

---

year with effect from 1st February, 1984." The petitioner did nothing to challenge this order till February 15, 1996 when she served a notice on the respondents through her counsel. In the circumstances of this case, we are satisfied that there is even culpable delay on her part. However, irrespective of that and also keeping in view the fact that the petitioner is suffering a recurring loss, we have gone into the merits of the case.

(12) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed in limine.

---

J.S.T.

Before Hon'ble Sat Pal, J.

B. D. SHARMA.—Petitioner.

versus

NARINDER KUMAR ARYA.—Respondent.

C. R. No. 3285 of 1995.

18th March, 1996.

*The East Punjab Urban Rent Restriction Act, 1949—S. 13-A—Leave to contest declined and eviction ordered—Tenant filing affidavit stating that upper portion of the demised premises was lying vacant and there was sufficient accommodation with the landlord—Averment not controverted by landlord—However, tenant filing application supported by affidavit stating that landlord had not sought ejection of a tenant-school—Therefore, admittedly upper portion of the house was occupied—Landlord found not to own any other accommodation in the urban area of Chandigarh—No triable issue arises—Leave to contest was rightly declined, however four months time granted for vacating the demised premises subject to furnishing an undertaking to hand over the vacant possession to the landlord.*

Held, that the tenant himself had stated that the landlord has not sought ejection of the upper floor of the demised house. From this, it is evident that upper floor of the house is not in the possession of the landlord. Again in para 1 of this affidavit, the tenant had stated that all the 7 rooms constructed on the demised house had been let out for running a school under the name and style DAV Public School. In view of the aforesaid facts, I am of the opinion that the landlord is not having any other suitable accommodation in the urban area of Chandigarh.

(Para 13)

---

*Further held*, that the averments made by any of the parties in their affidavits filed in the case have to be taken into consideration for proper adjudication of the cases. The tenant cannot be permitted to get out the admissions made by him on oath in the affidavit, which has been duly signed and verified by him.

(Para 13)

I. K. Mehta, Sr. Advocate, with M. S. Kohli, Advocate, for the petitioner.

M. L. Sarin, Sr. Advocate, with Vikas Suri, Advocate, for the respondents.

### JUDGMENT

Sat Pal, J.

(1) This petition is directed against the orders dated 18th July, 1995, passed by the learned Rent Controller, Chandigarh, directing the eviction of the petitioner/tenant from the premises in dispute.

(2) Briefly stated, the facts of the case are that the petitioner (hereinafter referred to as the tenant) is occupying a Annexe portion other than garage and one small room between upstairs case of the premises bearing No. 2146, Sector 15-C, Chandigarh. The respondent-landlord-owner (hereinafter referred to as the landlord) filed a petition under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act) for eviction of the tenant from the Annexr portion other than the garage and one small room (shown in the site plan as ABCDEF and WXYZ) of House No. 2146, Sector 15-C, Chandigarh. It was alleged in the petition that the landlord who was working as Principal in a school at Ludhiana was to retire on 31st March, 1995 and he wanted to shift his family to the house mentioned herein above before retirement and after his retirement he wanted to settle in the house in question. It was also stated in the petition that the landlord did not own and possess any other accommodation in the urban area of Chandigarh or any other accommodation anywhere in the country.

(3) The tenant filed an application dated 16th January, 1995 under Section 18(5) of the Act seeking be leave of the Rent Controller to appear and contest the petition filed by the landlord under Section 13-A of the Act. Alongwith this application, the tenant also filed his affidavit. In the affidavit, *inter alia*, it was alleged by the tenant that the fact of insufficiency of accommodation with the landlord was not correct because the entire demised house was lying

vacant. The landlord filed his reply to the application filed by the tenant under Section 18(5) of the Act and in this reply, the allegations made by the tenant were controverted.

