petitioner for proving one of the charges, therefore, he could not be inducted as a member of the Enquiry Committee, and, was therefore, biased. The whole pleadings are that Shri Maru Ram was inimical towards the petitioner. Apart from the bald allegation in the writ petition, there is nothing to support that Shri Maru Ram was biased because of enmity. The argument of the learned counsel for the respondent that the point of law can be allowed to be raised at any time if it does not require any further pleadings is unexceptionable. However, we are of the opinion that plea of bias is not a point of law as it depends upon facts and also that it can be waived or given up. That being the position, we hold that the learned Single Judge was not correct in allowing such a plea to be raised.

(9) We are also of the view that the Deputy Commissioner gave opportunity to the writ petitioner to explain certain charges and was not at all influenced by Charge No. 12 to prove which, Shri Maru Ram had appeared. From the perusal of the order it is quite evident that the Deputy Commissioner was impressed with Charges No. 6, 10(b) and 11, which according to him, were sufficient to confirm the order of dismissal. The Commissioner also did not find anything wrong with the enquiry as such.

(10) For the reasons recorded above, we allow this appeal, set aside the judgment of the learned Single Judge and dismiss the writ petition. The parties will bear their own costs.

P.C.G.

Before A. L. Bahri, J.

R. K. SUKHUJA,—*Petitioner.*

versus

CHANDER PARKASH,—*Respondent.*

Civil Revision No. 3213 *of* 1990.

15th February, 1991.

East Punjab Urban Rent Restriction Act, 1949—*Ss.* 13-*A*, 13(3) (*a*) (*i*)—*Landlord already in possession of a portion of house—Ejectment of tenant sought as specified landlord—Plea of additional/insufficiency of accommodation—Leave to defend—Whether should be granted.*

Held, that where the landlord is not in possession of any accommodation and he wants to get the tenant evicted on his retirement from Government service he can get the order of ejectment passed on his pleas which should be deemed to be admitted if no leave to defend is granted. In such a case there would be no question of sufficiency of accommodation in his possession to debar him from getting the relief. However, present is a case where the question of sufficiency of accommodation with him has been raised by the tenant in his affidavit. Such a question can only be decided if opportunity to the tenant is granted to lead evidence on this question, as this question is of requirement of additional accommodation. It may be stated that at this stage the tenant is not required to prove his plea of sufficiency of accommodation with the landlord. He is only required to raise such a plea, if proved, the same would disentitle the landlord to have possession of the premises in a summary manner. In the peculiar facts of the present case, as discussed above, leave to defend should have been granted . (Para 5)

Petition u/s 15(5) *of the Act* ibid *for revision of the order of the Court of Shri T. R. Bansal, PCS Rent Controller, Chandigarh dated the 24th November,* 1990 *accepting the application of the petitioner under section* 13-*A of the East Punjab Urban Rent Restriction Act,* 1949 *against the respondent for the ejectment of the respondent from a portion of residential premises consisting of one drawing-cum-dining room, and bed room one with attached bath room and one bed room at the back of the drawing room with independent bath room, one kitchen, a Motor Garrage toward House No.* 157, *and a Cemented Court yard of House No.* 158, *Sector* 9-*B, Chandigarh, and directing the respondent to put the landlord petitioner in vacant possession of the demised premises within one month from that day i.e.,* 24*th November,* 1990.

Claim: *Applications under section* 13-*A of the East Punjab Urban Rent Restriction Act and leave to defend.*

Claim in revision : For reversal of the order of lower court.

M. L. Sarin, Sr. Advocate with Sarvshri C. B. Goel, Rajinder Goel, Jaishri Thakur and R. C. Chauhan, Advocate, *for the Petitioner.*

Jagan Nath Kaushal, Sr. Advocate with S. K. Aggarwal, Advocate, *for the Respondent.*

JUDGMENT

A. L. Bahri, J.

(1) The Rent Controller,—*vide* his order, dated November, 24, 1990, directed ejectment of the tenant R. K. Sakhuja under section 13-A,

of the East Punjab Urban Rent Restriction Act (hereinafter called 'the Act') while dismissing his application for grant of leave to contest, he was allowed one month's time to vacate the demised premises and put the landlord in possession thereof. The demised premises consist of portion of House No. 158, Sector 9-B, Chandigarh. The tenant has challenged the aforesaid order in this revision petition.

(2) Chander Parkash is the landlord of House No. 158, Sector 9-B, Chandigarh. He is in possession of one portion consisting of drawing-cum-dining room, three bed rooms with attached bath-rooms and a kitchen. The other portion was with the tenant. In the annexe of the main house there was another tenant. A portion was let out to the present tenant Shri R. K. Sakhuja on March 5, 1985, on a monthly rent of Rs. 1,200. In addition to the same a sum of Rs. 150 per month was payable on account of water and electricity charges. The premises were let out purely for residential purposes. Chander Parkash was in service of the State of Haryana. He retired from the post of Deputy Secretary, Haryana Vidhan Sabha on September 30, 1989 and thus was a specified landlord as defined under the Act. He is M.A., LL.B. and was a practising lawyer before he joined service. After his retirement he intended to start practice as a lawyer and also wanted to purchase a car. His father Shri Gurbachan Singh Aggarwal was also a leading Advocate practising at Chandigarh who died in 1980. Thus he required immediate possession of tenanted premises for his own occupation. His family consisted of his wife, a daughter and a son; both school going at the time of creation of tenancy but now they are grown up, likely to join college next year. The present accommodation was not sufficient. The tenant moved an application for leave to defend the case, *inter alia,* alleging that the landlord was in possession of the portion of the house in dispute as already described above along with a garage portion. His family consisted of his wife, a daughter-aged about 16 years old and a son-aged about 6 to 8 years old. The son being retarded did not require separate accommodation. The landlord had suffered twice illness as he had collapsed 2-3 times in the bath-room. He was not in a fit position to start legal practice. He also fell down from the scooter and his arm was fractured. He was not maintaining any car. The accommodation with the landlord was stated to be sufficient. In the reply filed by the landlord his claim was reiterated. After hearing arguments the impugned order was passed.

(3) Section 13-A of the Act was enacted with the sole object of providing summary remedy to the specified landlord as defined for

regaining tenanted premises for own use and occupation after retirement. Such claim can only be contested if leave to defend is granted to the tenant on his application supported by affidavit taking up such grounds, which if proved, would disentitle the landlord from claiming possession. Similar provision existed in the Delhi Rent Control Act and the Supreme Court in *Precision Steel and Engineering Works and another* v. *Prem Deva Niranjan Deva Tayal* (1), observed as under :—

> "The effect of these provisions is that the Controller would act on the admission of the tenant and there is no better proof of fact as admission, ordinarily because facts which are admitted need not be proved. But what happens if the tenant appears pursuant to the summons issued under sub-section (2) of Section 25 B, files an affidavit stating the grounds on which he seeks to contest the application. As a corollary it would transpire that the facts pleaded by the landlord are disputed and controverted. How is the Controller thereafter to proceed in the matter. It would be open to the landlord to contest the application of the tenant seeking leave to contest and for that purpose he can file an affidavit in reply but production and admission and evaluation of documents at that stage has no place. The Controller has to confine himself to the affidavit filed by the tenant under sub-section (4) and the reply, if any. On perusing the affidavit filed by the tenant and the reply if any filed by the landlord the Controller has to pose to himself the only question, "Does the affidavit disclose, not prove, facts as would disentitle the landlord from obtaining an order for the recovery of possession on the ground specified in cl. (e) of the proviso to Section 14 (1)?"

The aforesaid decision was relied upon while interpreting Section 13-A of the Act by M. S. Liberhan, J. in *Mahajan Cloth House and others* v. *Tara Singh of Amritsar* (2). In para 15 of the judgment it was observed as under :—

> "It is obvious from the reading of the provisions of the Act that the Rent Controller while considering whether to

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

(2) 1990 H.R.R. 496.

grant or decline the leave to contest shall take into consideration only the affidavit filed by the tenant and no other material. It is the facts disclosed in the affidavit filed by the tenant which alone would form the relevant consideration for coming to a conclusion whether those facts, if unrebutted, would disentitle a specified landlord from obtaining the possession or not, i.e. of those facts disentitle the specified landlord from taking the possession, the Rent Controller is bound to grant leave to defend the ejectment application filed under Section 13-A of the Act."

That was a case where the tenant took up the plea in the affidavit filed along with his application for leave to defend that the tenanted premises were a shop. Obviously, on proof of such fact the application for taking possession summarily under Section 13-A of the Act was to be dismissed and leave to defend was granted. D. V. Sehgal, J. in *Dr. Dina Nath* v. *Smt. Santokh Kaur and others* (3), marked out clear distinction between the phrase "landlord requires it for his own occupation" used in Section 13(3)(a)(i) of the Act and that "he does not own and possess any other suitable accommodation in the local area" in Section 13-A of the Act. The phraseology used in Section 13(3)(a)(i) of the Act is not to be taken into consideration. Keeping in view the ratio of the decision aforesaid, the facts of the case in hand are to be considered.

