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mis-representation, the necessary consequence thereof would be that such document needs to be cancelled. If the sale deed which is a registered document exists and is not directed to be cancelled and delivered the basic purpose of the plaintiff in instituting the present suit remains unsatisfied and the Court may not be in a position to grant complete and effective relief to the plaintiff. The registered sale deed reflects the consideration of Rs. 9 lacs and the plaintiff in unambiguous terms has claimed that the said document is void and ineffective for the reasons stated in the plaint. A plaintiff cannot be permitted to avoid payment of requisite and prescribed court fee in the garb of innocently worded prayer clause while in fact it would in spirit and substance and in law becomes inevitable for the Court to grant such a relief which has not been prayed for in the prayer clause explicitly. In other words, the prayer clause essentially incorporates another relief.

(6) Having come to this conclusion that the plaintiff respondent herein is liable to pay the *ad valorem* Court fee, the necessary corollary thereof is whether the plaintiff would be entitled to pay the requisite Court fee or the plaint is liable to be rejected. It is a settled principle of law that wherever or whenever the Court comes to a conclusion that plaintiff is liable to pay Court fee larger than the Court fee affixed by the plaintiff, it must grant time to the plaintiff to make up deficiency in Court fee, rather than rejecting the plaint right at the threshold for payment of inadequate Court fee.

(7) Consequently, this petition is allowed. The impugned order, dated 5th April, 1997 is set aside. The plaintiff shall pay *ad-valorem* Court fee as aforesaid within a period of one month from today. Upon payment of Court fee the trial Court shall proceed with the suit in accordance with law.

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**J.S.T.**

Before N. K. Agrawal, J  
SURINDER SHARMA,—Petitioner

versus

SMT. ZENOBIA BHANOT,—Respondent

C. R. No. 3033 of 1997

24th September, 1998

*Punjab Urban Rent Restriction Act, 1949, as amended by Punjab Act No. 2 of 1985—Ss. 2 (hh) & 13—A—Eviction—Leave to defend—Right of specified landlord to seek eviction of tenants created by*

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*notification dated 15th December, 1986 extending the Amending Act (2 of 1985) to U.T. Chandigarh—Landlord died on 5th January, 1985, widow bringing eviction petition on 16th December, 1987 i.e. within one year of the notification to recover immediate possession of the residential building—Widow living in rented accommodation with her unmarried son—Widow filing affidavit that she does not own & possess any other suitable accommodation in the local area of residence—Rent Controller disallowing leave to contest on the basis of affidavits filed by both the tenants of parts of the residential house—Merely disputing the claim of landlord is not sufficient to enable the tenants to grant of relief—In the absence of facts so as to disentitle the landlord from obtaining an order for recovery of possession, eviction orders of the Rent Controller upheld as no triable issue arose before the Rent Controller.*

*Held that*, a specified landlord has not to show under Section 13-A that she required the leased accommodation because of *bona fide* personal necessity. A specified landlord has only to show that he/she did not own and possess any other suitable accommodation in the local area in which he/she intends to reside and that he/she wanted possession of the house for his/her own occupation.

(Para 23)

*Further held*, that the tenant has to be clear and not vague, positive and not negative, specific and not in the dark. The tenant should, wherever possible, prove this through substantial evidence by annexing such documents to his affidavit as may be relevant to the issue. Merely disputing the claim made by the landlord would not be sufficient to enable the tenant to the grant of relief. Such averments would be regarded as vague and bald allegations and, thus, could not be regarded as facts so as to disentitle the landlord from obtaining an order for recovery of possession.

(Para 25)

*Further held*, that the right is given to the landlord, in cases where he does not own and possess any other suitable accommodation, to recover possession of his residential building. If the building is let out in parts, any or all such parts can also be recovered since the part or parts let out form part of the building.

(Para 28)

*Further held*, that no triable issue arose from the plea raised by the tenants that the landlady was occupying a suitable and larger accommodation and she had no requirement of the rented portions of the house for her own use and occupation.

(Para 29)

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*Further held*, that on the death of the specified landlord, his widow or child, grandchild or a widowed daughter-in-law, who was dependent upon such specified landlord at the time of his death, shall be entitled to file an application under Section 13-A. It is further clear that in the case of death of the specified landlord before the commencement of the Amending Act of 1985, an application could be filed by the widow within one year of such commencement. As is found, S. N. Bhanot had die on 5th January, 1985. The Amending Act (2 of 1985) was extended to the Union Territory of Chandigarh by notification dated 15th December, 1986. The application under Section 13-A was filed by the respondent landlady on 16th December, 1987. Thus, the widow of S. N. Bhanot, under the first proviso to Section 13-A, was entitled to file applications seeking eviction of the tenants. Since she claimed eviction for the use and occupation of her family, which included her son, the plea raised by the tenants that her son had not been impleaded as a co-landlord did not have any substance. When the law permitted the widow of the specified landlord to file an application under Section 13-A, there was no need to implead the son of the specified landlord also. Under first proviso to Section 13-A, a widow has been given a right to file an application. There is no requirement that all the legal heirs of the specified landlord should jointly file an application. In this view of the matter, the plea raised by the tenants did not have any merit at all and it was rightly rejected by the Rent Controller.

(Para 31)

*Further held*, that earlier a landlord who retired from the service of the Central Government or the State Government, had no specific right to claim possession of the tenanted premises on the ground of his retirement. If a certain right accrued to him on the basis of a certain specific legislation, he is entitled to avail of the benefit. It is also to be noticed that the premises were let out in 1974 when S. N. Bhanot was in service of the Haryana Government and he did not need the house owned by him for his own use and occupation. He died in January, 1985 and thereafter the provision beneficial to a specified landlord came on the statute book and was made applicable to the Union Territory of Chandigarh with effect from 15th December, 1986. Simply because the premises had been let out in the year 1974, that would not create a bar to the specified landlord to claim the benefit of the new provision contained in Section 13-A. The requirements which a specified landlord had to fulfil are those as have been mentioned in Section 13-A of the Act.

(Para 35)

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*Further held*, that any unilateral act on the part of the tenant creating a partnership firm would not convert the user of the building.

(Para 37)

Bachittar Singh Giani, Advocate,—*for the Petitioner.*

Rajiv Kataria, Advocate,—*for the Respondent.*

### JUDGMENT

*N.K. Agrawal, J.*

(1) These are two civil revision petitions filed by two tenants against the eviction orders dated 13th June, 1997, passed by Rent Controller, Chandigarh. Since the controversies in both these petitions are similar, these are being decided by this common order.

(2) Two petitions, one against Surinder Sharma and the other against P.K. Vasudeva, were filed on 16th December, 1987 by Smt. Zenobia Bhanot, respondent-landlady, under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the Act) seeking eviction of the tenants from their respective tenanted portions of House No. 2, Sector 18-C, Chandigarh. The case put forwarded by the respondent-landlady was that both the tenants were inducted in the house by her husband, late S.N. Bhanot, who was the owner of house. She stated in her petitions that her husband was a member of the Indian Administrative Service and was posted in the rank of a Commissioner in the State Government of Haryana. He retired from service on 31st August, 1975 and thereafter expired on 5th January, 1985. The Act was amended in the year 1985 by Punjab Act No. 2 of 1985, whereby a new Section 13-A was inserted entitling a specified landlord to seek eviction of his tenant on the ground of his retirement from service. A 'specified landlord' was defined in the newly inserted clause (hh) in Section 2 of the Act. A person, who was entitled to receive rent for a building and who was holding an appointment in a public service or post in the Central Government or the State Government was treated to be a specified landlord. Such a landlord was made entitled to file an application before Rent Controller within one year before or after the date of his retirement or within one year of the date of commencement of the Amending Act of 1985. He had to show through a certificate issued by a competent authority the date of his retirement. He was also required to show in his affidavit that he does not own and possess any other suitable accommodation in the local area in which he intends to reside.

(3) Zenobia Bhanot claimed in her petitions filed under Section 13-A of the Act that she, being the widow of late S.N. Bhanot, was

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entitled to file application under the first proviso to Section 13-A of the Act seeking eviction of the tenants and immediate recovery of possession of the leased portions of the house. Her petitions against the two tenants, Surinder Sharma and P.K. Vasudeva, were supported by her affidavits, wherein she stated that she did not own and possess any other suitable accommodation in Chandigarh for the use and occupation of her family members. She was residing on rent in a small portion of House No. 53, Sector 2, Chandigarh. She further stated in her affidavit that she had an unmarried son, who stayed with her and was to be married soon. The rented portion of the house in which she was residing was said to be insufficient and unsuitable.

(4) Each of the tenants filed application seeking leave to defend the eviction petition. The applications were supported by affidavits. Relationship of landlord and tenant was denied by Surinder Sharma. He further stated that Studio Kaushal Arts was the tenant under S.N. Bhanot and after his death, Pardeep Bhanot, the son of S.N. Bhanot, collected rent from Studio Kaushal Arts. A plea was raised by the tenant that Smt. Zenobia Bhanot had filed the petition without permission from her son, Pardeep Bhanot, who was a co-landlord. It was further pleaded that the building was not a residential building as it was being used for commercial purposes. Rent was initially Rs. 280 p.m., but it was increased in the years 1978, 1982 and 1985. The tenant further raised a plea that S.N. Bhanot did not feel any necessity to evict the tenant for personal use and occupation. He was to retire on 31st August, 1975, but he opted to let out the premises in November, 1974. It simply showed that he did not need the house for his use and occupation.

(5) P.K. Vasudeva also raised similar pleas in his application seeking permission to contest the eviction petition, supported by his affidavit. He also raised an objection that S.N. Bhanot had rented out the tenanted portion in August, 1974 knowing well that he was to retire in August, 1975. Actually, S.N. Bhanot never required the house for his own use and occupation. P.K. Vasudeva also took the plea that the petitioner, Zenobia Bhanot, was residing in a larger accommodation as compared to the accommodation in occupation of the tenant. It was explained by him that the landlady had two daughters, who were married and were not living with her. It was only the unmarried son of the landlady, who was living with her. She, therefore, did not require the tenanted portion of the house and the existing accommodation, in which she was residing, was not unsuitable to her requirement. It was also explained that the landlady was living in the house in Sector 2, Chandigarh, for the last 12 years and she cannot now say that the house in which she is residing unsuitable. It was alleged that she wanted to further increase the rent though it was increased from time to time

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in the past. Another plea was taken that fresh tenancy came into existence after the increase in the rent. It was further averred in the affidavit filed by P.K. Vasudeva that Zenobia Bhanot is not the only legal heir of late S.N. Bhanot and, therefore, she had no right to file application under Section 13-A without the consent of her son, Pardeep Bhanot.

(6) The Rent Controller, after considering the pleas raised in the applications filed by the two tenants, supported by their affidavits, did not find any plausible reason for granting them permission to contest the eviction petitions under Section 13-A of the Act. He ordered the eviction of each of the two tenants.

(7) Before considering the arguments of the learned counsel for the petitioner-tenants, it would be necessary to look to the history of the case.

(8) There were four tenants in the house owned by late S.N. Bhanot. Four eviction petitions were filed against the tenants. Eviction orders were passed under Section 13-A of the Act by the Rent Controller against two tenants, namely, Dr. S.K. Gill and Bhupinder Singh. Two civil revision petitions (Nos. 1260 and 1386 of 1989) were filed in this Court by the tenants. In the petition filed by Dr. S.K. Gill, the order of the Rent Controller was upheld by order dated 6th November, 1989. The revision petition filed by the second tenant, Bhupinder Singh, was, however, allowed by order of the even date as this Court took the view that a specified landlord was entitled to seek eviction of one tenant only and not all the tenants. If a sufficient and suitable accommodation becomes available on the eviction of one tenant, the specified landlord would not be entitled to seek eviction of all the other tenants.

(9) The Rent Controller, noticing the decision of the High Court in the case of the tenant, Bhupinder Singh, dismissed the other two eviction petitions filed against Surinder Sharma and P.K. Vasudeva. The Rent Controller took the view that the landlady had already made a choice of accommodation which was in occupation of Dr. S.K. Gill and, therefore, she was not entitled to seek eviction of the other tenants.

(10) Two civil revision petitions (Nos. 3025 and 3040 of 1990) were filed by Zenobia Bhanot against the orders of the Rent Controller, whereby the eviction petitions filed by her under Section 13-A against Surinder Sharma and P.K. Vasudeva had been dismissed.

(11) In the aforesaid revision petitions, the controversy relating to the option of the specified landlord to seek eviction of one of the several tenants was referred by a learned Single Judge of this Court to a larger Bench. The reference was answered by a Division Bench of

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this Court by order dated 20th July, 1992 taking a view that a specified landlord was entitled to seek eviction of a tenant after exercising option regarding the accommodation leased out to more than one tenant.

(12) The landlady moved the Supreme Court by Special Leave Petitions (C) No. 1289-90 of 1993 and, after obtaining leave, filed Civil Appeals No. 607 and 608 of 1993 against the aforesaid judgment of the Division Bench of this Court dated 20th July, 1992, by which the interpretation placed on the second proviso to Section 13-A of the Act by earlier two decisions (of single Judges) in *Sohan Lal of Patiala v. Col. Prem Singh Grewal*(1) and *Bhupinder Singh v. Smt. Zenobia Bhanot*(2) was approved. However, during the pendency of the appeals in the Supreme Court, both the revision petitions filed by the landlady against the orders of the Rent Controller were dismissed by the learned Single Judge of this Court on 10th May, 1993, in view of the Division Bench judgment of this Court dated 20th July, 1992. The civil appeals (No. 607 and 608 of 1993) filed by the landlady against the tenants, P.K. Vasudeva and Surinder Sharma respectively, were allowed by the Supreme Court on 14th November, 1995 and the Division Bench judgment of this Court dated 20th July, 1992 was set aside.

(13) After the decision in the civil appeals by the Supreme Court, Civil Revision Petitions (3025 and 3040 of 1990) filed by the landlady were revived. In both the petitions, this Court by order dated 1st May, 1997 took the view that the matter must be remitted to the Rent Controller for decision afresh as the Rent Controller had earlier dismissed the eviction petitions against Surinder Sharma and P.K. Vasudeva simply on the ground that the landlady had a right to seek eviction after exercising option against one tenant alone and not against all the tenants. The Rent Controller thereafter allowed the eviction petitions against both the tenants by order dated 13th June, 1997. The present revision petitions have been filed by the tenants against the aforesaid orders of the Rent Controller.

(14) Learned counsel for the petitioner-tenants have argued that the tenants in their affidavits seeking permission to contest the eviction petition had raised important issues which could not be rejected without evidence. It was, therefore, necessary for the Rent Controller to allow the applications of the tenants and thereafter to examine the merits of the pleas in detail after permitting both the landlady and the tenants to adduce evidence. It is contended that certain triable issues were made out from the averments in the affidavits and, therefore, it was incumbent upon the Rent Controller to permit the tenants to contest

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(1) 1989 (2) P.L.R. 139.

(2) 1990 (2) P.L.R. 335.

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the eviction petitions. It is also pointed out that fresh tenancy was created after enhancing the rent. In this light, the landlady had no right to seek eviction on the ground of her own requirement.

(15) Learned counsel for the petitioner-tenants have also argued that the Rent Controller was only required in law to look to the affidavit of the tenant so as to determine whether any triable issue arose or not and whether leave to defend should be granted or not. The Rent Controller had to look only to the averments made by the tenant in his application and his affidavit. The Rent Controller had no jurisdiction to travel beyond the affidavit of the tenant and look to the counter-affidavit or the reply filed by the landlady. The Rent Controller had to confine himself to the tenant's application and the affidavit and not to the averments made in the landlady's petition and her affidavit. The Rent Controller had to consider whether the tenant's affidavit disclosed such facts as would disentitle the landlady from obtaining possession of the house under Section 13-A of the Act. It is further argued that a portion of the house (top floor) was let out to M/s Milap Advertisers by the landlady after filing the present petitions. It showed that she did not require the premises for her own use and occupation. Moreover, rent was enhanced from time to time and that again showed that she did not require the tenanted premises and was interested only in the enhancement of rent.

(16) Learned counsel for the petitioner-tenants have placed reliance on a decision of this Court in *Shri Dharam Pal v. Malkiat Singh Gill*(3). It has been held therein that at the stage of granting or declining to grant leave, the Controller has to take into consideration the grounds disclosed by the tenant in his affidavit. If the grounds are found to be plausible, leave ought to be granted. The fact that these grounds have been countered in his reply by the landlord should not weigh with the Rent Controller. To take into consideration the reply so filed by the landlord, the Rent Controller enters the arena of proof which is a stage to be reached after the leave is granted.

(17) Reliance has also been placed by the learned counsel for the tenants on another decision of this Court in *Joginder Paul v. Gurdial Singh* (4). It has been held in that case that in the absence of any evidence that the premises in dispute was a residential building, no eviction order could be passed under Section 13-A of the Act. It is the duty of the Rent Controller to find out as to whether the demised premises is a residential building or not before an eviction order could be passed under Section 13-A, since it relates to its jurisdiction.

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(3) 1987 (2) P.L.R. 383.

(4) 1989 (1) P.L.R. 441.



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(18) Learned counsel for the tenants, on the basis of the aforesaid ratio, contended that the leased portion had been rented out by late S.N. Bhanot for commercial purposes. In one case, the tenanted portion was used by Studio Kaushal Arts and in the other case, P.K. Vasudeva was using the leased premises as a Chartered Accountant and, thus, the building was being used for commercial purposes.

(19) Reliance is also placed on yet another decision of this Court in *Mahajan Cloth House through its Proprietor and Partner v. Tara Singh* (5). That was also a case where the tenant filed an application seeking leave to defend in a proceeding filed by the landlord under Section 13-A of the Act. It was stated in the affidavit of the tenant that the demised premises was a shop and not a residential or a scheduled building but a commercial building. The application under Section 13-A was, therefore, claimed to be not maintainable. A plea of bar of *res judicata* in view of the fact of the earlier petition having been dismissed for non-prosecution was also raised. Some other pleas like the lack of *bona fide* and *mala fide* intentions were also raised. It was held that the Rent Controller had no jurisdiction to determine the matter on merits. Only *prima facie* allegations made in the affidavit of the tenant are to be seen. It is on Rent Controller being satisfied that the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord from obtaining an order for recovery of possession of the residential building or scheduled building, as the case may be, that the leave to contest can be granted. It is only after the leave is granted that the Rent Controller shall commence the hearing.

(20) Learned counsel for the petitioner-tenants have also placed reliance on *Prit Pal Kaur v. B.S. Ahuja* (6). It has been held therein that the landlord is the sole arbiter of his need. If the landlord seeks ejectment on the ground that he requires more accommodation for his residence and the accommodation in his occupation is neither sufficient nor suitable and if the tenant disputes that assertion, the Rent Controller is required to decide that point in controversy.

(21) The Supreme Court, in *Precision Steel & Engineering Works and another vs. Prem Deva Niranjana Deva Tayal* (7), had an occasion to examine a controversy which arose in connection with an application for leave to contest filed by the tenant. It was held that if the tenant appeared pursuant to the summons and filed an affidavit stating the grounds on which he seeks to contest the application, it will have to be seen whether it would disentitle the landlord from obtaining an order

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(5) 1990 (2) R.L.R. 284.

(6) 1996 (1) R.C.R. 630.

(7) A.I.R. 1982 S.C. 1518.

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for recovery of possession. The Controller has to confine himself only to the averments in the affidavit and the reply, if any. The jurisdiction to contest or refuse the same is to be exercised on the basis of the affidavit filed by the tenant. That alone at that stage is the relevant document and one must confine to the averments in the affidavit.

(22) Learned counsel for the petitioner-tenants have, on the basis of the ratio laid down by the Supreme Court in the case of *Precision Steel & Engineering Works* (supra), argued that the Rent Controller has acted without jurisdiction while rejecting the applications filed by the tenants seeking leave to defend. The Rent Controller looked to the reply and the counter-affidavit filed by the landlady and thereafter reached conclusions, which is not permissible in law.

(23) Learned Counsel for the respondent-landlady has, on the other hand, contended that no *prima facie* triable issue arose from the averments contained in the applications for leave to defend nor from the affidavit filed by the tenants in support of the applications. Whatever pleas were raised, those were totally frivolous, vague and ambiguous. If the application under Section 13-A of the Act could be allowed on fulfilling the conditions laid down in that section, there was no need to look to the irrelevant facts mentioned in the affidavits filed by the tenants. Learned counsel has argued that the landlady was residing in a rented accommodation and, therefore, the question that she did possess suitable accommodation was wholly irrelevant. Similarly, the plea raised by the tenants that the existing accommodation in occupation of the landlady was larger and also suitable is also not relevant in view of the requirements laid down in Section 13-A of the Act. A specified landlord has not to show under Section 13-A that she required the leased accommodation because of *bona fide* personal necessity. A specified landlord has only to show that he/she did not own and possess any other suitable accommodation in the local area in which he/she intends to reside and that he/she wanted possession of the house for his/her own occupation.

(24) Learned counsel for the respondent-landlady in support of his contention has placed reliance on a decision of this Court in *Dr. Dina Nath vs. Smt. Santosh Kaur etc.* (8). It has been held therein that, on the death of the specified landlord, his heir may file an application before the Rent Controller to recover immediate possession of the demised premises specified in Section 13-A complying with its requirements. A retired person or his widow is entitled to live along with other members of the family including children and grandchildren. He or she is not supposed to live in solitude by forsaking his

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(8) 1987 (1) P.L.R. 171.

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or her near and dear ones by recovering possession of the premises under section 13-A of the Act.

(25) Reliance is also placed by the learned counsel for the respondent-landlady on another decision of this Court in *Surjit Singh vs. Harbans Singh* (9). That was a case where the tenant had sought permission to contest the application of the landlord on two grounds, namely, (i) the demised premises is a commercial premises and eviction under Section 13-A cannot be sought, and (ii) the accommodation in possession of the landlord is adequate for his use and occupation. It was held that the tenant should disclose detailed facts in his affidavit which would disentitle the landlord from obtaining the order for recovery of possession. The endeavour of the tenant has to be to place on record facts which would show that the landlord filing the eviction application is either not the landlord or he is not the owner or the demised premises has not been let out for residential purposes alone and that they are not required *bona fide* for himself or his family members or that the landlord is in possession of a reasonable suitable accommodation for his residence. The tenant has to be clear and not vague, positive and not negative, specific and not in the dark. The tenant should, wherever possible, prove this through substantial evidence by annexing such documents to his affidavit as may be relevant to the issue. Merely disputing the claim made by the landlord would not be sufficient to enable the tenant to the grant of relief. Such averments would be regarded as vague and bald allegations and thus, could not be regarded as facts so as to disentitle the landlord from obtaining an order for recovery of possession.

(26) Reliance is also placed by the learned counsel for the respondent-landlady on a decision of this Court in *Dr. S.M. Nehra v. Sh. D.D. Malik* (10). That was also a case under section 13-A of the Act. A 'specified landlord' resided on the ground floor and the first floor was occupied by the tenant. The landlord retired from service of the Haryana Government in the year 1979. The rent of the tenanted premises was also increased in 1979. It was held that it did not create fresh tenancy in 1979 to disentitle the landlord to claim the benefit of Section 13-A. The contention that fresh tenancy was created when rent was increased was held to be not tenable. Ejectment of the tenant from the first floor of the house was ordered.

(27) In *Panna Lal v. Smt. Kamla Devi & another* (11), a question regarding a widow's right as a specified landlord was examined. It was

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(9) 1989 (1) P.L.R. 6.

(10) 1990 (1) R.C.R. 350.

(11) 1990 (1) P.L.R. 178.

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held that the widow had a right to be brought on the record of the case provided she was dependent upon the specified landlord at the time of his death.

(28) Learned counsel for the respondent-landlady has argued that whatever pleas were raised by the tenants in their applications as well as the affidavits, those were totally irrelevant to the matter which was required to be decided within the ambit of Section 13-A of the Act. The landlady had only to show that she was a specified landlord within the meaning of Section 2(hh) of the Act and that the petition had been filed within the period mentioned in Section 13-A. She had also to show that she did not own and possess any other suitable accommodation in that local area. She was not required to prove *bona fide* personal necessity or to show insufficiency of the present accommodation. A specified landlord can even seek additional or more accommodation. Reliance is placed on the observations of the Supreme Court made in the cases of the present tenants while deciding Civil Appeal Nos. 607 and 608 of 1993. While examining the second proviso to Section 13-A of the Act, it was observed by their Lordships of the Supreme Court that a right has been given to a specified landlord to recover immediate possession of a residential or scheduled building. If such residential building is let out in parts, the landlord is given the option to recover immediately the possession of such building itself or any part or parts of such building in cases where it is let out in part or parts. In cases where the building is let out in parts, the parts so let out will form part of the building itself. The right is given to the landlord, in cases where he does not own and possess any other suitable accommodation, to recover possession of his residential building. If the building is let out in parts, any or all such parts can also be recovered since the part or parts let out form part of the building.

(29) From the ratio laid down by the Supreme Court, it is evident that the plea raised by the tenants in their applications and the affidavits has no relevance inasmuch as the landlady was residing with her son in a rented accommodation. Therefore, the question that she had sufficient and suitable accommodation for her use and occupation became wholly irrelevant. It has been held by the Supreme Court that she is entitled to recover any or all parts of the residential building. In this light, no triable issue arose from the plea raised by the tenants that the landlady was occupying a suitable and larger accommodation and she had no requirement of the rented portions of the house for her own use and occupation.

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(30) Section 2(hh) of the Act defines a 'specified landlord' as under:—

“ ‘Specified landlord’ means a person who is entitled to receive rent in respect of a building on his own account and who is holding or has held an appointment in a public service or post in connection with the affairs of the Union or of a State.”

First proviso to Section 13-A of the Act further says:-

“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 grandchild 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 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 his 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.”

(31) It would, thus, be obvious that on the death of the specified landlord, his widow or child, grandchild or a widowed daughter-in-law, who was dependent upon such specified landlord at the time of his death, shall be entitled to file an application under Section 13-A. It is further clear that in the case of death of the specified landlord before the commencement of the Amending Act of 1985, an application could be filed by the widow within one year of such commencement. As is found, S.N. Bhanot had died on 5th January 1985. The Amending Act (2 of 1985) was extended to the Union Territory of Chandigarh by notification, dated 15th December, 1986. The application under Section 13-A was filed by the respondent-landlady on 16th December, 1987. Thus the widow of S.N. Bhanot, under the first proviso to Section 13-A,

was entitled to file applications seeking eviction of the tenants. Since she claimed eviction for the use and occupation of her family, which included her son, the plea raised by the tenants that her son had not been impleaded as a co-landlord did not have any substance. When the law permitted the widow of the specified landlord to file an application under Section 13-A, there was no need to implead the son of the specified landlord also. Under first proviso to Section 13-A, a widow has been given a right to file an application. There is no requirement that all the legal heirs of the specified landlord should jointly file an application. In this view of the matter, the plea raised by the tenants did not have any merit at all and it was rightly rejected by the Rent Controller.

(32) It would be necessary to read the relevant part of Section 13-A of the Act:—

*“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, applies to the Controller alongwith 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 in 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.”*

(33) From a perusal of the aforesaid provision, it is apparent that a specified landlord is required to fulfil three conditions:—

- (i) he should file the application within one year before or after his retirement or within one year of the date of commencement of the Amending Act of 1985;
- (ii) he should file a certificate from the authority competent to remove him from service indicating the date of his retirement;

(iii) he should also file his own 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 and that he wants possession of the house for his own use and occupation.

(34) There is no dispute that application under Section 13-A of the Act was filed within time. A certificate obtained from the Chief Secretary to the Government of Haryana was also annexed to that application showing the date of retirement of S.N. Bhanot. An affidavit was also attached with the application mentioning therein that the landlady did not own and possess any other suitable accommodation and, therefore, she wanted possession of the leased premises for her use and occupation. The tenants raised objections regarding other facts which were not at all relevant to the requirements laid down in Section 13-A, as reproduced above. The landlady had not to show that the present accommodation, in which she was residing, was insufficient or unsuitable. She was staying in a rented accommodation and, therefore, she was entitled to claim the immediate recovery of possession of the house owned by her husband and left behind after his death.

(35) A plea has been raised by the petitioner-tenants that S.N. Bhanot had rented out the house in August, 1974, whereas he was to retire in August, 1975 and, therefore, he would not have let out the premises prior to his retirement if he wanted it for his use. This plea has no merit at all as the remedy made available to a retiring Government employee has come into force with effect from December 15, 1986. Earlier, a landlord, who retired from the service of the Central Government or the State Government, had no specific right to claim possession of the tenanted premises on the ground of his retirement. If a certain right accrued to him on the basis of a certain specific legislation, he is entitled to avail of the benefit. It is also to be noticed that the premises were let out in 1974 when S.N. Bhanot was in service of the Haryana Government and he did not need the house owned by him for his own use and occupation. He died in January, 1985 and thereafter the provision beneficial to a specified landlord came on the statute book and was made applicable to the Union Territory of Chandigarh w.e.f. 15th December 1986. Simply because the premises had been let out in the year 1974, that would not create a bar to the specified landlord to claim the benefit of the new provision contained in Section 13-A. The requirements which a specified landlord had to fulfil are those as have been mentioned in Section 13-A of the Act.

In this light, the plea of the tenants that the house had been rented out by late S. N. Bhanot immediately prior to his retirement as he had no necessity for the house, has no merit at all.

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(36) On a consideration of the controversy, it is found that whatever pleas were raised by the tenants in their applications and the affidavits, those pleas did not give rise to any triable issue. The plea that the fresh tenancy came into existence after the increase in the rent had no substance at all. The plea that the respondent-landlady wanted to enhance the rent had also no relevance in the light of the requirements laid down in section 13-A of the Act. Further, if a portion of the house (top floor—Barsati) was let out by the landlady subsequent to the filing of the eviction petitions under sections 13-A, that would also not disentitle her from claiming the possession, because she cannot be compelled to reside in the top floor (Barsati) of the house. She had only to show that she did not own and possess any other suitable accommodation. Therefore, all the pleas raised by the tenants were rightly found to be not sufficient to disentitle the landlady from obtaining an order for recovery of possession of the residential building. Consent of the son of the specified landlord was not required as he lived with his mother. The eviction petitions were filed by his mother on the ground that she, being the widow of the specified landlord, was entitled to seek possession of the leased premises for the use and occupation of her family.

(37) There is also no substance in the plea of the tenants that the leased premises were not in the nature of residential building, because it had been rented out for commercial purposes. In the case of Surinder Sharma, the leased portion of the house was not let out by S.N. Bhanot to Studio Kaushal Arts but to Surinder Sharma as is evident from the Lease Agreement. Surinder Sharma took the lease 'for running a Club of Photography'. It cannot be said that the activity of running a club of photography was in the nature of a commercial activity. Surinder Sharma had taken on lease two room, common verandah and W.C. in the right half portion of the ground floor of the house. Thus, a portion of the residential house was taken by him in his individual capacity, though for running a club of photography. The lease was, thus, not in favour of Studio Kaushal Arts but to Surinder Sharma. If Surinder Sharma subsequently constituted a partnership firm, that would not make any difference so far as the nature of lease is concerned. It was a lease of a portion of a residential house granted to Surinder Sharma. Therefore, the plea that the house was taken for commercial purposes, is found to have no substance. Any unilateral act on the part of the tenant creating a partnership firm would not convert the user of the building.

(38) In the case of P.K. Vasudeva, it is noticed that he took the left side portion of the first floor of the house on lease from S.N. Bhanot. The leased portion consisted of two rooms, kitchen, veranda, W.C. and



bath room. He filed affidavit dated 23rd January, 1988 in support of his application seeking leave to defend. He did not raise therein any plea that it was a commercial building and not a residential house. He filed a second affidavit dated 6th May, 1989 taking similar grounds. Here again, he never raised the plea that the lease related to a commercial building or for a commercial purpose. Therefore, he cannot be allowed to travel beyond his affidavits. The Rent Controller was required to look to the averments raised by him in his affidavits and since no plea regarding the commercial use of the building was raised by P.K. Vasudeva in his affidavit, no arguments could be raised subsequently in that connection. A party cannot travel beyond his pleadings.

(39) Under section 18-A of the Act, the procedure to deal with an application under section 13-A has been laid down. Sub-sections (4) and (5) thereof read as under :—

- “(4) A 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, 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 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 disentitle the specified landlord or, as the case may be, the widow, widower, child grandchild or widowed daughter-in-law of such specified landlord from obtaining an order for the recovery of possession of the residential building or scheduled building, as the case may be, under section 13-A.”

It would, thus, be apparent that a tenant shall have no right to contest the application for eviction unless he filed an affidavit stating the grounds on which he sought to contest the application and obtain leave

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from the Rent Controller. The Controller may give to the tenant leave to contest if the affidavit filed by the tenant disclosed such facts as would disentitle the landlord from obtaining the order of possession.

(40) In the light of the aforesaid provision, it is evident that in the absence of any averment, about the use of the house for commercial purposes, made by P.K. Vasudeva, the Rent Controller was not required to look into such plea raised by the learned counsel during arguments. It was for the tenant to take or not to take a plea in his application and the affidavit annexed thereto.

(41) The petitioner-tenants have also raised a plea that the notification dated 15th December, 1986 extending the Amending Act of 1985 to the Union Territory of Chandigarh was bad in law. They had already filed writ petitions (C.W.P. No. 794, 1378 and 1804 of 1988) in this Court challenging the notification but their petitions were dismissed by this Court by order dated 30th May, 1988. They cannot, therefore, raise the same plea again.

(42) The Supreme Court had also an occasion to examine a matter relating to tenant's right for leave to defend in the case of *Kashmir Singh Bhullar v. Punjab and Sind Bank and others*, (Civil Appeal No. 347 of 1997) arising out of S.L.P. (C) No. 19000 of 1996 decided on 24th January, 1997. In that case, the tenant filed an application seeking leave to contest. The Rent Controller dismissed the application on the ground that no triable issues had been raised by the tenant in the application. The tenant filed a revision petition in the High Court against the order rejecting the application for leave to contest. The revision petition was allowed by the High Court. Their Lordships of the Supreme Court held that the High Court was in error in interfering with the order passed by the Rent Controller. There was no dispute on facts and the only question was whether the accommodation with the landlord was sufficient for the needs of his family. The Rent Controller had taken into consideration the accommodation that was available with the landlord as well as the accommodation with the tenant. It was held that the High Court, in exercise of its revisional jurisdiction, was in error in interfering with the said view of the Rent Controller. The High Court had also referred to the fact that the landlord was a member of the Punjab Superior Judicial Services, having been appointed by the State Government and had retired from the Service and that the certificate issued by the Registrar of the High Court was not relevant to prove the fact that he is a specified landlord. It was held that no such plea was raised by the tenant in his application for leave to contest/defend and, therefore, this could not be taken into account by the High Court while granting leave to defend.

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(43) In the light of the *ratio* laid down by their Lordships of the Supreme Court in the case of *Kashmir Singh Bhullar* (supra), P.K. Vasudeva cannot be allowed to raise a new plea regarding the use of the house for commercial purposes inasmuch as no such plea was raised by him in his affidavits filed before the Rent Controller.

(44) On an examination of all the pleas taken by the tenants in their applications and the affidavits, it is found that those pleas did not give rise to any triable issue before the Rent Controller.

(45) In the result, the orders of eviction dated 13th June, 1997, passed by the Rent Controller against the petitioner-tenants do not call for any interference. The revision petitions are, therefore, dismissed. No order as to costs.

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**R.N.R.**

*Before V.S. Aggarwal, J*

NARESH KUMAR & ANOTHER.—*Petitioners*

*versus*

KAILASH DEVI & OTHERS,—*Respondents*

C.R. No 2013 of 1998

10th November, 1998

*Code of Civil Procedure, 1908—0.20 Rl. 18—Preliminary decree for partition passed—Appeal preferred against the preliminary decree passed—Thereafter application moved for passing of final decree and for appointment of Local Commissioner to suggest mode of partition—Challenge thereto on grounds that application for passing of final decree barred by limitation—Held, Court not only declare rights of parties but is duty bound to pass final decree—Drawing of final decree is continuation of the said proceedings—Limitation does not come into play.*

*Held that, under Order 20 Rule 18 of the Code of Civil Procedure, when a preliminary decree is passed for partition, the Court not only declare the rights of the parties but is duty bound to, after the further act is done, pass a final decree, if permissible. He is to give further direction as to if necessary. In the case of preliminary decree passed for partition, no further right necessarily in this regard accrue. It would be a continuation of the same proceedings.*

(Para 10)