(4) The learned Rent Controller, by his order, dated 18th July, 1995 rejected the application filed by the tenant under Section 18(5) of the Act and held that no case for grant of leave to contest under Section 18(5) of the Act had been made out by the tenant. By an order of the same date, the learned Rent Controller allowed the petition filed by the landlord under section 13-A of the Act and directed the eviction of the tenant from the premises in dispute. The tenant was further directed to hand over the vacant possession of the premises in dispute within two months from the date of the order.

(5) Aggrieved by the order, dated 18th July, 1995, passed by the learned Rent Controller rejecting the application of the tenant filed by him under Section 18(5) of the Act and allowing the petition of the landlord under Section 13-A of the Act, the present petition has been filed by the tenant.

(6) Notice of motion on this petition was issued on 12th September, 1995 for 5th October, 1995. In the meantime, the eviction of the tenant was stayed subject to the condition that the tenant would pay to the landlord arrears of rent, if any, within a period of two weeks from the date of the said order and further the tenant shall continue paying monthly rent to the landlord during the pendency of the revision petition. The records were also summoned,—*vide* order, dated 31st January, 1996 and thereafter the records were received in this Court.

(7) Mr. Mehta, learned Senior counsel appearing on behalf of the tenant drew my attention to sub-para (v) of para 1 of the affidavit dated 16th January, 1995, filed by the tenant before the learned Rent Controller and submitted that in this paragraph it was clearly alleged that the fact of insufficiency of accommodation with the landlord was not correct because the entire upper portion of the demised house was lying vacant. He submitted that no reply to this allegation was given by the landlord in his reply filed by him to the application filed by the tenant, under Section 18(5) of the Act. He, therefore, contended that a triable issue was raised by the tenant and the learned Rent Controller erred in holding that no case for granting leave to contest under Section 18, Rule 5 of the Act was made out. He also submitted that the Management of DAV School who were in occupation of the major portion of the demised house had given an advertisement in the daily Tribune, dated 21st March, 1995

that the said school was likely to shift shortly to a more spacious building in Sector 15. He, therefore, contended that the revision petition filed by the tenant should be allowed and the tenant should be granted leave to contest the petition filed by the landlord for eviction of the tenant. In support of his submissions, learned counsel placed reliance on two judgments of this Court in *Jagdish Puri of Chandigarh v. Kundan Lal Thapar* (1) and *Shri B. D. Thapar v. Shri Pal Singh* (2).

(8) Mr. Sarin, learned Senior Counsel appearing on behalf of the landlord, referred to Section 13-A of the Act and submitted that the only requirement under this section was that the landlord can file such petition within one year after the date of his retirement and further he does not own or possess any other suitable accommodation in the locality or area in which he intends to reside. He submitted that in the present case, both the conditions have been fulfilled as the landlord has already retired on 31st March, 1995 and as stated in para 10 of the petition, the landlord does not own and possess any other accommodation in the urban area of Chandigarh.

(9) As regards the contention of the learned counsel of the tenant that the allegation made by the tenant in sub-para (v) of Para 1 of the affidavit that the entire upper portion was lying vacant, has not been controverted by the landlord, the learned counsel submitted that the tenant himself in his affidavit, filed with the application dated 29th April, 1995 under Section 6, rule 17, read with section 151 CPC for amendment of his application for leave to defend, had admitted that the entire portion of the demised house excluding the premises in occupation of the tenant had been let out to the management of the DAV Public School. He further submitted that the tenant in para 3 of this affidavit had further alleged that the landlord had not sought ejection of the premises including the upper floor from the management of DAV School. Learned counsel further contended that under Section 13-A of the Act, sufficiency of the accommodation available to the landlord could not be gone into and the only question which could be gone into is as to whether the landlord has got any other alternative suitable accommodation. In support of his contention, learned counsel placed reliance on the following judgments :

(1) *Surjit Singh v. Harbans Singh* (3).

---

(1) 1994 HRR 127.

(2) 1987 (1) PLR 344.

(3) 1989 (1) PLR 6.

(2) *Kapil Narain Raina Advocate v. Lt. Col. S. S. Gill* (4).

(3) *Daya Parkash Mahendra v. Darshan Lal* (5).

(4) *H. T. Primlani v. Shanta Malhotra* (6).

(10) I have given my anxious consideration to the submissions made by the learned counsel for the parties and have perused the record.

(11) Admittedly at the time when the petition under Section 13-A of the Act was filed by the landlord he was to retire within a period of one year from the date of filing the application. The other condition for landlord to succeed under Section 13-A of the Act is that he does not own and possess any other suitable accommodation in the locality or area in which he intends to reside. In the present case, the landlord intended to reside in the Union Territory of Chandigarh and as per averments made in the petition, the landlord possessed in the Union Territory of Chandigarh only one house i.e. the demised house. In Para 10 of the petition, it was clearly stated by the landlord that he did not own and possess any other accommodation in the urban area of Chandigarh. The tenant, however, in para 1(v) of his affidavit filed along with his application under Section 18(5) of the Act had stated that the fact of insufficiency of accommodation with the landlord was not correct because the entire upper portion of the demised house was lying vacant and it was contended by the learned counsel for the tenant that the averments made in the said para 1(v) were not controverted by the landlord.

(12) The only point to be examined in this case is as to whether the landlord owned and possessed any other suitable accommodation in the urban area of Chandigarh. It is true that the allegations made in para 1(v) of the Act were not specifically made in the application filed by the tenant under Section 18(5) of the Act but since these averments were made in the affidavit of the tenant, these have to be taken into consideration while deciding the question regarding suitable accommodation being available to the landlord. The matter could have rested here if the tenant had not filed any other affidavit in the present case but from the records I find that the tenant filed another affidavit dated 29th April, 1995 along with his application filed under Order 6, Rule 17, read with section 151 of the Code of Civil Procedure. Para 3 of this affidavit reads as under :

“3. That in the main building there are three independent units and a big hall and one independent portion unit on

---

(4) 1989 (2) RLR 46.

(5) 1993 HRR 185.

(6) 1994 (2) RCR 469.

upper floor, ejection of which was not sought by the petitioner but the Annexe portion which is not tenable."

(13) In this paragraph the tenant himself has stated that the landlord has not sought ejection of the upper floor of the demised house. From this, it is evident that upper floor of the house is not in the possession of the landlord. Again in para 1 of this affidavit, the tenant had stated that all the 7 rooms constructed on the demised house had been let out for running a school under the name and style DAV Public School. In view of the aforesaid facts, I am of the opinion that the landlord is not having any other suitable accommodation in the urban area of Chandigarh. I do not find any merit in the contention urged by the learned counsel for the tenant that the averments made in the affidavit dated 29th April, 1995 cannot be taken into consideration as the application under Order 6, Rule 17, read with section 151 CPC, in support of which the said affidavit was filed, was dismissed by the learned Rent Controller. The averments made by any of the parties in their affidavits filed in the case have to be taken into consideration for proper adjudication of the cases. The tenant cannot be permitted to get out the admissions made by him on oath in the affidavit which has been duly signed and verified by him.

(14) Since as per the averments made by the tenant himself, the portion on the upper floor was in occupation of the tenant, the decision in the case of *Jagdish Puri* (supra) and *B. D. Thapar* (supra) are not of any assistance to the learned counsel for the tenant.

(15) For the reasons recorded herein above, I do not find any merit in this petition and the same is accordingly dismissed. However, keeping in view the facts and circumstances of the case, I am of the view that the tenant should be granted a period of four months for vacating the said premises subject to the condition that the tenant furnishes an undertaking to the effect that he shall hand over the vacant possession of the demised premises to the landlord within four months from the date of this judgment. Accordingly, I direct the petitioner/tenant to furnish an undertaking in the shape of an affidavit within one week that he would hand over the vacant and peaceful possession of the said premises to the landlord within four months from today. The parties are left to bear their own costs. Lower Court records be sent back forthwith.

R.N.R.