

Krishan Lal v. Des Raj (J. V. Gupta, J.)

and direct the respondent-Corporation to release the arrears of salary for the period from 26th April, 1983 to 15th October, 1985. It goes without saying that if he is entitled to the relief prayed for, the deemed increments and promotions etc., shall also be given to the petitioner.

(3) The relief above granted shall be given to the petitioner within a period of two months from today. If the relief is not given within this period, interest at the rate of 12 per cent per annum will accrue on the amount due for the period subsequent to two months.

R.N.R.

Before J. V. Gupta, J.

KRISHAN LAL,—*Petitioner.*

versus

DES RAJ,—*Respondent.*

Civil Revision No. 2022 of 1987.

November 24, 1987.

East Punjab Urban Rent Restriction (Amendment) Act (II of 1985)—Sections 13 A and 18 A—Application for ejection under section 13 A—Summons issued in prescribed form—Limitation for filing application seeking leave to defend—Application filed beyond the period provided in summoning—Fixation of such period—Validity of such fixation.

Held, that if no period of 15 days as such is prescribed for making an application for obtaining the leave of the Controller to contest and it is left open to the tenant to move such an application as and when it is convenient to him, it will be violative of the language used in the summons. It may be that the period of 15 days was not provided under section 18A as such but the form of the summons has been specified in sub-section (2) of section 18 A of the East Punjab Urban Rent Restriction (Amendment) Act, 1985 in Schedule II. Thus the said form will be deemed to be a part of sub-section (2) of section 18 A of the Act. The last para of the summons duly reiterates the provisions of sub-section (5) of section 18-A of the Act, which provide, that 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 from obtaining an order for the recovery of possession of the residential building. Apart from that, 15 days period is given for appearance as well as to obtain leave of the Controller to contest the application under section 13 (A) of the Act.

(Para 9)

Petition for revision under section 18A(8) proviso to East Punjab Urban Rent Restriction (Amendment) Act, 1985 against the order of the Court of Shri H. R. Bhukar, PCS, Rent Controller, Ferozepur, dated 9th April, 1987 dismissing the application for leave to contest as barred by time and directing the respondent to put the applicant Des Raj in vacant possession of the demised premises within 3 months from that day.

M. L. Sarin with Miss Jaishree Thakur, Advocate, for the Petitioner.

Ravinder Chopra and Shri Arun Chandra, Advocates, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) This judgment will dispose of C. R. No. 2022 and 2023 of 1987, as the facts are the same in both the cases.

(2) The landlord Des Raj filed an application under section 13(A) of the East Punjab Rent Restriction Act, 1949 (for short the 'Act') against his tenant Krishan Lal for vacating House No. 8, Street No. DS-11, in Ferozepur City, on the ground of personal necessity as he had retired on 11th December, 1975, after attaining the age superannuation. According to the landlord, the accommodation presently in occupation by him and his family members was insufficient to make up their requirements as he has four sons and four daughters who are married and have their own children also. The tenant Krishan Lal was occupying only one room on the ground floor of the residential building, the remaining portion of which was insufficient keeping in view the members of the family. He also filed certificate that he was retired from the cantonment Board, Ferozepur, on 11th December, 1975, after attaining the age of superannuation. Thus, he being the specified landlord under the Act, was entitled to the summary ejection of his tenant Krishan Lal.

(3) Summons were issued to the tenant for 17th December, 1986. Admittedly summons were served on him on 8th December, 1986.

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No one appeared on 17th December, 1986, as it was alleged that the lawyers were on strike. However, the case was taken up on 18th December, 1986 when the tenant was present but he did not file any application or affidavit for obtaining the leave to contest. The case was adjourned to 2nd January, 1987 on which date, he moved an application for leave to contest the ejectment application *inter alia* on the ground that the building in dispute was not a residential building as he was occupying the same for the last 30 years as a shop. Moreover, the landlord had suitable accommodation with him which was sufficient for his requirements. The said application for leave to contest was opposed mainly on the ground that it was barred by time as it was filed after more than 15 days after the service of the summons. The learned Rent Controller dismissed the said application for leave to contest as barred by time,—*vide* its order dated 9th April, 1987 and consequently passed the ejectment order on the same date. Dissatisfied with the same, the tenant has filed these two petitions challenging the order of ejectment as well as the order refusing leave to contest the ejectment application.

(4) The learned counsel for the tenant-petitioner contended that under section 18(A) of the Act, there was no limitation prescribed for making an application for obtaining leave to contest the ejectment application. Thus, argued the learned counsel, the application filed on 2nd January, 1987, for obtaining leave to contest could not be dismissed as barred by time. Moreover, argued the learned counsel, in the affidavit filed by his client he stated that he was occupying the premises in dispute for the last 30 years as a shop and hence it could not be held to be residential building. Moreover, suitable accommodation was already there with the landlord and hence no petition under section 13(A) of the Act, was maintainable. In view of these averments in the affidavit, it was a fit case where leave to contest should have been granted. In support of this contention, he referred to C.R. No. 854 of 1987 decided on 6th August, 1987 and C.R. No. 2500 of 1986 decided on 9th December, 1986.

