

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CR 127 of 2015

Date of Decision: July 31, 2015

Balram Chhabra

.....Petitioner

Vs.

Shingara Singh Virk

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.S.K. Sood, Advocate  
for the petitioner.

Mr. J.S. Santwal, Advocate  
for the respondent.

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**M.M.S. BEDI, J.**

This is tenant's revision petition, challenging the order passed under Section 13-B of East Punjab Urban Rent Restriction Act, 1949, for short 'the Act' directing the petitioner to hand over the possession of building in dispute, ordering eviction of the tenant-petitioner.

Learned counsel for the petitioner has vehemently contended that by virtue of a lease agreement portion of SCO No.11, the tenanted premises, and SCO No.12 were rented out to the petitioner. The landlord-respondent had filed an application under Section 13-B of the Act to evict the petitioner from both the buildings but later on had withdrawn the same

with liberty to file fresh one. The main contention of learned counsel for the petitioner is that it is the case of splitting up of a tenancy where the premises in dispute i.e. part of SCF No.11 along with SCF No.12 had been leased out by one lease deed Annexure P-4 in favour of the petitioner. The Rent Controller has got no jurisdiction to split the tenancy for ejecting the tenant-petitioner from one building which is part of the lease deed Annexure P-4.

Counsel for the petitioner placed reliance on judgment of Apex Court in **Habibunnisa Begum and others Vs. G. Doraikannu Chettiar (deceased by L.Rs.) and others**, AIR 2000 Supreme Court 152, in support of his contentions that neither partial ejectment is permissible nor the tenancy can be split up in absence of any statutory provisions in the Rent Act.

On the other hand, learned counsel for the respondent has submitted that the principle of prohibition of splitting up a tenancy is not applicable in the present case. In support of his contentions he has placed reliance on **Mohar Singh Vs. Devi Charon**, 1988 (2) RCJ 470 and **SK. Sattar SK Mohd. Choudhari Vs. Gundappa Amabadas Bukate**, AIR 1997 SC 998. He has vehemently urged that the respondent was co-owner of both the buildings above said. He had filed an application under Section 13-B of the Act for eviction of the petitioner but subsequently realised that he was not owner for more than 5 years regarding the other shop and that said shop had been transferred to his son. Being not owner of the other shop i.e. SCO No.12 he had withdrawn the earlier petition being not maintainable

under Section 13-B of the Act. It has been urged that the respondent rented out two separate buildings having separate excess and that it is not a case of splitting of tenancy but a case of option of the landlord to enforce his legal rights under Section 13-B of the Act.

I have heard learned counsel for the petitioner as well as learned counsel for the respondent and gone through the orders passed by the Courts below. In order to appreciate the contentions of learned counsel for the tenant/ petitioner and landlord- respondent, I have gone through the petition filed by respondent under Section 13-B of the Act whereby the possession of ground floor and basement of SCF No.11 has been sought for whereas lease deed was executed on June 2, 2006 by the respondent- landlord in favour of tenant- petitioner pertaining to SCF No.11, Phase XI, Urban Estate, Mohali regarding complete ground floor and basement of SCF as well as complete basement of SCF No.12 Phase XI, Mohali. The landlord- respondent had admittedly filed a petition No. 60 of October 3, 2009 under Section 13 B of the Act seeking ejectment of the tenant- petitioner from SCF No. 12, Phase XI, as well as SCF No. 11, Phase XI, but he had withdrawn the earlier petition on the ground that due to domestic and personal reasons he had to transfer SCO No. 12 Phase XI, Mohali in favour of his son Daljit Singh as such he had withdrawn the said petition with liberty to file the fresh petition vide order dated January 29, 2014 (annexure P-12) passed by the Rent Controller. The respondent- landlord had returned to India from USA and with an intention to settle permanently he filed an

ejectment application under Section 13-B of the Act claiming that he required to establish Call Centre in SCO No. 11, Phase XI, Mohali, as he fulfilled all the conditions under Section 13-B of the Act, the petitioner filed an application under Section 18 A (4) of the Act for leave to contest. The said application has been dismissed and ejectment order has been passed by the Rent Controller vide impugned order.

The plea raised before this Court that the application for ejectment is not maintainable being application for partial ejectment has been raised for the first time. Neither the said plea was raised nor stands considered by the Rent Controller. Since counsel claimed that the said plea is a question of law, I have considered the contentions of learned counsel for the petitioner and gone through the judgments cited by him. In **Habibunnisa Begum's** case (supra), it was held that partial ejectment of the tenant cannot be ordered when there is single individual contract of tenancy. It was held in the said judgment, in context to the provisions of T.N. Building Lease and Rent Control Act that tenancy cannot be split up in absence of statutory provisions to that effect. He also referred to **Ravinder Singh Vs. Bhagwant Rai**, 2003 (2) RCR (Rent) 267, wherein it was observed that a tenant holding indivisible tenancy of house, cannot be got vacated by co-owner on the ground that the house had been partitioned between the co-owners.

Learned counsel for the respondent has placed reliance on **Nalakath Sainuddin Vs. Koorikadan Sulaiman**, 2002 (2) Rent Law

Reporter 249, **Sk. Sattar Sk. Mohd. Chodhari Vs. Gundappa Amabadas Bukate**, AIR 1997 SC 998 and **Mohar Singh (dead) by his Legal representative Vs. Devi Charan**, AIR 1988 SC 1365.

In **Nalakath Sainuddini's** case (supra), the provisions of Sections 109 and 111 of Transfer of Property Act had been taken into consideration holding that owner of a building can transfer part of the premises which would tantamount to statutory splitting of tenancy enabling the transferee to seek eviction of the tenant for the part transferred to him.

In **Sk. Sattar Sk. Mohd. Choudhari's** case (supra), it was held that when a partition takes place by a family arrangement and a shop owned by two brothers was partitioned by family arrangement by metes and bounds, the suit for ejectment of the tenant can be filed by one of the owners in respect of his share only. Similar is the ratio of judgment on **Devi Charan's** case (supra).

In the present case, the tenancy in favour of petitioner is pertaining to two separate units i.e. a portion of SCO No.11 and another part of SCO No.12 separate floors though separate entries have been provided for both the shops. The landlord- respondent has pleaded that on account of SCO No.12 having been transferred in the name of his son he was not interested in pursuing petition regarding two separate portions. It is not a case of splitting of tenancy especially when the tenanted building consists of two separate units having different identities. It is always open to the landlord to pursue his legal right qua the portion belonging to him. Besides

this, the plea of the objection of splitting of tenancy has not been raised in application under Section 18 A (4) of the Act. The only consideration before the Rent Controller while deciding the application under Section 13 B of the Act is that the Court would presume that the landlord's need pleaded in the petition is genuine and bonafide but tenant is not disentitled from proving that in fact and in law, the requirement of the landlord is not genuine. The heavy burden lies on tenant to prove that the requirement of the landlord is not genuine. In this context, reference can be made to a judgment in **Baldev Singh Bajwa Vs. Monish Saini**, 2005 (4) RCR (Rent) 470, wherein the Apex Court had taken into consideration the issue relating to the standard of proof required by NRI landlord to prove his requirement of the accommodation from which ejectment is asked for. It was held as follows:-

“18...Under Section 13-B the landlord is entitled for eviction if he requires the suit accommodation for his or her use or the use of the dependant, ordinarily lives with him or her. The requirement would necessarily to be genuine or bona fide requirement and it cannot be said that although the requirement is not genuine or bona fide, he would be entitled to the ejectment of the tenant nor it can be said that in no circumstances the tenant will not be allowed to prove that the requirement of the landlord is not genuine or bona fide. A tenant's right to defend the

claim of the landlord under Section 13-B for ejectment would arise if the tenant could be able to show that the landlord in the proceedings is not NRI landlord; that he is not the owner thereof or that his ownership is not for the required period of five years before the institution of proceedings and that the landlord's requirement is not bona fide.

19.... In our view there are inbuilt protections in the relevant provisions, for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of-course, subject to tenant's right to rebut it but with strong and cogent evidence. In our view, the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bona fide. But this would not dis- entitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea

in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlords' favour that his requirement of occupation of the premises is real and genuine.”

A perusal of the above observations indicate that when an applicant filed by NRI landlord seeking ejectment of tenant is filed before the Rent Controller and the summons are issued on the tenant as per the provisions of Section 18 A of the Act, the tenant cannot contest the eviction petition of the landlord unless he obtains leave to contest under sub-section (5) of Section 18 A of the Act in terms of sub-sections (4) and (5) of Section 18 A of the Act. If the affidavit filed by the tenant disclosed such facts as would disentitle the landlord from obtaining an order of recovery of immediate possession, the Controller would grant leave to the tenant to contest landlord's petition for eviction.

Finding no infirmity in the order passed by the Rent Controller, this petition is dismissed.

July 31, 2015  
sanjay

(M.M.S.BEDI)  
JUDGE