(4) Learned counsel for the petitioner has referred to two decisions of this Court in support of his argument that when the question of suitability of the accommodation already in possession of the landlord is raised in the application for leave to defend, the same should be granted as it depends on proof of facts at the trial. Those decisions are *Ravinder Nath Khanna* v. *T. R. Lakhanpal and another* (4), decided by G. C. Mital, J. and *K. G. P. Pillai* v. *Subhash Chander Pathania* (5). The Division Bench has approved the decision of G. C. Mital, J. in this case. It was held that in a case where landlord was already in possession of some premises and he wanted additional accommodation by ejectment of the tenant, in such a case the question was not of sufficiency or insufficiency of the accommodation but of additional accommodation and leave to

(3) 1987 (1) R.C.R. 363.

(4) 1990(2) R.C.R. 73.

(5) 1990 (2) R.C.R. 386 (DB)

contest be granted. The following paragraph from the Supreme Court decision in *Dr. S. M. Nehra* v. *D. D. Malik*, Civil Appeal No. 120 of 1990, arising out of S.L.P. (C) No. 236 of 1990, decided on January 11, 1990, was quoted :—

> "Special leave granted. Having heard counsel for both the sides and also perused the material, we are of the opinion that this is a case where the Court below ought not to have refused leave to contest. The landlord is occupying the ground-floor besides the entire second floor. The tenant is occupying the first floor. The question is whether the landlord requires the first floor also. This question, in our opinion could be properly determined only by granting leave to the tenant to contest. There is no need to take a summary procedure since it is a case of additional accommodation."

(5) Adverting to the facts of the case in hand the same are not broadly disputed. The landlord is in possession of portion of the house in dispute consisting of a drawing-cum-dining room with three bed rooms and some portion garage like accommodation. The other main portion of the house is with the present tenant. The family of the landlord admittedly consists of himself, his wife and two children; one of them a girl-likely to join college and a son aged about 7-8 years, a retarded one. These facts are also borne out from the application seeking leave to defend. Where the landlord is not in possession of any accommodation and he wants to get the tenant evicted on his retirement from Government service he can get the order of ejectment passed on his pleas which should be deemed to be admitted if no leave to defend is granted. In such a case there would be no question of sufficiency of accommodation in his possession to debar him from getting the relief. However, present is a case where the question of sufficiency of accommodation with him has been raised by the tenant in his affidavit. Such a question can only be decided if opportunity to the tenant is granted to lead evidence on this question, as this question is of requirement of additional accommodation. The general version in such a case that one room would be required for office of a lawyer or the garage would be required for keeping a car, which presently is being used for parking scooter as is the case of the landlord, is of no consequence. A garage which is used to park a scooter can also be used to park a car, may be with certain modifications, as it is urged that the accommodation is like garage. Whether the son

of the landlord who is retarded one still needs a separate room or is to be accommodated with the parents in one room also rests to be determined on the state of condition of the child. Straightaway it could not be held either way that he must sleep in the bed room of his parents or he must be kept in a separate bed room. It may be stated that at this stage the tenant is not required to prove his plea of sufficiency of accommodation with the landlord. He is only required to raise such a plea, if proved, the same would disentitle the landlord to have possession of the premises in a summary manner. In the peculiar facts of the present case, as discussed above, leave to defend should have been granted.

(6) For the reasons recorded above, this revision petition is allowed and the impugned order is set aside. Leave to defend the case is allowed to the tenant. Parties through their counsel are directed to appear before the Rent Controller, Chandigarh, on March 4, 1991. There will be no order as to costs.

P.C.G.

Before A. L. Bahri, J.

SARWAN RAM & ANOTHER,—*Petitioners.*

versus

HARNEK SINGH & ANOTHER,—*Respondents.*

Civil Revision No. 1849 *of* 1990.

31st July, 1990.

Code of Civil Procedure, 1908 (*Act V of* 1908)—S. 151, *O.* 41, *rl.* 11—*Unanimous resolution of Bar Association to strike work—Non-appearance of counsel—Listing of case in cause list—Whether amounts to grant of sufficient opportunity of being heard.*

Held, that fixing of the case for hearing in the 'cause list' is a sufficient notice to the Advocate and sufficient compliance of the provisions of the Code of Civil Procedure for affording an opportunity to the counsel to present his case. O. 41. rl. 11 of the Code of Civil Procedure. which applies to appeals, provides for fixing a date of hearing and if the counsel appears on that date, to be heard. The same principle can legitimately be applied to the Civil Revisions. If the Court has given opportunity of hearing to the counsel and the counsel absents it can be taken as sufficient opportunity of hearing being given. (Para 5)