

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 8430 of 2014 (O&M)

Date of decision: 08.05.2015

M/s Aar Computer Solution

... Petitioner

versus

Karnail Singh

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. I.S. Pabla, Advocate for the petitioner.

Mr. Arun Bhardwaj, Advocate for the respondent.

K.Kannan, J.

The revision is against the order of eviction passed in favour of the landlord in an application filed under Section 13 B of the Rent Restriction Act. The claim by the landlord was that he intended to start his business on return from USA where he has been living for the last over 19 years. The contention in defence was that there was no landlord tenant relationship and that the tenant took the property only from one Charan Singh. It was also the contention of the plaintiff that he has not expressed any particular time frame when the landlord wanted to commence his business on return to India or when he was going to return to India. The Court found the evidence given on behalf of the landlord by his wife to be adequate proof of his bonafide requirements and directed ejectment.

Learned counsel appearing on behalf of the tenant argued that the landlord was alleged to have made a power of attorney to one Ramesh Chand Tiwari but the power of attorney was not even filed in Court. It is the further contention that the landlord Karnail Singh himself was not examined as a witness but only his wife had given evidence in her alleged capacity as co-owner. If she was the co-owner, she could have herself filed the petition and there was no reason given

by the wife about any particular disability of her husband to come to Court to give evidence. He also argued that the tenant relationship of the tenant is only with one Charan Singh and there was no relationship of landlord and tenant with the petitioner and his wife to sustain the petition.

I asked the counsel appearing on behalf of the parties to produce the evidence before the Rent Controller. I have the copy of the evidence given by the landlord's wife. I find that she speaks about the requirement of her husband as a person who has been living along with him and has given the details of when she and her husband migrated to USA for running a fast food and grocery business. She has also given the details of her passport and the desire of her husband and herself to return to India and that they have made the selection of Chandigarh as a beautiful city to have their own business. The wife has given evidence about the ownership of the property along with her husband. The argument that the petitioner was himself not examined to prove his personal necessity and hence the evidence cannot be taken to be tenable in the light of the Section 120 of the Indian Evidence Act. The said Section makes rule of evidence that in all the civil proceedings, the husband and wife shall be competent witness for the other spouse. There could be exceptional situation where the evidence made has to be with reference to certain matters which is only within the personal knowledge of one to the exclusion of others. If the husband sets out a case of necessity to return to India to start a business and that expression of intention finds vouched by the wife's version in Court, I will not find anything lacking in such evidence to doubt bonafides. I would take the wife's evidence of what I have read as adequate to uphold the plea of bonafides. There can be no tenable objection for the husband. The competency of spouse to give evidence on behalf of other spouse has been considered in some of decisions by reference to Section 120 of the Evidence Act. The following are the decisions:

1. Vedpal and others Vs. Shakuntala @ Aruna 2005 (2) RCJ

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2. Sri Regulavalasa Rama Rao Vs. Smt. Munagavalasa Kanakaratnam 2006 (2) RCJ 132.
3. Rajni Tiwari Vs. Bhagyawati Bai, 2012 (2) MPLJ 536.
4. Daya Shanker Vs. Umesh Chandra, 2012 (92) ALR 848.

No other position is required to be explained.

The contention that there is no relation of landlord and tenant is equally not tenable in the light of the evidence which is available. It has been elicited in the cross-examination of wife that the property had been given on rent at the instructions of her husband and herself through one Charan Singh. It is admitted that the petitioner has taken property from Charan Singh. The nexus is clearly established that Charan Singh was letting out the property on behalf of the landlord and the landlord who claims to be a NRI was competent to maintain the petition. The plea of absence of jural relationship can not therefore, be countenanced.

There is also a faint argument that a foreign citizen cannot be NRI and that the issue is pending before Hon'ble the Supreme Court. This Court has had an occasion to deal with this issue at length in M/s Blue Sky Worldwide Travel and another Vs. Harvinder Singh in CR No. 2217 of 2015 and I have brought out the fact that the definition of NRI under the Act makes out no requirement of proof of citizenship. All that it requires is that he is a person of Indian origin. Even the Foreign Exchange Management Act which defines a person of Indian origin creates no fetter for possession of foreign citizen to own any property other than agricultural land, in which event permission of Reserve Bank of India is necessary. Otherwise the ownership of foreign citizen to own property in India is not prohibited. The citizenship Act also does not create any fetter.

Before parting I will only make reference to the fact to the plea that the power of attorney in favour of Ramesh Chand Tiwari is not established has no meaning since the petition has been presented in

the name of Karnail Singh himself and not the power of attorney. If there had been a power to Ramesh Chand Tiwari and his presence was not necessary for institution, then the issue of whether the power of attorney was established or not obtains no meaning.

The order of eviction is maintained. Time of eviction four months.

08.05.2015

kv

(K.KANNAN)
JUDGE