

Surinder Pal Singh Bhattal (Retd.)

Vs

Rakesh Kumar Jain

Civil Appeal No. 6885 of 1996

(Kuldip Singh, Faizanuddin JJ)

09.04.1996

JUDGEMENT

FAIZAN UDDIN, J. :-

1. Leave granted.

2. This appeal by the landlord has been directed against the order dated November 28, 1995 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Revision No. 3638/1995 setting aside the order dated September 30, 1995 passed by the Rent Controller, Chandigarh rejecting the application of the tenant-respondent herein filed under Section 18-A(4) of the East Punjab Urban Land Restriction Act, 1949 (hereinafter the Act) seeking leave to defend the eviction proceedings initiated by the appellant landlord.

3. The appellant is the owner of House No. 1013 Sector 27-B, Chandigarh which is occupied by the respondent on a monthly rent of Rs. 7,000/-. The appellant was in the service of Indian Army and retired as a Col. on 21-2-1995. While in service the appellant was allotted Government accommodation House No. 960, Sector-2, Panchkula. He was, however, granted permission to retain the Government accommodation temporarily after his retirement. Consequently, the appellant-landlord, after his retirement, presented a petition on March 28, 1995 before the Rent Controller, Chandigarh supported by an affidavit for eviction of the respondent-tenant by contending that after his retirement from the Indian Army he bona fide requires the premises let out to the respondent for residential purposes as he wanted to settle down at Chandigarh permanently along with his widowed mother and other family members. He pleaded that he has to vacate the Government accommodation and has no other suitable accommodation of his own in the local area of Union territory where he could reside with his family. The appellant had placed on record the original certificate of discharge from service dated March 18, 1995 issued by the Big. Commanding officer, HQ, 98 Army Brigade indicating that the appellant had retired from Army on February 21, 1995. He also placed on record original order dated February 28, 1995, granting him permission to retain the Government accommodation temporarily. He also placed on record a letter dated June 20, 1995 issued by the Station HQ, Chandimandir/Chandigarh stating that he was declared unauthorised occupant of the said Government accommodation with effect from May 22, 1995.

4. After the aforementioned petition was presented by the appellant, the respondent-tenant appeared in response to the summons and on April 7, 1995 and made an application under Section 18-A (4) of the Act supported by an affidavit praying for grant of leave to contest the eviction petition presented by the appellant-landlord. In the said application seeking leave to contest the eviction petition, the respondent-tenant stated the certificate of retirement produced by the appellant was bogus and

fabricated as he continued to be in service and, therefore, he did not fall in the category of a specified landlord within the meaning of Section 2 (hh) so as to entitle him to make an application for eviction under Section 13-A of the Act. The respondent had further stated that in fact the appellant wanted to enhance the rent to Rs. 15,000/- per month which was not acceded to by him and that the appellant had entered into an agreement with one Mohit Nanda resident of House No. 2208, Sector 15-D, Chandigarh for sale of the house in question for a sum of Rs. 15 lacs and had agreed to deliver vacant possession of the house in question after getting it vacated from the respondent-tenant. The appellant-landlord refuting the allegation of agreement for sale of the house and stated that no such agreement has been executed by him for sale of the house in question to Mohit Nanda as alleged by the respondent.

5. After hearing counsel for the parties and on perusal of the affidavits and the documents produced on record, the Rent Controller disbelieved the allegation with regard to the agreement for, sale of the house and rejected the application of the respondent-tenant under Section 18-A (4) of the Act seeking leave to contest the eviction petition filed by the appellant-landlord by holding that no ground for granting the leave to defend was made out. The respondent-tenant went up in revision before the High Court challenging the aforementioned order of the Rent Controller. The High Court took the view that the Rent Controller was not justified in declining to go into the question of alleged agreement of sale by the appellant-landlord to Mohit Nanda and that the same should have been considered by the Rent Controller because if the said allegation is proved it would surely indicate that the landlord did not require the premises in question for his residence but wanted to dispose of the same for a high price and that the same would lead on the conclusion that the landlord had failed to make out the basic ingredient of Section 13-A of Act so as to entitle him to seek eviction by summary proceedings. It is this order of the High Court which has been challenged in this appeal by grant of leave.

6. Learned counsel for the appellant submitted with great force that the allegation of the respondent-tenant with, regard to the alleged agreement by the appellant-landlord for sale of the house in question is wholly unfounded, false and based on a conspiracy hatched by the respondent-tenant to subvert the course of justice and to defeat the rightful claim of the appellant by causing a false suit for specific performance to be filed through Mohit Nanda against the appellant and the fact that it is a false allegation is borne out from the very fact that the suit which was filed for specific performance on October 16, 1995 was withdrawn on 11-11-1995 within 25 days of its institution. It may be pointed out here that the fact that the withdrawal of the said suit for specific performance of agreement for sale has not been disputed before us. On the contrary the appellant has filed an affidavit before this Court, paragraphs 2 to 4 of which read as under :-

"2. I say that I never intended to and do not intend to sell the suit property, namely House No. 1013, Sector 27-B, Chandigarh, which is the only residential house owned by me. I never entered into any Agreement to sell the same to anyone. The alleged Agreement to sell dated 31-3-1995 relied on by the Respondent/tenant is a fabricated document.

