

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Civil Revision No. 1725 of 2013 (O&M)

Date of decision: September 19, 2016

Girish Kansal

...PETITIONER

Versus

NRI Gurbax Singh Dhillon

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Krishan Singh Dadwal, Advocate
for the petitioner.

Mr. Divanshu Jain, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J.

Challenge in this revision petition is to the order dated 26.02.2013 (Annexure P-4) passed by the Rent Controller, Kharar, whereby application under Section 18-A of The East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'Rent Act') filed by the petitioner-tenant seeking leave to contest the petition filed by the respondent-landlord under Section 13-B of the Rent Act has been declined.

It is the contention of the learned counsel for the petitioner that there were various triable issues, which were raised by the petitioner, which required evidence to be led by the parties and, therefore, the application

should not have been dismissed summarily. He contends that the petition preferred under Section 13-B of the Rent Act has not been supported by an affidavit and in the absence of the said affidavit, the contents thereof could not have been taken into consideration. His further contention is that the respondent-landlord although was a co-owner of the demised premises but became an exclusive owner as per the pleaded case on 02.03.2012 when a mutual family agreement was entered into between the three co-sharers and that too, is not a registered document. He contends that the mandate of Section 13-B of the Rent Act is that an application would be maintainable only after a period of five years from the date of becoming the exclusive owner of the said building. If the date of the exclusive ownership is taken as 02.03.2012 (the mutual family agreement), the eviction petition could not have been filed prior to 02.03.2017 whereas the present application has been filed on 16.07.2012 and on this ground itself, the petition is not maintainable and, thus, the triable issue has arisen. His further contention is that the construction, which has been raised where the demised premises is situated, is a forest area and, therefore, would be an illegal construction, eviction whereof could not have been sought by the respondent. That apart, he submits that the bona-fide necessity, as has been sought to be projected by the respondent of himself and his son, also is not acceptable for the reason that the respondent was more than 71 years old when the petition for eviction was filed and as per the pleadings, he is a permanent resident of United States of America and, therefore, there is no likelihood of his coming back to India and starting the business of hotel, which he intends to start after demolishing all the nine shops of which he asserts himself to be the owner. The present eviction petition under Section 13-B of the Rent Act

has been filed with a mala-fide intention in connivance with the other co-sharers for getting eviction from the demised premises of the tenants. That apart, he contends that there are nine shops which are the ownership of the respondent, out of which two shops and one store are in possession of the petitioner and qua the remaining seven shops, separate eviction petitions have been preferred by the respondent-landlord, which itself shows that it is violative of the provisions of Section 13-B of the Rent Act as it clearly mentions that a Non-Resident Indian owner, who returns to India, can get the possession of one building only. The nine shops being separate, he cannot seek eviction of all the nine shops under Section 13-B of the Rent Act. Assertion has also been made that he had already got possession of four shops and, therefore, there is no bona-fide necessity on the part of the respondent-landlord. All these triable issues, which arise for consideration, have been ignored by the Rent Controller while deciding the application preferred by the petitioner for leave to contest. In support of this contention, he has placed reliance upon a judgment of the Supreme Court in **Charan Dass Duggal vs. Brahma Nand** (SC) 1983 (1) SCC 301 and the judgments of this Court in **Kundan Singh vs. Lal Singh**, (P&H) 2005 (1) RCR (Rent) 194, **Harwinder Pal Kaur vs. Kuldeep Singh Gurm** (P&H) 2011 (1) RCR (Rent) 323, **Basant Kumar vs. Romesh Kumar Deora** (P&H) 2015 (2) RCR (Rent) 505. In view of the above, the counsel for the petitioner prays for allowing the present revision petition by setting aside the order passed by the Rent Controller, Kharar dated 26.02.2013 (Annexure P-4).

On the other hand, learned counsel for the respondent submits

that the Statute does not mandate or require the filing of an affidavit along

with an application under Section 13-B of the Rent Act. In support of this contention, he places reliance upon the judgment of this Court in **Mrs. Jainder Kaur vs. Sh. Rohit Chopra**, 2011 (3) PLR 667. His further submission is that a Division Bench of this Court in **Smt. Bachan Kaur and others vs. Kabal Singh and another**, 2011 (1) RCR (Rent) 368, has held that a co-owner is owner of each part of the properties in husband like manner with other co-owner and is entitled to seek ejectment of a tenant for benefit of all other co-owners with an only exception that none of the co-owners should object to such action having been taken and, therefore, in the present facts and circumstances of the case, the petition under Section 13-B of the Rent Act is fully maintainable as there is no objection raised by the co-owners. Reference has also been made to other judgments of this Court in **Ram Lal vs. Rashpal Lal**, 2011 (3) RCR (Civil) 756, **Vinod Kumar vs. Gurdarshan Singh Basra**, 2009 (1) RCR (Civil) 53.

