

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

C.R. No. 4025 of 2006

Reserved on: 07.01.2015

Date of decision: 28.01.2015

Smt. Bachan Kaur and others

....Petitioner(s)

Versus

Kabal Singh and another

...Respondent(s)

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

Present: Mr. B.R. Mahajan, Sr. Advocate,
with Mr. Prateek Mahajan, Advocate,
and Mr. Akhilesh Vyas, Advocate,
for the petitioners.

Mr. Vikas Bahl, Sr. Advocate,
with Mr. Nitish Garg, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition filed by the landlords/owners under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') is to the order dated 10.06.2006 passed by the Rent Controller, Nawanshahar which has dismissed the eviction application under Section 13-B of the Act after leave to contest had been granted.

The reasoning given by the Rent Controller in support of its decision is that the original sale deeds have not been produced on record by the petitioners pertaining to the property in question and only photocopies had been placed on record. The Will dated 11.05.1989 Ex. A-1 of Kabal Singh, the original owner was in favour of Gurmail Singh and Rajinder Singh, petitioners no. 2 and 3. The petitioner no. 1 did not have any right in the immovable property and the property in khasra numbers in the sale deed

has not been mentioned in the petition and neither any mutation has been sanctioned in favour of the said petitioners. Thus, the ownership of the said petitioners was not proved with regard to the property in dispute. The third issue which weighed with the Rent Controller was that only petitioner no. 1 had produced her own passport on record and identity card to show that she was a Non-resident Indian and since petitioners no. 2 and 3 had not produced any documents that they were Non-resident Indians and residing in USA, they had failed to prove the said fact. The said persons had also not been able to show that they had returned to India and since the petition had been filed by their attorney, the need of the landlord was not bona fide.

Mr. B.R. Mahajan, Sr. counsel for the petitioners has submitted that it was admitted fact that the respondents were the tenants and the relationship of landlord-tenant was not denied. The rent note Ex. A-2 dated 21.04.1980 showed that the property had been let out by the petitioners to respondents. The ownership was admitted and it was settled that the tenants were estopped from denying the title of the landlords and it was not their case that any other person was the owner. The power of attorney in favour of petitioners no. 2 and 3 was general and no specific powers as such had to be given. The bona fide element was there since the tenants had remained in occupation since the last more than 20 years and the ejectment application was filed on 07.09.2001. Similarly, the factum of the petitioners being Non-resident Indians was admitted and that they were residing abroad which would be clear from the evidence of the parties and in such circumstances, the Rent Controller was not justified in dismissing the eviction petition.

Senior counsel for the respondents-tenants Mr. Vikas Bahl,

vehemently submitted that neither petitioner no. 1 had signed the petition and only the power of attorney Tarsem Singh had filed the petition. The petitioner nos. 2 and 3 had never appeared in the witness box and neither their passports had been produced. The bona fide element was, thus, missing and the litigation was being pursued by the power of attorney who was the interested person in the property. There were 5-6 rooms lying vacant on the first floor of the property in question which could have been utilized but the petitioners were not to come back. It is accordingly submitted that once there is a special provision of ejectment, then mere admission would not be sufficient to grant the relief of ejectment. The khasra numbers had not been mentioned of the property concerned in the petition and how they were owners was also not mentioned in the petition under Section 13-B of the Act. Accordingly, in such circumstances, the Rent Controller's order was justified.

A perusal of the record would go on to show that the petition was filed under Section 13-B of the Act for ejectment of the respondents from building/shop as shown red in the site plan situated on the Old Court Road, Nawanshahar. The boundaries were given by depicting that the civil hospital was on the southern side and the shop of Hazara Singh was on the northern side. The old Court road bounded the property on the western side whereas the house of the petitioners was there on the eastern side. The site plan Ex.A-3 also showed the property as per the boundaries given in the petition which was filed through the Attorney namely Tarsem Singh. It was pleaded that the petitioners were the owners-landlords of the premises as shown in red in the site plan and described in the head note of the petition and the respondents were inducted as tenants in the said building/shop by

late Sh. Kabal Singh and Bachan Kaur on the basis of rent note dated 21.04.1980 @ ₹1,350/- per month excluding house tax. It was further alleged that the petitioners were Non-resident Indians and working in USA for last many years. They had intention to come back to India permanently with bag and baggage and to settle in India and to run the business on their own in the premises in question. The petitioners bonafidely required the premises in question for their personal use and occupation and they intended run their own business. They were owners for more than 5 years of the property in question and were entitled to seek the eviction on the basis of the provisions of Section 13-B of the Act as being specified landlords and they further undertook not to transfer the premises in question after the recovery of possession for a period of 5 years from the date of taking of possession of the same. The respondents had been asked to hand over the possession but they had not done so.