3. I say that I require the said house for my personal residence and that of my dependent family members.

4. I solemnly undertake that in the event of the said house being vacated by the Respondent, I shall use the same from my personal bona fide residence and I further undertake that I shall not sell or relet the same to anyone for at least a period of five

years from obtaining possession thereof."

7. It is settled law that in proceedings like the one in question when an application for leave to defend is made by the tenant supported by an affidavit for grant of leave to contest the eviction petition filed by landlord under Section 13-A of the Act, the rent controller is not required to examine the issue from the point of view of the ultimate proof which the tenant may produce but the only thing which the Controller is required to examine is to look into the averments made in the application by the tenant and the affidavit in support thereof to see whether the tenant has made out a case which, if proved, would disentitle the landlord from claiming the eviction of tenant from the premises occupied by him in summary proceedings. In this connection it would be appropriate to refer to the view expressed by this Court in Precision Steel and Engineering Works v. Prem Deva, AIR 1982 SC 1518 : 1982 (3) SCC 270, wherein the principles with regard to leave to defend or contest any eviction proceedings have been laid down while interpreting similar provisions contained in Delhi Rent Control Act. The relevant observations read as under:-

"On a combined reading of Section 14(1) proviso (e) with Section 25B (1) and (4) the legal position that emerges is that on a proper application being made in the prescribed manner which is required to be supported by an affidavit, unless the tenant obtains leave to defend as contemplated by sub-sections (4) and (5) of Section 25B, the tenant is deemed to have admitted all the averments made in the petition filed by the landlord. The effect of these provisions is that the Controller would act on the admission of the tenant and there is no better proof of fact as admission, ordinarily because facts which are admitted need not be proved. But what happens if the tenant appears pursuant to summons issued under sub-section (2) of Section 25B, files an affidavit stating the grounds on which he seeks to contest the application. As a corollary it would transpire that the facts pleaded by the landlord the disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply if any. On perusal of the affidavit filed by the tenant and the reply if any filed by landlord the Controller has to pose to himself the only question. 'Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possessions on the ground specified in Cl. (e) of the proviso to Section 14(I)? The Controller is not to record a finding on disputed questions of facts or his preference of one set of affidavits. That is not the jurisdiction conferred on the Controller by sub-section (5) because the Controller while examining the question whether there is a proper case for granting leave to contest the application has to confine himself to the affidavit filed by the tenant disclosing such facts as would prime facie and not on contest disentitle the landlord from obtaining an order for recovery of possession. At the stage when affidavit is filed under sub-section (4) by the tenant and the same is being examined for the purposes of sub-section (5) the Controller has to confine himself only to the averments in the affidavit and the reply if any and that becomes manifestly clear from the language of sub-section (5) that the Controller shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from recovering possession etc. 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. That alone at that stage 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. A speedy trial not conforming to the well-recognised principle of arriving at truth by resting evidence on the touchstone of cross-examination, should not be easily read into the provision at a stage not contemplated by the provision unless the statute positively by a specific provision introduces the same. The scheme of Section 25B does not introduce a trial for arriving at the truth at the stage of proceeding contemplated by sub-section (4) of Section 25B. In this connection it cannot be said that the scope for granting leave under sub-section (5) of Section 25B is narrower than the one under O.37, R. 3. of Civil P. C. nor can it be said that the jurisdiction under Section 25B (3) is very limited."

8. In the present case the essential requirements of Section 13-A of the Act have been clearly set out in the eviction petition supported by an affidavit. It cannot be disputed that the appellant-landlord falls within the category of specified landlord within the meaning of Section 2 (hh) of the Act and that the petition for eviction has been filed within the period mentioned in Section 13-A of the Act. The original certificate of discharge from service has also been produced on record and the facts are supported by an affidavit. The alleged suit for specific performance had been withdrawn on 11-11-1995 indicating that the alleged agreement for sale was device to avoid the passing of an order of eviction against the respondent under Section 13-A of the Act. A further affidavit has been filed by the appellant-landlord as indicated above wherein he has specifically stated on oath that he never entered into the alleged agreement for sale and he does not intend to transfer the house in question and that the same is required bona fide by him for his residence and that of his family. In these facts and circumstances no case for grant of leave to contest the eviction petition is made out in favour of the respondent-tenant and his application for grant of leave to contest the eviction petition was rightly rejected by the Rent Controller.

9. In the facts and circumstances stated above the appeal succeeds and is hereby allowed with costs. Costs quantified at Rupees 2,500/- The impugned order of the High Court is set aside and that of the Rent Controller is restored. The Rent Controller shall proceed further with the eviction petition of the appellant-landlord and dispose of the same in accordance with law at the earliest.

Appeal allowed.