

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.5291 of 2013(O&M)
Date of decision: 21.02.2015

Kamaljit Kaur Parmar alias Kamal Gurtaj Singh

....Petitioner

Versus

Gurinder Singh Gill

...Respondent

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

Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. Arjun Lakhanpal, Advocate for the petitioner.

Mr. Rajinder Goyal, Advocate for the respondent.

G.S.Sandhawalia J.(Oral)

Reply to the Civil Misc. Application No.24808-CII of 2014 filed in Court today is taken on record.

Office to tag the same at appropriate place in the file.

Challenge in the present revision petition is to the order dated 31.5.2013 whereby the Rent Controller, Chandigarh has granted leave to defend to the tenant in the application under Section 18-A of the East Punjab Rent Restriction Act, 1949 (hereinafter referred to as "the Act").

A perusal of the order passed by the Rent Controller, Chandigarh would go on to show that the leave was granted on the ground that application under Section 13-B of the Act filed by the petitioner-landlady was being contested through power of attorney and therefore, the said power of attorney did not have any personal knowledge of the principal NRI. It is admitted by the counsel for the parties that some of the observations made in the impugned order are part of the observations made in Civil Revision No.5491 of 2008, which were never the grounds for leave to defend under Section 18-A of the Act. The order which has been passed does not notice the fact that the attorney namely Col (Retd.) Gurtaj Singh is none else but the husband of the petitioner-landlady, namely, Kamaljit Kaur Parmar. The close relationship between the husband/wife

and the authority to initiate the litigation has obviously been missed by the Rent Controller, Chandigarh while placing reliance upon **Basant Kumar Vs. Romesh Kumar Deora 2008(4) PLR 313.**

After noticing the observations of the Apex Court in **Baldev Singh Bajwa Vs. Monish Saini 2005(4) RCR (Civil) 492,** it is to be noticed that in **Satnam Channan Vs. Darshan Singh 2006(2) PLR 459** this Court took the view that the power of attorney can depose for the landlord. The relationship of the parties in the said case as attorney who was son of the landlord was taken into account and this Court came to the conclusion that petition under Section 13-B of the Act wherein leave to contest had been granted could not be interfered with on this account.

Thereafter in **Shri Sita Ram Vs. Smt. Malwinder Kaur 2008(4) PLR 793** this Court has laid down that the NRI-landlord can maintain a petition under Section 13-B of the Act through a power of attorney and it is not necessary to give detailed reasons for seeking eviction in the power of attorney.

In **Anita Sood and others Vs. Manjit Singh 2011(2) PLR 666,** the mother who had filed the petition under Section 13-B of the Act in her capacity of power of attorney for ejectment of the tenant was allowed to prosecute the said application on the ground of relationship interse the parties.

Similarly, in **M/s Hind Sons Agency and others Vs. Sh. Jai Parkash Jain 2012(2) PLR 541** the same view was followed as was done in **Amarjit Singh Vs. Amarjit Kaur 2012(4) PLR 726.**

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. However, it was also specifically laid down once close relationship interse the parties like that of husband/wife are there and the husband having knowledge is competent to pursue the petition on behalf of wife. 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 in mind the principles laid down in Clause (c) and (g), this Court is of the opinion that the Rent Controller, Chandigarh was not justified in allowing the leave to contest on this ground.

Another aspect which is to be taken into consideration is that proceedings at this stage are only under Section 18-A of the Act and adverse inference should not have been drawn. It is settled principle that leave to defend has to be granted on the grounds which are laid down in the application for leave to defend filed as has been held by the Apex Court in **Baldev Singh Bajwa's case** (supra). The Rent Controller thus is only to limit the exercise to find out whether the petition under Section 13-B of the Act is maintainable and necessary ingredients of the landlord/owner are fulfilled, namely, being owner of the property for five years prior to filing of the petition, intention to come back and falling under the definition of NRI under Section 2(dd) of the Act and bonafide requirement.

Thus, the impugned order cannot as such be ~~sustained~~ and is

accordingly set aside. The Rent Controller, Chandigarh is directed to re-conduct the exercise afresh pertaining to the application under Section 18-A of the Act keeping in mind the above observations. The needful be done within a period of two months from the date of receipt of copy of this order.

Accordingly, the present revision petition is allowed.

21.02.2015
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(G.S.SANDHAWALIA)
JUDGE