



IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : 03.05.2025

I.

CR-5911-2008

M/s Popular Shuttle Company

... Petitioner

VERSUS

Harbans Kaur and others

... Respondents

II.

CR-5970-2008

Amrik Singh

... Petitioner

VERSUS

Harbans Kaur and others

... Respondents

III.

RSA-4475-2012 (O&M)

M/s Popular Shuttle Company

... Appellant

VERSUS

Harbans Kaur and others

... Respondents

IV.

RSA-4515-2012 (O&M)

M/s Popular Shuttle Company

... Appellant

VERSUS

Harbans Kaur and others

... Respondents

V.

RSA-4526-2012 (O&M)



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M/s Popular Shuttle Company

... Appellant

VERSUS

Harbans Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. B.R.Mahajan, Sr. Advocate with
Mr. Prateek Mahajan, Advocate,
Ms. Nikita Goel, Advocate,
Ms. Harita Dhanda, Advocate,
for the petitioners/appellants.

Mr. Mukul Aggarwal, Advocate,
for the respondents.

PANKAJ JAIN, J. (Oral)

This is a bunch of three regular second appeals and two revisions arising out of dispute between the same parties. Counsel are *ad idem* that Civil Revision No.5911 of 2008 filed by one of the tenants be decided as a lead case as the fate of the other matters hinges upon the decision thereof. With the consent of both the counsels, Civil Revision No.5911 of 2008 is being taken as the lead case for adjudication.

Factual Background :

2. CR-5911-2008 is at the behest of one of the tenants impugning the order of eviction passed by the Rent Controller, Amritsar directing them to handover vacant possession of the premises under their possession allowing eviction petition filed by the landlady under Section 13-B of East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as, "1949 Act").

3. Parties hereafter are referred to by their legal status i.e. the revision petitioner as tenant and the respondent in revision as the landlady.

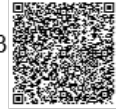


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The petition was filed under Section 13-B of 1949 Act by the landlady seeking ejection of the tenants from the building bearing No.257-A situated in East Mohan Nagar, Amritsar. As per the landlady, tenant (petitioner in CR-5970-2008) was inducted in half portion of the shed and one office i.e. part of the demised premises vide rent note dated 17.04.1976 at the agreed rent of ₹ 200/- per month. Later on, the same was enhanced to ₹ 250/- per month. The landlady further claimed that the other tenants i.e. the petitioner in present petition was inducted in two portions of the demised premises i.e. one shop vide rent note dated 12.11.1976 with effect from 01.11.1976 for monthly rent of ₹ 225/-. The rent was later on enhanced to ₹ 450/- per month. As per the landlady, the tenant was also allowed to use electricity connection of 10 horse power on payment of electricity charges on actual basis. Same tenant i.e. the petitioner in CR-5911-2008 was rented out another shop measuring 30 x 20 feet along with one office and one *veranda* with electricity connection of 24 HP and 10 HP with effect from 01.04.1974 at monthly rent of ₹ 325/- which was subsequently enhanced to ₹ 550/- per month.

4. The landlady pleaded that she is of Indian origin settled in England. She, thus, is a Non Resident Indian. She wants to return to India i.e. the country of her origin. Her husband intends to start business. She thus claimed that demised premises is required for her own use and occupation and also for use and occupation of her husband who retired from service from an engineering company in U.K. and has technical experience to run *Latha* machine workshop.



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5. As per pleadings in eviction petition, earlier an application was filed under Section 13 of Rent Act seeking ejection of the respondents on the ground of bonafide need. The same was withdrawn on 19.07.2001 after incorporation of the provisions of Section 13-B in 1949 Act.

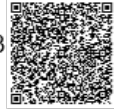
6. The tenant contested the eviction petition. The tenant questioned the maintainability of the eviction petition pleading that the same was barred by the provisions of Order XXIII Rule 1 CPC. Earlier eviction petition instituted on 13.05.1996 was withdrawn when the same was fixed for final arguments. The tenant also questioned status of the landlady as non-resident Indian. It was further claimed that the landlady possessed other non-residential and residential premises within the urban area of Amritsar and have been letting out the same after commencement of 1949 Act and thus, the present petition was not maintainable. The tenant admitted execution of the rent notes dated 12.11.1976 and 17.04.1976. The tenant, however, claimed that the eviction petition was also bad for partial eviction as the eviction was being sought from part of area under tenancy.

