1996

**Acts Referred:**

East Punjab Urban Rent Restriction Act, 1949 — Section 13A, 15(5)

**Citation :** (1996) 113 PLR 571 : (1996) 1 RCR(Rent) 671

**Hon'ble Judges :** Sarojnei Saksena, J

**Bench :** Single Bench

**Advocate :** I.P. Singh, for the Appellant; J.S. Bhullar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Sarojnei Saksena, J.—By this order Civil Revision Nos. 1905 and 1906 of 1996 are being decided.

2. Facts of the case are that the landlord-petitioner-respondent filed ejectment petition u/s 13-A of the East Punjab Urban Rent Restriction Act, 199 (in short the "Act") for respondent-petitioners" ejectment from the demised premises comprising basement, ground floor and first floor of House No. 1926, Sector 34-D, Chandigarh alleging that he is a specified landlord under Clause (hh) of Section 2 of the Act. The premises was demised to the respondent-petitioners under lease deed dated 22.9.1983 wherein respondent No. 1 through respondents 2 and 3 has been earlier running its branch and now has shifted the said branch to another premises in Sector 34, Chandigarh but has not vacated the premises. Petitioner-respondent is a public servant being a Member of the Punjab Superior Judicial Service and is going to retire on 31.5.1996. The second floor of the demised house comprising of only two rooms and a store is in possession of the petitioner's son who is a practising lawyer and is living therein with his wife and daughter. The applicant-respondent-landlord is not in possession of sufficient accommodation and wants to settle at Chandigarh after his retirement and needs the demised premises for his own use and occupation. At present, he is posted at

Bhatinda as Presiding Officer, Labour Court at Bhatinda.

2. Notice of the petition was given to the respondent-petitioners, who filed the petition to grant leave to defend the petition on various grounds. It was alleged that sufficient accommodation is available with the landlord, who is not a specified landlord. It was also averred that the applicant-respondent-landlord has also filed the civil suit for permanent injunction restraining the respondent-petitioners from running a branch of the bank and misusing the premises in dispute, that is, for using the same for the purpose other than the residential. Application under Order 39 Rules 1 and 2, CPC was also filed in the civil suit which was declined by the trial Court. The said civil suit is also pending in the Court of the Rent Controller. The civil suit is fixed for evidence. The applicant-respondent- landlord is misusing the process of law having filed the civil suit. He is estopped from filing this rent application.

3. In Civil Revision No. 1905, it is also averred that with a view to harass the respondent-petitioners, the landlord got the building resumed from the Estate Officer, Union Territory, Chandigarh under the Public Premises (Unauthorised Occupants) Act, 1973. Respondent-petitioners have filed appeal before the Chief Administrator Chandigarh Administration, which is pending wherein the stay has been granted in their favour on 20.9. 1994.

4. By the impugned order passed on 17.4.1996 leave to defend was declined on the ground that the petitioner-landlord is a specified landlord. His only two rooms on the second floor are in possession of petitioner's son. Considering the status of the petitioner-landlord and his family, the accommodation with him is not suitable for his and his family members residence. The Rent Controller observed that there are no triable issues and there is no merit in the application for leave to defend. Hence, the petition was declined.

5. On that very day, the ejectment petition was allowed vide the impugned order dated 17.4.1996 holding that the petitioner-landlord is a specified landlord. u/s 13-A of the Act, leave to defend has been refused to the respondent-tenants and thus, the Rent Controller is bound to pass an order of ejectment. Accordingly, petition was allowed, ejectment order was passed and respondent- tenants were directed to hand over the possession of the demised premises within one month from the date of the order. Aggrieved against the order Civil Revision No. 1906 of 1996 is filed.

6. Respondent-petitioners" learned counsel relying on K.G.P. Pillai Vs. Subhash Chander Pathania, , C.D. Korpai Vs. Capt. A.K. Madan and Others, , Smt. Jamna Devi and Others Vs. Kude Ram and Another, , Precision Steel and Engineering Works and Another Vs. Prem Deva Niranjana Deva Tayal, , Om Parkash Saluja Vs. Smt. Saraswati Devi, , and Sobh Raj v. Din Dayala (1989) 96 P.L.R. 235, contended that as the respondent-tenants have denied the alleged need of the landlord on the ground that he is having sufficient accommodation in his occupation in the demised building for his residence, leave ought to have been

granted to them. He also relied on Mohinder Singh Vs. Gurnam Singh and Another, , on the ground that if such need is disputed by the tenant, the Rent Controller must enquire into it.

7. Petitioner-respondent-landlord's learned counsel raised a preliminary objection that the respondent-tenants filed affidavit in support of their petition to grant leave to defend, but the affidavit is not in accordance with the provisions of Order 19 Rule 3, CPC as well as the High Court Rules and Orders, Vol. IV, Chapter 12-B Para 9. To substantiate his contention, he has relied on Tek Chand Vs. Balbir Singh and Others, , Sunder Industries and Others Vs. General Engineer Works, and A.K.K. Nambiar Vs. Union of India (UOI) and Another, .

8. Respondent-petitioner-tenants' learned counsel relying on Ram Krishan Chhokar Vs. The Jagmohan Singh Ahluwalia, and Prof. Bhupinder Singh, Advocate Vs. Sohinder Singh, , contended that the provisions of CPC are not applicable in rent petitions. The Rent Controller is a persona designation under the Act, who acts as a quasi-judicial tribunal to decide the matter covered by the Act and thus has not the trappings of a Civil Court. The Tribunal is well within its rights to regulate its own procedure.

9. So far as the preliminary objection is concerned, it has no relevance. Firstly because the provisions of CPC are not strictly applicable in rent petitions. It is not a Civil Court, it is a Tribunal, which is competent to decide its own procedure. Secondly, as is held in A.K.K. Nambiar's case (supra), if affidavit is not properly verified, it cannot be admitted in evidence. When the tenant files, an affidavit in support of his petition seeking leave to defend, that affidavit is not filed with a view that it will be admitted in evidence. Hence, in my considered view, this preliminary objection is not sustainable.

10. Petitioner-respondent-landlord's learned counsel relying on B.D. Thapar v. Pal Singh (1987) 91 P.L.R. 344, Daya Parkash Mahendru Vs. Darshan Lal, , Savitri Devi Dutta Vs. Smt. Shakuntla Khullar (Principal), Government College, and Sunil Kumar v. Sh. S.S. Sharma (1991) 100 PLR 36 valiantly argued that the sufficiency of accommodation with the landlord cannot be challenged by the tenant and cannot be enquired into and decided by the Rent Controller. The only point of suitability can be enquired into and decided by the Rent Controller.

11. The authorities cited by the petitioner-respondent-landlord's learned counsel are distinguishable on facts. In B.D. Thapar's case (supra), the tenant alleged that the landlord has got sufficient accommodation but details were not given. Allegations were vague and on that count, leave to contest the ejectment application was declined, which is not the case here. In Bava Parkash Mahendru's case (supra), the Rent Controller held that "suitability of the landlord can only be inferred or adjudged in case the landlord is residing outside the local area and intends shifting therefrom and not in a case where he is already occupying a part of the same building." This finding of the Rent Controller was set aside on the ground that it is misconceived.

12. In Savitri Devi Dutta's case (supra) it is held that "sufficiency of accommodation already in possession of the landlord and lack of bonafide need are not sufficient grounds to decline the relief to the landlord." In Sunil Kumar's case (supra), a Single Bench of this High Court has held that the Rent Controller cannot go into the question of sufficiency or insufficiency of accommodation with the landlord. But in Sobh Raj's case (supra), it is held that if the tenant was pleading about the same previous litigation and was disputing the need of the landlord, leave should have been granted to him.

13. While dealing with the provisions of Sections 25B(40), 14(1) Proviso (e) of Delhi Rent Control Act, 1958 the Apex Court has held that "leave has to be granted when eviction is sought on the ground of bonafide personal requirement and that ground is disputed by the tenant." It has been so held by the Lordships of Apex Court in CD. Karpal's case, Smt. Jamna Devi's case, Precision Steel's case and Om Parkash Saluja's case (supra).

14. In Mohinder's case (supra), a Single Bench of this High Court has held that if the specified landlord is seeking additional accommodation being already in possession of four rooms and a kitchen, leave to defend should be given to the tenant because the Rent Controller is required to examine whether the existing accommodation was enough or not. In Pillai's case (supra) a Division Bench of this High Court has held that if the landlord is in possession of the entire ground floor and he seeks eviction of the tenant from one room in Barsati, it would be a case of seeking additional accommodation and hence, this question can be decided only after leave is granted to the tenant to contest the ejection application.

15. Considering all the above authorities, in my considered view in this case the tenants should have been granted leave to defend their case as the tenants were disputing the alleged requirement of the landlord. Admittedly, the landlord is in occupation of a portion of the demised building and he is seeking possession of additional accommodation in the same building.

16. Hence, Civil Revision No. 1905 of 1996 is hereby allowed, impugned order is set aside, leave is granted to the tenants to defend the ejection petition and the case is remanded to the Rent Controller for deciding the petition in accordance with law.

17. So far as another revision is concerned, petitioner respondent-landlord's learned counsel admitted that in the ejection petition, no evidence was adduced by the landlord. He filed the original certificate issued by the Registrar, Punjab and Haryana High Court, Chandigarh, wherein he has certified that Shri K.S. Bhullar, member of the Punjab Superior Judicial Services presently posted as Presiding Officer, Labour Court, Bhatinda is due to retire from service on 31.5.1996, but no evidence was adduced to prove this certificate. There was no evidence on record to prove that the Registrar is competent to retire the petitioner-respondent landlord. The petitioner-landlord is a member of the

Punjab Civil Service (Judicial). He is appointed by the State Government. Only the State Government is competent to remove him from service. Therefore, the aforementioned certificate should not have been relied on by the Rent Controller to hold that the petitioner-respondent-landlord is a specified landlord. In *Subedar Tara Singh v. Smt. Bachan Kaur and Ors.* 1990 (1) RCR 383, a Single Bench of this High Court has held that the landlord should produce copy of the certificate of retirement from service, but if he fails to prove that the officer who signed the certificate was competent to remove him from service, the landlord should not be considered as specified landlord.

18. In this case as the petitioner-respondent-landlord is a member of the Punjab Superior Judicial Service, he is appointed by the State Government and lastly the State Government is competent to retire him from service. Hence, the certificate relied on by the petitioner-respondent-landlord was not relevant to prove this fact that he is a specified landlord. The Rent Controller has fallen into that error and passed ejectment order in hot haste without applying her judicial mind.

19. Consequently, the revision No. 1906 of 1996 is also allowed, impugned ejectment order is set aside and the Rent Controller is hereby directed to decide the petition in accordance with law.