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C.A.No. 7130 OF 2000
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ITEM No.102 Court No.11 SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO.7130 OF 2000@@
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Dharam Paul Jasal Appellant (s)

VERSUS

Raj Kapoor & Ors. Respondent (s)

(With prayer for interim relief)

Date : 06/11/2001 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant (s) Mr. Anil Mittal, adv.
Mr. R.K. Gupta, adv.
Mr. S.K. Chachra, adv.
Ms. Sonia Sharma, adv.
Mr. K.K. Gupta, adv.

For Respondent (s) Mr. Saba Rahman, adv.
Mr. Rahul Singh, adv.
Mr. Navin Prakash, adv.

UPON hearing counsel the Court made the following
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The appeal is allowed in terms of the signed order.
No order as to costs.

.SP1

(Neena Verma)
Court Master

(Radha Rani Bhatia)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7130 OF 2000@@
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Dharam Paul Jasal Appellant

Versus

Raj Kapoor & Ors. Respondents

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....T.....J
.SP2

The appellant retired on 30.09.1996 from the post of Mono Operator in the service of Government of India. Undisputedly, he was a 'specified landlord' within the meaning of Clause (hh) of Section 2 of The East Punjab Urban Rent Restriction Act, 1949 (hereinafter 'the Act', for short). On 02.09.1997, he filed a petition seeking eviction of the tenant-respondent on the ground available under Section 13-A of the Act. However, the tenant was also in arrears of rent since 01.05.1997 and the landlord included in his petition the claim for payment of arrears and a relief for eviction of the tenant on the ground of non-payment of rent. It appears that during the pendency of the proceedings, the tenant tendered the arrears and, therefore, he ceased to be a defaulter. The only ground which survived for decision and providing cause of action to ...2/-

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the appellant to seek eviction of the tenant, was under Section 13-A of the Act. The landlord, therefore, sought leave of the court to abandon the ground under Section 13(2)(i) of the Act, i.e. non-payment of rent, which was permitted by the Trial Court. The landlord then filed an amended petition. The tenant sought for leave to defend, which was refused and vide order dated 22.03.1999 the Rent Controller directed the tenant to be evicted. The tenant preferred revision before the High Court which has been allowed. The High Court has formed an opinion that the petition as originally filed by the landlord - appellant was a petition 'under Section 13' and 'not under Section 13-A' which should have been heard and decided as a petition under Section 13 as originally filed and the tenant should have been allowed an opportunity of contesting the petition as of right, by filing the written statement without the need of seeking leave to defend. The High Court set aside the order of Rent Controller and directed the petition filed by the appellant to be tried as one under Section 13 simplicitor. The aggrieved landlord has filed this appeal, by special leave.

We have heard the learned counsel for the parties. We are of the opinion that the order of the High Court ...3/-

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cannot be sustained. The date on which the petition was filed by the land lord, he was entitled to file a petition under Section 13-A. He was a landlord falling within the definition of 'specified landlord'. The petition was filed within one year of the date of his retirement. It was accompanied by the requisite certificate issued by the competent authority. Though a ground under Section 13(2) of the Act was also included but then the same was abandoned with the leave of the Trial Court whereafter the petition remained a petition under Section 13-A of the Act and, therefore, was rightly heard and decided in accordance with the procedure applicable to the hearing of a petition under Section 13-A. Merely because in the original petition, a ground other than one under Section 13-A was also added by the landlord, it does not mean that the defect could not have been cured by the leave of the court. In an almost identical situation of facts, a learned Single Judge of Punjab and Haryana High Court took such a view in Piare@@ CCCCC

Mohan Vs. Madan Lal 1991 (1) Rent Control Reporter, 321 and@@ CCCCC CCCCCCCCC

held that a specified landlord, having filed an ejection application under Section 13-A of the Act along with a plea of non-payment of rent also, could, on an objection being ...4/-

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raised by the tenant, withdraw the plea of non-payment of rent and confine the petition to seeking relief solely by reference to Section 13-A of the Act. This decision, unfortunately appears to have escaped the attention of the learned Single Judge while passing the impugned order.

In our opinion, the order of eviction passed by the Rent Controller was a legal, valid and sound order and was not liable to be interfered with by the High Court. The appeal is, therefore, allowed. The order of the High Court dated 09.12.1999 is set aside and the order of eviction dated 22.03.1999 passed by the Rent Controller is restored. However, the respondent is allowed three months' time from the date of this order to vacate the premises and hand over possession to the landlord.

No order as to costs.

.SP1

.....J.
(R.C. LAHOTI)

New Delhi,
November 06, 2001.

.....J.
(BRIJESH KUMAR)