As regards the contention of the learned counsel for the petitioner that the need of the respondent-landlord is not genuine as he could get possession of one of the shops of the demised premises and not beyond that, rather he is seeking eviction of all the tenants of the nine shops as Section 13-B of the Rent Act envisaged the eviction of one premises, counsel for the respondent contends that the nine shops form a building in itself, which is within the premises and is a shopping complex of nine shops along with two stores and staircase, which is fallen in the share of the petitioner and as per the oral partition, had been constructed by the respondent with the consent of the other co-sharers. The tenants cannot dictate the terms nor can they assess the requirement of the landlord. He, in any case, contends that as per the petition preferred, the respondent needs it

and has specifically said that he would demolish nine shops along with stores and staircase and build a hotel where he along with his son, who is grown-up and unemployed, would start his own hotel business. Even if some of the shops are now in possession of the respondent-landlord, the purpose is not achieved unless the complete building, which includes the nine shops, does not come in possession of the respondent, who intends to demolish the same and construct a hotel. He, thus, contends that neither the bona-fides of the respondent can be doubted nor it can be said that he cannot seek eviction of the demised premises merely because the other shops, of which he is seeking eviction as all these nine shops constitute one building although let out to different tenants, are of other co-owners. In support of this contention, counsel has placed reliance upon a judgment passed by this Court in **M/s Bhandari General Store and another vs. Makhan Singh Grewal**, 2006 (1) RCR (Rent) 306.

As regards the contention of the learned counsel for the petitioner that the shops in question are situated in a forest area and, therefore, is an illegal construction, the same cannot be raised by the petitioner as neither this is a part of the pleadings nor can he raise such an issue viz-a-viz the landlord. He, therefore, supports the order, which has been passed by the Rent Controller, by asserting that no triable issue has been raised and the respondent fulfils the requirement as mentioned in Section 13-B of the Rent Act. Dismissal of the revision petition is, thus, prayed for.

I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings, the records and the impugned order.

Section 13-B of the Rent Act is the governing provision for adjudication of the present case, which reads as follows:-

“13-B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-resident Indian.- (1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:

Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this Section, he or she shall not transfer it through sale or any

other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.”

The procedure for dismissal of the applications under Section 13-B of the Rent Act has been provided for in Section 18-A of the Rent Act. and Sub-Sections (4) and (5) deal with right to contest the prayer for eviction by the tenant. These two provisions read as follows:-

“18-A (4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building and/or non-residential building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the

application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian from obtaining an order for the recovery of possession of the residential building or scheduled building and/or non-residential building, as the case may be, under Section 13-A or Section 13-B.”

The Hon'ble Supreme Court has, in Baldev Singh Bajwa's case (supra) while dealing with Section 18-A (4) and (5), culled out in paras 19 and 20 as follows:-

“19. From the aforesaid decisions the requirement of the landlord of the suit accommodation is to be established as genuine need and not a pretext to get the accommodation vacated. The provisions of Sections 18-A(4) and (5) concede to the tenant's right to defend the proceedings initiated under Section 13-B showing that the requirement of the landlord is not genuine or bona fide. The legislative intent for setting up of a special procedure for NRI landlords is obvious from the legislative intent which has been deliberately designed making distinction between the ordinary landlords and special category of landlords. The Controller's power to give leave to contest the application filed under Section 13-B is restricted by the condition that the affidavit filed by the tenant discloses such fact as would disentitle the landlord from obtaining an order for recovery of possession. It is needless to say that in the summary

proceedings the tenant's right to contest the application would be restricted to the parameters of Section 13-B of the Act. He cannot widen the scope of his defence by relying on any other fact which do not fall within the parameters of Section 13-B. The tenant's defence is restricted and cannot go beyond the scope of the provisions of the Act applicable to the NRI landlord. Under Section 13-B the landlord is entitled for eviction if he requires the suit accommodation for his or her use or the use of the dependant, (who) ordinarily lives with him or her. The requirement would necessarily to be genuine or bona fide requirement and it cannot be said that although the requirement is not genuine or bona fide, he would be entitled to the ejectment of the tenant nor it can be said that in no circumstances the tenant will not be allowed to prove that the requirement of the landlord is not genuine or bona fide. 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.