7. On the basis of the pleadings, the Rent Controller framed the following issues :-

“1. Whether the petitioner requires the premises in dispute for her own use and for use of her family members? OPA

2. Whether the petitioner is entitled to seek relief under Section 13-B of the East Punjab Urban Rent Restriction Act? OPA

3. Whether the petition is bad for partial eviction? OPR



4. *Whether the petition is barred under Order 23 Rule 1 CPC?*

5. *Relief.”*

8. The Rent Controller decided issues No.1, 2 and 3 together. The plea raised by the tenants with respect to creation of oral tenancy in their favour apart from the portion let out to them by way of rent notes dated 17.4.1976 and 12.11.1976 stands rejected. It has been held that once the relationship between the parties was created qua specific portion by way of written rent note, stand of tenant that the remaining portion of the same building can be let out by way of oral tenancy cannot be believed. The Rent Controller held that the story projected by the tenants is contradictory. It is not possible that in the year 1984, two portions measuring 20 feet x 11 inches and 22 feet x 9 inches were let out by the same landlady for a sum of ₹ 50/- while a lesser area was let out to the tenants in the year 1976 at a monthly rent of ₹ 200/-. Rejecting the plea raised by the tenants with regard to maintainability of the eviction petition, the Rent Controller decided all the issues in favour of the landlady and ordered eviction of the tenant from the demised premises. Dissatisfied, tenant is before this Court.

ARGUMENTS ON BEHALF OF THE TENANT:

9. Learned Senior Counsel representing the tenant has eloquently argued that the eviction petition filed by the landlady is bad for partial eviction. It has been contended that as per the case pleaded by the landlady, two portions of the building were let out to the tenants M/s Popular Shuttle Company (hereinafter referred to as, “the firm”) @ ₹ 225/- and ₹ 325/- per month vide two separate rent notes dated 12.11.1976 and 17.04.1976. The



rate of rent was later on enhanced to ₹ 450/- and ₹ 550/- per month respectively. In the eviction petition, it was further claimed by the landlady that half of the portion of the shop and one office was let out to the other tenant namely Santokh Singh vide rent note dated 17.04.1976 at the monthly rent of ₹ 200/-. Same was later on enhanced to ₹ 250/- per month. Mr. Mahajan asserts that the rent was enhanced from ₹ 550/- to ₹ 650/- per month only when an additional portion CDEF was let out to the firm with effect from April 1978. The rent was further enhanced to ₹ 750/- after portion ABIJ was orally let out from 1.11.1984. He claims that a specific plea was raised by the tenant to this effect pleading reason for enhancement of rent. Landlady, in para. 5 of the replication, denied the enhancement and letting out of additional area. She rather claimed illegal occupation. He submits that had it been so, there was no reason for landlady to remain quiet for such a long time.

10. Mr. Mahajan further submits that the instant ejection petition is bad, being barred under the provisions of Order XXIII Rule 1 CPC. On 04.11.1996, the landlady filed ejection application invoking Section 13 of 1949 Act. The ejection of the tenant was sought on the ground of bonafide need. Same defence of partial eviction was raised by the tenant in his written statement placed on record as Ex.R7. Specific issue with respect to ejection application being barred for partial ejection was framed which is evident from Ex.R9. On 19.07.2001, when the matter was listed for arguments, the landlady withdrew the ejection petition without seeking any permission to file fresh petition. Mr. Mahajan, thus, submits that the present petition having been filed, without seeking any permission while



withdrawing the earlier eviction petition at final stage, needs to be dismissed as not maintainable under Order XXIII Rule 1 CPC.

