

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 30.03.2015

CR No. 4190 of 2013 (O&M)

Vijay Kumar Bhatti

.....Petitioner

Versus

Ram Lubhaya Verma

.....Respondent

CR No. 4172 of 2013 (O&M)

DavinderKumar (since deceased) through
his LRs

.....Petitioners

Versus

Ram Lubhaya Verma

.....Respondent

CR No. 4197 of 2013 (O&M)

Rajiv Kumar

.....Petitioner

Versus

Ram Lubhaya Verma

.....Respondent

CR No. 4190 of 2013 (O&M)

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CR No. 4189 of 2013 (O&M)

Mahesh Chander

.....Petitioner

Versus

Ram Lubhaya Verma

.....Respondent

CR No. 4177 of 2013 (O&M)

Kulwant Singh (since deceased) through
his LRs

.....Petitioners

Versus

Ram Lubhaya Verma

.....Respondent

CR No. 4188 of 2013 (O&M)

Gurdeep Singh

.....Petitioner

Versus

Ram Lubhaya Verma

.....Respondent

CR No. 4016 of 2013 (O&M)

Tony

.....Petitioner

Versus

Ram Lubhaya Verma

.....Respondent

CR No. 3532 of 2013 (O&M)

Ashok Kumar

.....Petitioner

Versus

Ram Lubhaya Verma

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Divanshu Jain,Advocate and
Mr.Amit Jain,Advocate
for the petitioner(s).
Mr.Puneet Jindal, Senior Advocate with
Ms.Sakshi,Advocate
for the respondent.

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SABINA, J

Vide this order, the above-mentioned eight petitions would be disposed of as the controversy involved in all the above cases is the same.

Respondent had filed ejectment petitions against the tenants/petitioners in question under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949('the Act' for short) qua the shops in question.

The case of the respondent was that he was a non-resident Indian and was settled in Canada. Land measuring 19 marlas was purchased by the respondent and his mother-Parkash Wati vide sale deed dated 5.10.1967 in equal shares. Parkash Wati died on 17.3.1999 and after her death, her half share in the said property devolved on the respondent-Ram Lubhaya Verma, Sat Pal Verma

and Surinder Kumar in equal shares. In the year 1981, ten shops were carved out of the site in question. Eight shops and one room were in the possession of different tenants. In some portion of the land, residential house had been constructed behind the shops. Respondent was in possession of Indian passport and was having a permanent resident card issued by the Canadian Government. Sat Pal Verma and Surinder Kumar along with their families were also residing in Canada and now they wanted to settle in India and constructed a show room in the property in question by demolishing the existing shops and rooms etc. Respondent and his brother along with other family members wanted to construct show room in the front portion of the property in question and in the rear portion, they wanted to construct residential house for their residential purposes. Besides the property in question, respondent and his brother owned a small ancestral piece of land measuring about 5 marlas bearing No. 221-B in Jalandhar. The said property was residential one and was insufficient to cater to the needs of the respondent and his brothers.

Notice was issued to the petitioners. Petitioners moved applications for leave to contest the ejectment petitions. The case of the petitioners was that, in fact, Sat Pal Verma was owner of the shops in question as he had got the same in partition effected between the owners. The shops in question had been rented out to the petitioners by Sat Pal Verma. In fact, Sat Pal Verma had executed general power of attorney dated 31.10.2000 in favour of Vinod Kumar. Hence, the ejectment petitions filed by the respondent

were not maintainable.

Vide impugned order dated 9.4.2013, the applications moved by the petitioners for permission to contest the ejectment petitions were dismissed and the ejectment petitions were allowed. Hence, the present petitions by the petitioners(tenants).

Learned counsel for the petitioners have submitted that the respondent had no locus standi to file ejectment petitions. In fact, the shops in question had come to the share of Sat Pal Verma in a partition effected between the owners of the premises in question. Sat Pal Verma had executed general power of attorney in favour of Vinod Kumar qua property in question on 31.10.2000. Therefore, ejectment petitions filed by the respondent were not maintainable as he had no concern with the shops in question.

