

**(2011) 03 P&H CK 0744**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 7124 of 2010 (O and M)

Om Parkash Dhiman

APPELLANT

Vs

Lalit Kumar

RESPONDENT

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**Date of Decision:** March 16, 2011

**Acts Referred:**

- East Punjab Urban Rent Restriction Act, 1949 - Section 13B, 18A

**Citation:** (2011) 3 RCR(Civil) 744

**Hon'ble Judges:** Rakesh Kumar Jain, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

Rakesh Kumar Jain, J.

This revision petition is directed against the order dated 30.09.2010 passed by the Rent Controller, Chandigarh, vide which an application filed by the tenant u/s 18-A(5) of the East Punjab Urban Rent Restriction Act (for short "the Act") for seeking leave to defend a petition, filed by the landlord u/s 13-B of the Act for seeking eviction of the tenant from 2nd floor of the premises on the ground of personal necessity, has been allowed.

2. In brief, the petitioner-landlord claimed eviction of the respondent-tenant from the top floor of House No. 3373 Sector 15- D, Chandigarh in a petition filed by him, alleging therein that he is a Non-Resident Indian and permanently settled in United States of America (for short "USA"). He had let out the said premises to the respondent in April 2003 at the monthly rent of Rs. 2600/-, which was later on increased to Rs. 2800/- per month. It was alleged that he has a family of four members including two sons and wanted to settle in India after his retirement, for which, he requires 2nd floor of his house for his own use and occupation. In respect of his title over the property, it was alleged that his elder brother Sardari Lal executed a registered Will dated 25.04.1997 in his favour qua the demised premises,

which came into effect on 07.04.1982 on his demise. He also disclosed that in the record of the Estate Office, Chandigarh, the demised premises has been transferred in his name on 08.03.2006. After notice, the tenant filed an application u/s 18-A(5) of the Act for seeking leave to defend, in which relationship of landlord and tenant was admitted, but it was denied that the landlord has either retired or requires demised premises for his own use and occupation, especially when he is already in possession of first floor of the said house. The said application was contested by the landlord by filing reply, in para No. 6 of which, it was alleged that the landlord has already retired from service and is in need of demised premises for his own use and occupation. Alongwith this application filed u/s 13-B of the Act, the landlord had filed copies of the passport, certificate of Overseas Citizen of India, in which his date of birth is recorded as 30.09.1938 and the column of occupation records "retired". Learned Rent Controller allowed the application for leave to defend by observing that there is nothing on record to show that the petitioner has retired or whether he wants to come back to India. Thus, it was found to be a triable issue, for which leave to defend was granted. The impugned order dated 30.09.2010 is challenged by way of this revision petition, in which notice of motion was issued on 29.10.2010 with dasti process, pursuant to which respondent put in appearance and thereafter, proceedings continued without any stay with parallel proceedings before the Rent Controller.

3. Learned counsel for the petitioner has pointed out from the record that the petitioner had become owner of the demised premises on 07.04.1982 by virtue of the registered Will and thus, qualifies the condition of five years of ownership before filing of the petition and the other condition of being NRJ is fulfilled from the copy of the passport. The only thing which has prevailed against him before the Rent Controller, on the ground of which his petition has been found to be triable, was as to whether he had retired or not or whether he wants to come back to India. In this regard, the certificate of registration issued by the Consulate General of India, New York, shows that he has retired from service and according to his date of birth, he was 71 plus when the petition was filed. Thus, looking from all angles, it is apparent that the petitioner could not be in any service at this age. Therefore, the Rent Controller has erred in making an observation that it has not come out from the record that the petitioner has retired from service, for the purpose of giving a chance to the tenant to contest the eviction petition filed u/s 13-B of the Act.

4. In view thereof, I find this revision petition to be meritorious and hence, the same is hereby allowed. The impugned order dated 30.09.2010 passed by the Rent Controller, Chandigarh, is set aside. However, parties are directed to bear their own costs.