

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

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**Civil Revision No.5364 of 2015
Date of Decision:21.08.2015**

Banwari Lal Gupta

....petitioner

Versus

Bhupinder Singh

.....respondent

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

1.Whether Reporters of local papers may be allowed to see the judgement?

2.To be referred to the Reporters or not? YES

3.Whether the judgment should be reported in the Digest?

Present: Ms.Promila Nain, Advocate and
Ms.Anita Wadhwa, Advocate
for the petitioner

ARUN PALLI, J.(ORAL):-

Vide order being assailed dated 07.07.2015, rendered by Civil Judge (Jr.Divn.), Ludhiana, application moved by the petitioner-tenant seeking amendment in his application for leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, 'the Act'), has since been dismissed.

Vide a proposed amendment, what is sought to be pleaded, is that the respondent-landlord has failed to prove his status as an NRI and he does not even meet the ingredients of provisions of Section 13-B of the Act. Further, he does not intend to settle down in India as his family is already settled in Malaysia.

In response, the respondent-landlord contested the application moved by the petitioner and it was averred that such an

application was not even maintainable. Further, the eviction petition was pending since 04.02.2011, and petitioner-tenant has been moving false and frivolous applications on one pretext or the other.

On a consideration of the matter in issue, the learned Rent Controller declined the prayer, and it was concluded:

“I have heard both the counsels of the parties and come to the conclusion that the present application for the amendment of application for seeking to leave the contest the present petition is not maintainable. Applicant alleges that the necessary requirement of Section 13-B has not been fulfilled in the present case. Onus to prove the fact that the petitioner is an NRI and now he has returned to India permanently or temporarily period and he is having no accommodation and he has not instituted any ejectment proceedings from last 5 years, is upon the petitioner. It is a settled principle of law that pleading should include the facts not the law. Whether applicant has fulfilled the condition of Section 13-B or not, it is between the petitioner and court, so applicant/respondent cannot raise a question on this aspect. I am of the considered view that application has been filed just to delay the present case and is hereby dismissed being

devoid of merit.”

I have heard learned counsel for the petitioner and perused the paper book.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant revision petition is wholly devoid of merit and, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Needless to assert, onus to plead and prove that the respondent-landlord is indeed a Non-Resident Indian, in terms of Section 2 (dd) of the Act, is upon the respondent himself. Likewise, onus to prove: Whether he even meets the ingredients of provisions of Section 13-B of the Act, shall also be upon the respondent-landlord. Therefore, proposed amendment, in the application seeking leave to contest, was wholly misconceived. Further, whether the respondent-landlord indeed intends to settle down in India as his family is already settled in Malaysia, is a question which the Rent Controller shall examine in the wake of the requisite material on record in accordance with law. Ex facie, the application was moved by the petitioner with a sole purpose to delay and derail the proceedings and, is, thus, nothing short of an abuse of process. Therefore, the petition lacks both merits as also the bona fides. Records show that the eviction petition filed by the respondent is pending since 04.02.2011 i.e. for the past more than 4 years and the matter is still at the stage of consideration of the application moved by the petitioner-tenant for leave to contest the proceedings. That being so, Rent Controller, Ludhiana, is directed to decide the said

application within a period of three months from the receipt of the certified copy of this order.

That being so, no interference is warranted in exercise of revisional jurisdiction, under Article 227 of the Constitution of India. The petition being devoid of merit is, accordingly, dismissed. Needless to assert, this order shall not constitute any expression of opinion on merits of the case of either party.

21.08.2015

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(ARUN PALLI)
JUDGE