

(1990) 05 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 829 of 1987

Mahajan Cloth House and
Others

APPELLANT

Vs

Tara Singh

RESPONDENT

Date of Decision: May 11, 1990

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- East Punjab Urban Rent Restriction Act, 1949 - Section 13A, 18, 18A

Citation: (1990) 98 PLR 520 : (1990) 2 RCR(Rent) 401 : (1991) 1 RCR(Rent) 259

Hon'ble Judges: M.S. Liberhan, J

Bench: Single Bench

Advocate: M.L. Sarin and Jai Shree Thakur, for the Appellant; Nemo, for the Respondent

Judgement

M.S. Liberhan, J.

In order to decide this revision petition briefly the facts may be stated as under : --

2. Tara Singh landlord claimed ejectment of M/s Mahajan Cloth House u/s 13-A of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 (hereinafter referred to as "the Act"), which provides a right to a specified landlord to seek the ejectment of the tenant summarily from the residential building, in case on his retirement he, i.e. the landlord is possessing no suitable accommodation in the locality. The landlord stated that he had inherited the demised premises which was a residential building on the basis of a will alleged to have been executed in his favour by one Resham Singh son of Ganda Singh. The portion in occupation of the tenants was given on rent where they started running a cloth merchant shop, without obtaining prior permission u/s 11 of the East Punjab Urban Rent Restriction Act, 1949. A part from this detail with respect to family etc. and insufficiency of the accommodation were given.

3. It may be pertinent at this stage to refer to a fact that earlier to this application, the landlord had preferred an application for ejectment on the same ground i.e. u/s 13-A of the Act wherein the demised premises were alleged to have been described as a shop; but the application was got dismissed for non-prosecution.

4. On notice of the petition being given, the tenants sought permission to defend the proceedings by filing an affidavit stating the grounds on which he sought to contest the application for eviction. It was stated in the affidavit that M/s Mahajan Cloth House i.e. the tenants, are the tenants in the demised premises which is, in fact, a shop. Since the demised premises is neither residential nor scheduled building but a commercial building, the application u/s 13-A of the Act is not maintainable. A plea of bar of res judicata in view of the fact of the earlier petition having been dismissed for non-prosecution was also raised. Some other pleas like the lack of bona fides and mala fide intentions were also raised.

5. The learned Rent Controller, after appraising the respective affidavits filed on the record, returned a finding on merits that the landlord who was previously working as a Reader in Judicial Courts at Amritsar retired from service on superannuation on December 16, 1969, and is thus a specified landlord. The demised premises is put of the building which is residential one and there is nothing on record that the demised premises were converted into a shop with the permission of the Rent Controller. Consequently, the Rent Controller, relying on Hari Mittal v. B.M. Sikka 1986 89 P. L. R. 1. returned a finding that demised premises is part of a residential building and the application is maintainable. It was further found after a detailed reasoning given in the order that the dismissal of earlier petition on the same cause of action for non-prosecution is of not consequence as the principle of res judicata envisaged by Section 11 C.P.C. and provisions of Order 9, Rule 9 C. P. C. are not applicable to the proceedings under the Act. It was further observed that mala fides and lack of bona fides were of no consequences.

6. The learned counsel for the petitioners urged that at this stage where the tenant has only sought a permission to defend the petition for ejectment, the Rent Controller has no jurisdiction to determine the matter on merits. Only prima facie allegations made in the affidavit of the tenants are to be seen. It is on Rent Controller being satisfied that the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord from obtaining an order for recovery of possession of the residential building or scheduled building, as the case may be, that the leave to contest can be granted. It is only after the leave is granted that the Rent Controller shall commence the hearing on a date not later than one month from the date on which the leave is granted to the tenant to contest and shall hear the application from day to day till hearing is concluded and application is decided. It has further been provided that while holding an inquiry in a proceeding to which this section applies including the recording of evidence, the Rent Controller shall follow the practice and procedure of a Court of Small Causes. At this stage, it would

be apposite to refer to the provisions of Section 18-A of the Act. The relevant provisions areas under :--

"18-A. Special Procedure for disposal of applications u/s 13-A:

(1)	xx	xx	xx	xx
(2)	xx	xx	xx	xx
(3)	xx	xx	xx	xx

(4) The tenant on whom the service of summons has been declared to have been validly made under Sub-section (3) shall have no right to contest the prayer for eviction from the residential building or scheduled building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter in law of such specified landlord in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord from obtaining an order for the recovery of possession of the residential building or scheduled building as the case may be, u/s 13-A.

(6) Where leave is granted to the tenant to contest the application, the Controller shall commence the hearing on a date not later than one month from the date on which the leave is granted to the tenant to contest and shall hear the application from day to day till the hearing is concluded and application decided.

(7) Notwithstanding anything contained in this Act, the Controller shall while holding an enquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes."

6. The learned counsel for the petitioners, in order to support the contention raised, relied on Precision Steel and Engineering Works and Anr. v. Prem Deva Niranjana Deva Tayal 1982 (2) R. C. J. 643, Dharam Pal v. Malkiat Singh Gill (1987-2) 92 P. L. R. 383, Joginder Paul v. Gurdial Singh 1989 95 P. L. R. 441 and Civil Revision No. 2500 of 1986 decided on December 9, 1986.

7. During the course of arguments, the learned counsel for the petitioners, referred to Annexure P-1 where under the similar situation with respect to the adjoining shop of the landlord-respondent himself, leave to defendant was granted. He has

further shown the photograph in order to show prima facie that it is not a residential building but a commercial shop as there are two other shops adjoining to this shop in dispute and the shops open in the bazar (Shopping Centre). It was stated that in an earlier petition preferred on July 19, 1986, the demised premises were described as shop and the application was got dismissed as withdrawn on September 25, 1986. It is only in the fresh application preferred on November 13, 1986 that demised premises have been described as a part of the house.

8. In *Precision Steel and Engineering Work's case* (supra) (equivalent to AIR 1982 Supreme Court 1518) the Supreme Court, while considering the provisions of Section 25B(5) of the Delhi Rent Control Act, 1958, took the view that the jurisdiction to grant leave to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. At that stage that affidavit alone is the relevant document and one must confine to the averments in the affidavit. If the averments in the affidavit disclose such facts which, if ultimately proved to the satisfaction of the Court, would disentitle the landlord from recovering possession, that by itself makes it obligatory upon the Controller to grant leave. It is immaterial that facts alleged and disclosed are controverted by the landlord because the stage of proof is yet to come. It is distinctly possible that a tenant may fail, to make good the defence raised by him. Plausibility of the defence raised and proof of the same are materially different from each other and one cannot bring in the concept of proof at the stage when plausibility has to be shown. The authorities have to confine themselves to the jurisdiction conferred on them by the statute.

9. In *Dharam Pal's case* (supra) the learned Judge was of the view that at the stage of granting or declining the leave the Controller has to take into consideration the grounds disclosed by the tenant in his affidavit. If the grounds are found to be plausible leave ought to be granted. The fact that these grounds have been countered in his reply by the landlord should not weigh with the Rent Controller. By taking into consideration the reply filed by the landlord the Rent Controller enters the arena of proof which is a stage to be reached after the leave is granted. It was further observed that coming to the conclusion on facts by banking on the detailed reply of the landlord amounts to an error in the exercise of jurisdiction by the learned Rent Controller. The learned Judge was dealing with the provisions of Section 18(5) of the East Punjab Urban Rent Restriction Act (III of 1949), as amended, i.e. the relevant provisions which are under consideration in the present case.

10. Similarly in *Joginder Paul's case* (supra) the learned Single Judge took the view that in the absence of any evidence that the premises in dispute was a residential building, no eviction order could be passed u/s 13-A of the Act and it is the duty of the Rent Controller to find out as to whether the demised premises is a residential building or not before the eviction order could be passed u/s 13-A since it relates to jurisdictional fact. Though the law laid down in the judgment is not relevant to the facts and circumstances of this case, but it does lend some support while

interpreting the provisions of the Act.

11. Civil Revision No. 2500 of 1986 is noticed as it was cited at the Bar.

12. The Act was brought into provide a shelter to a retiring person. The Act was enacted in order to cut short the procedural bottlenecks and delays in getting an ejectment of a tenant-through the summary procedure. This was done for a specific class of persons which have been defined as specified landlords. It carried with it the commitment that the specified landlord i.e. a person who is entitled to receive rent in respect of a building on his own account and was either holding an appointment in a public service or post in connection with the affairs of the Union or of a State. It confers a right on the specified landlord to recover possession of residential or scheduled building by filing an affidavit to the effect that he does not own and possess any other suitable accommodation in the local area in which he intends to reside. On this application being preferred to the Rent Controller, Section 18-A of the Act prescribes procedure to be followed i.e. on preference of the application, the Controller shall issue summons for service on the tenant in the form specified which shall be served in accordance with the C.P.C. as well as by registered post acknowledgement due. It may be served on the tenant or his authorised agent. It further makes it incumbent on the Rent Controller to get the copies of the same affixed on some conspicuous part of the building with respect to which the application for possession has been made. The Rent Controller, on being satisfied with respect to the procedural part having been complied with and service effected and after such enquiry as he deems fit with respect to the correctness of the endorsement made with respect to the service of the summons, would declare that valid service has been effected. It is at this stage that a right has been conferred on the tenant to a limited extent. The legislature has debarred the tenant's right to contest his eviction from the residential building or scheduled building unless he files an affidavit stating the grounds on which he seeks to contest his eviction and obtains a leave for the same from the Rent Controller. It is only in the absence of or on non filing of the affidavit by the tenant stating the grounds on which he proposes to defend the application that the statement made by the landlord shall be deemed to be admitted.

13. A bare reading of Section 18-A. Sub-section (5) of the Act shows that it has been enjoined on the Rent Controller to grant leave to a tenant to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord from obtaining the recovery of possession of the residential building or scheduled building.

14. It is obvious from the reading of the provisions of the Act that the Rent Controller while considering whether to grant or decline the leave to contest shall take into consideration only the affidavit filed by the tenant and no other material. It is the facts disclosed in the affidavit filed by the tenant which alone would form the relevant consideration for coming to a conclusion whether those facts, if

unrebutted, would disentitle a specified landlord from obtaining the possession or not, i.e. if those facts disentitle the specified landlord from taking the possession, the Rent Controller is bound to grant leave to defend the ejectment application filed u/s 13-A of the Act. It is only after the leave to contest the application has been granted that the Act further provides the procedure for hearing and holding an inquiry into the facts stated by the landlord or the tenant. Section 18-A (6) and (7) provide that within a month from the date of granting the leave to contest, the Rent Controller shall hear the application from day to day till the disposal of the application. The Rent Controller has been empowered to follow the procedure and practice for recording evidence and holding of enquiry as is done by Court of Small Causes.

15. I find full support from the judgments cited by the learned counsel for the petitioners, referred to above, and I am of the considered opinion that the Rent Controller has to take into consideration only the affidavit filed by the tenant for seeking the leave to contest and the Rent Controller cannot embark upon to find out the truthfulness or falsity of the affidavit filed at the stage of granting leave to contest. There is no gainsaying that herein the tenants did file an affidavit that the demised premises is a shop and is not a residential building or a scheduled building. It is a business premises. The right to eject has been conferred on the specified landlords with respect to the residential and scheduled buildings alone and if after granting the leave to contest on enquiry the Rent Controller himself comes to the conclusion that the demised premises is neither a residential building nor a scheduled building, it has no jurisdiction to order ejectment forthwith in terms of Section 13-A of the Act. Apart from this, his earlier eviction application having been dismissed as withdrawn on the same cause of action also raises a reasonable defence which can result in declining the relief of eviction, though the strict provisions of res judicata may or may not be applicable. The Rent Controller has committed an error in exercise of his jurisdiction in embarking on deciding the petition on merits at this preliminary stage of consideration of grant or rejection of the permission to contest. The Rent Controller had no jurisdiction at this stage to come to a conclusion on matter of facts solely on the affidavits of the tenant and the landlord. There is no evidence on the records to come to the conclusion arrived at by the Rent Controller.

16. In view of my observations made above, the impugned judgment is set aside. The application for eviction is remanded to the Rent Controller with the direction to proceed in accordance with law.