

CR-1322-2012 (O&M)
Date of decision : 17.05.2016

versus

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Mr. Aalok Jagga, Advocate
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

This petition has been filed against the order dated 06.01.2012

rejecting the prayer for grant of leave to defend and allowing the eviction petition.

The respondents had filed the petition on the ground that the respondent No.1 was a Non-Resident Indian and, having retired he wanted to come back to India to live a comfortable retired life with his one unmarried daughter. The respondent No.2 being brother of the respondent No.1 was the attorney to collect the rent from the petitioners. The petitioners filed an application for leave to defend under Section 18-A (5) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act of

1949") alleging that the respondent No.1 having not relinquished the Indian Citizenship he was not a Non-Resident Indian. The second ground taken was that the petition had been filed through General Power of Attorney. The Rent Controller having allowed the petition the parties are before this Court.

The learned Additional Advocate General has also argued on the lines of the arguments raised in the Court below. As regards the contention that the respondent No.1-landlord is not an NRI because he has not relinquished his Indian Citizenship the same flies in the face of the definition clause under Section 2 (dd) of the Act of 1949 which is as under :-

“Section 2 (dd)

Non-resident Indian” means a person of Indian origin, who is either permanently or temporarily settled outside India in either case -

- (a) for or on taking up employment outside India; or*
- (b) for carrying on a business or vocation outside India;*
or
- (c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for a uncertain period;”*

The petition filed by the respondents clearly mentioned that the respondent No.1 had been living in England for several years and had retired and wanted to come back to India because he and his wife were suffering from various ailments and he had no other house at Chandigarh. Further as per the petition the respondent No.1 had one un-married daughter who stay with him.

In my opinion, the respondents clearly well within the parameters of Section 2 (dd) (supra).

As regards the second argument that the petition was filed through General Power of Attorney, the Rent Controller has found that the original petition and the affidavit were duly executed by the respondent No.1 himself and the petition was only filed through an attorney.

In the case of ***Basant Kumar v. Romesh Kumar Deora, 2008(2) RCR (Civil) 176*** this Court while holding that the power of attorney could not give evidence with regard to facts on the principle that he would not have knowledge about the facts exclusively within the knowledge of the principle however noticed as follows in para 6 :-

“Though the NRI has himself filed an affidavit before this Court but there was no such affidavit on record of the Rent Controller. There the petition and the affidavit in the form of evidence were filed by power of attorney holder.”

In the circumstances, the second contention made by the learned Additional Advocate General, Haryana is also rejected.

The petition is dismissed.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

17.05.2016
Pooja sharma-I

(AJAY TEWARI)
JUDGE