20. The legislative intent of expeditious disposal of the application for ejectment of the tenant filed by the NRI landlord is reflected from the summary procedure prescribed under Section 18-A of the Act of 1949 which requires the Controller

to take up the matter on day-to-day basis till the conclusion of the hearing of an application. The Legislature wants the decision of the Controller to be final and does not provide any appeal or second appeal against the order of eviction, it is only the High Court which can exercise the power of consideration of the case, whether the decision of the Controller is in accordance with law. Section 13-B gives right of ejectment to special category of landlord who is NRI (Non Resident Indian); and owner of the premises for five years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his life time. Sub-s. (3) of Section 13-B imposes a restriction that he shall not transfer through sale or any other means or lease out the ejected premises before the expiry of the period of five years from the date of taking possession of the said building. Not only that, if there is a breach of any of the conditions of sub-section (3) of Section 13-B, the tenant is given a right of restoration of possession of the said building. Under sub-section (2-B) of Section 19 the landlord has to take possession and keep it for a continuous period of three months and he is prohibited from letting out the whole or any part of such building to any other person except the evicted tenant and any contravention thereof, he shall be liable for punishment of imprisonment to the term which can be extended upto six months. These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine. Landlord, after the decree for

possession, is bound to possess the accommodation. Landlord is prohibited from transferring it or letting it out for a period of five years. Virtually conditions and restrictions imposed on the NRI landlord makes it improbable for any NRI landlord to approach the Court for ejectment of a tenant unless his need is bona fide. No unscrupulous landlord probably, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him by which practically he is deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. The restriction imposed on the landlord by all probability points to the genuine requirement of the landlord. In our view there are inbuilt protections in the relevant provisions, for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of-course, subject to tenant's right to rebut it but with strong and cogent evidence. In our view, the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bona fide. But this would not dis-entitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and

particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlords' favour that his requirement of occupation of the premises is real and genuine.”

With the provisions and the law as laid down by the Hon'ble Supreme Court in mind, we proceed further with the arguments put forth by the counsel for the parties.

To support that there is no denial of fact that there is a relationship of tenant and landlord between the petitioner and the respondent i.e. petitioner being the tenant and respondent being the landlord, what has been asserted is that as per Section 13-B, the respondent became the exclusive owner of the demised premises on the basis of a mutual family agreement dated 02.03.2012 although prior thereto, he was a co-owner and the petition having been filed on 16.07.2012, the five years, as mandated under Section 13-B of ownership, had not expired and, therefore, was a triable issue. This contention cannot be accepted in the light of the authoritative judgment of the Division Bench of this Court in Bachan Kaur's case (supra), where one of the questions, which was referred to the Larger Bench, was 'Whether NRI/landlord, who is a co-owner with the other landlords, who do not have the same status as that of NRI, can maintain a petition for eviction of the tenant from the property jointly owned by all of them?' which was answered by the Division Bench in para-10 as follows:-

“10. A co-owner is owner of each part of the property in

husband like manner with other co-owners. He is entitled to seek ejectment of tenant in premises for benefit and for the benefit of all other co-owners. Such right is subject to one exception that none of the remaining co-owner objects to such action of the petitioning co-owner. If one of the owners happens to be a NRI, he does not relinquish his character and status as that of co-owner. Thus an order of ejectment obtained by a NRI - co-owner will bind other co-owners but will not entitle other NRI and/or an co-owner to seek ejectment of tenant from another building either owned solely by such co-owner or jointly with other persons as co-owner in exercise of right of eviction granted to an NRI by Section 13-B of the Punjab Act. Thus in respect of first question of law, it is held that a co-owner, who is Non-Resident Indian, even when other co-owners are not Non-Resident Indians, can maintain a petition for ejectment for the benefit of all the co-owners.”

Apart from this judgment, in Ram Lal's case (supra), the eviction was sought by a Non-Resident Indian on the ground that he required the demised premises to start his business and because the ownership was joint, the tenant had disputed the ownership of the landlord. As in the present case, there also revenue records revealed that the landlord was the co-owner of the demised premises. Although the other co-owners were not Non-Resident Indians but still, it was held that the petition under Section 13-B of the Rent Act was maintainable.

Similarly, in Vinod Kumar's case (supra), this Court had held

that where there is no dispute with regard to the landlord being a co-sharer and subsequently, having become the exclusive owner on account of family settlement, it cannot be said that the landlord did not have any pre-existing right in the property and, therefore, the period of ownership would relate back to the date when he became the co-owner of the property and the exclusive ownership, on the basis of the family settlement, would not be of any consequence for calculating the period of ownership of the landlord. It may be pointed out that there has been no objection on the part of the other co-sharers with regard to the eviction petition, which has been preferred by the respondent against the petitioner and in any case, the factum, as pleaded in the eviction petition that the respondent-landlord had constructed the shopping complex of nine shops along with two stores and staircase, has not been contested by the petitioner-tenant nor is it disputed that the petitioner is the tenant of the respondent. It may be added here that the respondent had placed on record the passport and the green card, which, by mere denial on the part of the petitioner-tenant, would not render the respondent-landlord to be not a Non-Resident Indian. Therefore, it cannot be said to be a triable issue.

As regards the contention of the learned counsel for the petitioner that there is no affidavit filed by the respondent-landlord along with and in support of the petition preferred under Section 13-B of the Rent Act, suffice it to say that the provisions of the Statute do not provide for filing of an affidavit along with and in support of the said petition. A Co-ordinate Bench of this Court in Mrs. Jatinder Kaur's case (supra) has, in para Nos. 6 and 7, held as follows:-

“6. Sections 13-A and 13-B of the Act are the special

provisions which provide for a summary procedure for eviction of the tenants. The procedure is provided under Section 18-A of the Act which applies to both Sections 13-A and 13-B of the Act wherein lot of emphasis has been laid by the Legislature on due service upon the tenant who is required to move an application to the Rent Controller within 15 days of his service for seeking leave to defend on an affidavit in terms of Section 18-A(4) of the Act.

7. From the resume of the aforesaid provisions of law under which the Rent Controller acts as a *persona designata* evolving its own procedure as provisions of the Code of Civil Procedure, 1908 [for short “CPC”] are not strictly applicable, the requirement of filing of an affidavit along with the eviction petition filed under Section 13-B of the Act is there or not, is to be decided. I have found that except for a petition filed under Section 13-A of the Act, the requirement of filing of an affidavit is conspicuous by its absence in Sections 13 and 13-B of the Act. In a petition to be filed under Section 13-A of the Act, the affidavit is only required to be filed to the effect that the specified landlord does not own and possess any other suitable accommodation in the local area in which he intends to reside by recovering possession of his residential building or scheduled building, as the case may be, for his own occupation. The underlying idea of the filing of this affidavit is that the specified landlord should candidly declare in his petition of not having any suitable accommodation one year prior or one year

after the date of his retirement and may not exercise his special right under Section 13-A of the Act as a ploy to seek eviction of a tenant under the summary procedure. Had there been the similar intention of the Legislature, the affidavit would have been provided in Section 13-B as well, but it was not provided because the Non- Resident Indian is already having a shelter for him unlike the specified landlord who occupies the government accommodation and is obliged to restore it to the department concerned after his retirement for the next incumbent to take over which could eventually make him a vagabond. Thus, it is held that for a petition to be filed under Section 13-B of the Act, an affidavit is not an essential requirement to support the application in the absence of which the Rent Controller can hold that it gives right to the tenant of a trial of the petition as if it is filed under Section 13 of the Act. It is also made clear that the provisions of Section 18-A(9) of the Act deals with the procedure for disposal of the application by the Rent Controller and has no connection with the procedure for the filing of application under Sections 13-A and 13-B of the Act.”

The plea of the counsel for the petitioner thus, that it is the triable issue, does not sustain.

The contention of the learned counsel for the petitioner with regard to there being no genuine and bona-fide necessity on the part of the respondent-landlord of the demised premises and that it should not be merely a desire on the part of the landlord, suffice it to say that the

pleadings clearly indicate that the respondent has mentioned therein that he wants to settle in India and start his own hotel business along with his son, who is unemployed and grown-up. For the said purpose, it has been decided that all the nine shops along with stores have to be demolished and after demolition, the area available at the disposal of the respondent-landlord would be 28 ft. x 88 ft., wherein he wants to construct a hotel. It is not in dispute that he has the means and resources for doing so and the mandate of the Statute has been fully complied with, when seen on the basis of the principles, as have been laid down in various authoritative pronouncements of the Hon'ble Supreme Court. Reference in this regard can also be made to the judgment of the Supreme Court in Baldev Singh Bajwa's case (supra), relevant portion whereof has already been reproduced, according to which, the presumption with regard to the bona-fide necessity is attached as per the Statute in favour of the landlord but to rebut the same, the onus is upon the tenant, who has to plead all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit so that the Rent Controller will be in a position to adjudicate and decide the question of genuine and bona-fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in favour of the landlord that his requirement of occupation of the premises is real and genuine.

In the application for leave to contest as filed by the petitioner, there is nothing which would indicate that there is any serious objection to the same except for bald assertions on the part of the petitioner. In view of the above, the judgment in Basant Kumar's case (supra), on which reliance has been placed by the learned counsel for the petitioner, would not apply to

the facts and circumstances of the present case and, therefore, no benefit thereof can be derived by the petitioner. The argument, thus, raised by the counsel for the petitioner fails.

The plea on the part of the counsel for the petitioner that the shops have been constructed in the forest area and, therefore, the respondent cannot seek eviction of the shops being an illegal construction, suffice it to say that this is not the part of the objection in the leave to contest, however, even if that be so, that would not, in any manner, confer any right upon the petitioner nor would it affect the mandate of Section 13-B of the Rent Act, which again would not be a triable issue as only relevant issues, which arise, can be permitted to be raised under Section 18-A of the Rent Act.

Another plea, which has been raised by the counsel for the petitioner, is that as per Section 13-B, a Non-Resident Indian landlord is entitled to seek eviction and possession of one building only and not more than that and since there are nine shops with seven tenants therein, against whom separate eviction petitions have been filed, the present eviction petition would not be maintainable but this plea cannot be accepted as it is not in dispute that all these nine shops including two stores are a part and parcel of one building as all the nine shops along with stores constitute one shopping complex, which was constructed by the respondent-landlord, which factum has not been disputed by the petitioner. That apart, keeping in view the bona-fide requirement and the purpose, for which the possession is being sought i.e. for demolition of nine shops along with stores which constitute a single building and thereafter, to construct a hotel at the said spot, the plea of the counsel for the petitioner cannot be accepted.

Similarly, the plea that the landlord has already got possession

of some of the shops now, again would be of no avail as the very purpose, for which the eviction/possession is being sought by the landlord, is not achieved by eviction of one or two or even more shops and all the nine shops will have to be got evicted by the landlord. Since the two shops in possession of the petitioner-tenant are the part of one single building, it cannot be said that the same would not fall within the mandate of Section 13-B of the Rent Act. What is not permissible as per Section 13-B (2) is seeking eviction of a tenant and possession of a premises, if the landlord, who is owner of more than one building, had already taken benefit of Section 13-B qua eviction of one building and is seeking eviction now qua the other building or in other words a landlord cannot seek benefit of Section 13-B qua more than one building. It may be clarified that in case of there being more than one building, it is the discretion and choice of the landlord to get anyone of the building(s) vacated under Section 13-B of the Rent Act out of two or more buildings, of which he is the owner and the tenant cannot object as to why his building is being sought to be evicted than the other building(s).

The judgments, on which reliance has been placed by the counsel for the petitioner and the principles laid therein i.e. Charan Dass Duggal (supra), Kundan Singh (supra), cannot be disputed with but in the facts and circumstances of the present case, as has been dealt with above, the same would not be applicable to the case in hand as there are no triable issues prima-facie made out, which would mandate the grant of leave to contest.

As regards the judgment in Harwinder Pal Kaur's case (supra), the said judgment would again not be of any help in the light of the Division

Bench judgment of this Court in Bachan Kaur's case (supra) as detailed above and in any case, it is not in dispute here that the respondent is now the exclusive owner of the demised premises although initially, he was a co-owner.

In view of the above, finding no merit in this revision petition, the same stands dismissed.

In view of the disposal of the main revision petition, all the pending applications stand disposed of.

September 19, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes