

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.7769 of 2012 (O&M)

Date of decision:06.02.2015

Gurdev Singh

....Petitioner

Versus

Satpal Singh Makkar & others

.....Respondents

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

Present: Mr.Rajesh Sood, Advocate, for the petitioner.

Mr.M.S.Sachdev, Advocate, for the respondent.

G.S.Sandhawalia J.

Challenge in the present revision petition, filed under Section 15 (5) of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), by the tenant, is to the order dated 26.10.2012 (Annexure P1), whereby the Rent Controller, Jalandhar has allowed the petition filed under Section 13-B of the Act and dismissed the application under Section 18-A and accordingly, ordered eviction from Kothi No.101, Urban Estate Phase-II, Jalandhar.

The petition dated 25.08.2012 (Annexure P2) was filed on the strength of the sale deed dated 11.01.1990, which reflected the ownership of the respondent who was born in Rajasthan and worked at Kota. Later, he shifted to the G.N.D.U. Regional Centre, Jalandhar and thereafter, he had gone to the USA in the year 1991 and had kept on working in USA and now had intention of coming back to India. He had even applied for the post of Principal in Lyallpur Khalsa College, Jalandhar and his application was pending which was also attached in support of the petition. The house in question was owned by him and he had not availed of his remedy under Section 13-B of the Act and had leased out the house to Gurbachan Singh, the

respondent No.2. The rent was being submitted to one Barkat Ram, his agent and the receipts were duly issued. The said person died in March, 2004 and thereafter, the respondents had refused to pay rent and they were also in arrears of rent, for which separate petition was filed for payment of arrears of rent @ ₹6000/- per month. A Civil Suit had also been filed for injunction by Satwant Kaur, respondent No.2, the wife of Gurbachan Singh. The petitioner having no other house, was residing at house No.341, Hargobind Nagar, Phagwara, which was house of his first cousin.

The petition was resisted by the present petitioner by filing an application under Section 18-A of the Act, for leave to contest and the plea taken was that the respondent was not a Non Resident Indian, as defined under Section 2(dd) of the Act and neither he was the owner nor he was landlord of the property. The property had been taken on rent from Barkat Ram, who was the owner and landlord and rent had been paid regularly to him by Gurbachan Singh. It was alleged that the property was in possession of the present petitioner as a tenant whereas other respondents were coming and going. There was no relationship of landlord-tenant and thus, the factor could only be determined by leading evidence.

The application was contested by the respondent on the ground that he was an NRI and all documents were attached. The relationship had been admitted in the previous litigation, filed by the co-tenant and Barkat Ram was only an agent and the respondent had every right to get the property vacated.

Keeping in view the pleadings, the Rent Controller has passed the eviction order, as noticed above, by taking into account the US passport which shows the nationality of the respondent as an Indian and accordingly, held that he was an NRI as defined under Section 2(dd) of the Act. The sale

deed dated 11.01.1990 was examined and it was noticed that the property had been purchased from Paramjit Singh by the attorney of the respondent and it was held that the ownership was more than 5 years, before the filing of the present petition. The site plan filed was correct and in the absence of any counter-site-plan and the relationship had been accepted on the ground that he was owner and Barkat Ram was only an agent. The intention to come back was noted and keeping in view the strong presumption in favour of the NRI landlord, the contention of the petitioner-tenant was rejected.

Counsel for the petitioner has vehemently argued on two issues; that once there was a triable issue regarding the ownership and secondly, there was the pendency of the Special Leave Petition, before the Apex Court of the issue of having a US passport, therefore, leave to defend should have been granted.

The said contentions having been noticed, are liable to be rejected, since admittedly, the respondent is owner in possession of the property in question, as per the sale deed dated 11.01.1990 and thus, he was the owner of the property for more than a period of 5 years from the date of filing of the petition under Section 13-B of the Act. The necessary ingredients which are required for the ejectment, regarding the intention to come back, being an NRI and *bona fide* requirement of the premises and being the owner of the property for more than 5 years, were, thus, fulfilled. The Apex Court in **Baldev Singh Bajwa Vs. Monish Saini (2005) 12 SCC 778** has laid down the principles and it has also been held that there is a presumption in favour of the NRI owner. The said view has further been approved by a five Judges Bench of Apex Court in **Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452** wherein it has been held that no restrictive meaning is to be given. Thereafter, in **Kamaljit Singh Vs. Sarabjit Singh 2014 (4)**

RCR (Civil) 252 it has further been held by the Apex Court that it is a beneficial piece of legislation and the purpose of providing speedy remedy to NRIs who return to their native places. 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.”

