

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1698 of 2016

Date of Decision.04.03.2016

Manik Book Shop

.....Petitioner

Vs.

Gurdev Singh and another

.....Respondents

Present: Mr. Sanjeev Patiyal, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. In a petition filed by NRI for eviction under Section 13-B of the East Punjab Urban Rent Restriction Act, the contention is that the plaintiff is not an Indian citizen and therefore, he cannot invoke the provisions of Section 13-B. It is the further contention that the plaintiff has to establish the bona fides and that bona fides cannot be simply presumed. He should, therefore, have the benefit of being given the leave to defend and contest his bona fides.

2. Both the contentions are untenable. There is no expression used for a Non Resident Indian to require to prove the citizenship also. They are two different concepts in international law and a status of Non Resident Indian will be tested only on the origin of nationality of the landlord. A person who is willing to come back to India who was born or whose parents were in the manner defined would continue to be a NRI notwithstanding an assumption of citizenship in foreign country. This

Court has held in the judgment in Blue Sky Worldwide Travels and another Vs. Harvinder Singh 2015(4) RCR (Civil) 456 that dealt with the issue and brought out the difference between the nationality and citizenship and the relevance of citizenship on claim of Non Resident Indian status in the said judgment. The counsel for the petitioner states that this point is also pending adjudication before the Supreme Court. I am afraid I cannot fetter my own jurisdiction to decide on what is brought before me as legal point unless there had been an order of stay granted by the Supreme Court to all other courts to undertake such an adjudication.

3. The plea that the landlord's bona fide must be established and therefore, he should have a right to defend will make nugatory a provision that requires a defendant to show prima facie that there is a tenable defence that he can offer, to be provided with leave to defend. It is no doubt true that the Court will have to be satisfied about the bona fides but the area of enquiry is limited to merely examining whether the petitioner has made sufficient averments in the petition about his intention to return and occupy the property. The point canvassed by the counsel has no meaning in the eye of law that a statutory provision allowing for a quick remedy of eviction for NRI to be fettered in every case by allowing for every tenant to be given leave to defend only for examining the bona fides. While I agree that the proof of bona fides would at all times be required to be adjudicated by the Court, it ought to be on the basis of what the plaintiff declares at the time when the Court passes the order and it cannot be stifled by a vague plea in defence about the bona fides of the landlord.

4. There is no ground for interfering with the order already passed by the Court below and I dismiss the revision petition.

(K. KANNAN)
JUDGE

March 04, 2016
Pankaj*