

entertain an application under Section 5 of the Limitation Act for condonation of delay since the statute does not vest him with such power.

18. In such case, neither the Rent Controller nor the High Court had committed any error of law in rejecting the Petitioner's application for seeking leave to contest the suit, since the same had been filed beyond the period prescribed in the form in Schedule II of the Act referred to in Section 18-A(2) thereof.

19. The Special Leave Petition must, therefore, fail and is dismissed accordingly. However, there will be no order as to costs.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Mahesh Grover, J.

C.R. No.2078 of 2003

Decided on: 22.07.2010

Dr.Madan Lal

Petitioner

Versus

Rattan Singh

Respondent

For the Petitioner: Shri Veneet Sharma, Advocate.

For the Respondent: Shri B.R. Mahajan, Advocate with Ms. Gaganpreet Kaur, Advocate.

A. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13-A, 18-A(4)(5)(6) – Specified landlord – Retired employee – Leave to contest – Object of provision -- Section 13-A enshrines a special provision for a retired landlord to get the rented residential or scheduled building vacated from tenant – Tenant is required to obtain leave to contest within a period of fifteen days of service of summons -- If the leave is declined, then the Rent Controller is to decide the eviction application summarily, but on the other hand, if the leave is granted, then he shall commence the hearing on a date not later than one month from the date on which such leave was granted and shall hear the application from day-to-day till the hearing is concluded and the application is decided – Held, mandate of sub-sections (4) to (6) is unambiguous in this regard -- Ostensible purpose of having such a procedure is to obviate and mitigate the sufferings of a landlord, who retires from service and has no residential premises and is desirous of retrieving the same from his tenant.

A conjoint reading of the afore-quoted provisions show that Section 13 provides remedy for a landlord to evict his tenant from rented building or land on the grounds of non-payment of rent, sub-letting, material impairment of value and utility thereof, the tenant being guilty of such acts and conduct as are a nuisance to the occupiers of the buildings in the neighbourhood, requirement of the building by him for himself or his family for own use and occupation etc., whereas Section 13-A enshrines a special provision for a retired landlord to get the rented residential or scheduled building vacated from tenant. Further, if a summons is served upon a tenant of the application under Section 13-A, he is required to obtain leave to contest such application within a

period of fifteen days of such service. If the leave is declined, then the Rent Controller is to decide the eviction application summarily, but on the other hand, if the leave is granted, then he shall commence the hearing on a date not later than one month from the date on which such leave was granted and shall hear the application from day-to-day till the hearing is concluded and the application is decided. The mandate of sub-sections (4) to (6) is unambiguous in this regard. The ostensible purpose of having such a procedure is to obviate and mitigate the sufferings of a landlord, who retires from service and has no residential premises and is desirous of retrieving the same from his tenant.

(Para 12)

B. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13, 13-A, 18-A(4)(5)(6) – Retired employee -- Commercial building – Bonafide need – Eviction of tenant -- Petition was filed u/s 13-A, yet, the trial of the case proceeded as if it was a petition u/s 13 – Contention that the petition having been styled u/s 13-A could have only been answered qua the premises which were residential in nature – Now there is no distinction between residential and commercial premises in so far as the bona fide need of a landlord is concerned -- If the respondent wanted to get the demised premises vacated and that too in the evening of his life, it can hardly be said that need was not bona fide. Harbilas Rai Bansal's case 1995(2) R.C.R. (Rent) 672 (S.C.) and Ashok Kumar's case 2010(1) R.C.R. 63 (S.C.) relied.

