

## Om Prakash vs Ashwani Kumar Bassi on 27 August, 2010

**Equivalent citations:** AIR 2010 SUPREME COURT 3791, 2010 (9) SCC 183, 2010 AIR SCW 6454, (2010) 94 ALLINDCAS 53 (SC), (2010) 3 CAL HN 230, (2010) 82 ALL LR 750, (2010) 2 RENTLR 289, 2010 (8) SCALE 562, (2010) 2 RENCRR 244, (2011) 1 WLC(SC)CVL 88, (2011) 1 CIVLJ 306, (2011) 2 ALL WC 1348, (2010) 4 RECCIVR 163, (2010) 4 CIVILCOURTCL 137, (2010) 8 SCALE 562

**Author:** Altamas Kabir

**Bench:** A.K. Patnaik, Altamas Kabir

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) No.24430 OF 2008

Om Prakash

... Petitioner

Vs.

Ashwani Kumar Bassi

... Respondent

### J U D G M E N T

ALTAMAS KABIR, J.

1. This Special Leave Petition is directed against the judgment and order dated 5th October, 2007, passed by a learned Single Judge of the Punjab & Haryana High Court, dismissing Civil Revision Petition No.5129 of 2007 which had been filed by the Petitioner herein against an order dated 4th August, 2007, passed by the Rent Controller, Ludhiana. By his said order the Rent Controller dismissed the Petitioner's application under Section 5 of the Limitation Act for condoning the delay in filing the application for leave to contest the eviction petition. Consequently, the application for leave to contest the eviction petition was also dismissed.

2. The Respondent herein filed an application for eviction of the Petitioner from the premises in question under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949, hereinafter referred to as "the 1949 Act". Notice of the application was issued to the petitioner/tenant in the

prescribed form asking him to appear before the Rent Controller within 15 days from the date of service of the notice and to apply for leave to contest the petition. The tenant was served with the summons of the eviction petition on 19th May, 2005. The 15 days' period indicated in the notice for filing the application for leave to contest expired on 3rd June, 2005. Such an application was subsequently made the next day on 4th June, 2005, but was not accompanied by any application for condonation of the delay of one day in making the same. Thereafter, the petitioner filed an application under Section 5 of the Limitation Act for condonation of the said delay in filing the application which was dismissed by the Rent Controller on 4th August, 2007, along with the application for leave to defend the eviction petition. In dismissing the Petitioner's application under Section 5 of the Limitation Act, 1963, the Rent Controller, relying on certain judgments of the Punjab & Haryana High Court, held that the provisions of Section 5 of the Limitation Act were not applicable in proceedings before the Rent Controller, particularly, for condoning the delay in filing an application for leave to contest the eviction petition.

3. The said decision of the Rent Controller, Ludhiana, was questioned in Revision Petition No.5129 of 2007 before the High Court and it was contended that the impugned order had been passed in violation of the provisions of Section 18-A(7) of the East Punjab Urban Rent Restriction Act, 1949, as also Section 17 of the Presidency Small Causes Courts Act, 1882. It was contended on behalf of the Petitioner that by virtue of Sub-section (7) of Section 18-A of the 1949 Act, the procedure prescribed for trial of a suit under the Small Causes Courts Act was also applicable for trial of eviction petitions under the 1949 Act and by virtue of Section 17 of the Small Causes Courts Act, the Code of Civil Procedure has been made applicable to eviction proceedings as well. It was also contended that it was, therefore, obligatory upon the part of the Rent Controller to have considered the merits of the eviction petition and to direct the landlord to lead evidence to prove the grounds for eviction taken by him. It was also urged before the High Court that mere rejection of an application for leave to contest did not ipso facto entitle the landlord to an order of eviction. On the other hand, the Rent Controller should have recorded the evidence of the landlord and it is only after such evidence was recorded and the Rent Controller was satisfied as to the existence of grounds for eviction of the tenant under Section 13-B of the 1949 Act, that the order of eviction could be passed.

4. On consideration of the submissions made on behalf of the respective parties, the High Court took the view that the provisions of Section 18-A of the 1949 Act have an overriding effect on all other laws inconsistent therewith and that Sub-section (7) of Section 18-A of the 1949 Act and Section 17 of the Presidency Small Causes Courts Act, 1882, were not attracted to the facts of the case or in a situation where leave to contest has been declined for any reason whatsoever. The High Court further held that under the circumstances, there was no statutory obligation upon the Rent Controller to frame issues or to try the eviction petition by calling upon the petitioner to lead evidence. The High Court further held that refusal to grant leave to contest amounts to admission of the contents of the eviction petition and if the eviction petition itself satisfies the requirements of Section 13-B of the 1949 Act, an order of eviction has to follow as a matter of course.