The respondents filed an application under Section 18-A of the Act for leave to contest in which, it was alleged that an earlier petition had been filed by petitioner no. 1 alone on the basis of a Will dated 11.05.1989 executed by Kabal Singh. The petitioners were all living in foreign country and doing good business and had no occasion to come back to India and occupy the premises in question. They were not Non-resident Indians and not competent to file the petition and the same had been filed through their agent Tarsem Singh and intention was to get the premises vacated. They were not members of NRI Sabha of Punjab and petitioner no. 1 was an old lady. The old lady was not able to do any job and was dependent on her sons who were permanently settled and living abroad for the last 20 years and doing good hotel business in America, USA (Philadelphia) and having

two separate hotels and running flourishing business. They were permanent residents of America, green card holders and were American citizens and had been income tax payees and were comfortable in America and well settled, earning in crores of rupees. Respondent no. 2 was not a tenant in the premises which was taken on rent by respondent no. 1-Kabal Singh. In the previous petition, rent had been paid from 01.09.2000 to 31.01.2001 for five months @ ₹1,350/- per month. The rent had been paid regularly to Kabal Singh from the very inception of the tenancy i.e. 21.04.1980 and receipts of various authorized persons alongwith house tax was attached. The respondents were ready to pay the rent as calculated till day and the petition through the attorney of the petitioners was not maintainable and neither they were entitled to recover the immediate possession of the premises in question. Respondent no. 1 was running the business under Doaba Medicos since 1980 which was a registered partnership firm and was completely dependent on it.

The application was contested by replying that the petitioners required the property for personal use and occupation of family members and it was not open to the tenant to doubt the bona fide of the petitioners in view of the safe guard provided under the Act. No such ground had been made out whereby, the leave to contest should be granted. The respondents were having a big hospital in the name of Raja Hospital nearby the premises in dispute run by respondent no. 2 who was a qualified doctor. He was running a chemist and pharmacy shop in the premises of the said hospital on Mota Singh road, Nawanshahr about 100 yards distance from the premises in question. The Rent Controller granted leave to contest on 31.08.2002 on the ground that the petition had been filed through the attorney.

Thereafter, written statement was filed by the respondents wherein, reference was again made to the earlier petition filed by petitioner no. 1 alone. The authority of the attorney was also disputed and the petitioners were alleged to be Non-resident Indians not competent to file the petition. The provisions of the Amended Act were not applicable and the petitioners were not admitted to be the owners and landlords of the premises in question. The allegation of the rent note was also denied and the liability of house tax and the right to seek eviction under Section 13-B of the Act. The earlier petition under Section 13 of the Act had been withdrawn. It was further admitted that the rate of rent was ₹1,350/- per month as per the rent note and respondent no. 1 had been paying the rent regularly and the arrears had been tendered in Court. The factum of petitioners no. 2 and 3 working in US was incorrect and denied but in the alternative, it was pleaded that in case they were working in US, they were not NRIs and they had no intention to come back to India permanently with bag and baggage to set up their business. The petitioners did not require the premises bonafidely for their personal use and occupation and the petition had been filed through the attorney and had never completed a period of 5 years ownership. The Rent Controller framed the following issues on 28.09.2002:-

“1. Whether Tarsem Singh is duly appointed attorney of petitioners? OPP

2. Whether petitioners are Non-Resident Indians and are required the premises in dispute for their own personal and bona fide use? OPP

3. Whether the petitioner has no locus standi to file the present petition? OPR

4. Whether the petition is bad for non-joinder and mis-joinder of necessary parties and causes of

action? OPR

5. *Whether the petition is not maintainable in present form? OPR*

6. *Whether petitioners are barred by their act and conduct from filing this petition? OPR*

7. *Relief.”*

The petitioners examined petitioner no. 1-Bachan Kaur herself and the attorney Tarsem Singh as AW-2 and Gurcharan Singh, the draftsman. The respondents, on the other hand, examined respondent no. 1 Kabal Singh himself as RW-1.

