

CR Nos.7054 & 7055 of 2013 (O&M)

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

(1) **CR No.7054 of 2013 (O&M)**
Date of decision:24.02.2015

Anil Kumar ...Petitioner

Versus

Smt. Gurmit Kaur ...Respondent

(2) **CR No.7055 of 2013 (O&M)**
Date of decision:24.02.2015

Shri Krishan ...Petitioner

Versus

Kishan Dass ...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Amit Jhanji, Advocate,
for the petitioner(s).

Mr. Mansur Ali, Advocate,
for the respondent(s).

Rakesh Kumar Jain, J.

This order shall dispose of two revision petitions bearing CR Nos.7054 & 7055 of 2013 as both are inter-connected. However, for the sake of convenience, the facts are extracted from CR No.7054 of 2013.

The present petition has been filed by the tenant against the order of eviction passed against him under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (here-in-after referred to as the "Act") by the Rent Controller on 12.04.2012. His appeal was dismissed by the Appellate Authority on 28.09.2013 on the ground that it is not maintainable.

In brief, the respondent-landlady filed the ejectment petition on 24.03.2006 being an NRI on the ground of personal necessity alleging that she has retired from her job and her husband is also retiring within one year and intends to settle down in India finally. The demised premises forms part of the residence and bears one Unit No.B-12. It is pleaded that she is having 4 married sons who wanted to settle with their children in India permanently. The ejectment petition was allowed by the Rent Controller initially when the application seeking leave to defend was dismissed but the said order was set aside by this Court in CR No.5385 of 2008 on 08.09.2011. Thereafter, the parties led their respective evidence and the Rent Controller again passed the order of eviction on 12.04.2012 which was challenged by the petitioner by way of appeal but it was dismissed by the Appellate Authority on 28.09.2013 on the ground that the appeal against the order of eviction passed under Section 13-B of the Act is not maintainable, therefore, the petitioner may avail his remedy, as available to him, under the law.

Counsel for the petitioner has argued that as per Section 13-B of the Act, the landlord has to be an NRI, owner of the demised premises from the last 5 years before institution of the eviction petition and has not filed the petition earlier for seeking eviction of the tenant on that premise. It is submitted that the landlady, while appearing as PW1, has admitted that she had earlier filed an ejectment petition under Section 13-B of the Act in respect of other shops but those petitions were dismissed. The petitioner has also filed an application for additional evidence in order to bring on

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record the petition filed under Section 13-B of the Act by the landlady against Jugal Kishore and another which was dismissed on 19.08.2010. It is, thus, contended that the landlady could have filed the petition under Section 13-B of the Act only once in her life time and once that right had already been exercised in respect of the property in possession of Jugal Kishore, the present petitions, either filed by her or by her husband being a co-owner, are not maintainable.

On the other hand, counsel for the respondent-landlady has submitted that she has only one property bearing Unit No.B-12, Sheemar Market, Gurjeet Nagar, Garha Road, Jalandhar in which there are many shops. He has drawn the attention of this Court to the petition filed by the respondent-landlady against Jugal Kishore etc. in respect of shop No.1, situated in Unit No.B-12, the petition filed by Krishan Dass, husband of the respondent-landlord in respect of shop no.5, forming part of property No.B-12 and the present petition in respect of shop no.3, forming part of property/Unit No.B-12, which is the same property bearing House No.7, Sheemar Market, Gurjeet Nagar, Garha Road, District Jalandhar. He has submitted that there is no dispute that the NRI landlord can exercise the right of summary eviction under Section 13-B of the Act only once in the life time but if the property forms one unit having other parts, the landlord can still file the petition for eviction as it would be considered to be a single building. In this regard, he has relied upon a decision of the Supreme Court in the case of **Zenobia Bhanot v. P.K. Vasudeva and another**, 1996(1) PLR 220, followed by this Court in the cases of **M/s Bhandari General**

Store and another v. Makhan Singh Grewal, 2006(2) PLR 167, **Mukesh Kumar v. Santosh Kumari and others**, 2007(1) PLR 801, **Pritam Singh v. Dilbagh Rai**, 2007(4) PLR 712 and **Assa Singh v. Charanjiv Singh Gulati**, 2005(1) PLR 608.

I have heard learned counsel for the parties and examined the available record with their able assistance.

Section 13-B of the Act confers a right upon a Non Resident Indian to recover immediate possession of residential building or scheduled building and/or non-residential building. Section 13-B of the Act is reproduced 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."

The proviso to Section 13-B(1) of the Act says that the NRI landlord can apply in respect of such a building under this Section only after a period of five years of becoming the owner of such building and such right would be available only once during the life time of such an owner.

The only dispute raised by learned counsel for the petitioner is that the landlady had admittedly filed an eviction petition against one of the tenants, namely, Jugal Kishore while exercising her right under Section

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13-B of the Act which shall be deemed to have been exercised by her other co-sharer, namely, her husband as well, therefore, the present petitions filed by her and by her husband are not maintainable.

At the first blush, this argument appears to be attractive but in view of the decision of the Supreme Court and various other decisions of this Court if the demised premises forms part of one building in which there are several tenants occupying several shops, the NRI landlord can always file the eviction petitions under Section 13-B of the Act in respect of all the tenants. In this regard, the decisions referred to by learned counsel for the respondent are squarely applicable and insofar as the question as to whether the demised premises forms part of the single building is concerned, it can be easily ascertained from the description of the building given in all the three petitions, namely, the present petitions which are being disposed of by this common order and the petition which was filed earlier by the respondent-landlady against Jugal Kishore and Rattan Lal in respect of shop no.1, which also forms part of Unit No.B-12, House No.7, situated in Sheemar Market, Gurjeet Nagar, Garha Road, Jalandhar.

No other point has been raised.

In view thereof, I do not find any merit in both revision petitions and hence, the same are hereby dismissed though without any order as to costs.

February 24, 2015
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(**Rakesh Kumar Jain**)
Judge