

Suman Vs Bhagat Ram

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 13, 2007

Acts Referred: Limitation Act, 1963 " Section 10, 11, 12, 13, 14

Citation: (2007) 4 PLR 440 : (2008) 1 RCR(Civil) 313 : (2008) 1 RCR(Rent) 25

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Judgement

Permod Kohli, J.

Legality and validity of order dated 2.5.2007 passed by the Rent Controller, Nakodar is in question in the present

Revision filed u/s 18 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act").

2. The facts of the case may be briefly noticed. Bhagat Ram-respondent landlord, claiming to be an NRI residing in England for the last 40 years

and now residing with his son-Ram Lal at Mohalla Arjan Nagar, Nakodar filed a petition u/s 13-B of the Act for eviction of the petitioner-tenant

from the demised house. The petitioner-tenant appeared through her counsel on 28.2.2007 when the case was adjourned to 10.3.2007 for filing

the reply by her. On the date fixed i.e. 10.3.2007, respondent-landlord filed an application for striking off the defence of the petitioner-tenant for

want of application seeking leave to contest the petition. On the same date, the petitioner-tenant filed an application for seeking condonation of

delay u/s 5 of the Limitation Act and an application for leave to contest the main petition. Both the said applications were taken up for

consideration by the Rent Controller. Vide the impugned order, the Rent Controller allowed the application of the respondent-landlord for striking

off the defence of the petitioner-tenant and simultaneously dismissed the application of the petitioner-tenant refusing to condone the delay in

preferring an application for leave to defend the eviction petition, and consequently, the application for leave to defend was also dismissed.

3. The Rent Controller was confronted with three reported judgments of this Court, on the question of condonation of delay u/s 5 of the Limitation

Act in proceedings before the Rent Controller, particularly, in condoning the delay in filing an application for seeking leave to defend the eviction

petition. In a judgment as S. Manohar Singh Vs. S. Aridaman Singh Dhillon, , an Hon"ble Single Judge of this Court has held in favour of

applicability of Section 5 of the Limitation Act for condonation the delay in making an application for leave to defend. In the other two rulings as

Amarjit Singh Walia Vs. Harbans Singh, and Babu Ram Vs. Naresh Kumar, , two Hon"ble Judges of this Court sitting singly took a contrary view

and held that Section 5 of the Limitation Act has no application and cannot be invoked to condone the delay in filing application for leave to

contest the eviction petition as prescribed u/s 13-A and 18-A of the Act. The Rent Controller applied the latest judgments and opined in favour of

the non-applicability of Section 5 of the Limitation Act and consequently, dismissed the application for condonation of delay as also application for

leave to contest the eviction petition. The Rent Controller also made certain observations on the merit of the application u/s 5 of the Limitation Act

and recorded that the petitioner-tenant"s contention of remaining ill cannot be accepted, in view of the fact that she had appeared through counsel

on 28.2.2007.

4. Two question arise in the present case.- (1) As to which of the two views expressed by this Court regarding applicability and non-applicability

of Section 5 of the Limitation Act in eviction proceedings before the Rent Controller in filing application for leave to contest, is the correct and

acceptable view? And (2) as to whether the observations made by the Rent Controller on the merit of application u/s 5 of the Limitation Act are

legal and correct and what is its effect in the event Section 5 of the Limitation Act is found applicable to the proceedings before the Rent

Controller?

5. I take this opportunity to refer to two sets of the judgments of this Court, including the judgments relied upon in formulation of the opinions by

three co-ordinate Benches of this Court.

6. In the case of S. Manohar Singh (supra), Hon"ble Single Judge of this Court relied upon a judgment of the Hon"ble Supreme Court in the case

of Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, wherein following observations have been made:

15. After repealing of Indian Limitation Act, 1908 and its replacement by the present Limitation Act of 1963 a fundamental change was made in

Section 29(2). The present Section 29(2) as already extracted earlier clearly indicates that once the requisite conditions for its applicability to given

proceedings under special or local law are attracted the provisions contained in Sections 4 to 24, both inclusive would get attracted which

obviously would bring in Section 5 which also shall apply to such proceedings unless applicability of any of the aforesaid Sections of the Limitation

Act is expressly excluded by such special or local law. By this charge it is not necessary to expressly state in a special law that the provisions

contained in Section 5 of the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section

29(2) this provision is made applicable to the periods prescribed under the special laws. An express mention in the special law is necessary only

for any exclusion. It is on this basis that when the new Rent Act was passed in 1965 the provision contained in old Section 31 was omitted. It

becomes therefore apparent that on a conjoint reading of Section 29(2) of Limitation Act of 1963 and Section 18 of the Rent Act of 1965,

provisions of Section 29(2) would automatically get attracted to those proceedings, as there is nothing in the Rent Act of 1965 expressly excluding

the applicability of Section 5 of the Limitation Act to appeals u/s 18 of the Rent Act.

7. After taking note of the above mentioned observations of the Hon"ble Supreme Court, Hon"ble Single Judge of this Court recorded his own

observations in the following manner-

10. It may be noticed that under the Act, there is no clause which expressly exclude the applicability of the Limitation Act to any of the

proceedings under the said Act. Therefore, keeping in view the interpretation of Section 29(2), the provisions of Sections 4 to 24 including that of

Section 5 would be applicable to the proceedings under "the Act" including that to application for leave to defend. It may further be noticed that

the Hon"ble Supreme Court in Mukri Gopalan's case has approved the minority view in Jokkim Fernandez case (supra) whereas the Division

Bench in Ashwani Kumar Gupta's case has approved the majority view of the said Full Bench of the Kerala High Court. The principle laid down

by Hon"ble Supreme Court in Mukri Gopalan's case (supra) has come up for decision in other cases as well before the Hon"ble Supreme Court.

8. In subsequent judgment passed in the case of Babu Ram (supra) another Hon"ble Single Judge of this Court observed as under:

10. The applicability of the provisions of the Act, therefore, is to be judged not from the terms of the Limitation Act but by advert to the

provisions of the Act relating to filing of a petition u/s 13-A of the Act for seeking immediate possession of a "residential" or "scheduled building

for which a right accrues to certain persons. It is to be seen by advert to the provisions and where the procedure provided therein is a complete

Code in itself, it does not then admit the application of the provisions of the Limitation Act mentioned in Section 29(2) thereof. A reference to the

provisions of Sections 13-A and 18-A of the Act would show that the procedure provided regarding right to recover immediate possession of

residential"" or ""scheduled building"", is a complete code by itself and the same does not admit the application of any provision of the Limitation Act

mentioned in Section 29(2) thereof. It is also appropriate to note that in terms of Section 18-B of the Act, it is provided that Section 18-A or any

rule made for the purpose thereof, shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other

law for the time being in force. This also would exclude the applicability of the Limitation Act. The procedure prescribed for seeking recovery of

immediate possession of ""residential"" or ""scheduled building"" in terms of Section 13-A of the Act, would not admit the applicability of the

provisions of the Limitation Act....

9. Even before these judgments were rendered by two Co-ordinate Benches of this Court, same issue came up for consideration before a Division

Bench of this Court in the case of Ashwani Kumar Gupta Vs. Shri Siri Pal Jain, . The Division Bench in the aforesaid case, while examining and

interpreting the scope of Section 13-A made following observations:

11. In our opinion, the question relating to applicability of Section 5 of the Limitation Act must be answered against the petitioner because, as

observed herein above, Section 13-A of the Act is a code into itself and it constitutes a special provision not only vis-a-vis other provisions of the

Act but also any other law for the time being in force. This naturally displaces the applicability of any other law which is inconsistent with the

provisions of Section 13-A read with the form prescribed for issuance of summons u/s 13-A(2) of the Act. Therefore, neither the tenant can

invoke the provisions of Limitation Act nor can the Controller use Section 5 thereof for condoning the delay in the filing of application u/s 13A(4).

As a logical corollary, it must be held that the Rent Controller does not have the discretion and jurisdiction to condone the delay in the filing of the

application or to extend the period specified in the form. If at all the Legislature wanted to make the provisions of Limitation Act applicable or

confer some element of discretion upon the Rent Controller, nothing prevented it from incorporating an express provision to that effect. In the

absence of such express provision, we do not find any rhyme or reason to import the applicability of the provisions of Limitation Act or implied

vestige of discretion with the Rent Controller to condone the delay in the filing of the application or to extend the period of 15 days.

10. Aforesaid judgment was rendered on the reference made by Hon"ble Single Judge Hon"ble Mr. Justice H.S. Bedi (the then Hon"ble Judge of

this Court) who expressed his disagreement with four reported judgments of this Court in the cases of Gian Singh Gandhi v. Surjit Singh (1989) 95

P.L.R. 335, Surinder Kumar v. Prem Kumar 1980 (2) R.L.R. 279, Kapil Bhatia and Others Vs. Delhi Express Travels Pvt. Ltd. and Others, and

Puran Singh v. Jai Ram Das 9 1989 (1) R.L.R. 611. In all these judgments, the High Court either upheld the orders condoning the delay or

condoned delay in making applications for leave to contest the eviction applications. The Division Bench, accordingly, disagreed with the above

judgments and held that the Rent Controller has no jurisdiction to condone the delay and Section 5 of the Limitation Act is not applicable. In the

later judgment in the case of Babu Ram (supra), a learned Single Judge noticed two later judgments of the Hon"ble Supreme Court. In the case of

Parkash H. Jain v. Ms. Marie Fernandes J.T. 2003 (Suppl. 1) S.C. 528, the Hon"ble Supreme Court, while considering a similar provision under

the Maharashtra Rent Control Act, 1999 and taking note of judgment in the case of Mukri Gopalan (supra) and some other judgments observed

as under:

10. We have carefully considered the submissions of the learned Counsel appearing on either side. Questions of the nature raised before us have to

be considered not only on the nature and character of the authority, whether it is court or not but also on the nature of powers conferred on such

authority or court, the scheme underlying the provisions of the Act concerned and the nature of powers, the extent thereof or the limitations, if any,

contained therein with particular reference to the intention of the Legislature as well, found expressed therein. There is no such thing as any inherent

power of court to condone delay in filing a proceedings before court/authority concerned, unless the law warrants and permits it, since it has a

tendency to alter the rights accrued to one or the other party under the statute concerned....

11. In the case of Gopal Sardar Vs. Karuna Sardar, , the Hon"ble Apex Court again considered a similar provision under the West Bengal Land

Reforms Act, 1955, and ruled as under:

13. Section 8 of the Act prescribes definite period of limitation of three months or four months, as the case may be, for initiating proceedings for

enforcement of right of pre-emption by different categories of people with no provision made for extension o; application of Section 5 of the

Limitation Act. When in the same statute in respect of various other provisions relating to filing of appeals and revisions, specific provisions are

made so as to give benefit of Section 5 of the Limitation Act and such provision is not made to an application to be made u/s 8 of the Act, it

obviously and necessarily follows that the legislature consciously excluded the application of Section 5 of the Limitation Act. Considering the

scheme of the Act being self-contained code in dealing with the matters arising u/s 8 of the Act and in the light of the aforementioned decisions of

this Court in the case of Hukumdev Narain Yadav, Anwari Basavaraj Patil and Parson Tools (supra), it should be construed that there has been

exclusion of application of Section 5 of the Limitation Act is an application u/s 8 of the Act. In view of what is stated above, the non-applicability

of Section 5 of the Limitation Act to the proceedings u/s 8 of the Act is certain and sufficiently clear Section 29(2) of the Limitation Act as to the

express exclusive of Section 5 of the Limitation Act and the specific period of limitation prescribed u/s 8 of the Act, without providing for either

extension of time or application of Section 5 of the Limitation act or its principles can be read together harmoniously. Such reading does not lead to

any absurdity or unworkability or frustrating the object of the Act. At any rate in the light of the three-Judge bench decision of this Court in

Hukumdev Narain Yadav case (supra) and subsequently followed in Anwari Basavaraj Patial case (supra) even though special or local law does

not state in so many words expressly that Section 5 of the Limitation Act is not applicable to the proceedings under those Acts, from the scheme of

the Act and having regard to various provisions such express exclusion could be gathered. Thus, a conscious and intentional omission by the

legislature to exclude application of Section 5 of the Limitation Act to the proceedings u/s 8 of the Limitation Act, looking to the scheme of the Act,

nature of right of pre-emption and express application of Section 5 of the Limitation Act to the other provisions under the Act, itself means and

amounts to ""express exclusion"" of it satisfying the requirement of Section 29(2) of the Limitation Act.

12. In the case of S. Manohar Singh (supra), Hon"ble Single Judge held in favour of applicability of Section 5 of the Limitation Act, 1963, applying

the ratio of judgment of the Hon"ble Supreme Court passed in Mukri Gopalan "s case (supra), which inter-alia, observed that where the provisions

of Section 5 of the Limitation Act, 1963 are not expressly excluded under local or special law, Sections 4 to 24 of the Limitation Act will apply by

virtue of Section 29(2) of the Limitation Act. The Hon"ble Single Judge was of the opinion that Section 5 of the Limitation Act has not been

expressly excluded under the East Punjab Urban Rent Restriction Act, 1949, and thus Section 5 of the Limitation Act will be applicable through

the window of Section 29(2) of the Limitation Act. In the case of Gopal Sardar (supra), Hon"ble Supreme Court took note of the observations

made in Mukri Gopalan"s case (supra) and also Section 29(2) of the Limitation Act, but held that Section 5 of the Limitation Act has no

application where there is no provision for extension of time or condonation in a local or special law. The entire view depends upon the

interpretation of Section 29(2) of the Limitation Act. For the convenience, Section 29(2) of the Limitation Act is noticed herein under:

29. ...

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the

Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining

any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Section 4 to 27

(inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

This provision excludes the applicability of Section 4 to 24 of the Limitation Act only in the event of express exclusion by a local or special law.

From the reading of Sections 13-A, 13-B and 18-A of the East Punjab Urban Rent Restriction Act, 1949, it is evident that these provisions are

silent about the applicability or non-applicability of the Limitation Act and/or Section 5 thereof.

13. The question that arises for consideration is whether provisions of Section 5 as also Section 29(2) of the Limitation Act, 1963 can be said to

be inconsistent or to be construed as supplemental to each other. The answer lies in the judgment of the Hon'ble Supreme Court in the case of

Gopal Sardar (supra) wherein it has been observed as under:

13. ...even though special or local law does not state in so many words expressly that Section 5 of the Limitation Act is not applicable to the

proceedings under those Acts, from the scheme of the Act and having regard to various provisions such express exclusion could be gathered.

Thus, a conscious and intentional omission by the legislature to exclude application of Section 5 of the Limitation Act to the proceedings u/s 8 of

the Act, looking to the scheme of the Act, nature of right of pre-emption and express application of Section 5 of the Limitation Act to the other

provisions under the Act, itself means and amounts to "express exclusion" of it satisfying the requirement of Section 29(2) of the Limitation Act.

(Emphasis supplied)

14. In the opinion of the Hon'ble Apex Court, even if there is no specific or express exclusion of Section 5 of the Limitation Act in a special or

local law and such special/local law does not provide for extension of time or condonation, Section 5 of the Limitation Act will not apply and the

provisions must be construed to exclude Section 5 of the Limitation Act. In the light of ratio of this Judgment, there is no escape but to hold that

Section 5 of the Limitation Act is not applicable for condoning delay in making application for leave to contest eviction petition.

15. There is another important and relevant provision which must be construed to exclude the applicability of Section 5 of the Limitation Act. Sub-

section 18-B of the East Punjab Urban Rent Restriction Act, 1949 reads as under:

18-B. Section 18-A to have over-riding effect-Section 18-A or any rule made for the purpose thereof shall have effect notwithstanding anything

inconsistent therewith contained elsewhere in this Act or in any other law for time being in force.

16. A bare reading of this Section makes it abundantly clear that procedure prescribed u/s 18-A of the Act has over-riding effect on all other

provisions of this Act or any other law for the time being in force to the extent of inconsistency. This can be construed to be a provision which

expressly excludes Section 5 of the Limitation Act as otherwise it tends to render the provisions of Section 18-A of the Act read with Form

prescribed which contains specific period of limitation for seeking leave to contest the eviction petition and does not envisage any extension or

relaxation of the prescribed period as otiose. Thus, I am of the considered view that the view expressed in the case of Babu Ram v. Naresh

Kumar (supra) needs to be followed.

17. In view of the above, I uphold the impugned order dated 2.5.2007 passed by the Rent Controller, Nakodar and dismiss this Revision Petition,

without any order as to costs.

Order Dated 13.08.2007

18. At this stage, learned Counsel appearing for the petitioner has prayed for grant of some time to the tenant/petitioner to vacate the premises.

Prayer is not opposed by the other side.

19. In the interest of justice, three months time is granted to the petitioner to vacate the premises, subject to the petitioner's filing an undertaking to

vacate the premises on or before 12.11.2007. Undertaking be filed before this Court within a period of two weeks. On the failure of the petitioner

to vacate the premises, the Rent Controller will be competent to initiate eviction proceedings in accordance with law. The petitioner will also be

liable for contempt of this Court. During this period, the petitioner will pay not only the agreed monthly rent but also the arrears, if any.