Accordingly, the judgment relied upon by counsel for the petitioner in the case titled **Joginder Kaur Channa Vs. Dinesh Bhatia & another 2014 (2) RCR (Rent)148** would not be applicable, in the facts and circumstances of the present case.

The issue of Barkat Ram being the owner also, would not lie in the mouth of the petitioner, as admittedly, under Section 13-B of the Act, the owner is entitled for claiming the possession and the sale deed which is in his favour cannot be discounted and the relationship of landlord-tenant cannot be denied. It is also pertinent to mention that in the petition filed under Section 13-B of the Act, for claiming the arrears of rent, which had been mentioned under Section 13-B of the Act itself, the mother of the petitioner, Satwant Kaur had only put in appearance to contest and in her reply, had admitted that the present respondent was the owner and landlord of the disputed property and had leased it to her husband. The provisional assessment of rent had also

Rule 3 CPC, on account of not leading the evidence by the respondent. Thus, the facts, as discussed above, would go on to show that the tenancy had been accepted by none other than the mother of the present petitioner, who is arrayed as respondent No.2. On the issue of the landlord having the US citizen would not also detain this Court for very long since the certificate of registration shows that the petitioner is an overseas citizen of India and was born in India. The photocopy of the registration certificate was placed on record after showing the original of the same, by the respondent, who came present in Court. The same has been issued by the Consulate General of India, Chicago, USA, on 17.07.2012.

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. The relevant para reads as under:

“6. Thereafter, the Hon'ble Supreme Court, in the celebrated judgment of **Baldev Singh Bajwa** (supra) also went on to hold that only persons who had gone out of India and temporarily settled there for the purposes of undertaking certain courses or degrees of University would not be a NRI. The definition of NRI pertains to that of a person of Indian origin settled outside India and in the present case, the petitioner is holding a U.S. passport. Admittedly, the place of birth of the respondent-landlord is India, and therefore, he falls within the definition of a NRI landlord as has been held in the judgments referred above. The provisions of Section 13-B of the Act have been extended to Chandigarh as per notification dated 09.10.2009 and this notification was challenged before a Division Bench of this Court in **Asha Chawla & others Vs. Union of India &**

others 2011 (4) PLR 376 and the Division Bench was pleased to dismiss the said writ petition. The said matter is also pending before the Hon'ble Apex Court. It is thus clear that the notification has not been stayed and the operation of law cannot be put to stop in view of the pendencies of matters before the Hon'ble Apex Court or this Court in the absence of any interim order. The Hon'ble Apex Court, in different SLPs, has stayed eviction` which are peculiar to the said cases and it is not acceptable that Rent Controllers will be barred from proceeding with the trial of cases under Section 13-B of the Act on account of the fact that the tenants are setting up fresh challenge to the definition of NRI landlord.”

Similar view has been taken by the Co-ordinate Benches of this Court in *Harjinder Singh Vs. Baljit Kaur 2012 (1) RCR (Civil) 184* wherein the NRI landlord was a citizen of UK and born in Hoshiarpur and accordingly, this Court upheld the eviction order, keeping in view the Full Bench's decision of this Court in *Anwar Ali Vs. Gian Kaur 2011(2) RCR (Rent) 604*. In *Rakesh Rishi Vs. Bakhshish Kaur 2013 (4) PLR 401*, the owner holding a British passport was allowed the benefit of possession under Section 13-B of the Act, keeping in view the fact that the requirement had been fulfilled.

Accordingly, keeping the above facts in mind and the fact that the petitioner had even applied for the post of Principal at a college in Jalandhar and thus, the intention of coming back is apparent and merely holding certificate of registration of an overseas citizen would not disentitle him, in any manner, keeping in view the observations of the Apex Court in *Kamaljeet Singh* (supra).

In view the observations made above, the present revision petition is dismissed.

06.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE