

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.4597 of 2014(O&M)

Reserved on 27.2.2015.

Date of decision: 13.03.2015

Neena and another

....Petitioners

Versus

Lal Chand Sidhu and others

...Respondents

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

Present: Mr. Amit Dhawan, Advocate for the petitioners.

Mr. Manish Dadwal, Advocate for the respondents.

G.S.Sandhawal J.

Challenge in the present revision petition filed by the petitioners-tenants under Section 18-A(8) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") is to the order dated 7.5.2014 whereby the Rent Controller, Jalandhar dismissed the application filed under Section 18-A (4) and (5) of the Act seeking leave to contest and allowed the petition under Section 13-B of the Act and directed eviction of the petitioners from the premises in question.

Respondents No.1 and 2/landlords filed a petition under Section 13-B of the Act seeking eviction of Subhash Chander who was the original tenant from the shop in question situated at Railway Road, Adampur Doaba, Tehsil and District Jalandhar as described in the head note of the petition on 30.4.2008. The application for leave to contest without any supporting affidavit was filed on 16.5.2008 on the ground that there was malafide intention of the owners/landlords who had gone to England and were residing there for the last 35 years. It had not been averred that they were born in India and were owners of property in question for more than 5 years. Neither any undertaking that they shall not sell or re-let the premises for further period from the date of taking possession was given. The owners/landlords were more than 65 years of age and unable to move and thus they were not in a position to carry on any

business and the site plan attached to the petition was wrong. The landlords were in possession of sufficient property at their disposal, list of which would be submitted to show that they did not require the building for the bonafide use.

The application was contested by respondent no.1 on the ground that neither the application was verified nor supported by duly sworn affidavit and had been filed after the expiry of 15 days from the date of service of summons and thus was not maintainable. The NRI status and the ownership of the respondents no.1 and 2 being admitted and therefore, the petition under Section 13-B of the Act was maintainable. The Landlords undertook not to sell the property in dispute to anybody in the event of its vacation and the same was required for their own use. They also did not have any other property as alleged nor any detail of property had been given and factum of being NRIs was admitted as they were based in England.

Thereafter, an application for filing additional grounds for grant of leave to contest was filed by the petitioners and it was averred that triable issues were being raised and various ejectment applications were filed against different tenants and all the shops could not be categorised as one building. The law was to be strictly construed and owners were not the legal heirs of Dalipa Ram.

The reply to the application for filing additional ground was filed by the owners that the application for leave to contest has to be filed within 15 days from the date of service of notice as per provisions of Section 18-A of the Act and it could not be extended. The application was thus contested by stating that it was devoid of merits and smacks of malafides and to delay the proceedings.

The Rent Controller, Jalandhar on the basis of said averments and after taking into consideration the sale deed dated 22.4.1958 which was executed in favour of Dalipa Ram, the father of the present respondents and death certificate dated 24.11.1981 came to the conclusion that the respondents had inherited the property and therefore, they were owners for the last 5 years prior to filing of the petition under Section 13-B of the Act. The passport issued

in favour of respondent no.1 by the United Kingdom of Great Britain and Northern Ireland where his place of birth was mentioned as Adampur and the notarised copy of identity card of Lal Chand issued by the NRI Sabha were taken into consideration. The argument of bonafide requirement was dispelled by placing reliance upon the judgment of Apex Court in **Baldev Singh Bajwa Vs. Monish Saini 2005(4) RCR (Civil) 492** to hold that there was presumption in favour of the NRI landlord and sufficient safeguards are provided in the Act itself to put back the tenant in possession in case of any violation. Four necessary ingredients i.e. he being an NRI, having returned to India permanently or for temporary period, bonafide requirement of accommodation and owner of the property for the last five years having been fulfilled and as such ejectment was ordered.

Counsel for the petitioners has submitted that there were other tenants also in the building and therefore, triable issue was being raised for grant of leave to contest. The second submission is that the matter is pending before the Apex Court regarding the same issue, therefore, this Court should stay its hands to decide the said matter.

After hearing the counsel for the parties, this Court is of the opinion that admittedly in similar circumstances other tenants have challenged the eviction order passed against them unsuccessfully in **Civil Revision No.6162 of 2008-Jit Ram Vs. Lal Chand and others** decided on 10.11.2008 and **Civil Revision No.5080 of 2009-Vipin Kumar Vs. Lal Chand Sidhu and others** decided on 12.9.2014. Nothing could be shown as the fact that the respondents were owners of some other premises and some other building which was in their possession and nothing was brought on record to substantiate the said allegations by showing any sale deed. It is settled principle that an NRI/landlord/owner is entitled for possession in summary manner for one building. In the present case, necessary ingredients having been fulfilled, the Rent Controller, Jalandhar was well justified in directing eviction. The ownership

as noticed was of 1958 of their father which was inherited by the respondents.

The Apex Court in **Swami Nath Vs. Nirmal Singh (2010) 9 SCC 452** has held that restrictive meaning cannot be given to the provisions of the Act and NRI owner is entitled to get one building vacated in a summary manner. The 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.”

Thereafter recently in **Kamaljit Singh Vs. Sarabjit Singh 2014(4)**

ROR (Civil) 252 the Apex Court has held that Section 13-B of the Act is a

beneficial provision intended to provide speedy remedy to NRI and once the relationship of landlord-tenant exists between the parties, the benefit of summary eviction is to be given. The relevant observations read as under:-

“18. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in the Act.”

19. The upshot of the above discussion is that the Courts below fell in manifest error in holding that the appellant-landlord was obliged to prove his title to the property, no matter the tenant clearly admits the existence of jural relationship of landlord and tenant between him and the Appellant. We have, in the circumstances, no hesitation in reversing the view taken by the Courts below and in decreeing the eviction petition.”

Section 18-A of the Act further provides that the application for leave to contest has to be filed within a period of 15 days from the date of service duly supported by affidavit of the grounds on which leave to contest is to be agitated. In the present case, the application was filed without any supporting affidavit. The statutory mandate was never complied with and application for filing additional grounds for grant of leave to contest was filed beyond the prescribed period of 15 days on 12.12.2008 which can not be taken into consideration as such.

In view of the mandate provided that the application has to be filed within the period prescribed failing which the right of leave to contest is taken

away. Therefore, any ground taken therein could not be taken into consideration. The definition of NRI under Section 2(dd) of the Act pertains to that of a person of Indian origin settled out side India and admittedly respondent no.1 falls in the definition of NRI as he was born at Adampur the place wherein the shop in question is situated and therefore, it cannot be said that he would not be a NRI for the purpose of Section 13-B of the Act as is now sought to be contended.

This Court in **Ranjit Puri Vs. Dr.Mohinder Paul Singh 2012 (3) PLR 309**, in similar circumstances, rejected the argument that the matter is pending before the Apex Court while keeping in mind the judgment passed in the case of **Baldev Singh Bajwa** (supra) and noticing that when the landlord/owner is born in India, he would fall under the definition of NRI landlord, as defined under Section 2(dd) of the Act. Merely because in some cases, eviction has been stayed, would not mean that this Court was precluded from deciding on the merits of the case.

Similar view has been taken by this Court in **Mohinder Singh Vs. Sohan Singh Sethi 2009(3) RCR (Civil) 23**, **Satnam Singh Vs. Avtar Singh 2009(3) RCR (Civil) 759**, **Manohar Lal Mahajan Vs. Kuldeep Singh Mahal 2012 (4) RCR (Civil) 104** and **Neera Kheti Vs. Sadhu Singh 2013(2) R.C.R. (Rent) 236**.

Another factor which goes against the petitioner is that conditional order of stay was passed by this Court on 26.8.2014 and the operation of the impugned order was ordered to be stayed subject to payment of arrears of rent/mesne profits within one month and rent/mesne profits by the 7th of every calendar month thereafter. Instead of complying with the said order, an application was filed by the petitioner-tenant on 17.12.2014 with a prayer that extension of time may be granted for complying with the order on account of the fact that she has received the certified copy of order from her counsel but had

compliance of the directions of this Court. In reply, the landlord specifically averred that the petitioners were in arrears of rent from June, 2002 to till date and no amount was deposited by them and prayed that the application be dismissed.

Keeping in view the observations of the Apex Court in **Rakesh Wadhawan Vs. M/s Jagdamba Industrial Corporation 2002 (5) SCC 440** wherein it has been specifically held in the principles laid down that the conduct of the tenant who is in possession is to be taken into consideration and to ensure that the rent is being paid to the landlord regularly. In the present case, even this aspect is missing as there is an admission itself that arrears of rent have not been cleared and the ground given is that the certified copy of order of this court had not been supplied to their counsel by the petitioners in the trial Court. Thus, in such circumstances, the petitioners having violated the interim protection granted by this Court cannot claim any equity.

Accordingly, the present revision petition is dismissed being bereft of any merits.

13.03.2015
Pka

(G.S.SANDHAWALIA)
JUDGE