

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.2099 of 2013
Reserved on: 27.01.2015
Date of decision:11.02.2015

Rakesh Sharma

.....Petitioner

Versus

Harmesh Singh

.....Respondent

CR No.2111 of 2013(O & M)

Dinesh Gujral

.....Petitioner

Versus

Harmesh Singh

.....Respondent

CORAM : HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Aakash Singla, Advocate, for the petitioner.

Mr.Sunil Chadha, Sr.Advocate
with Mr.Chetan Bansal, Advocate, for the respondent.

G.S.Sandhawalia J.

This judgment shall dispose of CR Nos.2099 & 2111 of 2013, involving common questions of law and facts and since the shops are part of one common building and the tenants have been ordered to be evicted in the proceedings under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), filed by the respondent-NRI landlord. However, to dictate orders, facts have been taken from CR No.2099 of 2013 titled *Rakesh Sharma Vs. Harmesh Singh*.

The present revision petition has been filed on the allegation that the respondent and Smt.Gian Kaur had purchased the land, boundaries of

which have been mentioned in the rent application, vide sale deed dated 13.09.1991 and thus, he was owner to the extent of half share. Seven shops and two rooms had been constructed along with covered courtyard, toilet, bathroom and covered varendah, had been constructed on the said land as per Annexure A, the site plan. The premises had been rented out to different tenants including premises No.5, which is shown in red colour and detailed in the site plan as Annexure B, to the present petitioner, for a sum of ₹1800/- per month, as per rent note dated 30.11.2009. The landlord/owner was a Non Resident Indian, as defined under Section 2(dd) of the Act and was residing in Abu Dhabi since the last 40 years and originally belong to Punjab. He was staying in a foreign country for a long time was homesick and wanted to come back to India permanently. After coming back to India, he wanted to start a departmental store at Kapurthala and he required the premises in question for his personal requirement and certain additions and alterations had to be carried out and the building was to be converted into a big hall, as per Annexure C. The six tenants in the premises were to be evicted and five other petitions were being filed against the other tenants. Shops No.1 and two rooms and the green portion of the site plan (Annexure A) were already in the possession of the landlord and he was not occupying any other premises and neither had vacated any other premises.

The petitioner-tenant filed an application for leave to contest on the ground that the landlord was not an NRI and he had no intention to settle in India and the provisions of Section 13-B were being misused. The ownership was not exclusive but was with his wife who was not an NRI and the need of the landlord was not a *bona fide* and he wanted to dispose of the

property and a CD was relied upon where he was demanding ₹1.35 crores for the value of the entire 9 marlas of land, comprising of all the units. The site plan which was relied upon for the departmental store was not a sanctioned plan and there was no provision of parking and there were other departmental stores already existing. The landlord would not have rented out the premises in the year 2008 if he was to open a departmental store. The Civil Suit had been filed against his father as the tenant was threatened and he would have great difficulty in finding a new place since he was running a chemist shop. It was alleged that the landlord was owner of 3 ½ acres of land in his native village and he had palatial triple storied house and also owned another 30 marlas plot in Grover Colony where he could open the departmental store.

In the reply to the application, filed by the respondent-landlord/owner, it was submitted that out of the six tenants, three had already appeared in the Court and admitted the requirement of the landlord and stated that they would vacate the premises by December, 2011. The application did not disclose any legal or valid ground which would entitle the tenant to seek leave to contest. The landlord intended to come back and 50% of the shops were owned by his wife and he being a co-sharer, was entitled for getting it vacated. Even otherwise, his wife was also an NRI and the identity card issued by the NRI Sabha was attached. The CD had not been supplied and the same was a fake and fabricated one and the landlord denied any conversation with the tenants as shown. The factum of litigation with the father was not denied and the premises were ideally situated for running the departmental store. The area where the new Court complex was situated was away from the city and had got no habitation and

there was no business activity and the building in question in the said colony was a residential colony where he intended to raise his house in future. The tenant could always make alternative arrangement as per his requirement and the premises in question being a commercial property would be constructed after getting the plan sanctioned.

The Rent Controller placed reliance upon the judgment of this Court in **Bhandari General Store & another Vs. Makhan Singh Grewal 2006 (1) RCR 306** to hold that merely because eviction petitions have been filed against the other tenants was not not a ground to give rise to any triable issue since under the provisions of the Act, one building could be got vacated. The issue of not returning to India was also rejected by placing reliance upon the judgments of the Apex Court in **Baldev Singh Bajwa Vs. Monish Saini 2005 (12) SCC 778**. The argument that the premises were being got vacated by misusing and abusing the provisions of the Act was also rejected on the ground that there was a presumption that the need of the landlord is genuine and *bona fide*. Reliance was placed upon the passport of the respondent whereby there was a VISA of UAE and the identity card issued by the NRI Sabha and the identity card issued by the Company, which *prima facie* showed that he was a Non Resident Indian and no triable issue having been made out, the application, filed under Section 18-A of the Act, was dismissed and resultantly, the eviction order was passed.

Counsel for the petitioner has vehemently submitted that once there were 6 shops and possession had already been taken of some, as per the owner himself, then triable issues had arisen whether the *bona fide* requirement was there and therefore, leave to contest should have been granted. Reliance was placed upon the judgment of this Court in **Surjit**

Kaur Vs. Vijay Pal Singh 2008 (4) PLR 436 to submit that since the adjoining shops were in the possession of the landlord, therefore, leave to contest should have been granted. The factum of being a co-owner to the extent of 50% was also projected that a triable issue arose.

Counsel for the respondent, on the other hand, submitted that this Court in the case of **Bhandari General Store** (supra) has already held that a complete building can be got vacated and placed reliance upon the judgment of this Court in **Ashok Goel Vs. Wing Commander Harbhajan Singh Bhatia 2011 (2) RCR (Rent) 404** to submit that the merely because additional accommodation is being asked for, leave to defend is not to be allowed. Reliance is also placed upon the judgment of the Apex Court in **Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452** to submit that one complete building could be got vacated in a summary manner. Reliance is also placed upon the Division Bench judgment of this Court in **Smt. Bachan Kaur & others Vs. Kabal Singh & another 2011 (1) RCR (Rent) 368** to submit that a co-owner is entitled for getting eviction ordered.

After hearing counsel for the parties, this Court is of the opinion that the present revision petitions does not have any merit and is liable to be dismissed. The Apex Court in the case of **Baldev Singh Bajwa** (supra) has specifically held that there is a *bona fide* presumption in favour of the NRI landlord and that there are sufficient safeguards in the Act to put the tenant back in possession including the penal clause. It has further been held that the leave to contest is only on the four grounds which, if made out, would entitle the Rent Controller to grant leave to contest. The NRI landlord would be entitled for eviction, the moment he proves:

- (i) that he is an NRI,
- (ii) that he has returned to India permanently or for a temporary period,
- (iii) that the requirement of accommodation by him is genuine and
- (iv) that he is the owner of the property for the last 5 years.

It is settled principle of law that the Rent Controller is only to adjudicate upon the issues and has to grant leave to contest on the basis of the affidavit filed. It has been so held by a three Judges Bench of the Apex Court in **Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal 1982 (3) SCC 270**. The affidavit has to disclose some triable issues and in the absence of the same, the application under Section 18-A of the Act, for granting leave to defend cannot be allowed, on the asking. Only a *prima facie* case is to be made out so that the necessary ingredients of Sections 2 (dd) and 13-B of the Act having fulfilled and in case they have been fulfilled, the order of ejectment is to follow. Reliance can also be placed upon the observations made by this Court in **Sham Lal Khera Vs. Sudershan Kumar Rao 2011 (4) PLR 656**. Similarly, this Court in **Amarjit Singh Vs. Amarjit Kaur 2012 (4) PLR 726**, has held that leave to defend is to be within the parameters raised in the application under Section 18-A(4) (5) of the Act. The Rent Controller has, thus, to decide on the basis of cogent and material facts having been placed in support of the leave to contest application.

The factum of the ownership is not denied and in the present case, the sale deed was executed wayback on 13.12.1991 and on the basis of the rent note, the petitioner was put in possession. The fact that the respondent is an NRI and was residing in Abu Dhabi had never been denied, as such

and the only ground taken is that he had not returned to India permanently. It has also been held that the return to India, as such, is not to be permanent and the NRI can extend the business by staying in a foreign country and he can do that with a temporary stay also. It is settled principle of law that the leave to contest is only to be granted on the grounds raised in the application filed under Section 18-A of the Act, which would show that triable issues had been made out.

The factum of having returned permanently, being the necessary ingredient has also been rightly rejected by the Rent Controller as it has been held by this Court in **Kamlesh Devi @ Keshi Vs. Chanan Singh 2003 (1) RCR (Rent) 725** that the section cannot be read as the NRI has first to return to India and then apply for eviction of the tenant. In the case of **Sohan Lal Vs. Swaran Kaur 2003 (2) RCR (Rent) 407**, this Court has specifically held that the section has to be construed harmoniously and that having returned is not to be of permanent intention. Relevant observation reads as under:

“26. The expression 'returns to India' used in Section 13-B of the Act would not necessarily means that he must return permanently or he must file a petition after he has returned to India. It is a ground reality that the time consumed in the litigation is long and a NRI who is a person of Indian origin and owner of the property is not expected to wait all the while for the result of the litigation because once a person comes back to India after burning all his boats and bridges abroad he would cease to be useful for himself or the society or the country he had left. Such an NRI is likely to sit idle after returning to India. A provision has been made in sub-section (2-B) of Section 19 of the Act that an NRI who is owner and who have succeeded in evicting a tenant from a residential building in pursuance to an order made under Section 13-B of the Act, if he fails to occupy such building for

a continuous period of three months from the date of such eviction or lets out the whole or any part of such building from which the tenant has been evicted to any person other than the evicted tenant then criminal proceedings in accordance with sub-section (3) of Section 13-B of the Act can be initiated as he is deemed to have committed an offence which is punishable with imprisonment that may extend to six months or a fine which may extend to Rs. 1,000/- or both. The expression 'returns of India' has to be construed harmoniously in the light of the provisions made in sub-section (3) of Section 13-B and sub-section (2-B) of Section 19 of the Act. Therefore, it is not necessary that the NRI owner of the property must come back to India permanently and then stay in this country waiting for the result of the litigation. It is sufficient that application for ejectment is filed by him or through a general power of attorney because there are sufficient safe-guards provided under sub-section (2-B) of Section 19 of the Act laying down that the vacated premises must be occupied by the NRI owner continuously for a period of three months and if he fails to do so, then penal action is contemplated. He can also not let out any part or whole building to any person other than the tenant for a period of 5 years nor he can alienate the same."

The Apex Court in the case of Baldev Singh Bajwa (supra) has also held that there is a presumption that the need of the landlord is genuine and a *bona fide* one and heavy burden would lie upon the tenant to the contrary. Relevant observations read as under:

"24. Definition of "Non-resident Indian" (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled

outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase "Indian Origin" has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase "origin" refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2 (dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase "return to India" along with the definition of the "NRI" under Section 2(dd) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

25. When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has

permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words "return to India" under Section 13-B of the Act denotes return to India permanently."

The Apex Court in the case of Swami Nath (supra) has held that restricted meaning is not to be given as it would frustrate the principles of the Act and approved the observations made earlier. Relevant observations read as under:

"12. Reliance was placed on the decision of this Court in Baldev Singh Bajwa v. Monish Saini [JT 2005 (12) SC 442] where the same question had come up for consideration and it was observed that on a plain reading of the provisions of Section 13-B, it would be obvious that once in a life-time possession is given to an NRI to get one building vacated in a summary manner. It was also submitted that the ownership of the Respondent/landlord in respect of only one building had not been disputed by the Petitioners and the only contention that was raised on their behalf was that each separate tenancy in a building would amount to a separate unit and after exhausting the right of summary possession once, it was no longer available to the NRI landlord to exercise such an option for the second time to a particular building, which contention had been negated by the Courts below.

13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with

the submissions made on behalf of the Petitioners. The interpretation sought to be given to the proviso to Section 13-B (1) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of Section 13-B by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be accepted.

14. The provisions of Section 13-B of the 1949 Act have been correctly interpreted and dealt with in Baldev Singh Bajwa's case (supra) and in that view of the matter, the Special Leave Petitions must fail and are dismissed. I.A. No.2 of 2006 filed in SLP(C) No.11719 of 2006 by Gurdeep Ram to be impleaded as party in his personal capacity, is also disposed of, accordingly."

The argument raised that since it was a requirement of additional accommodation, the leave to defend should have been granted as a matter of right, also cannot be accepted. This Court in **Prem Kumar Patel Vs. Inderjit Singh Grewal 2002 (3) PLR 829** has rejected the argument that merely because the NRI landlord was already in occupation of some accommodation, the tenant would, thus, be entitled to leave to defend. It was held that since the whole building could be got vacated as per the provisions of the Act, it would not make a *prima facie* case for leave to defend. The said view was followed in the case of **Ashok Goel** (supra).

In the above facts and circumstances, the respondent has made out a case for summary ejection on the ground of *bona fide* requirement, on account of his wanting to start a departmental store in the premises in question. The law provides that the landlord (NRI owner) is entitled for the possession of one scheduled building, during his lifetime and in such circumstances, the resort to the summary procedure, which has been permitted, cannot be faulted in any manner, especially keeping in view the

fact that part of the building also stands vacated by the other tenants.

The four necessary ingredients, in the present cases, having been made out and the Division Bench of this Court in the case of **Smt.Bachan Kaur** (supra) holding that the NRI owner being a co-owner is entitled to the benefit of Section 13-B of the Act, this Court is of the opinion that the order which has been passed by the Rent Controller does not warrant interference.

Resultantly, finding no merit in the present revision petitions, the same are, hereby, dismissed. However, considering the fact that the petitioners are in possession since 1991, they are granted 3 months time to vacate the premises.

11.02.2015
sailesh

(G.S.Sandhawalia)
JUDGE