

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

CR NO.7145 OF 2013 (O&M)
DATE OF DECISION : 6th FEBRUARY, 2015

Ravinder Singh

.... Petitioner

Versus

Shander Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SURINDER GUPTA

* * * *

Present : Mr. Atul Jain, Advocate for the petitioner.

Mr. S. S. Rangi, Advocate for respondent.

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SURINDER GUPTA, J. (ORAL)

1. Heard.

2. Respondent-Shander Singh filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, (in short, the Act) seeking ejectment of the revision petitioner on the ground of personal bonafide necessity to set up his business in the entire building, of which the demised shop is a part. As per the respondent-landlord he intended to return and permanently settle in India. He is presently residing in United Kingdom and required the demised shop for his own use. He intended to start business for which he require the entire building of plot no.3 and 4 of which the demised shop is also a part and he had instituted similar ejectment petitions against other tenants.

3. In his application, seeking leave to defend the revision petitioner denied that the shop is required by the respondent-landlord for his personal bonafide necessity. It was alleged that the shop was let out by

Nirmal Singh-attorney of revision petitioner (since deceased) by proclaiming himself to be owner of the property. The shop was earlier in possession of Gurbachan Singh on rent @ ₹450/-. It was got vacated from Gurbachan Singh and let out to the revision petitioner in August 2006 at the monthly rent of ₹1550/- which was increased to ₹1625/- later on. Thereafter, the attorney of respondent-landlord started pressing hard the revision petitioner to enhance the rent to ₹2,000/- per month. It was pleaded that Shander Singh had no concern with the property. He is settled abroad permanently and has not come to India so far. The other pleas raised in the petition were also denied.

4. In reply this fact was admitted that the demised shop was got vacated from Gurbachan Singh and let out to the revision petitioner with the plea that when one tenant vacate a shop the same was let out to another tenant at the prevalent rate of rent.

5. All the other averments of the revision petitioner were contested controverted and denied.

6. Petition filed by the revision petitioner seeking leave to defend was declined vide order dated 27.09.2013 passed by learned Rent Controller, Jalandhar and he was directed to vacate and hand over the vacant possession of disputed shop to respondent-landlord.

7. I have heard learned counsel for the parties and perused the case file.

8. Learned counsel for the revision petitioner has argued that firstly the petition under Section 13-B of the Act filed by Nirmal Singh in his capacity as attorney of respondent-landlord was defective as the power of

attorney executed by Shander Singh nowhere disclosed that he is coming to India and intends to start his business here. The averments in the petition were made by the attorney from his personal knowledge and not on the instructions given by the respondent-landlord in the special power of attorney. The shop was let out in 2006 and this petition was filed in April 2008 and in case the petitioner had the requirement of the shop he would not have let out the shop to the revision petitioner and the plea of bonafide necessity projected is only a farce. He has relied upon the observations of the Hon'ble Supreme Court in the case of ***Baldev Singh Bajwa vs. Monish Saini, 2005 (2) RCR 470*** and ***Devinder Kumar vs. Nachhattar Singh, 2015(1) RCR (Civil) 186***. Secondly, that the need projected by respondent-landlord was prima facie not bonafide and to prove this fact the revision petitioner should be allowed leave to contest the petition and prove his plea.

9. Admittedly, the shop was let out to the revision petitioner by Nirmal Singh in his capacity as attorney of the respondent-landlord who is residing in England, as such, the revision petitioner in his capacity as tenant has no right to challenge the status of the respondent-landlord. The averment of the respondent-landlord that he intends to start his business in the premises on plot No.3 and 4 situated opposite District Court, Jalandhar, are supported by the affidavit placed on file and there is no reason to disbelieve this fact. Nirmal Singh was duly authorized by the respondent-landlord to file the petition on his behalf and all the pleas taken in the petition were presumed to be based on the instructions given to him and not on the personal knowledge of the attorney.

10. On perusal of the paper book and judgment of the Court below I find no substance in any of the submission put forth by learned counsel for the revision petitioner. In the case of **Baldev Singh Bajwa (supra)** Hon'ble Supreme Court while discussed the scope and domain of the provision contained in Section 13-B of the Act and in para 23 to 25 of aforesaid judgment observed as follows:

“23. Definition of “Non-resident Indian”

(NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period.

....XXX.....XXX.....XXX..... XXX.....XXX.....XXX.....

Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2 (dd) and 13-B of the Act of 1949, it is necessary

that NRI has to return to India permanently. We are unable to agree with the interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase “return to India” along with the definition of the “NRI” under Section 2(dd) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

24. When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the

accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words “return to India” under Section 13-B of the Act denotes return to India permanently.

25. On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to a NRI to get one building vacated in a summary manner. A Non-resident Indian landlord is required to prove that:- (i) he is a NRI; (ii) that he has return to India permanently or for the temporary period; (iii) requirement of the accommodation by him or his dependent is genuine and; (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit

asking for leave to contest the NRI landlord's application should confine to the grounds which NRI landlord is required to prove, to get ejectment under Section 13-B of the Act. The Controller's power to give leave to contest the application filed under Section 13-B circumscribe to the grounds and inquiry to the aspects specified in the Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall be considered by the Controller.”

11. This fact is not disputed that Nirmal Singh was attorney of respondent-landlord. Even if he had let out the premises to the revision petitioner, the respondent-landlord in his capacity as the owner of the demised premises was competent to file the ejectment application. The mere fact that Nirmal Singh represented himself to be owner of the suit property at the time of letting out, gave rise to no triable issue to allow the revision petitioner to contest this petition.

12. The respondent-landlord intends to start business in the demised premises. There is no reason to doubt his intention. The mere fact that the shop was let out to the revision petitioner in 2006 and this petition is filed in 2008, raises no issue to make out ground to grant leave to defend. The respondent-landlord has specifically pleaded that shops were being let out to the tenants in routine and after the vacation of the shop by one tenant

Gurbachan Singh it was let out to revision petitioner in the year 2006. This does not depict that the respondent could anticipate at the time of letting out the shop that he may require the same in the year 2008 for his personal bonafide necessity. The schemes and planning keep on changing. A person who is living abroad may be feeling comfortable while staying there but after some time, for reasons personal to him, may think of returning to India or to start his business in India. This nowhere creates any suspicion about bonafide need projected by the respondent-landlord in this case.

13. Learned counsel for the appellant referred to the observation made by Hon'ble Supreme Court in para 18 of the judgment in the case of ***Baldev Singh Bajwa (supra)*** and has argued that the tenant has right to seek leave to defend to prove that the need of the respondent landlord is not bonafide.

14. Hon'ble Supreme Court in para 18 of the judgment in the case of ***Baldev Singh Bajwa (supra)*** has observed as follows:

“A tenant's right to defend the claim of the landlord under Section 13-B for ejectment would arise if the tenant could be able to show that the landlord in the proceedings is not NRI landlord; that he is not the owner thereof or that his ownership is not for the required period of five years before the institution of proceedings and that the landlord's requirement is not bona fide.”

15. In this case plea raised by the revision petitioner make out none of the reasons referred above for grant of leave to defend. In the case of ***Devinder Kumar (supra)*** the reliance was placed on the observation made in the case of ***Baldev Singh Bajwa (supra)***. The observation in the above citations are not helpful to the revision petitioner in this case as he has not been able to make out any of the ground as discussed in the case of ***Baldev Singh Bajwa (supra)*** for grant of leave to defend.

16. It is settled principle of law that Rent Controller is to adjudicate upon the issues and has to grant leave to contest if the pleadings and the affidavit placed on record disclose some triable issue. In the absence of the same, the application under Section 18-A of the Act cannot be allowed just because the tenant wishes to contest the plea raised by the NRI landlord. It was so observed in the case of ***Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal 1982(3) SCC 270*** and ***Sham Lal Khera Vs. Sudershan Kumar Rao, 2011 (4) PLR 656.***

17. The Rent Controller has to decide on the basis of cogent and material fact supported by documents placed before him as to whether any reason to allow the leave to contest was made out. The observations of Hon'ble the Supreme Court in the case of ***Baldev Singh Bajwa (supra)*** are relevant factors to be looked into.

18. Section 13-B of the Act is a beneficial provision introduced by the State Legislature to provide speedy remedy to the non-resident Indian. Allowing the leave to defend merely on the wish of the tenant or by raising

all type of plea including denying the title of landlord will result in defeating the very purpose for which this provision has been introduced in the Act.

19. On perusal of the paper book and the order passed by learned Rent Controller I find no legal or factual infirmity therein calling for any interference. This revision petition has no merit and the same is dismissed.

6TH February, 2015
'raj'

(SURINDER GUPTA)
JUDGE