(6) The learned Judges of the Full Bench in *Ved Parkash Mithal's case* (supra) held the view that the person who had been authorised in the agreement to appoint the arbitrator had to give reasons for his not appointing an arbitrator. With great respect, the aforesaid construction of the underlined stipulation in the arbitration clause is not correct. The expression 'if for any reason' cannot be construed in the manner in which it has been construed by the Full Bench. It is not a question of 'any reason' cannot mean 'no reason'. In my opinion, what the parties, while making the said stipulation, intended and meant was something like their saying 'If for any reason I do not reach such and such place at such and such time, then you are no longer to wait for me.' The party, which was supposed for any reason not to reach the given place by the appointed time, was not required to give reason as to why it could not reach a given place at a given time. The stipulation was intended to free other party from waiting after the appointed time. Same is the case here. If for any reason either the arbitrator is not appointed by the Managing Director or, if appointed, for any reason the arbitrator is not able to act, then the matter is not to be referred to the arbitration.

(7) For the reasons aforementioned, I am of the view that the Court below has taken a correct view of the arbitration clause and has rightly dismissed the application of the plaintiff-appellant. Hence, I find no merit in this appeal and dismiss the same. The cross-objections also stand disposed of accordingly. However, there is no order as to costs.

R. N. R.

FULL BENCH

Before: *P. C. Jain, C.J., D. S. Tewatia and S. P. Goyal, JJ.*

ROMESH KUMAR,—*Petitioner.*

versus

ATMA DEVI and others,—*Respondents.*

Civil Revision No. 412 of 1980.

August 9, 1985.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(b)—Landlord seeking eviction of tenant on ground of personal

necessity—Said landlord already occupying another residential house as a tenant in the same urban area—Tenant ordered to be ejected on the ground that the landlord was in occupation not in his own right but as a tenant at the sufference of his own landlord—Order of ejectment—Whether liable to be set aside.

Held, that a reading of sub-clause (b) of Section 13 of the East Punjab Urban and Rent Restriction Act, 1949, would show that if the landlord is in possession of another residential building in the same urban area, whether as owner, landlord tenant, mortgagee with possession or in any other recognised mode, having right in property-the said landlord would not be able to claim eviction of his tenant from other premises in the same urban area without alleging and proving anything more. The landlord would, however, be entitled to seek eviction of the tenant in spite of the fact that he has occupied another residential building as lessee if he has sufficient cause to vacate the building in his occupation or the same is not sufficient/suitable for his needs or there is some other reasonable cause to vacate the same. As such, the landlord is not entitled to seek ejection of the tenant simply on the ground that though he is in occupation of another premises in the urban area concerned, but such occupation is not in his own right. The order of ejectment is, therefore, liable to be set aside.

(Paras 2 and 5).

Petition for revision under Section 15(5) *of Rent Restriction Act. of the order of the Court of Shri M. L. Merchea, Appellate Authority, District Judge, Patiala dated* 25*th January,* 1980 affirming that of *Shri M. M. Aggarwal, P.C.S., Rent Controller, Amloh, District Patiala, dated 7th October,* 1978 *allowing the application for ejectment of the respondents with no order as to costs and granting one months's time to vacate premises.*

Civil Misc. No. 5728-*CII of* 1984.

Application under Order 6, *rule* 17, *read with Section* 151 *C.P.C. praying that the amendment application be allowed and the applicants be permitted to add paras* 5(*a*) *and* 6(c) *reproduced as below, in the ejectment application.*

"5(*a*) *Applicant No.* 1, *was a tenant in one room* (Chaubara) *in the House of Karam Chand at a monthly rent of Rs.* 50 *per month. The said accommodation was highly insufficient for applicant No.* 1, *besides the fact that applicant No.* 1 *could not climb up and down the stairs due to old age. Further more she was not in a position to continue paying Rs.* 50 *per month as rent. As such the applicant No.* 1 *was compelled to vacate the building* i.e., *one* Chaubara *taken on rent by her and she had to move*

to the house of her brother-in-law's (Jeth) daughter's house situated at Amloh, where she is residing as a licencee and at the mercy of her niece. She had to resort to this course due to the delay in the decision of the present proceedings.