If the facts of the instant case are to be seen, then even though the petitioner was issued summons in accordance with the provisions of Section 13-A and the Schedule II of the Act and leave to defend was granted by the Rent Controller, yet, the trial of the case proceeded as if it was a petition under Section 13. There was no semblance of a summary trial as contemplated under Section 18-A (6) of the Act. The issues were framed and the petitioner did not raise any objection regarding the maintainability of the petition in a composite form. He was also alive of the fact that the plea of bona fide requirement has been made regarding the demised premises, but except for pleading that it was a commercial premises and hence, the provisions of Section 13-A of the Act were not available to the respondent, no attempt was made by him to adduce any evidence which could off-set the evidence adduced by the landlord regarding his plea of bona fide necessity. In the opinion of this court, therefore, the petitioner has not suffered any prejudice either procedurally or substantively. He continued to contest the proceedings which proceeded as a normal petition under Section 13 of the Act would. If the petition were to be under Section 13-A and an argument would have been raised by the learned counsel for the respondent that it is the landlord who had been prejudiced procedurally, then it could be understandable, but is not such a case and it is the petitioner who is making a grievance that the petition having been styled under Section 13-A could have only been answered qua the premises which were residential in nature. I am afraid, even this plea is a failing plea. To the mind of this Court, after the decision of the Supreme Court in Harbilas Rai Bansal Versus State of Punjab, 1995(2) R.C.R. (Rent) 672 (S.C.) and also subsequent judgments, the effect of such a distinction between residential and non-residential building stands acutely watered down. In any eventuality, as observed earlier, the petition lingered on for seven years and thereafter before the Appellate Authority for four years. The petitioner was given sufficient opportunities to put forward his case and to meet the objections of the respondent which he failed to do. Not even an iota of evidence was produced by him which could suggest that the plea of the respondent was not bona fide. It is in evidence that he retired from service on 30.4.1988 and have no other premises in Amritsar. There is also positive pleadings and evidence to show that the demised premises belonged to his father which was partitioned inter se between the successors. In these

circumstances, if the respondent wanted to get the demised premises vacated and that too in the evening of his life, it can hardly be said that need was not bona fide.

It was then contended by the learned counsel for the petitioner that the demised premises were commercial in nature and the respondent was not entitled to get the same vacated on the ground of personal necessity, but this contention is being noticed only to be rejected. As observed earlier, now in view of the various judicial pronouncements, there is no distinction between residential and commercial premises in so far as the bona fide need of a landlord is concerned. In a recent judgment in *Ashok Kumar Versus Ved Parkash & Ors.* (supra), the Apex Court held that a landlord can seek eviction of a tenant from a non-residential building on the ground that he requires it for his own use though this is not a ground under the Haryana Rent Act.

(Para 13, 16)

C. East Punjab Urban Rent Restriction Act, 1949 (III of 1949), Section 13, 13-A, 15, 18-A(4)(5)(6) – Petition u/s 13-A of the Act – Right to Appeal - Even though the petitioner was issued summons in accordance with the provisions of Section 13-A and the Schedule II of the Act and leave to defend was granted by the Rent Controller, yet, the trial of the case proceeded as if it was a petition u/s 13 – Appeal filed by the landlord was maintainable as the procedure of trial of a petition u/s 13 of the Act was adopted by the Rent Controller.

(Para 13,15)

Cases referred:

1. Pritam Singh Versus Lakhbir Singh, 2001 (2) R.L.R. 395 (P&H).
2. State Bank of Patiala versus S.Zulzuaoar Singh Virk and others, 2003(1) R.C.R.(Rent) 670 (P&H).
3. Dinesh Kumar Versus Ram Singh and others, 2006(1) R.C.R. (Rent) 182 (P&H).
4. Ashok Kumar Versus Ved Prakash & Ors., 2010(1) L.A.R. 673 (SC) = 2010(1) R.C.R. 63 (S.C.).
5. Manoj Kumar Aggarwal & Anr. Versus Vijay Kumar, 2010(1) L.A.R. 135 (P&H) = 2009(4) R.C.R.(Civil) 272 (P&H).
6. Harbilas Rai Bansal Versus State of Punjab, 1995(2) R.C.R. (Rent) 672 (S.C.).

JUDGMENT

MAHESH GROVER,J.-- This revision petition under Section 15(5) of the East Punjab Urban Rent Restriction Act,1949 (for short, 'the Act') has been directed against judgment dated 11.3.2003 passed by the Appellate Authority, Amritsar whereby the appeal of the respondent-landlord was accepted, judgment dated 9.2.1996 of the Rent Controller, Amritsar was set aside and the eviction of the petitioner-tenant from the demised premises was ordered.

2. The facts of the case need to be adverted to as they are essential because of the peculiar nature of the controversy which has been raked up in the wake of the petition which was filed by the respondent and styled as a petition under Sections 13 and 13-A of the Act.

3. Having described the petition as thus, the respondent chose the

following grounds for seeking eviction of the petitioner:-

- (1) Non-payment of rent;
- (2) Personal necessity as the demised premises is required for his own use & occupation and also for his son.

4. The petitioner, who was issued summons in accordance with Schedule II of the Act when the petition was purportedly treated as the one under Section 13-A by the Rent Controller. He was served on 22.5.1989 and promptly filed an application for leave to defend on 30.5.1989 which was the first date of hearing. The Rent Controller then proceeded with the matter and on 24.5.1990, the following issues were framed by him:-

1. Whether the relationship of landlord and tenant exists between the parties? OPA
2. Whether the petitioner requires the demised premises for his own use and occupation? OPA
3. Relief.

No other issue was claimed or pressed by the petitioner.

5. It may be mentioned here that the rent was paid in the first instance which rendered the ground of non-payment thereof as redundant leaving the parties to go to trial on the issue of bona fide need of the respondent to have the demised premises.

6. After affording opportunities to the parties to lead their evidence and perusing the same, the Rent Controller dismissed the petition while the Appellate Authority reversed that decision and ordered the eviction of the petitioner.

7. Aggrieved by the judgment of the Appellate Authority, the petitioner has filed the present petition.

8. The foremost thrust of the arguments of the learned counsel for the petitioner while assailing the findings of the Appellate Court is that the eviction petition was filed by the respondent primarily under Section 13-A of the Act and since the demised premises were commercial in nature, such a remedy was not available to him as under the aforesaid provision of law, a specified landlord can seek eviction of a tenant from a residential premises alone and not from a commercial premises. He contended that leave to defend was specifically granted by the Rent Controller vide order dated 11.4.1990 and it was thereafter that the proceedings commenced on the eviction petition. He further contended that the appeal filed by the respondent was not maintainable in view of the specific bar contained in Section 13-A of the Act. In support of his arguments/ submissions/ contentions, he placed reliance on **Pritam Singh Versus Lakhbir Singh, 2001 (2) R.L.R. 395 (P&H); State Bank of Patiala versus S.Zulzuaar Singh Virk and others, 2003(1) R.C.R.(Rent) 670 (P&H) and Dinesh Kumar Versus Ram Singh and others, 2006(1) R.C.R. (Rent) 182 (P&H).**

9. On the other hand, learned counsel for the respondent argued that even though the petitioner was summoned under Section 13-A of the Act, yet, after grant of leave to defend, the matter proceeded in its normal course and special procedure as enshrined under the said section was not followed. He

submitted that in view of this, the petitioner cannot say that any prejudice has been caused to him. He contended that Section 13-A of the Act, even though provides for an eviction petition to be filed by a specified landlord qua a residential building only, but this artificial distinction is unsustainable for the reason that it would be far-stretched to say that a person, who retires from service, can only recover possession of a residential premises and he is barred from invoking such provision qua the commercial premises it is equally possible that such a specified landlord may in the evening of his life, desire to set up a venture in such commercial premises for his own use and such a need itself cannot be said to be wishful thinking of a landlord so as to deny him the desired relief. To support his submissions, he placed reliance on a judgment of the Supreme Court in **Ashok Kumar Versus Ved Prakash & Ors., 2010(1) L.A.R. 673 (SC) = 2010(1) R.C.R. 63 (S.C.)** and also on a judgment of this Court in **Manoj Kumar Aggarwal & Anr. Versus Vijay Kumar, 2010(1) L.A.R. 135 (P&H) = 2009(4) R.C.R.(Civil) 272 (P&H)**.

10. I have thoughtfully considered the rival contentions/ submissions and have perused the material on record, as also the evidence of the parties which is available.

11. To understand and answer the controversy as raised by the counsel for the parties before this Court, it is essential to delineate the procedure and scope of the proceedings under Sections 13 and 13-A of the Act. Section 13 of the Act contemplates the filing of a petition by the landlord seeking eviction of a tenant on the grounds which have been mentioned therein. Once such a petition is filed, the Rent Controller is obliged to proceed with the matter to determine the validity of the grounds on which such eviction has been sought, but in so far as Section 13-A is concerned, apart from the limited grounds on which the eviction can be sought, it is also governed by special provisions contained in Section 18-A of the Act. Sub-sections (2) and (3)(a) of Section 13, Sections 13-A, 18-A and Schedule II of the Act are extracted below for ready reference:-

“13. Eviction of tenants.—

(1) xx xx xx xx xx

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

(i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid;

- (ii) that the tenant has after the commencement of this Act without the written consent of the landlord –
 - (a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or
 - (b) used the building or rented land for a purpose other than that for which it was leased, or
- (iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or
- (iv) that the tenant has been guilty of such acts and conduct as are a nuisance to the occupiers of buildings in the neighbourhood, or
- (v) that where the building is situated in a place other than a hill station, the tenant has ceased to occupy the building for a continuous period of four months without reasonable cause, the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate.

(3) (a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession –

- (i) in the case of a residential building if –
 - (a) he requires it for his own occupation;
 - (b) he is not occupying another residential a building in the urban area concerned; and
 - (c) he has not vacated such a building without sufficient cause after the commencement of this Act, in the said urban area;
 - (d) it was let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and the tenant has ceased, whether before or after the commencement of this Act, to be in such service or employment:

Provided that where the tenant is workman who has been discharged or dismissed by the landlord from his service or employment in contravention of the provisions of the Industrial Disputes Act, 1947, he shall not be liable to be evicted until the competent authority under that Act confirms the order of discharge or dismissal made against him by the landlord.

- (i-a) in the case of a residential building, if the landlord is a member of the armed forces of the Union of India and requires it for the occupation of his family and if he produces a certificate of the prescribed authority, referred to in Section 7 of the Indian soldiers (Litigation) Act, 1925, that he is serving under special

conditions within the meaning of Section 3 of that Act.

Explanation.-- For the purposes of this sub-paragraph –

- (1) the certificate of the prescribed authority shall be conclusive evidence that the landlord is serving under special conditions; and
 - (2) “family” means such relations of the landlord as ordinarily live with him and are dependent upon him;
- (ii) in the case of rented land, if
- (a) he requires it for his own use;
 - (b) he is not occupying in the urban area concerned for the purpose of his business any other such rented land; and
 - (c) he has not vacated such rented land without sufficient cause after the commencement of this Act, in the urban area concerned;
- (iii) in the case of any building or rented land, if he requires it to carry out any building work at the instance of the Government or local authority or any Improvement Trust under some improvement or development scheme or if it has become unsafe or unfit for human habitation;
- (iv) in the case of any residential building, if he requires it for use as an office, or consulting room by his son who intends to start practice as a lawyer or as a registered practitioner within the meaning of that expression as used in the Punjab Medical Registration Act, 1916, or for the residence of his son who is married, if –
- (a) his son as aforesaid is not occupying in the urban area concerned any other building for use as office, consulting room or residence, as the case may be; and
 - (b) his son as aforesaid has not vacated such a building without sufficient cause after the commencement of this Act, in the urban area concerned:

Provided that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not, except under sub-paragraph (i-a), be entitled to apply under this sub-section before the expiry of such period:

Provided further that where the landlord has obtained possession of a residential building or rented land under the provisions of sub-paragraph (i) or sub-paragraph (ii) he shall not be entitled to apply again under the said subparagraphs for the possession of any other building of the same class or rented land:

Provided further that where a landlord has obtained possession of any building under the provisions of

subparagraph (iv) he shall not be entitled to apply again under the said sub-paragraph for the possession of any other building for the use of, or as the case may be, for the residence of the same son.

(b) xx xx xx xx xx xx xx xx

(c) xx xx xx xx xx xx xx xx

(4) xx xx xx xx xx xx xx xx

(4-A) xx xx xx xx xx xx xx xx

(5) xx xx xx xx xx xx xx xx

13-A. Right to recover immediate possession of residential or scheduled building to accrue to certain persons.-- Where a specified landlord at any time, within one year prior to or within one year after the date of his retirement or after his retirement but within one year of the date of commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, whichever is later, applied to the Controller along with a certificate from the authority competent to remove him from service indicating the date of his retirement and his 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 to recover possession of his residential building or scheduled building, as the case may be, for his own occupation, there shall accrue, on and from the date of such application to such specified landlord, notwithstanding anything contained elsewhere in this Act or any other law for the time being in force or in any contract, whether expressed or implied, custom or usage to the contrary, a right to recover immediately the possession of such residential building or scheduled building or any part or parts of such building if it is let out in part or parts:

Provided that in case of death of the specified landlord, the widow or widower of such specified landlord and in the case of death of such widow or widower, a child or a grand-child or a widowed daughter-in-law who was dependent upon such specified landlord at the time of his death shall be entitled to make an application under this Section to the Controller, -

- (a) in the case of death of such specified landlord, before the commencement of the East Punjab Urban Rent Restriction (Amendment) Act, 1985, within one year of such commencement;
- (b) in the case of death of such specified landlord, after such commencement, but before the date of his retirement, within one year of the date of his death;
- (c) in the case of death of such specified landlord, after such commencement and the date of his retirement, within one year of the date of such retirement;

and on the date of such application the right to recover the possession of the residential building or scheduled building, as the case may be, which belonged to such specified landlord at the time of his death shall accrue to the applicant:

Provided further that nothing in this section shall be so construed as conferring a right, on any person to recover possession of more than one residential or scheduled building inclusive of any part or parts thereof if it is let out in part or parts:

Provided further that the Controller may give the tenant a reasonable period for putting the specified landlord or, as the case maybe, the widow, widower, child, grand-child or widowed daughter-in-law in possession of the residential building or scheduled building, as the case may be, and may extend such time so as not to exceed three months in the aggregate.

Explanation.- For the purpose of this section, the expression "retirement" means termination of service of a specified landlord otherwise than by resignation.

18-A. Special procedure for disposal of applications under section 13-A or section 13-B.-- (1) Every application under section 13-A or section 13-B shall be dealt with in accordance with the procedure specified in this section.

(2) After an application under section 13-A or 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II.

(3) (a) The summons issued under sub-section (2) shall be served on the tenant as far as may be in accordance with the provisions of Order V of the First Schedule of the Code of Civil Procedure, 1908. The Controller shall in addition direct that a copy of the summons be also simultaneously sent by registered post acknowledgment due addressed to the tenant or his agent empowered to accept the service at the place where the tenant or his agent actually and voluntarily resides or carries on business or personally works for gain and that another copy of the summons be affixed at some conspicuous part of the building in respect whereof the application under section 13-A or section 13-B has been made.

(b) When an acknowledgement purporting to be signed by the tenant or his agent is received by the Controller or the registered article containing the summons is received back with an endorsement purporting to have been made by a postal employee to the effect that the tenant or his agent has refused to take delivery of the registered article and an endorsement is made by a process server to the effect that a copy of the summons has been affixed as directed by the Controller on a conspicuous part of building and the Controller after such enquiry as he deems fit, is satisfied about the correctness of the endorsement, he may declare that there has been a valid service of the summons on the tenant.

(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 and/ or non-residential 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 or the owner, who is a non-resident Indian 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 by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grand-child or widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian from obtaining an order for the recovery of possession of the residential building or scheduled building and/ or non-residential building, as the case may be under section 13-A or section 13-B.

(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 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 inquiry in a proceeding to which this section applies including the recording of evidence, follow the practice and procedure of a Court of Small Causes.

(8) No appeal or second appeal shall lie against an order for the recovery of possession of any residential building or scheduled building and/ or non-residential building, as the case may be, made by the Controller in accordance with the procedure specified in this Section.

Provided that the High Court may, for the purpose of satisfying itself that an order made by the Controller under this section is according to law, call for the records of the case and pass such order in respect thereto as it thinks fit.

(9) Save as otherwise provided in this section, the procedure for the disposal of an application for eviction under section 13-A or section 13-B shall be the same as the procedure for the disposal of applications by the Controller.

SCHEDULE II

[See sub-section (2) of Section 18-A]

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 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 the Section 18-A of the said Act.

Given under my hand and seal this day of19

Controller”

....

12. A conjoint reading of the afore-quoted provisions show that Section 13 provides remedy for a landlord to evict his tenant from rented building or land on the grounds of non-payment of rent, sub-letting, material impairment of value and utility thereof, the tenant being guilty of such acts and conduct as are a nuisance to the occupiers of the buildings in the neighbourhood, requirement of the building by him for himself or his family for own use and occupation etc., whereas Section 13-A enshrines a special provision for a retired landlord to get the rented residential or scheduled building vacated from tenant. Further, if a summons is served upon a tenant of the application under Section 13-A, he is required to obtain leave to contest such application within a period of fifteen days of such service. If the leave is declined, then the Rent Controller is to decide the eviction application summarily, but on the other hand, if the leave is granted, then he shall commence the hearing on a date not later than one month from the date on which such leave was granted and shall hear the application from day-to-day till the hearing is concluded and the application is decided. The mandate of sub-sections (4) to (6) is unambiguous in this regard. The ostensible purpose of having such a procedure is to obviate and mitigate the sufferings of a landlord, who retires from service and has no residential premises and is desirous of retrieving the same from his tenant.

13. If the facts of the instant case are to be seen, then even though the petitioner was issued summons in accordance with the provisions of Section 13-A and the Schedule II of the Act and leave to defend was granted by the Rent Controller, yet, the trial of the case proceeded as if it was a petition under Section 13. There was no semblance of a summary trial as contemplated under Section 18-A (6) of the Act. The issues were framed and the petitioner did not raise any objection regarding the maintainability of the petition in a composite form. He was also alive of the fact that the plea of bona fide requirement has been made regarding the demised premises, but except for pleading that it was a commercial premises and hence, the provisions of Section 13-A of the Act were not available to the respondent, no attempt was made by him to adduce any evidence which could off-set the evidence adduced by the landlord regarding his plea of bona fide necessity. In the opinion of this court, therefore, the petitioner has not suffered any prejudice either procedurally or substantively. He continued to contest the proceedings which proceeded as a normal petition under Section 13 of the Act would. If the petition were to be under Section 13-A and an argument would have been raised by the learned counsel for the respondent that it is the landlord who had been prejudiced procedurally, then it could be understandable, but is not such a case and it is the petitioner who is making a grievance that the petition

having been styled under Section 13-A could have only been answered qua the premises which were residential in nature. I am afraid, even this plea is a failing plea. To the mind of this Court, after the decision of the Supreme Court in **Harbilas Rai Bansal Versus State of Punjab, 1995(2) R.C.R. (Rent) 672 (S.C.)** and also subsequent judgments, the effect of such a distinction between residential and no-residential building stands acutely watered down. In any eventuality, as observed earlier, the petition lingered on for seven years and thereafter before the Appellate Authority for four years. The petitioner was given sufficient opportunities to put forward his case and to meet the objections of the respondent which he failed to do. Not even an iota of evidence was produced by him which could suggest that the plea of the respondent was not bona fide. It is in evidence that he retired from service on 30.4.1988 and have no other premises in Amritsar. There is also positive pleadings and evidence to show that the demised premises belonged to his father which was partitioned inter se between the successors. In these circumstances, if the respondent wanted to get the demised premises vacated and that too in the evening of his life, it can hardly be said that need was not bona fide.