(5) On the other hand, the learned counsel for the respondent submitted that the period of 15 days is given in the summons which are issued under sub section 2, section 18(A) of the Act and since the tenant failed to move necessary application within 15 days from the date of service, his application has been rightly dismissed as barred by time. He also controverted the other contentions raised on behalf of the tenant.

(6) The main controversy between the parties, is whether there is any limitation prescribed under section 18(A) of the Act, for moving an application to obtain leave to contest the ejection application or not. This matter came up for consideration earlier before me in a case reported as *Shri B. D. Thapar v. Shri Pal Singh* (1), wherein it was observed that "for filing an ejection petition under section 13-A, form of summons is prescribed under the Act itself, as given in Schedule II thereof. It has been categorically provided therein that the application to obtain the leave of the Controller to contest the application for eviction under section 13-A should be filed within 15 days of the service thereof. Thus, it could not be successfully argued that the tenant was misled in any manner". Sub Section 2 of section 18-A provides that after an application under section 13-A is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. Sub-section (4) thereof further provides that 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, unless he filed an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the controller as thereunder provided.

(7) From these provisions, it is quite evident that summons are issued under sub-section (2) of section 18-A in the form prescribed in Schedule II, which may be reproduced as under:—

"Form of summons in a case where recovery of possession of residential building or scheduled building is prayed for under section 13-A of the East Punjab Urban Rent Restriction Act, 1949.

(Name, description and place of residence of the tenant)

Whereas Shri _____ has filed an application (a copy of which is annexed) for your eviction from _____ (here insert the particulars of the residential building or scheduled building) under section 13-A of the East Punjab Urban Rent Restriction Act, 1949;

Now, therefore, you are hereby summoned to appear before the Controller within fifteen days of the service thereof

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and to obtain the leave of the Controller to contest the application for eviction under section 13-A of the said Act, in default whereof, the applicant will be entitled at any time after the expiry of the said period of fifteen days to obtain an order for your eviction from the said residential building or scheduled building.

Leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as is referred to in sub-section (5) of section 18-A of the said Act".

(8) According to the learned counsel for the tenant-petitioner, the tenant is to appear before the Controller within 15 days of the service of the summons but in order to obtain the leave of the Controller to contest the application, this period of 15 days could not be applied. According to the learned counsel, since this period of 15 days was not provided under section 18-A as such, therefore, the same could not be read in the summons. In any case, even in the last para of the summons though it has been provided that leave to appear and contest the application may be obtained on an application to the Controller supported by an affidavit as referred to in sub-section (5) in section 18-A of the said but no period as such of 15 days has been given therein.

(9) If the summons are read as a whole, it could not be successfully argued on behalf of the tenant-petitioner that the period of 15 days was provided only for the appearance before the Controller and not for obtaining the leave to contest the application. To put any other interpretation will be defeating the very purpose of the provisions of section 13(A) read with section 18-A of the Act. If no period of 15 days as such is prescribed for making an application for obtaining the leave of the Controller to contest and it is left open to the tenant to move such an application as and when it is convenient to him, it will be violative of the language used in the summons. It may be that the period of 15 days was not provided under section 18-A as such but the form of the summons has been specified in sub-section (2) of section 18-A of the Act in Schedule II. Thus the said form will be deemed to be a part of sub-section (2) of section 18-A of the Act. The last para of the summons only reiterates the provisions of sub-section (5) of section 18-A of the said Act, which provide, that 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 from obtaining an order for the recovery of possession of the residential building. Apart from that, 15 days period is given for appearance as well as to obtain leave of the Controller to contest the application under section 13(A) of the Act. It is not obligatory on the tenant to put in appearance unless he has the inclination to contest the eviction petition. That itself is enough to suggest that if he, makes up his mind to appear, he must apply for leave to contest within the period allowed i.e., 15 days from the date of service. In default, the landlord will be entitled at any time after the expiry of the said period of 15 days to obtain an order for his eviction as provided in the summons itself. That further makes the period of 15 days relevant. In these circumstances, I do not find any illegality or infirmity in the order of the Rent Controller as to be interfered with in this petition.

(10) Once the application to obtain leave to contest is dismissed as barred by time, the landlord was entitled to obtain an order for eviction. Moreover, in the present case, the Rent Controller was satisfied from the affidavit filed by the landlord in support of his application of ejection that the landlord required the premises for his own occupation as he does not possess any other suitable accommodation in the area concerned. Consequently both the petitions fail and are dismissed with costs. However, the tenant is allowed two months time to vacate the premises provided all the arrears of rent up-to-date are deposited or paid within a fortnight with a further undertaking in writing that after the expiry of the said period vacant possession will be handed over to the landlord.

S.C.K.

Before S. S. Kang, J.

DEEP CHAND,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 8563 of 1987.

December 4, 1987.

The Haryana Municipal Election Rules, 1978—Rules 74 & 85(1)(d) & (IV)—Constitution of India, 1950—Articles 226 & 329—Municipal