6(c) That applicant No. 1 has not vacated such a building after the commencement of the Act in the urban area concerned without sufficient cause. The building referred to in para 5(c) above was vacated because it was highly insufficient, unsuitable to the requirements of applicant No. 1, and because the applicant No. 1 could not afford to pay the rent of Rs. 50 per month. Besides the landlord Karam Chand had started pressing the applicant No. 1, to vacate the Chaubara as he needed it for his personal occupation."

(Case referred to Larger Bench by Hon'ble Mr. Justice M. M. Punchhi on 2nd June, 1982, as an important question of Law involved in the case. The Larger Bench consisting of Hon'ble Mr. Justice S. P. Goyal and Hon'ble Mr. Justice M. M. Punchhi dissented themselves and wrote separate judgments on July 31, 1984 and Hon'ble Mr. Justice M. M. Punchhi desired that Full Bench should be constituted to decide the question as originally proposed by him while sitting in the Single Bench. Then the matter was referred to Hon'ble Mr. Justice D. S. Tewatia for his opinion and his Lordship on February 16, 1985 agreed with the opinion of Hon'ble Mr. Justice M. M. Punchhi and referred the case for constituting a Larger Bench. The Full Bench consisting of Hon'ble the Acting Chief Justice Mr. Prem Chand Jain, Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice S. P. Goyal finally resolved the controversy and decided the case on July 12, 1985. Two CM's Nos. 3256-CII of 1985 and 3257-CII of 1985 were moved by the petitioner praying that since final order dated July 12, 1985 has duly solved the important question of Law and they were not heard on merits the cases should be sent back to learned Single Judge to decide the case on merits and the Full Bench thus sent back the cases to Single Judge for final disposal on dated August 9, 1985. Hon'ble Mr. Justice M. M. Punchhi finally disposed of the case on dated 28th November, 1986.

Puran Chand, Advocate, for the Petitioner.

M. L. Sarin, Advocate, for the Respondent.

JUDGMENT

S. P. Goyal, J.

(1) These two revisions (C. R. No. 412 of 1980 and C.R. No. 644 of 1981) have been put up before us on a reference by M. M. Punchhi, J. with whom my learned brother Tewatia, J., concurred as the correctness of the decision in *Karnail Singh* v. *Vidya Devi alias Bedo,* (1), was doubted. For the purpose of this judgment, the facts of C. R. No. 412 of 1980 have been noticed.

(2) The petitioner was ordered to be ejected from the demised premises on the ground that Smt. Atma Devi, the owner, required it for her personal occupation. The correctness of this order was assailed on the ground that Smt. Atma Devi was living in a rented house and unless it is established that she has a reasonable cause to vacate that house she cannot claim her own house on the ground of personal necessity. Reliance for this contention was placed on the following passage in *Karnail Singh's case* (supra) :

> "Coming back to the interpretation of sub-clause (b) reproduced above, if the Legislature wanted that the occupation of another residential premises in the urban area concerned should be as 'owner' or as 'landlord' (the definition of 'landlord' shows that a person other than that of owner can also be a landlord), then it would have been provided in sub-clause (b) but by not adding these words the intention of the legislature is clear that only possession as of right whether as owner, landlord, tenant, mortgagee with possession or in any other form, recognised by law, was to be taken into consideration for seeing the occupation of the landlord for purposes of sub-clause (b). In nutshell, the sole basis of enacting sub-clause (b) was that if the landlord is occupying any other residential building in his own right, that is possession recognised by law, then he could not claim eviction from another residential building in the same urban area. Unless we read sub-clause (b) as follows, no other conclusion is possible :—
>
> "He is not occupying another residential building in the urban area concerned as an owner."

(1) 1980(2) All Indian R. C.J. 188.

Therefore, on a reading of sub-clause (b) as it stands in the statute book, we hold that if the landlord is in possession of another residential building in the same urban area, whether as owner, landlord, tenant, mortgagee with possession or in any other recognised mode, having right in property, he would not be able to claim eviction of his tenant from other premises in the same urban area without alleging and proving anything more."

The words, 'another residential building' in sub-clause (b) of section 13 of the East Punjab Urban Rent Restriction Act, according to Punchhi, J. means, "that the landlord is not occupying another residential building co-related to him in the manner of the residential building whose occupation he seeks from the tenant. In other words, the language employed by the statute is easily discernible that the landlord's occupation of another building in the urban area concerned means of such residential building as to which he should be related to also as a landlord." Support for this view was sought from the following observations of Mehar Singh, J. as he then was, in *M/s. Sant Ram Des Raj Kalka* v. *Karam Chand Mangal Ram* (2), (full Bench):—

"This is one consideration which militates against the interpretation of the words, 'another residential building' in condition (b) as suggested on behalf of the tenants. Another reason is that in condition (b) the word used is 'another' and not 'any' or 'any other' with the words, 'residential building', which clearly means 'another residential building' referred to in this condition is that another residential building which meets the requirements and needs of the landlord as established by him under condition (a).

If he in possession of another residential building of this type, condition (b) becomes operative, and the landlord must fail in his claim. If the intention of the Legislature was that no matter what type of residential building is in possession of landlord and no matter how inadequate it is for his requirements and needs, once he is shown to be in possession of some residential accommodation, he

(2) A.I.R. 1963 Pb. 1.

is not to have eviction of his tenant from a residential building, then the Legislature would have made the matter more clear by using the word, 'any' or the words 'any other' with the words, 'residential building' rather than the word 'another'. So that this consideration supports the claim of the landlords and negatives the interpretation of condition (b) in sub-paragraph (i) as suggested on behalf of the tenants."

(3) The question before the Full Bench in *M/s. Sant Ram Des Raj's case* (supra) was as to whether the landlord was entitled to get the house vacated for his personal use if the house in his possession was insufficient for his needs. It was in this context that the said observations were made and the words, 'another residential building' were interpreted to mean a building which meets the requirements and needs of the landlord and not any residential building. In our view, by no stretch of reasoning the said observations can be interpreted to mean that the building in occupation of the landlord must be his own or that he must hold that building in the same character which he claims *qua* the building from which the ejectment of the tenant is sought. In fact, argument was also raised before the Full Bench that the landlord who is in occupation of residential building in the urban area concerned as tenant would be entitled to seek ejectment of the tenant from his own building for his personal use as his occupation of the building as tenant was not in his own right, but the same was repelled as would be evident from the following passages :

"It is also contended on behalf of Karam Chand respondent, who is the tenant landlord, that condition (b) in sub-paragraph (i) cannot apply to him on another consideration and that is because he is not in occupation of the tenanted premises in his possession in his own right, but occupies the same at the sufferance of his own landlord. In this respect reliance is placed on *Ram Singh* v. *Sita Ram* (3) in which the learned Judge has held that the word 'occupation' as used by section 13(3)(a) of the Act must mean 'occupation' in exercise of a right and not dependent on another person's mere sweet will or suffierence, even though that other person be his close relation.

(3) (1959) 61 Pun. L. R. 132.

What the learned Judge has observed is unexceptional, but in that case it was the question of the son living either with his father or mother and he had no right to remain in possession of the premises except at the sweet will of either his father or mother. This is not the case with Karam Chand respondent because he is in occupation of the tenanted premises with him under his rights of tenancy, which rights are protected by the provisions of the Act and his eviction can only be subject to the limited conditions as provided in the Act. It is only when those conditions exist that he may be evicted but not otherwise. So it is not true that he occupies the tenanted premises with him at the sweet will of his landlord. He has statutory protection of his rights and is in possession of those premises in exercise of his right under the tenancy with him. This argument does not avail this respondent."

(4) Mr. M. L. Sarin, learned counsel for the respondent did not dispute that the interpretation put on the said clause (b) in *Karnail Singh's case* (supra) and the rule laid down therein is in accordance rather than at variance with the Full Bench in *M/s. Sant Ram Des Raj Kalka* (supra) but urged that the said view requires reconsideration. He, however, failed to put across any substantial argument which would persuade us to doubt the correctness of the rule laid down by the Full Bench and to refer the matter to a larger Bench for its reconsideration.

(5) The learned counsel then urged that the decision in *Karnail Singh's case* (supra) may be explained to the extent that the landlord would be entitled to seek ejectment of the tenant in spite of the fact that he is occupying another residential building as lessee if he has sufficient cause to vacate the building in his occupation or the same is not sufficient/suitable for his needs. There is hardly any need to do so because what was held in *Karnail Singh's case* (supra) was only that the landlord would not be entitled to claim eviction of the tenant simply on the ground that he was in occupation of the premises in the same urban area as tenant without alleging and proving anything more. The Bench, therefore, never held that the landlord occupying another premises in the urban area concerned as tenant would not be entitled to eject his own tenant if there is sufficient cause for him to vacate the premises in his

occupation or the same are not sufficient/suitable for his needs. All the same we do agree with the learned counsel for the respondent that there is no absolute bar for a landlord to seek ejectment of a tenant from his own house if he is occupying another premises in the same urban area as lessee and the landlord would be entitled to claim ejectment of his tenant if the premises in his occupation are not sufficient/suitable for his needs or he has some other reasonable cause to vacate the same. Subject to this observation the rule laid down in *Karnail Singh's case* (supra) is affirmed.

(6) The ejectment of the petitioner was ordered in both the petitions simply on the ground that the landlord though in occupation of another premises in the urban area concerned being not in occupation in his own right was entitled to eject his tenant. In view of the fact that we have affirmed the rule expressed in *Karnail Singh's case* (supra), ejectment orders on the grounds stated above have to be reversed. As no other ground to sustain the ejectment order was urged these petitions are allowed and the ejectment order set aside. In the circumstances of the case, we make no order as to costs.

Prem Chand Jain Acting Chief Justice.—I agree.

D. S. Tewatia, J.—I also agree.

S. P. Goyal, J.

(7) Two revision petitions (Civil Revision No. 412 of 1981 and No. 644 of 1981) came up initially before M. M. Punchhi, J. for hearing who ordered them to be put up before the learned Chief Justice for reference to a larger Bench for reconsideration of the rule laid down in *Karnail Singh* v. *Vidya Devi alias Bedo* (4). Thereafter the said petitions were heard by a Division Bench and because of a difference of opinion were referred to Tewatia, J., who agreed with Punchhi, J., and the petitions were thus placed before the Full Bench.

(8) From the facts stated above, it is apparent that it were not the revisions which were referred to the Full Bench but the question of law as to whether the landlord was entitled to claim eviction of the tenant from the demised premises for his own occupation on the ground that he was not in occupation of any premises

(4) 1980 (2) All India Rent Control Journal 188.

in the urban area as of right as his occupation of another premises in the urban area was only in the capacity of a tenant. The Division Bench of this Court in *Karnail Singh's case* (supra) has taken the view that the landlord would not be entitled to claim eviction of the tenant simply on the ground that he was in occupation of the premises in the same urban area as a tenant without alleging or proving anything more. It was the correctness of this view which was under challenge and the revisions had been referred to the Full Bench only to consider the correctness or otherwise of the rule laid down in *Karnail Singh's case*. However, after affirming the rule laid down in *Karnail Singh's case,* the Full Bench allowed the petitions and set aside the ejectment orders with the observation that no other ground to sustain the ejectment order was urged. As the said cases were never heard on merits, the learned counsel for the petitioner moved two separate applications, Civil Misc. Nos. 3256-C-II and 3257-CII of 1985 under sections 151, 152, 153, Civil Procedure Code, for modification of the final order so as to send back the revisions to the learned Single Judge for disposal on merits in the light of the question of law answered by the Full Bench.

(9) Notice of these applications was issued to the respondents and their learned counsel vehmently opposed the same. But, we do not find any reason to decline the prayer. As would be evident from the facts stated above, it was by inadvertence that the petitions were finally disposed of even though the parties were never called upon to address their arguments on merits apart from the question referred to the Full Bench.

(10) These applications are consequently allowed and the final judgment is modified to the extent stated above with the result that the main petitions shall now go back to the learned Single Judge for disposal on merits.

Madan Mohan Punchhi, J. (Oral).

This petition for revision is back for disposal on merits.

The two contesting respondents Nos. 1 and 2 are mother and son respectively. As alleged by them, a house situated in Mandi Gobindgarh was owned by one Biru Mal. It was bequeathed by him by means of a registered will dated 2nd March, 1949 in favour of one of these two respondents, namely, Atma Devi who was his sister's daughter. Allegedly, Atma Devi used to reside with her maternal uncle in that house and after inheriting it she holds the title paramount. Her son Dharam Pal, respondent No. 2, presumably with her tacit consent, gave it on rent on 3rd July, 1964 to Romesh Kumar petitioner at the rate of Rs. 65 per mensem. It is alleged that he, in turn, sublet it to Sudesh Kumar, his brother, petitioner No. 2, but the plea of subletting stands practically abandoned. Fourteen years ago, Atma Devi filed an application for eviction on 3rd November, 1972 against the revision-petitioner and petitioner No. 2 before the Rent Controller on a variety of grounds. One ground was of personal necessity requiring the premises for her own occupation. The tenants contested the application on the ground that Atma Devi was not the landlord, for the tenancy was created by Dharam Pal. The Rent Controller,—*vide* order dated 22nd February, 1975 (Annexure R-13), upheld the objection that it was Dharam Pal who was the landlord though a finding was recorded that Atma Devi needed the house for her personal necessity.

Second round of litigation became thus inevitable. This time Atma Devi joining her son Dharam Pal sought ejectment of the tenant/tenants, *inter alia*, on the ground of personal necessity. It was asserted in the application that Dharam Pal had acted as an agent of her mother and that the house, in question, was required by his mother for her use and occupation. Simultaneously, it was pleaded that the house was required by Dharam Pal, for his own occupation, viz., for occupation by his mother. Additionally, it was also pleaded that both the applicants were not occupying any other residential building within the urban area of Mandi Gobindgarh and had not vacated such building without sufficient cause after the commencement of the East Punjab Urban Rent Restriction Act, 1949 (for short "the Act") in the urban area concerned.

The tenant/tenants, *inter alia*, pleaded that there was no relationship of landlord and tenant between them and Atma Devi but such relationship existed between them and Dharam Pal. It was pleaded that no relief could be given either to Dharam Pal or to Atma Devi in the instant application. The plea of *res judicata*, on the basis of the earlier order of the Rent Controller dated 22nd February, 1975, was pressed into service in claiming that Dharam Pal alone was the landlord.

From the pleadings of the parties, the following issues were framed by the Rent Controller :—

(1) Whether there is relationship of landlord and tenant between the applicant No. 1 and respondent ?

(2) Whether applicant No. 1 has *locus standi* to file the application ?

(3) Whether the respondents are liable to ejectment on the grounds mentioned in paragraphs Nos. 7, 8 and 9 of the application ?

(4) Whether the present application is overted on the principles of *res judicata* ?

(5) Whether the present application is filed *mala fide* ?

(6) Whether both the applicants could not file one application and the application, therefore, not maintainable ?

(7) Relief.

An additional issue 7-A was also framed :—

(7-A) "Whether the respondent is liable to ejectment on the grounds mentioned in 3-A, 6-A and 6-B of the application?"