14. In Manoj Kumar Aggarwal & Anr. Versus Vijay Kumar (supra) , two basic questions arose for consideration, i.e., (i) can a landlord who rents out the premises, after his retirement, seek eviction of the tenant summarily by invoking Section 13-A of the Haryana Urban (Control of Rent and Eviction) Act, 1973? and (ii) what is the de facto or de jure distinction that can be drawn in an 'ordinary eviction petition' filed under Section 13 or in a petition filed under Section 13-A of the Act in which leave to contest is granted?" It is pertinent to mention here that the provisions of Sections 13 and 13-A of the Haryana Act are pari materia to those of Sections 13 and 13-A of the Act. The learned Single Judge, after noticing a number of judgments of the Supreme Court and this Court, observed as under:-

"21. An erroneous nomenclature of a petition or reference to a wrong provision of law would per se not vitiate the proceedings, if otherwise conducted as per the procedure prescribed by law. Though the eviction petition filed by the respondent purportedly under Section 13 (1-A) of the Act, nevertheless the Rent Controller treated it and followed the same procedure as has been prescribed for deciding an eviction petition under Section 13 of the Act. Further, while returning the findings on the issues framed, the Rent Controller has guided itself by the statutory ingredients of Section 13 of the Act, to be satisfied while accepting a landlord's application for eviction on the ground of personal necessity. The Rent Controller has formed his view point after discussing each and every piece of evidence led by the parties and thereafter only has concluded that the respondent-landlord has bona fide personal necessity of the demised premises as he needs more than one bed room for his (i) a married son; (ii) a young unmarried daughter and (iii) younger unmarried son and for that purpose, the ground floor accommodation consisting of one bed room in a six marla house besides living room, kitchen etc. was wholly insufficient. In other words, the impugned eviction order, though described under Section 13(1A), in fact, has been passed under Section 13 of the Act only."

15. In the light of the observations made above and the discussion made

in the foregoing paragraphs, I do not find any infirmity in the finding recorded by the Appellate Authority that the appeal filed by the landlord was maintainable as the procedure of trial of a petition under Section 13 of the Act was adopted by the Rent Controller and the contention of the learned counsel for the petitioner in this regard has to be rejected.

16. It was then contended by the learned counsel for the petitioner that the demised premises were commercial in nature and the respondent was not entitled to get the same vacated on the ground of personal necessity, but this contention is being noticed only to be rejected. As observed earlier, now in view of the various judicial pronouncements, there is no distinction between residential and commercial premises in so far as the bona fide need of a landlord is concerned. In a recent judgment in **Ashok Kumar Versus Ved Parkash & Ors. (supra)**, the Apex Court held that a landlord can seek eviction of a tenant from a non-residential building on the ground that he requires it for his own use though this is not a ground under the Haryana Rent Act.

17. No other point has been raised or urged.

18. On the basis of the above discussion, I do not find any illegality or infirmity in the judgment of the Appellate Authority and the revision petition deserves to be dismissed.

19. Accordingly, the judgment of the Appellate Authority is affirmed and the revision petition is rejected.

20. At this stage, learned counsel for the respondent contended that the demised premises were let out in the year 1994 and the respondent has been struggling for getting the possession thereof for the last more than two decades and therefore, he shall file an execution application within one month from the date of receipt of a copy of the order of this Court.

21. In view of the above, it is directed that if an execution is filed by the respondent, the Executing Court shall ensure that the eviction proceedings are carried out and the same are completed within a period of six months.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Alok Singh, J.

C.W.P. No.9627 of 1990

Decided on: 19.5.2010

Kartar Chand

Petitioner

Versus

Financial Commissioner, Appeal, Punjab and others

Respondents

For Petitioner: Mr. Som Nath Saini, Advocate.

For Respondent: Mr. H.C. Gupta, Advocate for respondent No.4.

A. Code of Civil Procedure, 1908 (V of 1908), Order 1 Rule 10 – Necessary party -- For seeking impleadment in any pending litigation, applicant has to prove that he has interest in the lis and his valuable rights are involved in the lis or without his presence lis can not be