5. It is against the said order of the learned Single Judge of the High Court, dismissing the petitioner's Revision Petition, that the present Special Leave Petition has been filed.

6. As indicated hereinbefore, the case of the Petitioner is that both the Rent Controller and the High Court had erred in law in holding that the provisions of the Limitation Act would not apply in a proceeding before the Rent Controller and that Section 18-A of the 1949 Act would have an overriding effect over Section 29(2) of the Limitation Act, 1963. It was reiterated that by virtue of Sub-section (7) of Section 18-A of the 1949 Act, the procedure prescribed for trial of suits in the Small Causes Courts Act, is also applicable for trial of eviction petitions since by virtue of Section 17 of the Small Causes Courts Act, the Code of Civil Procedure has been made applicable to eviction proceedings as well.

7. Appearing for the Petitioner, Mr. Ujjal Singh, learned advocate, referred to and relied upon the decision of this Court in *Mukri Gopalan vs. Cheppilat Puthanpurajil Aboobacker* [(1995) 5 SCC 5], wherein a similar question had arisen with regard to the power of the Appellate Authority under Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965, to condone the delay in filing an appeal after expiry of the period of limitation prescribed under the Act. This Court held that the conditions for applicability of Section 29(2) of the Limitation Act were satisfied since Section 18 is a special law and in the absence of any provision under the Limitation Act, for filing an appeal, the period of limitation provided under Section 18 would have to be treated to be different from that under the Limitation Act. It was held that as a consequence, Section 5 of the Limitation Act would be automatically attracted to an appeal under Section 18 in the absence of any express exclusion under the Rent Act. It was further held that since the District Judges function as Appellate Authority under Section 18, such an authority is a court and not persona designata and, therefore, entitled to resort to Section 5 of the Limitation Act. It was further held that the Appellate Authority constituted under Section 18 of the Kerala Buildings (Lease and Rent Control) Act, 1965, functions as a Court and as a result the period of limitation under the said provisions governing appeals would be computed keeping in view the provisions of Sections 4 to 24 of the Limitation Act, 1963. Reference was made to a decision of this Court in *Gaya Prasad Kar vs. Subrata Kumar Banerjee* [(2005) 8 SCC 14], wherein it was held that having regard to the beneficial provisions of the West Bengal Premises Tenancy Act, 1956, which allowed extension of time for making deposit of arrears of rent, the provisions of the Limitation Act and, in particular, Section 5 thereof, would also be applicable.

8. Yet another decision of this Court in the case of *Akesh Wadhawan & Ors. vs. Jagdamba Industrial Corporation & Ors.* [(2002) 5 SCC 440], was referred to on behalf of the Petitioner in the context of the 1949 Act, in which it was held that subsidiary rules of interpretation envisage that in case of ambiguity, a provision should be so read as to avoid hardship, inconvenience, injustice, absurdity and anomaly. It was held that since a statute can never be exhaustive, courts have jurisdiction to pass procedural orders, though not specifically contemplated by statute and that such innovation is permissible on the basis of authority supported by the principles of justice, good sense and reason.

9. Certain other decisions were also referred to by learned counsel which are on similar lines.

10. On behalf of the Respondent it was submitted that Section 13-B had been introduced in the 1949 Act by way of amendment in 2001 to make special provisions for Non-Resident Indians who return to India and are in need of immediate possession of their building or buildings let out by them. Such benefit had been made available to a Non-Resident Indian only after a period of five years from the

date on which the Non-Resident Indian became the owner of such building. It was contended that the provisions of the 1949 Act and, in particular, Section 13-B thereof, would have to be very strictly construed on account of the object with which it had been enacted. In this regard reference was made to a decision of this Court in Prithipal Singh vs. Satpal Singh (Dead) through its LRs. [(2010) 2 SCC 15], where an ex-parte eviction order based on ground of bonafide requirement of landlord was recalled by the Rent Controller exercising jurisdiction under Order 9 Rule 13 read with Order 37 Rule 4 and Section 151 of the Civil Procedure Code. The said order was affirmed by the High Court observing that in view of Rule 23 of the Delhi Rent Control Rules, 1959, the Rent Controller is conferred with power to set aside the ex-parte order of eviction in exercise of jurisdiction under the aforesaid provisions of the Code. On the said orders being questioned in this Court it was held that Rule 23 of the aforesaid Rules could not be applied in view of Section 25-B which is a special code and provides for a specific and exhaustive procedure for eviction of a tenant by a landlord on ground of bonafide requirement. The order of the High Court was, therefore, set aside and that of the Rent Controller was restored.

11. Reference was also made to a Bench decision of the Punjab & Haryana High Court in Ashwani Kumar Gupta vs. Siri Pal Jain [1998 (2) RCR 222], in a Civil Revision, where the very same question fell for consideration and it was held that when the tenant had failed to file affidavit seeking leave to contest the proceedings within the time prescribed, the Rent Controller had no power to condone the delay. Certain other cases were also referred to on the same lines relating to the 1949 Act and Sections 13-B and 18-A thereof.

12. From the materials on record it is clear that the application for leave to contest the application under Section 13-B of the 1949 Act has to be made within 15 days from the date of service of the summons. In this case, the application for leave to contest the application was made one day after the said period had expired. The issue for consideration before us is whether the Rent Controller was right in rejecting the application on the ground that he had no jurisdiction to condone the delay under the Act. The matter was considered at length by the High Court, which, as indicated hereinabove, came to the conclusion that Section 18-A of the 1949 Act would have an over-riding effect on all other laws inconsistent therewith and that Sub-Section (8) of Section 18-A of the 1949 Act and Section 17 of the Presidency Small Causes Courts Act, 1882, were not attracted to the facts of the case.

13. The views expressed by the High Court also formed the subject matter of the decision in Prithipal Singh's case (supra), though in the context of the Delhi Rent Control Act, 1958, and the rules framed thereunder. This Court was of the view that Section 25-B of the Delhi Rent Control Act was a complete Code by itself and other provisions could not, therefore, be brought into play in such proceedings. In the instant case, the same principle would apply having regard to the fact that the Rent Controller had not been conferred with power under Order 9 Rule 13 C.P.C. to recall an ex-parte order passed earlier.

14. Apart from the above is the view taken by this Court in Prakash H. Jain vs. Marie Fernandes [(2003) 8 SCC 431], where it was specifically held that since the Competent Authority under Section 40 of the Maharashtra Rent Control Act, 1999, was not a court but a statutory authority with no

power to condone the delay in filing an affidavit and application for leave to contest, the Competent Authority had no other option but to pass an order of eviction in the manner envisaged under the Act.

15. The decision in Mukri Gopalan's case (supra) relied upon by Mr. Ujjal Singh is distinguishable from the facts of this case. In the facts of the said case, it was the District Judges who were discharging the functions of the Appellate Authority and being a Court, it was held that the District Judge, functioning as the Appellate Authority, was a Court and not persona designata and was, therefore, entitled to resort to Section 5 of the Limitation Act. That is not so in the instant case where the Rent Controller appointed by the State Government is a member of the Punjab Civil Services and, therefore, a persona designata who would not be entitled to apply the provisions of Section 5 of the Limitation Act, 1963, as in the other case. The decision in Gaya Prasad Kar's case (supra) is also of little help to the Petitioner since under the West Bengal Premises Tenancy Act, 1956, powers have been vested in the Rent Controller to extend the time for making deposits of arrears of rent, which would make the provisions of the Limitation Act applicable in such specific instances.

16. The instant case stands on a different footing and, in our view, is covered by the decision of this Court in Gaya Prasad Kar's case (supra), wherein it was held that the Competent Authority had no other option but to pass an order of eviction since it had no power to condone the delay in filing an application for leave to contest.

17. Section 13-B is a power given to a Non-Resident Indian owner of a building to obtain immediate possession of a residential building or scheduled building when required for his or her use or for the use of any one ordinarily living with and dependent on him or her. The right has been limited to one application only during the life time of the owner. Section 18-A(2) of the aforesaid Act provides that after an application under Section 13-B is received, the Controller shall issue summons for service on the tenant in the form specified in Schedule II. The said form indicates that within 15 days of service of the summons the tenant is required to appear before the Controller and apply for leave to contest the same. There is no specific provision to vest the Rent Controller with authority to extend the time for making of such affidavit and the application. The Rent Controller being a creature of statute can only act in terms of the powers vested in him by statute and cannot, therefore, 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.

.....J. (ALTAMAS KABIR) .....J. (A.K.  
PATNAIK) New Delhi Dated:27.08.2010