Under issues Nos. 1, 2, and 6, the Rent Controller held that relationship of landlord and tenant existed between applicant No. 2 (Dharam Pal) and respondent No. 1 (Romesh Kumar) and both the

applicants could file the application for eviction, which was held maintainable. Issues Nos. 3 and 7-A were decided in favour of the applicants landlords and against the respondents. Issue No. 4 was decided in favour of the tenants though not holding in so many words that judgment R-13 operated as *res judicata*. Issue No. 5 was decided in favour of the landlords. In view of these findings, the ejectment-application was allowed. The appeal of the tenants was dismissed by the Appellate Authority who affirmed the findings of the Rent Controller on all issues. This necessitated the tenant to approach this Court in revision.

It is undisputed that Dharam Pal petitioner is the landlord, for he created the tenancy. His status as such is clear from the definition of the word 'landlord' given in section 2(c) of the Act. When this matter was earlier put up before me, it was assumed that, besides Dharam Pal, Atma Devi too was a landlord. On that premises, an argument was raised that she was in occupation of another building at Mandi Gobindgarh in her own right as a tenant and, on the strength of *Karnail Singh* v. *Vidya Devi alias Bedo*, (5), she was disentitled to claim the premises for her own use and occupation. Since the rule laid down in *Karnail Singh's case* (supra) was doubted, the matter was referred to a larger Bench and finally it went to a Full Bench. The rule in *Karnail Singh's case* (supra) has been upheld but has been explained away to a considerable length as is reflective from the judgment of the Full Bench.

It is well settled that an element of need requires to be established before a landlord can claim eviction of his tenant on the basis of personal requirement. It is the asking of a situation without which he cannot do. Now, who is the landlord out of the respondents who crave for such a situation? Dharam Pal craves for it to put his mother in possession of the premises, in dispute, for there is no assertion anywhere on the file that he, his wife or children have any intention to be living at Mandi Gobindgarh. Atma Devi craves for the house for her own occupation but then she admits to be living in a rented house at Mandi Gobindgarh which debars her from claiming vacation of the house on the basis of *Karnail Singh's case* (supra) unless she pleads and proves something more in the form of a compulsion to leave those premises or that the premises with her are insufficient for her needs. On this aspect of the case, the Courts below have not come into grips since

(5) 1980(2) All India Rest Control Journal 188.

the parties did not invite their attention to it. Thus, when the need to seek eviction of the premises is for accommodating Atma Devi, it becomes imperative to determine whether the tenancy in her favour at Mandi Gobindgarh is under any threat or insufficient for her needs. The landlords-respondents have been cautious to file Civil Miscellaneous Application No. 5728-CII of 1984 under Order 6, Rule 17, read with section 151 of the Code of Civil Procedure for amendment of the ejectment-application. On a notice being issued to the counsel for the tenant-petitioner, the application was opposed but no proposed written statement to the proposed ejectment-application has been filed. The backdrop of the case and the lengthy arguments of the learned counsel, addressed in the case, make me adopt the course which would further justice by allowing the amendment of the ejectment-application. This would necessitate a limited remand for obtaining a finding and framing of a suitable issue/issues.

Let the record of the case be sent back to the Rent Controller, Amloh, District Patiala. The parties, through their counsel, are directed to put in appearance before him on 15th December, 1986. On that date, written statement be filed by the tenants to the amended ejectment-application. The Rent Controller shall frame the necessary issue/issues restricting them to the pleas raised in paragraphs 5(a) and 6(c) of the amended ejectment-application. Thereafter, let the Rent Controller give opportunity to the parties to lead evidence. He shall then record his findings and report the matter back to this Court. Let the entire process finish within three months from 15th December, 1986. It shall be open to the Rent Controller to close the evidence of any party whom he finds guilty of adopting dilatory tactics. The matter be listed on receipt of the report.

H.S.B.

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