11. Senior Counsel further submits that eviction petition pleading bonafide need by the landlady, cannot be entertained. The demised premises is a non-residential building. It was let out for commercial purpose. The need pleaded is for residential purpose. An industrial plot/non-residential building let out to be used as a non-residential building cannot be required and vacated for a residential need.

12. Mr. Mahajan has also questioned maintainability of a joint composite ejection application against two different tenants inducted in different portions, in different times and on a different rate of rent. He contends that a specific objection was raised before the Rent Controller which has remained undecided.

13. Mr. Mahajan relies upon **Panna Lal v. Devjit, 1978 (10) RCR (Rent) 530, Kanwar Behari v. Smt. Vindhya Devi, AIR 1966 Punjab 481 DB, Miss S. Sanyal v. Gian Chand AIR 1968 SC 438, Habibunnisa Begum v. G. Doraikannu Chettiar (Dead) by LRs AIR 2000 SC 152, Ravinder Singh v. Bhagwant Rai, 2003 (2) RCR (Rent) 267 and Mehtan Singh Advocate v. Shri Tilak Raj Arora and another, 1988(1) RCR (Rent) 159**

ARGUMENTS RAISED ON BEHALF OF LANDLADY:

14. Per contra, Mr. Mukul Aggarwal, learned counsel for the landlady submits that it is evident from the record that whenever portion of the building was let out by the landlady, the same was let out by execution of a rent note. He, thus, claimed that once it has come on record that the



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tenancy originated by way of written document and was subsequently revised by way of written agreements, the plea raised by the tenant with respect to oral tenancy cannot be believed. Mr. Aggarwal submits that earlier a Civil Suit No.179 of 11.03.1995 was filed by the tenant belies the version of the tenant seeking permanent injunction against the landlady and her husband. The tenancy over portion marked IJCD and EDGH covered by two rent notes dated 17.04.1976 and 12.11.1976 was admitted by the landlady in her written statement. The oral tenancy pleaded by the tenant qua remaining portion was denied. The Courts found that the plaintiff i.e. the tenant was not proved to be tenant over the disputed portion. He further submits that even though this Court in RSA-889-2000 held that the findings recorded by the Court below that the plaintiff was not proved to be tenant over the disputed portion would not operate as *res judicata* in the subsequent proceedings between the parties but still the said findings can be relied upon. He, thus, submits that the plea raised by Mr. Mahajan with respect to the eviction petition being bad for partial eviction be not accepted.

15. On the objection raised by the tenant regarding fresh eviction petition filed under Section 13-B of 1949 Act being barred under Order XXIII Rule 1 CPC, Mr. Aggarwal places reliance upon the ratio of law laid down in **Lakhwinder Kumar v. Pavitter Kaur (dead) through LRs, 2010 (1) RCR (Rent) 588, Hariender Kaur v. Sharan Gurdev Singh, 2008 (1) RCR (Rent) 304** and **M/s Trehan Auto Parts v. Kuldip Singh Sahi, 2009 (2) RCR (Rent) 680**. Reliance is also placed upon **Captain K. Phool Singh (deceased) through his LRs v. Rajinder Kumar Kalia 2024 (1) RCR (Rent) 292, Ram Dass v. Sukhdev Kaur and others 1981(1) Rent Law**



Reporter 704 and N.R.Narayan Swamy v. B. Francis Jagan, (2001) 6 SCC 473.

16. Mr. Aggarwal has further drawn attention of this Court to the bare provisions as contained under Section 13-B of 1949 Act to submit that the eviction of the tenant can be sought from any type of the building. Be it residential building, non-residential building or a schedule building. He submits that the building in question is situated in the old city of Amritsar. There is no defined user qua the building in question in absence of any zoning plan. He further submits that the defense raised before this Court regarding the building being non-residential and the need being for residential premises was never pleaded before the Rent Controller. The need pleaded by the landlady is not only residential, the same includes for non-residential use as well. It has been further contended that under Section 13-B of the 1949 Act, an Indian residing out of India who wishes to come to India has been granted a right to evict tenant from a building in a summary manner. Law presumes such need of NRI to be bonafide. In case there are more than one tenants in the said building, all the tenants can be joined to maintain a composite single petition in view of the provisions contained under Order I Rule 3 CPC. He relies upon the ratio laid down by this Court in case **Gobind Ram v. Godha Ram, 1979 (2) RCR (Rent) 255** and that by Delhi High Court in the case of **Atma Ram Properties Private Limited v. M/s Prem Nath Motors Private Limited, 2006(2) RCR (Rent) 696**. Mr. Aggarwal, thus, prays for dismissal of the present revision petition.

17. I have heard counsel for the parties and carefully gone through the records of the present case.

**ANALYSIS & FINDINGS****ORDER XXIII RULE 1 :**

18. The first and foremost objection raised by Mr. Mahajan relates to maintainability of eviction petition under Section 13-B of the Act invoking order XXIII Rule 1 of Code of Civil Procedure. The fact of an earlier petition filed by the landlady under Section 13 of the 1949 Act and withdrawal thereof at the time of final arguments is being raised to claim that fresh eviction petition on the same ground of bonafide need is barred in the absence of there being any permission to file fresh one.

19. This Court has been for long debating the issue of applicability of Order XXIII on the eviction proceedings filed under the Rent Act. Division Bench of this Court in the case of **Ram Dass v. Sukhdev Kaur** (ibid) held as under : -

“10. To conclude, the answer to the question posted at the outset, is rendered in the negative and it is held that the provisions of Order 23 Rule 1(3) of the Code of Civil Procedure was not applicable to proceedings under the East Punjab Urban Rent Restriction Act, 1949.”

20. Another Division Bench in **Mehtab Singh Advocate v. Shri Tilak Raj Arora and another** (supra) after referring to **Ram Dass's** case observed as under : -

“6. If the various provisions noticed above are held to be not applicable to the proceedings before the Rent Controller, it would necessarily result in the violation of the maxim that no man should be vexed twice over the same cause of action and the landlord or the tenant as the case may be, would be able to



*harass time and again on the same cause of action and for the same relief. For example, a landlord after the full trial of his petition for ejectment at the stage of arguments feeling that the petition is likely to fail, would get it dismissed as withdrawn and institute a fresh one again on the same cause of action. He would be able to repeat the same process time and again if the principles underlying the provisions of Order 23, Rule 1(4) are held to be not applicable to the proceedings before the Rent Controller. Similarly if the provisions of [Order 2, Rule 2 of the C.P.C.](#) are held to be not applicable, a landlord would be able to file ejectment application on one ground although many other grounds may be available for the same relief at a given time. After having failed on that ground till the highest Court, he would be able to institute another petition on the second ground and thus go on fighting litigation and harassing the opposite party. Same would be the situation with regard to the provisions of [Order 9, Rule 9 of the C.P.C.](#) and the landlord would be able to get his petition dismissed in default at any stage of the proceedings and file a fresh one on the same cause of action resulting in the abuse of the process of the Court and harassment of the opposite party. All these principles as held in [Lal Chand's case \(AIR 1977 SC 789\)](#) (*supra*), are conceived in the larger public interest and founded on equity, justice and good conscience, which require that no man should be vexed twice on the same cause of action. We are, therefore, of the*



considered view that even though [the Code of Civil Procedure](#) is not applicable as such to the proceedings before the Rent Controller; but the general principles contained in the Code, including the one noticed above which are based on justice, equity and good conscience would govern those proceedings...”

21. The issue regarding maintainability of fresh petition under Section 13-B of the Act in the background of dismissal of eviction petition under Section 13 of the Act was elaborately dealt by this Court in **Lakhwinder Kumar v. Pavitter Kaur** (supra) observing as under : -

“48. The dismissal of the above mentioned eviction petition filed by the respondent-landlady in default, in my view, has no material bearing at all on the merits of the eviction petitions filed by her u/s 13B of the Act which confers a special right on the Non-Resident Indian-owner to seek eviction of his tenant summarily and statutorily with presumes that the need expressed by such NRI-landlord is genuine and bonafide. In the eviction petition u/s 13 of the Act, neither any issue as to whether or not the demised premises was required by the respondent for her personal use and occupation was framed nor any finding returned. Even the dismissal of an eviction petition on merits, filed u/s 13 of the Act, can have no bearing on the merits of the subsequent petition filed u/s 13B of the Act.



The non-disclosure of an irrelevant fact, therefore, can cause no prejudice to the respondent-landlady.”

22. Thus, it is evident that even if the basic principle underlying the provisions contained under Order XXIII Rule 1 CPC is held to be applicable to the rent proceedings as held by Division Bench in **Mehtab Singh's** case, the proceedings under Section 13 and that under Section 13-B of the Act being different, Order XXIII Rule 1 CPC cannot be invoked to non-suit the landlady from maintaining the present petition. Apart from the series of precedents, a valid reasoning has been accorded by the landlady in the eviction petition itself. She has specifically pleaded that the eviction filed under Section 13 of the Act was withdrawn keeping in view the promulgation of Section 13-B of 1949 Act which provided summary procedure for eviction of a tenant where the owners/landlady is an NRI. Once the Rent Controller being merely a persona designata has no power to accord permission or deny the same to the landlady for filing fresh eviction petition in terms of ratio laid down in **Ram Dass's** case (supra), reliance placed by Mr. Mahajan on Order XXIII Rule 1 CPC is misconceived and cannot be accepted.

COMPOSITE PETITION AGAINST TWO DIFFERENT TENANTS:-

23. The next objection raised with respect to maintainability of the eviction petition filed by the landlady is regarding a composite petition having been filed against two different tenants. In order to appreciate the contentions raised by Mr. Mahajan and Mr. Aggarwal, it will be apt to peruse bare provisions of law.



24. Sections 2(a), 2(d), 2(g), 13-B and 18-A of the 1949 Act read as under :-

“Section 2(a) : “building” means any building or part of a building let for any purpose whether being actually used for that purpose or not, including any land, godowns, out-houses, or furniture let therewith, but does not include a room in a hotel, hostel or boarding-house.”

Section 2(d) : “non-residential building” means a building being used solely for the purpose of business or trade:

Provided that residence in a building only for the purpose of guarding it shall not be deemed to convert a “non-residential building” to a “residential building”;

Section 2(g) : “residential building” means any building which is not a non-residential building;

[Section 13-B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian] – (1)

where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:



Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.

18A. [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] [Substituted vide Punjab Act 9 of 2001.] shall be dealt with in accordance with the procedure specified in this section.



(2)After an application under [section 13-A or section 13-B] [Substituted vide Punjab Act 9 of 2001.] 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 to 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 acknowledgement 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] [Substituted vide Punjab Act 9 of 2001.] 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 or scheduled building and/or non residential building] [Substituted vide Punjab Act No. 9 of 2001.], 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 landlady or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlady [or the owner, who is non resident Indian] [Inserted vide Punjab Act 9 of 2001.] 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 filed by the tenant discloses such



facts as would desentitle the specified landlady or, as the case may be, the widow, widower, child, grand- child or widowed daughter-in-law [or the owner, who is non resident Indian] [Inserted vide Punjab Act 9 of 2001.] of such specified landlady from obtaining an order for the recovery of possession of the [residential building or scheduled building and/or non residential building] [Substituted vide Punjab Act No. 9 of 2001.], as the case may be, under [section 13-A or section 13-B] [Substituted vide Punjab Act 9 of 2001.].

(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] [Substituted vide Punjab Act No. 9 of 2001.] 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] [Substituted vide Punjab Act 9 of 2001.] shall be the same as the procedure for the disposal of applications by the Controller.

25. Section 13-B and Section 18-A of the 1949 Act came up for consideration in a bunch of petitions before the Supreme Court in case of **Baldev Singh Bajwa v. Monish Saini** (2005) 12 SCC 778. The Supreme Court while interpreting the provisions in light of the purpose of its enactment observed as under : -

“10. The amendment introduced in the Act created a special class of NRI landlady and repose special right to them to recover immediate possession from the tenants occupying their premises provided, such premises were required by them. Section 13-B intends to provide immediate possession of the accommodation to the NRI landlady which is in possession of the tenant if the landlady requires the same for his or her use or for the use of any one ordinarily living with him/her and is dependent on him or her. Sub-section (1) of Section 13-B postulates that the NRI-landlady should be owner of the building from which he has asked ejection of the tenant. He



should require the same for his or her use or for the use of anyone ordinarily living with him/her and is dependent on him or her. He should be the owner of that building for five years before he applied to the Controller for possession of such building. The right under [Section 13-B](#) of immediate possession could be availed of only once during the life time of such an owner/NRI landlady. Sub-section (2) of [Section 13-B](#) gives a choice to the NRI-landlady to select one among several others residential building or schedule building and/or non-residential building for the purpose of eviction of the tenant from that premises. Residential building is defined in [Section 2\(g\)](#) to mean a building which is not a non-residential building. Scheduled building is defined in [Section 2\(h\)](#) of the Act which means a residential building being used by a person engaged in one or more of the professions, namely, lawyers, architects, dentists, engineers, veterinary surgeons, medical practitioners including practitioners of indigenous systems of medicine and who occupies the same partly for his business and partly for his residence. Sub-section (3) of [Section 13-B](#) puts a restriction on the landlady to deal with building of which he has taken possession by virtue of the order passed under [Section 13-B](#) of the Act of 1949. Under this Section the owner who recovers the possession of the building by virtue of the order passed under [Section 13-B](#) shall neither transfer it either by sale or by any other mode nor he shall let it out for the period of five years



from the date he took possession of the building. In case there is a breach on the part of the owner who took possession of the building, of any of the conditions, the tenant who had been evicted would be entitled to apply to the Controller for an order directing that the tenant be restored back possession of that building and on such a petition being moved, the Controller would pass an appropriate order. Apart from the restriction which is imposed by sub-section (3) of [Section 13-B](#) on the landlady's right to deal with the building of which he took possession under the provisions of [Section 13-B](#), a further restriction has been imposed on the landlady under [Section 19\(2-B\)](#) of the Act of 1949. [Section 19\(2-B\)](#) contemplates that when the order for possession is being passed in favour of the owner-landlady under [Section 13-B](#), he is required to occupy the premises continuously for the period of three months from the date of eviction of the tenant. He is prohibited from letting out the whole or any part of that building from which the tenant was evicted to any other person except the tenant who had been evicted by virtue of the order passed under [Section 13-B](#). In contravention of these restrictions, landlady is liable for a penal action and can be imposed punishment of imprisonment for a term which may extend to six months or with fine which may extend to rupees one thousand or with both.

24. When we read [Section 13-B](#) along with the definition of the NRI it is apparent that the person who is a permanently



residing outside India can also claim possession under [Section 13-B](#) of the Act. All that is required under [Section 13-B](#) is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to India with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under [Section 13-B](#), a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words "return to India" under [Section 13-B](#) of the Act denotes return to India permanently.

25. *On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to a NRI to get one building vacated in a summary manner. A Non-resident Indian landlady is required to prove that:- (i) he is a NRI; (ii) that he has return to India permanently or for the*



temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and; (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the NRI landlady's application should confine to the grounds which NRI landlady is required to prove, to get ejectment under [Section 13-B](#) of the Act. The Controller's power to give leave to contest the application filed under [Section 13-B](#) circumscribe to the grounds and inquiry to the aspects specified in the [Section 13-B](#). The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to [Section 13-B](#) and no other aspect shall be considered by the Controller.”

26. Section 13-B provides for the right given to a non-resident Indian landlord to facilitate eviction of one building let out by him or her if so required for his or her use or for the use of a person dependent upon him or her. The right can be exercised by NRI landlord once during his life time. Reading of Section 2(a) makes it clear that the definition of ‘building’ includes ‘part of a building’. Thus, NRI can maintain petition qua the ‘building’ or ‘part of the building’. Section 13-B does not restrict right of a landlady to the number of tenants but it restricts his right to seek eviction qua number of buildings. The landlady competent to invoke the provisions contained in Section 13-B of the 1949 Act, can maintain petition qua ‘part of the building’ or qua the entire building even if there are more than one



tenants inducted in different parts of the said building. Thus, landlady can claim eviction of more than one tenant so long as it is confined to one building. The question is :-

Can a single petition be maintained against more than one tenants who are in possession of different parts of same building?

27. With respect to joinder of parties and joinder of cause of action, order I Rule 3 and Order II Rule 3 of Code of Civil Procedure need to be perused :-

“Order I Rule 3

Who may be joined as defendants.

All persons may be joined in one suit as defendants where

- (a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and
- (b) if separate suits were brought against such persons, any common question of law or fact would arise.

Order II Rule 3

“3. **Joinder of cause of action-** (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such cause of action in the same suit.



(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit.”

28. This Court as early as in the year 1979 while dealing with a composite application filed by the landlady for different tenancies in **Gobind Ram’s case (supra)** observed as under : -

“3. Two contentions have been raised by Mr. Sarin, the learned counsel for the petitioner. One is that the landlord cannot make a single application when the premises had been separately rented out, claiming eviction of the tenant on grounds of personal necessity and secondly that one of the rooms is a shop and, therefore, no eviction from it can be ordered.”

4. So far as the first contention is concerned I do not find any merit in it. The tenant is one and the landlady is one. It is immaterial whether the premises rented out by on rent note or by several rent notes. When the entire premises are needed bonafide by the landlady for his personal use, the contention raised is wholly besides the point. Therefore, I repel the first contention.”

29. The precise issue regarding the composite petition filed against different tenants was dealt by Delhi High Court relying upon the aforesaid observations made by this Court in Gobind Ram’s case (supra) to hold as under : -



“14. I am in agreement with the submissions of learned Counsel for the petitioner insofar as the aforesaid aspect is concerned. Order 2 Rule 4 permits joining of causes of action in a suit of the nature as specified in the said clause. There is no such restriction that only three causes of action can be clubbed. The provisions of Order 1 Rule 3(b) of the said Code also make it clear that if separate suits were brought against persons which would result in common question of law or fact all persons may be joined in one suit as defendants. In the present case the tenant is only one. The tenancies as held above are separate. Thus the only question to be examined is whether in view of the existence of such separate tenancies, the causes of action can be clubbed in view of Order 2 Rule 4 of the said Code r/w Order 1 Rule 3 of the said Code.

*15. Learned Counsel for petitioner to advance the aforesaid plea has referred to the judgment of the Supreme Court in [S.M. Gopalakrishna Chetty Vs. Ganeshan and Others](#), . It was held in the context of the Madras Rent Legislation that a single petition with regard to two different tenancies in the same premises was maintainable even where one was for residential purpose and the other was for non residential purpose. Learned Counsel also relied upon the judgment of the learned single Judge of this Court in *Mohd Yusuf v. Ram Nath* 1972 RLR (N) 36. The case dealt with the factual matrix where there were two separate tenancies between the same landlady and tenant. It*



was held that a single petition could be filed if there is common question of law and fact. Two premises had been let out in the same building but separately in the said case.

16. In the end reference was also made to the judgment of the learned Single Judge of the Punjab and Haryana High Court in Gobind Ram v. Godha Ram 1979 (2) RCR where it was held that even if two rooms had been let out to the tenant on two different dates and Therefore there were two separate tenancies, a single petition for eviction of the tenant was competent and there was no legal bar on the landlady claiming eviction of the tenant from a totality of the premises irrespective of the fact that whether they had been rented out under one rent note or two rent notes.

17. The aforesaid judgments do support the plea of the petitioner that separate tenancies would not ipso facto imply that one eviction petition would not be maintainable. The prerequisite however remains that there should be a common question of law and fact involved. The present case is one where the allegation is of non payment of rent in respect of the different tenancies in respect of different spaces in the same building by the same tenant. The arrears were not cleared despite notice as alleged by the petitioner/landlady. There is thus a common question of law and fact which is involved in the present case. A common thread permeates the dispute. The rent



to be paid already stands specified in ExRW2/A for different portions.”

30. Applying the aforesaid ratio, this Court finds that pre-requisites of there being common question of law and fact involved stand satisfied in the present case. The eviction of both the tenants who are occupying different parts of the same building is being sought on the common grounds i.e. need of the landlady. The landlady is same though tenants are different. Even if separate petitions were filed, questions of fact and law involved would have remained the same. Thus, the plea raised with respect to composite petition being not maintainable sans merit and the same deserves to be rejected.

ISSUE OF PARTIAL EVICTION:-

31. There is no dispute regarding proposition of law canvassed by counsel representing the tenant that contract of tenancy is single and indivisible and the same cannot be sub-divided. However, the same is applicable where there is joint tenancy proved on record. In the present case, evidently and admittedly, tenancy originated by way of rent note. Later in time, when additional portion was let out to the tenant, written rent note was executed. The tenant claims that he was rented out additional portion charging additional rent. In view of written documents proving tenancy, oral tenancy claimed by the tenant cannot be believed. Conduct of the parties belies claim of oral tenancy. A pure finding of fact has been recorded by the Rent Controller after appreciating the entire evidence in its true perspective. Stand of the landlady remained consistent throughout. In earlier *lis*, Courts found that the stand of the landlady was truthful. By effect of the judgment



passed by this Court in Regular Second Appeal, even though the said finding may not operate as *res-judicata*, but the same still is a reliable piece of cogent evidence. The Rent Controller having returned a pure finding of fact, this Court does not find any reason to interfere in the same in the revisional jurisdiction, that too, keeping in view the manner and mode in which Section 18-A (8) of the Act has been couched. The High Court in the revision petition exercising power under Section 18A (8) can interfere only when it is satisfied that order made by the Controller is not in accordance with law. The question of law being *sine-quo-non* to exercise revisional jurisdiction under Section 18-A (8) of the Act, pure finding of facts recorded by the Rent Controller cannot be interfered to re-appreciate the evidence. Thus, the findings recorded by the Rent Controller are maintained. Reliance placed by Mr. Mahajan on the ratio of law laid down in **S. Sanyal's case (supra)** and other precedents is, thus, misconceived.

NEED OF LANDLADY VIS-À-VIS NATURE OF BUILDING:-

32. The plea raised by Mr. Mahajan regarding requirement of the premises for residential use when the same was let out for non-residential use, sans merit and deserves to be rejected. The landlady sought ejection of the tenant pleading residential as well as non-residential need. Otherwise also, this Court can take notice of the fact that the building in question is a big plot. It has constructed portion and a shed which was let out to the tenant for non-residential purpose. Even if the landlady seeks vacant possession thereof for residential purpose, there is nothing in law that bars her from utilizing part thereof for residential purpose. However, the said issue may



CR-5911-2008 and 4 connected matters 30

not arise in the present case as the eviction was sought pleading non-residential need as well.

33. In view of above, finding no merit in the present revision petition, the same is ordered to be dismissed.

CR-5970-2008

34. The eviction order passed by the Rent Controller qua the petitioner in the present case already stands upheld by way of detailed judgment in CR-5911-2008. In view thereof, the present petition is ordered to be dismissed.

RSA-4526-2012 and RSA-4475-2012

35. The Courts below have found the tenant to be in unauthorized possession. The claim of the appellant of being tenant has already been rejected in a detailed judgment passed in CR-5911-2008.

36. Finding no merit in the present appeals, the same are ordered to be dismissed.

RSA-4515-2012

37. Counsel appearing for the appellant has not been able to show as to how concurrent findings recorded by the Courts below regarding payment of mesne profits are bad.

38. Finding no merit in the present appeal, the same is ordered to be dismissed.

**(PANKAJ JAIN)
JUDGE**

May 3, 2025

Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No