Petitioner no. 1 in her affidavit dated 29.01.2003 took the same plea as in the petition under Section 13-B of the Act and also exhibited her identity card as Ex. A-4 issued by the NRI Sabha, Punjab and the copy of the membership as A-5 alongwith passport A-6, the originals of which were seen and returned. It came forth in her cross examination that her husband had died about 13 years back and as per the Will, her sons were to inherit the estate and mutation had been sanctioned in the names of sons who were residing in America. It was further admitted that her sons were in USA at the time of filing of petition and even at that point of time, it also came on record that she was residing on the first floor of the property in question. The house on the first floor had approach from the other side i.e. Guru Nanak street also. The passports of her son of Gurmail Singh that he was doing business and other son that he was doing a job was with them. The petitioner no. 1 being a senior citizen was not working and her sons were to do business in India and they had last visited India about 6 years back and she had to leave India after two months having come on a visa. She and her sons had not surrendered their passports and had not taken any initiative

with the Government of India in this behalf and their ancestral property was in village Basiala. The factum of getting the shop vacated for selling or to rent out and filing the petition with mala fide intention was denied.

The attorney, in his deposition brought on record the original powers of attornies and their copies as Exs. A-7 and A-8 and deposed in favour of the petitioners. In cross examination, he admitted that petitioner nos. 2 and 3 were not in India at the time of institution of the petition and petitioner no. 1, who was in India had personally instituted the petition. It was also admitted by him that petitioners no. 2 and 3 came to India about 6 years back. The house of the petitioners had approach from two sides, from the side of the Court road and from Guru Nanak street and he did not know the avocations of the petitioners who were abroad. Petitioners no. 2 and 3 had not surrendered their American passports nor they had done any negotiations with the Government of India.

PW-1 Gurcharan Singh Draftsman proved his site plan Ex.A-3 and after that, the evidence was closed in affirmative.

Respondent no. 1 in his affidavit filed, admitted that he was a tenant in the shop in dispute and Bachan Kaur had got a residential house on the upper storey of the house which had 5-6 rooms. It was deposed that he had never seen the grand children of Bachan Kaur in India till date and they were not Non-resident Indians. However, it was admitted that they were running hotel business in USA and they had no intention to come back to India. The petitioners had got the whole premises of 5-6 rooms on the first floor of the shop and the same was lying vacant and the attorney was wanting to purchase the property after the vacation of the property under the garb of the Amended Act. Petitioner no. 1 was about 90 years old and could

not run any business. The grand children had never come to India in spite of having a residential house in village Basiala and the premises were not bona fide required and they had no intention to come back to India.

In cross examination, it was admitted that they were residing in US for the last 20 years and Kabal Singh had also died most probably in US, who was the owner of the property before the petitioners had inherited the same. The building having been taken on rent was admitted vide the rent note and his son respondent no. 2 was a partner with him in the said shop. He was also running Raja Hospital for the last about 5-7 years in a three storeyed building at Mota Singh Nagar, Nawanshahar, which was at a distance of about 400 yards from the premises. It was also admitted by him that he had gone to US about 10 years back and that the petitioners had got big business of hotels and restaurants in USA. They were rich persons having huge investments. That village Basiala was 6 to 8 kilometers from Nawanshahar situated in Tehsil Garhshankar. Rent used to be collected by Tarsem Singh, attorney of the petitioners and sometimes by son-in-law of the petitioner no. 1 residing at Banga and he had never seen Bachan Kaur visiting India. He denied the factum of any bargain having been executed between the petitioner and Tarsem Singh, the attorney of the petitioners in respect of shop in dispute.

Initially, the matter was referred to the Division Bench on the issue whether the Non-resident Indian who is a co-owner and who does not have the same status could maintain a petition for eviction of the tenant in the property jointly owned by all of them. The issue regarding the right to evict by the NRI landlord even if he had not let out the premises was also subject matter of consideration. The Division Bench in the judgment

dated 26.04.2011, *Smt. Bachan Kaur and others vs. Kabal Singh and another, 2011 (2) RCR (civil) 886* held that the NRI co-owner could seek eviction of the tenant from the building not inducted by such NRI and it is not necessary that all other co-owners should be NRIs.

Thus, from the evidence which has been discussed in detail of the petitioner no. 1 and her attorney alongwith the evidence of respondent no. 1-tenant, it would be apparent that the factum of relationship of landlord-tenant is admitted inter se the parties. A rent note also exists as such which is dated 21.04.1980 whereby, petitioners no. 2 and 3 had also leased out the property to respondent no. 1. Locus standi of petitioners no. 2 and 3 to file the petition under Section 13-B of the Act is apparently there on the record. The admission made by respondent no. 1 both to the tenancy and to the ownership of the predecessor-in-interest namely Kabal Singh is not denied. The petitioners are none else but the children of Kabal Singh and in such circumstances, the findings of the Rent Controller to the extent that the ownership of the petitioners was not proved with regard to the property in dispute is not correct. The property might be having khasra numbers in the sale deed but the property had been described in the eviction petition and the boundaries had been given. The factum that on the first floor, part of the house is there which was being used by the owners and that the tenants were running the business of sale of medicines on the ground floor from one side has come on record and in such circumstances, the findings recorded that the ownership of petitioners no. 2 and 3 was not proved is not correct. Similarly, the issue that the petitioners were not Non-resident Indians has also been incorrectly decided as such as there was sufficient material and there was an admission by the tenant himself that all

the petitioners were living abroad for the last more than 2 decades. It was also admitted that Kabal Singh had died most probably in US who was the original owner of the property. It was themselves admitted that they were running hotel business there and respondent no. 1 himself had gone to US and was aware that they were well settled having huge investment. The factum of having ancestral land in village Basiala close to Nawanshahr and originally belonging to Nawanshahr thus has come on record. The finding recorded that merely because they had not come in the witness box and produced their Non-resident Indians documents is not sustainable in view of the admissions made in the peculiar facts. It is settled principle that admission is the best evidence and the fact which has been admitted need not be proved by the other party. The petitioner no. 1 has also produced on record her passport and the NRI membership card of NRI Sabha which would go on to show that she was also residing abroad and thus, would fall in the definition of NRIs under Section 2(dd) of the Act which is reproduced as under:-

“2(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 an uncertain period”

It is pertinent to note here that a perusal of the original petition under Section 13-B of the Act which was filed on 07.09.2001 would go on

to show that it was never signed by Bachan Kaur and had only been signed by the Attorney Tarsem Singh. The Power of Attorney in support of the petition also did not show that Bachan Kaur had signed on the same and, therefore, Bachan Kaur cannot be said to have validly instituted the eviction petition on her behalf at all. The petition cannot, thus, be read as eviction petition filed on her behalf and she could only be treated as a witness to the said proceedings. The petitioners no. 2 and 3 never appeared in the witness box to depose regarding their requirement of the premises in question as has already been noted. Only the General Power of Attorney deposed on their behalf. He, no doubt, had the authority as the attornies have been placed on record as Ex. A-7 to A-8 which go on to show that they were executed in USA in 2001. However, it is settled principle that for proving the bona fide requirement of the landlord, the landlord in such circumstances would necessarily have to step into the witness box since the knowledge of his requirement is personal and his attorney could not depose regarding these facts. The attorney had also admitted that the petitioners no. 2 and 3 had come to India about 6 years back at the time of his deposition which was in February, 2003 and, therefore, he could have no personal knowledge of their requirement as he had not have even met the said petitioners after 1997 as the attornies were executed in USA in 2001. As noticed, the petition had been filed in September, 2001. Section 13-B further provides that the NRI owner is to return to India.

In the present case, two factors admittedly seem to be missing which would only give the Rent Controller the jurisdiction to evict under Section 13-B of the Act. The requirement of returning to India and the bona fide need and not a mere desire. This aspect was considered in detail by the

Apex Court in its celebrated judgment in **Baldev Singh Bajwa, Monish Saini, AIR 2006 SC 59**, where a presumption of bona fide requirement in favour of the NRIs was upheld while the issue of granting of leave to contest was concerned. However, the argument raised that once the tenants' right to defend the claim had been given, the NRI owners/landlords could not take it as a matter of right that they did not have to prove the bona fide element. Thus, the argument from the landlord's side that the bona fide element was to be presumed in their favour for all times was not accepted. Similarly, the meaning of return to India was also taken into consideration and it was held that it is not necessary that the NRI should return to India permanently as such. The relevant portion reads thus:-

“22. The golden rule of construction is that when the words of legislation are plain and unambiguous, effect must be given to them. The basic principle on which this rule is based since the words must have spoken as clearly to legislatures, as to judges, it may be safely presumed that the legislature intended what the words plainly say. The legislative intent of the enactment may be gathered from several sources which is, from the statute itself, from the preamble to the statute, from the statement of objects and reasons, from the legislative debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where they may be allowed. Record may be had from legislative history and latest legislation also. But the primary rule of construction would be to ascertain the plain language used in the enactment which advances the purpose and object of the legislation. No doubt the legislative intent in enacting Section 13-B, is to provide for immediate

possession of the accommodation owned by the NRI but it cannot be assumed that the legislature wants the NRI landlord/ owner, to get the possession of the accommodation from the tenant even if he does not require it and the need pleaded is proved to be a mere pretext to get the accommodation vacated. Had that not been the intention of the legislatures, the phrase 'required' by the NRI landlord would not have been used in Section 13-B. The classified landlords are given the benefit of summary trial under Section 18-A of the Act. The summary trial is in two parts. Sub-section 4 provides that after the service of summons the tenant has no right to contest the prayer for eviction from the residential building, or schedule building and/or non-residential building as the case may be unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the controller as provided in Sub-section 5 of Section 13-B to contest the matter. If the tenant defaults to appear in pursuance of summons or when he does not get leave to contest, the controller shall presume the statements made by the NRI in his petition have been admitted by the tenant and pass an order of eviction. This eventuality is contemplated when a tenant does not appear in pursuance of the summon issued and served or where the leave to contest has not been granted by the Controller. The second facet of the Section comes into operation when the leave to contest is granted by the Controller. Sub-section (6) of Section 18-A provides that the controller has to commence the hearing of the petition not later than one month from the date on which the leave was granted to the tenant to contest and he has to hear the application from day-to-day till the hearing is concluded and the application is

decided. It is further provided that the procedure which shall be followed in deciding the application would be as is being practiced by Court of Small Causes. No appeal or second appeal is provided. From the aforesaid, it is absolutely apparent that even when leave would be given to the tenant to contest, legislatures have taken care of expeditious disposal of the petition for ejectment filed by the NRI landlord. Trial of the issue of bona fide requirement of the landlord in the procedure prescribed would not take much time and thus we cannot accept the argument that the phrase “required” used by the legislature in Section 13-B would not mean bona fide or genuine requirement and the Section has to be construed as and when the allegation is made by the landlord of his need, it is to be taken as gospel truth and the tenant’s right to defend on that count is completely extinguished and given a go-by. We do not think High Court is right in holding that mere prayer of the NRI landlord that tenanted premises is required by him or his dependent living with him entails decree of eviction on the mere allegation of requirement and no leave to contest can be given in respect of cases which are covered by various provisions restricting the right of the landlord to deal with the premises taken possession of by him in pursuance of the decree for eviction passed by the Controller under Section 13-B of the Act of 1949. We hold that allegations made by the NRI landlord of his requirement shall be presumed to be genuine and bona fide unless rebutted by the tenant by placement of cogent and material facts and evidence in support thereof at the stage of ‘leave to contest’ before the Controller. We feel any other interpretation would completely whittled down and deny the tenant’s right to

show and prove that landlord does not in fact, or in law require suit premises.

23. *It is further contended that for according relief under Section 13-B of the Act of 1949, it must be proved by the NRI landlord that he has permanently returned to India or that his intentions are to permanently return to India. The intention to permanently settle down in India should be read into words “return” used in Section 13-B. The specific category of NRI landlord has been created by the Legislature with the intention to provide relief to them who are intending to settle down in India or take up business in India only. Learned counsel appearing for the landlords have submitted that from the very definition of the NRI in Section 2(dd) of the Act, it is not necessary for the NRI-landlord to permanently return to India either for the purpose of his residence or for non-residential purpose.*

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 India 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.

26. *On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to a NRI to get one building vacated in a summary manner. A Non-resident Indian landlord is required to prove that:- (i) he is a NRI; (ii) that he has return to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and; (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant’s affidavit asking for leave to contest the NRI landlord’s application should confine to the grounds which NRI landlord is required to prove, to get*

ejectment under Section 13-B of the Act. The Controller's power to give leave to contest the application filed under Section 13-B circumscribe to the grounds and inquiry to the aspects specified in the Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall be considered by the Controller.

27. In the light of interpretation given by us to relevant provisions of the Act of 1949 applicable to NRI landlord we shall consider individual cases of the appellants/tenants. We are confining our decision to the relevant grounds raised by the tenants in their affidavit filed seeking leave to defend and allegations made therein and the points urged before the High Court."

Keeping in view the above observations of the Apex Court and the evidence on record and the facts, it would be apparent that petitioners no. 2 and 3 had been abroad for more than last 20 years. However, their bona fide requirement was never proved since they would necessarily have to step into the witness box to depose regarding the said aspect which they failed to do. It has been settled by this Court that at the initial stage of filing the petition under Section 13-B of the Act, the same can be done by filing the petition through the power of attorney. However, once the leave has been granted, it is necessary for him to have come forth to depose regarding that aspect that he was wanting to come back to India and start the business which was alleged. The power of attorney, as noticed, was not a relative or a person who personally knew petitioners no. 2 and 3 and the same was in the personal knowledge of the said petitioners. They having failed to appear

in the Court and not come forward for cross examination, it would necessarily mean that they held themselves back and the best evidence that their requirement was bona fide.

In *Kaushalya Devi vs. Bhupinder Kumar, 2001 (2) CCC 222*, it was held that the power of attorney can depose as a witness but cannot appear as a plaintiff since the said person can only come forward and make a correct and true statement of facts.

This Court, in *Basant Kumar vs. Romesh Kumar Deora, 2008 (4) PLR 313* has held that the Power of Attorney can appear, plead and act on behalf of the party but he cannot become a witness on his behalf since this was a personal knowledge of the principal NRI.

In *Hardev Singh vs. Surjit Kaur, 2008 (3) PLR 477*, this Court while examining the provisions of Section 13-B of the Act, held that the attorney could appear only as a witness on behalf of the principal and depose about the facts but could not depose about the facts which were in the personal knowledge of the principal. The order of ejectment was accordingly set aside.

The Apex Court in *Man Kaur (D) through L.Rs. vs. Hartar Singh Sangha, 2010 (10) SCC 512* laid down the principles that an adverse inference would be drawn against a party who does not put in appearance regarding the facts which are in his knowledge and it was held that the power of attorney who is representing the landlord cannot be examined in place of the said person after placing reliance upon the provisions of The Evidence Act, 1872. The relevant observations came in a suit for specific performance whereby, the readiness and willingness of the plaintiff to execute the agreement in question was doubted. The relevant observations

read thus:-

“18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the

principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad."

Accordingly, keeping in view the above discussion and keeping the principles laid down in clause (c) and (g), this Court is of the opinion that for reasons other than recorded by the Rent Controller, the petitioners have not been able to successfully prove the factum of their personal and

bona fide use and requirement of the property in question under issue no. 2

and in the absence of the said requirement having been proved, their entitlement to get an eviction order cannot be made out.

To be fair to counsel for the petitioner, he has also relied upon a recent judgment of Apex Court in ***Civil Appeal No. 8410 of 2014, Kamaljit Singh vs. Sarabjit Singh*** decided on 02.09.2014 to submit that the title cannot be disputed and Section 13-B being a beneficial provision would enable the NRI owners to get eviction.

The said judgment, however, is not applicable to the facts and circumstances of the present case as in the said case, there was no dispute regarding the bona fide requirement of the NRI owner. Eviction proceedings had been dismissed only on the ground that the sale deeds in question had not been correlated to the suit property since they mentioned khasra numbers and an application for additional evidence had also been filed by the NRI owner. It was in such circumstances, it was held that once the jural relationship of landlord-tenant existed, the tenant was estopped from denying the title. This aspect has already been decided against the tenants by this Court in the present case by noticing that though the khasra numbers are not mentioned in the eviction petition but the identity of the shop has been described in detail in the eviction petition and the tenant having admitted that the petitioners were owners and that they were in possession as tenants has reversed the findings of the Rent Controller to that extent.

Accordingly, keeping in view the above discussion, this Court is of the opinion that there is no scope for allowing the present revision petition under Section 13-B of the Act in the absence of petitioners no. 2 and 3 having failed to step into the witness box and petitioner no. 1 being

not a signatory to the eviction petition could be considered as a witness and not a petitioner in the eviction petition and since the requirement was again for the sons for setting up business. Her statement would only prove the status of the parties as NRIs alone and to the factum of ownership of her sons but not the element of bona fide requirement.

Accordingly, the present revision petition is dismissed.

28.01.2015
shivani

(G.S. SANDHAWALIA)
JUDGE

