

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 2217 of 2015 (O&M)
Date of decision: April 1, 2015

M/s Blue Sky Worldwide Travels and another

...Petitioner

Versus

Harvinder Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Amarjit Markan, Advocate,
for the petitioner.

K. KANNAN, J. (Oral)

CM No. 6956 CII of 2015

CM is allowed. The documents are taken on record.

Main case

1. The petition for leave was sought in an application under Section 13-B of the East Punjab Urban Rent Restriction Act filed by the landlord on four grounds: (i) The landlord is not really the owner and the property has been resumed by the Chandigarh Administration for misuse; (ii) that the petitioner is a citizen of USA and the issue whether a foreign citizen could claim status of an NRI is pending before the Supreme Court; (iii) yet another portion of the building has been also subject to eviction petition and this court has granted stay of eviction in respect of that portion; and (iv) that the landlord is in possession of the basement of two floors and he has not taken any step to occupy the same. The bonafides are lacking in

the action of the landlord.

2. I find none of the grounds taken to be tenable to merit leave to defend in the action for eviction brought at the instance of the landlord.

3. As regards the first ground that the property which is the subject matter is resumed by the Chandigarh Administration, the petitioner himself has filed a copy of the order in the writ petition No. 8421 of 2010 decided on 27.11.2012, filed by a co-owner Daljit Singh against the proceedings for resumption. The court has considered the undertaking given by the landlord that he was ready and willing to deposit the misuse charges for the period of misuse and the petitioner in the writ petition has been directed through the order passed by the Division Bench that he would deposit the misuse charges amounting to ₹31,64,524/- payable by the petitioner. The court has stated that the order of resumption would be deemed to have been set aside, if the deposit is made within six months. The information elicited from the Estate Office is also filed before the court as Annexure P/11 that states that exercising the power of the Estate Officer, as per the direction of this court in CWP No. 8421 of 2012, the case was under process of restoration of the site where the order of the resumption did not take place as a matter of fact. It is also evident from the fact that the tenant continues in possession that resumption has not taken effect. If the requirement of ownership were to be established under Section 13-B of the Act that is available through order of the court that set a condition for payment of the amount within a particular period and the decision as stated in the letter dated 29.4.2013 that the case was under process for restoration. I deemed these proceedings as sufficient for the landlord to maintain the petition.

4. The counsel argues that the issue of whether a citizen could claim to be an NRI is pending consideration before the Supreme Court. So long as there is no stay order against the trial of this case or adjudication as regards the status of an NRI before all courts in Punjab by any order of the Supreme Court, every court is bound to adjudge on what is brought for adjudication. To my mind, there is simply no scope for importing any disability to any non-resident Indian to suffer by the fact that he has become a citizen of foreign country. Section 2 (dd) of the East Punjab Urban Rent Restriction Act, defines the non-resident Indian as follows:-

“2. Definitions.— In this Act, unless there is anything repugnant in the subject or context:--

[(dd) “Non-resident Indian” means a person of Indian origin, who is either permanently or temporarily settled outside India in either case--

- (a) for or on taking up employment outside India; or
- (b) for carrying on a business or vocation outside India; or
- (c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for a uncertain period;]”

5. The definition contemplates three different situations that (i) he should be employed outside India; (ii) or he could be carrying on business outside India or (iii) he settle outside India for any other purpose. The requirement would, therefore, be that an employment or vocation or any other situation has allowed for the person to be outside India. The common thread in all these situations is that he shall be a person of Indian origin. It does not require any great forensic skills to explain that a person is of Indian

origin if he is either born or he is a child to a person of Indian origin. The fact that the person obtains citizenship elsewhere is simply not considered under the provision as a disability for a person to claim the NRI status.

6. There are some enactments where non-resident Indian is defined. For instance: Foreign Exchange Management Act, 1999 defines non-resident Indian in the same fashion as Rent Act describes. There is no requirement under the Act that such a person must be a citizen of India. But unlike the Rent Act, Foreign Exchange Management Act, 1999 has independent definition of person of Indian Origin. This is to allow for availing of certain facilities like, opening and maintaining an investment in shares. The Foreign Exchange Management Act, 1999 does not restrict ownership of property in India, but only regulation exists in that regard for person of Indian origin. The Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations 2000 places no restriction to a foreign citizen to own immovable property, except as regards agricultural land in terms of Regulations 4 and 5 which reads as follows:-

“4.Acquisition and Transfer of Property in India by a person of Indian origin.—A person of Indian origin resident outside India may-

[(a) acquire immovable property in India other than an agricultural property, plantation, or a farm house:

Provided that in case of acquisition of immovable property, payment of purchase price, if any, shall be made out of *(i)* funds received in India through normal banking channels by way of inward remittance from any place outside India or *(ii)* funds held in any non-resident account maintained in accordance with the provisions of the Act

and the regulations made by the Reserve Bank:

Provided further that no payment of purchase price for acquisition of immovable property shall be made either by traveller's cheque or by currency notes of any foreign country or any mode other than those specifically permitted by this clause.]

- (b) acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from a person resident outside India who is a citizen of India or from a person of Indian origin resident outside India;
- (c) acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or from a person resident in India;
- (d) transfer any immovable property in India other than agricultural land/farm house/plantation property, by way of sale to a person resident in India;
- (e) transfer agricultural land/farm house/plantation property in India, by way of gift or sale to a person resident in India who is a citizen of India;
- (f) transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India who is a citizen of India or to a person of Indian origin resident outside India.

5. Acquisition of Immovable Property for carrying on a permitted activity.—A person resident outside India who has established in India in accordance with the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, a branch, office or other place of business for carrying on in India any activity, excluding a liaison office, may-

(a) acquire any immovable property in India, which is necessary for or incidental to carrying on such activity :

Provided that—

(i) all applicable laws, rules, regulations or directions for the time being in force are duly complied with; and

(ii) the person files with the Reserve Bank a declaration in the Form IPI annexed to these regulations, not later than ninety days from the date of such acquisition;

(b) transfer by way of mortgage to an authorised dealer as a security for any borrowing, the immovable property acquired in pursuance of clause (a).”

The above provisions clearly allow for ownership of immovable property as well as engagement in business activity.

7. The Citizenship Act by amendment Act of 2005 stipulates a new category called as Overseas Citizen of India defined under Section 2 (ee) of the Act, which means a person registered as such by Central Government under Section 7A of the Citizenship Act. If we, therefore, examine that the Rent Act gives a privilege to a non-resident Indian the benefit of fast tracking the litigation, it is to be understood that it is a matter of legislative policy which is reasonable and there should be no obstacle to

person to return to India and claim possession. I cannot conceive of any objection for a foreign citizen to claim the status as non-resident Indian, if the conditions mentioned in the definition section are fulfilled. I do not, therefore, think that there is any valid defence to be put forth before the court that the petitioner cannot treat himself as NRI because he is a foreign citizen. As we have seen, there is specific provision under law for a non-citizen who is a person of Indian origin to own property and establish business in India. The disability pleaded by the tenant is, therefore, of no merit.

8. The contention that in respect of yet another tenement within the same complex of building, a tenant has obtained an order of stay before this court could hardly be a ground for me to deny consideration of the bonafides of the landlord. A landlord which seeks for eviction of several tenements may come by several obstructions and if he must wait for a period that all orders of eviction must be passed simultaneously, we must be living in Utopia out of sync with no knowledge of how our courts function. Each court takes its own time and there is no particular strategy that we have evolved to put all cases on fast track and decided within any stipulated period. Section 13-B of the Act itself sets a different procedure and imposes a duty on a court to consider whether there is any case made by the respondent before he is allowed to defend. This is to take note of an existing reality that no litigation in India comes to close immediately and a defence under whatever grounds and however fragile will assure to litigants a long period in the corridors of the court. If Section 13-B must be given a meaning, that meaning, ought to be to enter a judicial finding on whether there exists any tenable ground to fetter the landlord from claiming eviction.

If the landlord's fate of maintaining a petition is only to depend on a successful claim of eviction of all the tenements simultaneously, it will last a life time and beyond. I will not, therefore, allow for such unusual contingency to prevail over my own judgment.

9. Even a plea that the landlord has the basement in two floors and he has not put them to use is no ground of defence. It is not as if the landlord conceals their existence. He, on the other hand, pleaded that he would want all the tenants evicted in order to carry his business. The process must begin somewhere. What is stated with reference to the occupation of yet another tenant, who has obtained an order of stay ought to apply for the fact that the landlord has in his possession the basement in two floors as well. All of them cannot take place simultaneously. The eviction may come one by one and if he makes out a case for eviction of the other tenants as well, I have no ground to suspect the bonafides, if he expresses his intention to return and show the status as NRI to claim special benefits as Section 13-B requires him to do.

10. I do not find that there is anything wrong about the order passed by the court below that has rejected the leave to defend. I see no reason for making intervention in this petition. The revision petition is dismissed.

April 1, 2015
prem

(K.KANNAN)
JUDGE