Learned counsel for the petitioner has placed reliance on **Kundan Singh vs. Lal Singh** 2005(1) RCR(Rent) 194 wherein it was held as under:-

“After hearing the learned counsel for the petitioner, I am of the considered view that no interference is warranted in the impugned order passed by the Rent Controller because there is a triable issue raised by the tenant-respondent by pleading that the landlord-petitioner does not fulfill the requirement of Section 13-B of the Act as the period of five years after acquiring the ownership of the property by him did not elapse. The plea of the landlord-petitioner that there was an oral partition in March, 1992 is open to serious doubts. Once the tenant-respondent has taken the stand that the landlord-petitioner along with his

other brothers had earlier filed an application in March, 2000 which would indicate that the demised shop was in joint ownership of the landlord-petitioner and his other brothers. It is well settled that if a triable issue of this nature is raised, then the Rent Controller is within its jurisdiction to grant leave to contest because such an issue could not be disposed of in summary proceedings. For the aforementioned view, reliance could be placed on the judgments of the Supreme Court in the case of [Rita Lal v. Raj Kumar Singh](#) 2002 (2) RCR (Rent) 463 (SC) : AIR 2002 S.C: 3341, Vashu Deo v. Balkishan, 2002(1) RCR(Rent) 343 (SC): (2002)2 S.C.C. 50 and Charan Dass Duggal v. Brahma Nand, (1983)1 S.C.C. 301. Therefore, there is no merit in the instant petition.”

Learned counsel for the petitioner has next placed reliance on **Amarjit Singh Chadha vs. Col.Jasbir Singh Likhari** 2011(3) PLR 127 wherein it was held as under:-

“After the detailed discussion of the facts and circumstances of the present case as well as the judgments which have been relied upon by both the learned counsel for the parties, the question, which has been posed by learned counsel for the tenant, is answered in his favour and it is held that where the specified landlord is already in possession of the demised premises and the tenant is in possession of some part of the demised premises, then it would be a case of claim of an additional accommodation and as the landlord would not hanker for immediate shelter after his retirement, the delay in

deciding the eviction petition otherwise than by way of the summary procedure, which is provided under Section 13-A of the Act, would not cause any harm and the question of sufficiency and suitability of the accommodation in possession of the landlord can be decided after the trial. “

Learned counsel has also placed reliance on **Inderjeet Kaur vs. Nirpal Singh** 2001(1) JT 308 wherein it was held as under:-

“We are of the considered view that at a stage when the tenant seeks leave to defend, it is enough if he prima facie makes out a case by disclosing such facts as would disentitle the landlord from obtaining an order of eviction. It would not be a right approach to say that unless the tenant at that stage itself establishes a strong case as would non-suit the landlord, leave to defend should not be granted when it is not the requirement of Section 25B(5). A leave to defend sought for cannot also be granted for mere asking or in a routine manner which will defeat the very object of the special provisions contained in Chapter IIIA of the Act. Leave to defend cannot be refused where an eviction petition is filed on a mere design or desire of a landlord to recover possession of the premises from a tenant under clause (e) of the proviso to sub-section (1) of Section 14, when as a matter of fact the requirement may not be bona fide. Refusing to grant leave in such a case leads to eviction of a tenant summarily resulting in great hardship to him and his family members, if any, although he could establish if only leave is granted that a landlord would be disentitled for an order of

eviction. At the stage of granting leave to defend parties rely on affidavits in support of the rival contentions. Assertions and counter assertions made in affidavits may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion one way or the other unless there is a strong and acceptable evidence available to show that the facts disclosed in the application filed by the tenant seeking leave to defend were either frivolous, untenable or most unreasonable. Take a case when a possession is sought on the ground of personal requirement, a landlord has to establish his need and not his mere desire. The ground under clause (e) of the proviso to sub-section (1) of Section 14 enables a landlord to recover possession of the tenanted premises on the ground of his bona fide requirement. This being an enabling provision, essentially the burden is on the landlord to establish his case affirmatively. In short and substance wholly frivolous and totally untenable defence may not entitle a tenant to leave to defend but when a triable issue is raised a duty is placed on the Rent Controller by the statute itself to grant leave. At the stage of granting leave the real test should be whether facts disclosed in the affidavit filed seeking leave to defend prima facie show that the landlord would be disentitled from obtaining an order of eviction and not whether at the end defence may fail. It is well to remember that when a leave to defend is refused, serious consequences of eviction shall follow and the party seeking leave is denied an opportunity to test the truth of the averments made in the

eviction petition by cross-examination. It may also be noticed that even in cases where leave is granted provisions are made in this very Chapter for expeditious disposal of eviction petitions. Section 25B(6) states that where leave is granted to a tenant to contest the eviction application, the Controller shall commence the hearing of the application as early as practicable. Section 25B(7) speaks of the procedure to be followed in such cases. Section 25B(8) bars the appeals against an order of recovery of possession except a provision of revision to the High Court. Thus a combined effect of Section 25B(6), (7) and (8) would lead to expeditious disposal of eviction petitions so that a landlord need not wait and suffer for long time. On the other hand, when a tenant is denied leave to defend although he had fair chance to prove his defence, will suffer great hardship. In this view a balanced view is to be taken having regard to competing claims.”

Learned senior counsel for the respondent, on the other hand, has opposed the petitions and has submitted that the respondent was owner to the extent of 2/3rd share of the property in question. Initially, a partition suit had been filed by Sat Pal Verma against the respondent and others. However, the said suit was got dismissed as withdrawn on 31.5.2003 as respondent and his brothers had amicably settled their dispute. The ejectment petitions had been filed by the respondent against the tenants with the consent of other co-owners. Along with the ejectment petitions, affidavits of Sat Pal Verma and Surinder Kumar were also placed on

record wherein they had stated that the property was still joint and had not been partitioned so far and the ejectment petitions filed by the respondent had been filed with their consent.

Learned senior counsel for the respondent has placed reliance on **Ranjit Puri vs. Dr.Mohinder Paul Singh** 2012(3) PLR 309 wherein it was held as under:-

“Thereafter, the Hon'ble Supreme Court, in the celebrated judgment of Baldev Singh Bajwa (supra) also went on to hold that only persons who had gone out of India and temporarily settled there for the purposes of undertaking certain courses or degrees of University would not be a NRI. The definition of NRI pertains to that of a person of Indian origin settled outside India and in the present case, the petitioner is holding a U.S. passport. Admittedly, the place of birth of the respondent-landlord is India, and therefore, he falls within the definition of a NRI landlord as has been held in the judgments referred above. The provisions of Section 13-B of the Act have been extended to Chandigarh as per notification dated 09.10.2009 and this notification was challenged before a Division Bench of this Court in Asha Chawla & others Vs. Union of India & others 2011 (2) RCR(Rent) 591: 2012(1) RCR(Civil)277:2011(4) PLR 376 and the Division Bench was pleased to dismiss the said writ petition. The said matter is also pending before the Hon'ble Apex Court. It is thus clear that the notification has not been stayed and the operation of law cannot be put to stop in view of the pendencies of matters before the Hon'ble Apex Court or this

Court in the absence of any interim order. The Hon'ble Apex Court, in different SLPs, has stayed eviction` which are peculiar to the said cases and it is not acceptable that Rent Controllers will be barred from proceeding with the trial of cases under Section 13-B of the Act on account of the fact that the tenants are setting up fresh challenge to the definition of NRI landlord.”

Learned senior counsel has next placed reliance on **Smt.Bachan Kaur and others vs. Kabal Singh and another** 2011 (1)RCR (Rent) 368 wherein following questions were referred to Larger Bench:-

- “1. Whether NRI/landlord who is a co-owner with the other landlords, who do not have the same status, as that of NRI can maintain a petition for eviction of the tenant from the property jointly owned by all of them?
2. Whether the premises from which eviction is sought under Section 13-B of the Act is to be let out by NRI/landlord or his duly authorized person acting on his behalf, or it can also include the letting by some other co-owner or predecessor-in-interest in their own right and not under the authority of NRI/landlord?”

In the said case, it has held as under:-

“In view of the rights of the co-owner as explained by the Larger Bench Judgment of this Court as well as by the Hon'ble Supreme Court in M/s India Umbrella Manufacturing Co., Dhannalal's cases (supra) and [Mahavir Prasad Jain v. Manohar](#)

[Lal Jain](#) 2006(2) RCR(Civil) 36, 2006(1) RCR(Rent)250: 2006 (2)SCC 724, a co-owner NRI can seek eviction of the tenant in a building though the tenant was not inducted by such NRI and that it is not necessary that all other co-owners should be Non Resident Indians. “

The Hon'ble Apex Court in **Baldev Singh Bajwa versus Monish Saini**, (2005) 12 SCC 778, has held as under:-

- “(i) Any person, who himself is of Indian Origin and/or whose parents/grand-parents are/were of Indian Origin and who is settled outside India either permanently or temporarily for taking up employment or for carrying on business/vocation would be a Non-Resident Indian;
- (ii) a Non-Resident Indian-landlord has a special right to seek immediate possession of the let-out premises if he is its owner for atleast a period of 5 years before his applying to the Rent Controller for possession and that he requires the premises for his own use and occupation and/or for anyone ordinarily living with him and is dependent on him;
- (iii) the right under Section 13-B of the Act for immediate possession can be availed of only once during the life-time of such an owner/NRI landlord;
- (iv) the NRI-landlord has the choice to select one amongst several other residential/non-residential buildings;

(v) it is not necessary for a NRI-landlord to permanently return to India for seeking eviction of the tenant;

(vi) the Courts shall presume that the need of the NRI- landlord is genuine and bonafide, though the tenant is entitled to prove that in fact and in law, the requirement of the NRI- landlord is not genuine;

(vii) a heavy burden would lie on the tenant to prove that the requirement of the NRI-landlord is not genuine and mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour;

(viii) if the NRI-landlord gets possession under Section 13-B of the Act, he can neither transfer it either by sale or by any other mode nor can he let it out for a period of 5 years and in case of any breach, the tenant is entitled to seek restoration of possession;

(ix) after getting the possession, the NRI-landlord should occupy the premises continuously for a period of 3 months.”

Section 13-B of the Act reads as under:

“13-B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian – (1)

Where an owner is a Non Resident Indian and returns to

India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:

Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the

said building and the Controller shall make an order accordingly.”

In the present case, admittedly, respondent is a non-resident Indian having Indian passport. Respondent and his brothers are the co-owners of the premises in question. Respondent as well as his brothers are residing in Canada. It is the case of the respondent that now he as well as his brothers along with their families want to settle in India and want to start their business in the premises in question by constructing a show room in the front portion and want to use back portion of the premises in question for their residential purposes. The property in question measures 19 marlas. In some portion of the premises in question, shops have been constructed, whereas, in the remaining portion of the premises in question, rooms have been constructed. It is also not in dispute that the property in question was purchased by Ram Lubhaya Verma, respondent and his mother-Parkash Wati vide sale deed dated 5.10.1967. Parkash Wati died on 17.3.1997 and after her death, her half share in the property measuring 19 marlas was inherited by Sat Pal Verma, Surinder Kumar and the respondent in equal shares.

The case of the petitioners is that, in fact, respondent had no concern with the shops in question as Sat Pal Verma had executed a general power of attorney in favour of Vinod Kumar qua shops in question and the same were rented out to the petitioners by Vinod Kumar. However, it has transpired, during the course of arguments, that Sat Pal Verma had filed a suit for possession by way of partition of the property in question but the same was got

dismissed as withdrawn on 31.5.2003 in view of the compromise effected between the parties. Thereafter, the ejectment petitions were filed by the respondent. It has further transpired, during the course of arguments, that affidavits of Sat Pal Verma and Surinder Kumar were also on record wherein they had stated that the property in question was still joint between the parties and respondent had filed ejectment petitions against the disputed tenants with their consent. In view of this factual back ground, ejectment petitions filed by the respondent were maintainable.

It is a settled proposition of law that the landlord is the best judge qua his needs and requirements. The property in question in all measures 19 marlas. Respondent and his two brothers along with their families intend to settle in India and use the premises in question for their own personal use. Respondent could get the shops vacated by moving petition under Section 13-B of the Act as they form part of one building. Moreover as per the sale deed placed on record, respondent was co-owner of the premises in question and if there was any dispute between the respondent and his other brothers,qua the property in question, the respondent could not take benefit of the same. Safeguards have been provided qua the ejected tenants in case the landlord fails to use the demised premises for his personal use and occupation under Section 13-B of the Act.

In the facts and circumstances of the present case, the learned Rent Controller had rightly allowed the ejectment petitions and had rightly dismissed the applications moved by the petitioners

for permission to contest the ejectment petitions. The judgments relied upon by the learned counsel for the petitioners fail to advance the case of the petitioners as they are based on different facts. No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

March 30, 2015
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