

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. CR-3509-2014 (O&M)
Date of decision : 09.05.2016

Krishan Kumar Petitioner

versus

Kamla Devi Respondent

2. CR-7507-2012 (O&M)

Karan Sharma @ Karun Sharma Petitioner

versus

Ved Parkash and another Respondents

3. CR-6428-2015 (O&M)

Roshan Lal Petitioner

versus

Rakesh Puri Respondent

4. CR-54-2016 (O&M)

Mrs. Shall Sharma and others Petitioners

versus

Brij Lal Moonga Respondent

5. CR-472-2016 (O&M)

Subhash Chander Petitioner

versus

Brij Lal Moonga Respondent

6.

CR-492-2016 (O&M)

Subhash Chander

..... Petitioner

versus

Brij Lal Moonga

..... Respondent

7.

CR-15-2015 (O&M)

Dalwinder Singh

..... Petitioner

versus

Chaman Lal

..... Respondent

8.

CR-5635-2015 (O&M)

Manjit Singh

..... Petitioner

versus

Kuldip Singh Mahal & another

..... Respondents

9.

CR-6359-2015 (O&M)

Meenu Sehgal

..... Petitioner

versus

Amarjit Singh

..... Respondent

10.

CR-8365-2015 (O&M)

Pawan Kumar

..... Petitioner

versus

Brij Lal Moonga

..... Respondent

11.

CR-8366-2015 (O&M)

Pawan Kumar

..... Petitioner

versus

Brij Lal Moonga

..... Respondent

12.

CR-675-2016 (O&M)

Mukhtiar Singh @ Mukhtar Singh

..... Petitioner

versus

Hardyal Singh

..... Respondent

13.

CR-676-2016 (O&M)

Malkiat Singh

..... Petitioner

versus

Hardyal Singh

..... Respondent

14.

CR-4786-2012 (O&M)

Harbhajan Singh Gill

..... Petitioner

versus

Dr. Mohinder Paul Singh Ahluwalia

..... Respondent

15.

CR-5089-2012 (O&M)

Sh.Ranjit Puri

..... Petitioner

versus

Dr.Mohinder Paul Singh Ahluwalia

..... Respondent

16.

CR-6832-2015 (O&M)

Gurinder Singh Gill

..... Petitioner

versus

Kamaljit Kaur Parmar @ Kamal Gurtaj Singh

..... Respondent

17.

CR-5850-2015 (O&M)

Sarabjit Singh

..... Petitioner

versus

Nasib Kaur

..... Respondent

18.

CR-7708-2015 (O&M)

Sohan Singh

..... Petitioner

versus

Gurmeet Singh Nagra

..... Respondent

19.

CR-7437-2015 (O&M)

Sache Gupta

..... Petitioner

versus

Gurmeet Singh Nagra

..... Respondent

20.

CR-7438-2015 (O&M)

Pritpal Singh

..... Petitioner

versus

Gurmeet Singh Nagra

..... Respondent

21.

CR-7439-2015 (O&M)

Brij Bhushan

..... Petitioner

versus

Gurmeet Singh Nagra

..... Respondent

22.

CR-7435-2015 (O&M)

Surjit Singh

..... Petitioner

versus

Gurmeet Singh Nagra

..... Respondent

23.

CR-7436-2015 (O&M)

Ragbir Krishan

..... Petitioner

versus

Gurmeet Singh Nagra

..... Respondent

24.

CR-7453-2015 (O&M)

Devinder Singh

..... Petitioner

versus

Gurmeet Singh Nagra

..... Respondent

25.

CR-5862-2015 (O&M)

Balwant Singh

..... Petitioner

versus

Ajaib Singh @ Ajaib Singh Dhaliwal

..... Respondent

26.

CR-7687-2015 (O&M)

M/s Pahwa Garments Store

..... Petitioner

versus

Sarabjit Kaur Lochab and another

..... Respondents

27.

CR-7689-2015 (O&M)

M/s Suresh Karyana Store

..... Petitioner

versus

Sarabjit Kaur Lochab and another

..... Respondents

28.

CR-7690-2015 (O&M)

Ram Parkash Bharti

..... Petitioner

versus

Sarabjit Kaur Lochab and another

..... Respondents

29.

CR-5698-2015 (O&M)

Sukhdev Singh

..... Petitioner

versus

Jorawar Singh and others

..... Respondents

30.

CR-7095-2015 (O&M)

National Insurance Company Limited

..... Petitioner

versus

Sarvinder Singh

..... Respondent

31.

CR-8418-2015 (O&M)

Department of Ayurveda through
its Director and another

..... Petitioners

versus

Balbir Singh Dhanda and another

..... Respondents

32.

CR-8679-2015 (O&M)

Kanta Rani and others

..... Petitioners

versus

Vir Chand Bhatia

..... Respondent

33.

CR-1958-2016 (O&M)

Sanjeev Kumar Gupta

..... Petitioner

versus

Rattan Chand Ghaie

..... Respondent

34.

CR-1968-2016 (O&M)

Ashok Kumar Sharma

..... Petitioner

versus

Rattan Chand Ghaie

..... Respondent

35.

CR-1976-2016 (O&M)

Thakur Dass Chawla

..... Petitioner

versus

Rattan Chand Ghaie

..... Respondent

36.

CR-1987-2016 (O&M)

Thakur Dass Chawla

..... Petitioner

versus

Rattan Chand Ghaie

..... Respondent

37.

CR-7363-2015 (O&M)

Rajan Bhatia

..... Petitioner

versus

Suman Lal Gupta Chaudhary

..... Respondent

38.

CR-2263-2016 (O&M)

Sanjeev Walia and Co. through its
proprietor

..... Petitioner

versus

Dr.Harjeet Singh

..... Respondent

39.

CR-6394-2015 (O&M)

Leena Khanna

..... Petitioner

versus

Kashmir Singh

..... Respondent

40.

CR-7601-2015 (O&M)

Bhupinder Singh

..... Petitioner

versus

Varinder Kumar

..... Respondent

41.

CR-6776-2015 (O&M)

Vinay Kumar and another

..... Petitioners

versus

Harbhinder Singh

..... Respondent

42.

CR-399-2016 (O&M)

Madhu Grover and another

..... Petitioners

versus

Jaswinder Singh Walia

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Vikas Bahl, Senior Advocate with
Mr. Nitish Garg, Advocate
for the petitioner (CR-3509-2014 & CR No.4786-2012).

Mr. Satinder Khanna, Advocate
for the petitioner (CR-7507-2012).

Mr. Manpreet Singh, Advocate
for the petitioner (CR-6428-2015).

Mr. S.S.Sodhi, Advocate
for the petitioners (CR-54-2016).

Mr. S.S.Sodhi, Advocate for
Mr. D.P.Soni, Advocate
for the petitioner (CR-472 & CR-492-2016).

Mr. Manuj Nagrath, Advocate
for the petitioner (CR-15-2015).

Mr. Arvind Kashyap, Advocate
for the petitioner (CR-5635-2015).

Mr. G.S.Sawhney, Advocate
for the petitioner (CR-6359-2015).

Mr. Binderjit Singh, Advocate
for the petitioner (CR-8365 & CR-8366-2015).

Mr. Keshav Pratap Singh, Advocate
for the petitioner (CR-675 & CR-676-2016).

Mr. Divanshu Jain, Advocate
for the petitioner (CR-5089-2012).

Mr. Rajinder Goyal, Advocate
for the petitioner (CR-6832-2015).

Mr. Kanwal Goyal, Advocate
for the petitioner (CR-5850-2015).

Mr. Y.M.Bhagirath, Advocate
for the petitioner (CR-7708-2015, CR-7435-2015,
CR-7436-2015, CR-7437-2015, CR-7438-2015,
CR-7439-2015, CR-7453-2015 and CR-8679-2015).

Mr. S.P.Soi, Advocate
for the petitioner (CR-5862-2015).

Mr. Chetan Mittal, Senior Advocate with
Mr. Kunal Mulwani, Advocate
for the petitioner (CR-7687, CR-7689 & CR-7690-2015).

Mr. Rajesh Bhateja, Advocate
for the petitioner (CR-5698-2015).

Mr. Ashwani Talwar, Advocate
for the petitioner (CR-7095-2015).

Mr. Neelesh Bhardwaj, DAG, Punjab
for the petitioners (CR-8418-2015).

Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate
for the petitioners (CR-1958-2016, CR-1968-2016,
CR-1976-2016 and CR-1987-2016).

Mr. Nitin Thatai, Advocate
for the petitioner
(CR-7363-2015 & CR-2263-2016).

Mr. K.B.Raheja, Advocate
for the petitioner (CR-6394-2015).

Mr. Narinder Singh, Advocate for
Mr. D.S.Malwai, Advocate
for the petitioner (CR-7601-2015).

Mr. S.K.Singla, Advocate
for the petitioners (CR-6776-2015).

Mr. Shekhar Verma, Advocate
for the petitioners (CR-399-2016).

Mr. Sarju Puri, Advocate
for the respondent (CR-3509-2014).

Mr. R.K.Singla, Advocate
for the respondents (CR-7507-2012).

Mr. Rakesh Chopra, Advocate
for the respondent (CR-6428-2015).

Mr. Anupam Singla, Advocate
for the respondent (CR-54-2016).

None for the respondent (CR-472 & CR-492-2016).

None for the respondent (CR-15-2015).

None for the respondents (CR-5635-2015).

Mr. Sandeep Verma, Advocate
for the respondent (CR-6359-2015).

Mr. Ankur Aggarwal, Advocate for
Mr. Anupam Singla, Advocate
for the respondent (CR-8365 & CR-8366-2015).

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Sarju Puri, Advocate
for the respondent (CR-675 & CR-676-2016).

Mr. Amit Singh Sethi, Advocate
for the respondent (CR-4786-2012 & CR-5089-2012).

Mr. Arjun Lakhanpal, Advocate
for the respondent (CR-6832-2015).

Mr. Vijay Rana, Advocate
for the respondent (CR-5850-2015).

Mr. Nitin Thatai, Advocate
for the respondent (CR-7435, CR-7436-2015, CR-7708-2015,
CR-7437-2015, CR-7438-2015, CR-7439-2015 and
CR-7453-2015).

Mr. S.K.Dariya, Advocate for
Mr. L.S.Mann, Advocate
for the respondent (CR-5862-2015).

Mr. D.S.Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate
for the respondents (CR-7687, CR-7689 & CR-7690-2015).

Mr. N.S.Dandiwal, Advocate
for the respondents (CR-5698-2015).

Mr. Rajesh Sood, Advocate
for the respondent (CR-7095-2015).

Mr. Pawan Kumar, Senior Advocate with
Mr. Abhimanyu Batra, Advocate
for the caveators-respondents
(CR-8418-2015).

Mr. Sunny Singla, Advocate
for the respondent (CR-8679-2015).

Mr. Hitesh Kaplish, Advocate
for the respondent (CR-1958-2016 & 1968-2016,
CR-1976-2016 & CR-1987-2016).

Mr. Vishal Aggarwal, Advocate
for the respondent (CR-7363-2015).

Mr. R.S.Rangpuri, Advocate
for the respondent (CR-2263-2016).

Mr. B.D.Sharma, Advocate
for the respondent (CR-6394-2015).

Mr. Vivek Rattan, Advocate
for the respondent (CR-7601-2015).

Mr. K.S.Boparai, Advocate
for the respondent (CR-6776-2015).

Mr. Divanshu Jain, Advocate
for the respondent (CR-399-2016).

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?

AJAY TEWARI, J.

This order shall dispose of the above said 42 cases.

CR-3509-2014

This petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 11.04.2011.

The present case was listed with many other cases wherein different issues relating to the relationship of Non-Resident Indians (NRIs)-landlords and tenants under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act of 1949') and the Punjab Rent Act, 1995 (for short 'the 1995 Act') were raised. The petitions have been filed to challenge orders refusing leave to defend and also ordering eviction.

One argument which is common to all the petitions and is infact the main argument is with regard to the very concept of 'Non-Resident Indians' (NRIs). All the cases were heard over the last about one month so that all the arguments on the main issue could be heard and a comprehensive order passed. For convenience of understanding reference has been made to the parties as tenants and landlords/landlady instead of petitioners and respondents. At the very outset, it would be appropriate to quote the relevant provisions. Sections 2 (dd) and 13-B of the Act of 1949 are 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;*

Section 13-B

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.”

Likewise Section 24 (3) of the 1995 Act is as follows :-

Section 24 (3)

“24 (3). Where an owner is a non-resident Indian and returns to India for permanent residence, he or she may apply to the

Rent Authority for recovery of immediate possession of residential or/and non-residential premises let out by him or her on or prior to the commencement of this Act, which are required for his or her use, or for the use of any one ordinarily living with and dependent on him or her.”

The first authoritative pronouncement on this issue was ***Sohan Lal Vs. Swaran Kaur, 2003 (2) RCR (Rent) 407***. In this case, M.M.Kumar. J, as his Lordship then was, held that the expression Non-Resident Indian used in Section 2(dd) of the Act of 1949 had been clearly defined and there was no ambiguity necessitating any external aid for interpreting the same and further held that therefore this expression could not be confined to only those who were holding Indian passports but would include foreign citizens and even those who were born abroad. The learned Judge further held that the expression 'returns to India' does not necessarily mean permanent return. This matter was challenged in the Hon'ble Supreme Court by the tenants and the Hon'ble Supreme Court in ***Baldev Singh Bajwa Vs. Monish Saini, 2005 (2) RCR (Rent) 470***, held that the amendment introduced in the Act of 1949 created a special class of NRI-landlords and reposed special right to them to recover immediate possession from the tenants occupying their premises provided such premises were required by them. Their Lordships further held that the Rent Controller's power to decide the application for leave to defend would be restricted only to such facts as would disentitle the landlord from obtaining order of recovery of possession. It was further held that as regards the issue of bonafide requirement of the landlord, the restrictions and conditions in the Act of 1949 inculcate a strong presumption that the need of the landlord is genuine and the Court was bound to presume that the landlord's requirement is genuine and bonafide but this would not dis-entitle the tenant from proving that in fact under law the requirement is not genuine; however a heavy burden would lie on the tenant to prove this fact and a mere assertion on his part would not be sufficient to rebut the strong presumption in the landlord's favour. As regards the definition, the Hon'ble Supreme Court

held that to be an NRI it would be sufficient that he was a person of Indian origin, permanently or temporarily staying outside India on account of his employment or for any other purpose which would indicate his intention to stay outside India for uncertain period. By way of illustration it was clarified that a person who had gone outside India for the purpose of undertaking any course could not be an NRI and that there is no requirement under the Act of 1949 that 'return to India' would mean a permanent return to India with an intention to settle in India permanently.

The decision in ***Baldev Singh Bajwa (supra)*** came up before a larger bench of three Judges of the Hon'ble Supreme Court in ***Swami Nath Vs. Nirmal Singh, 2010 (2) RCR 388***. In that case the landlord owned a building comprising three shops occupied by different tenants and filed an eviction petition for all the three shops. The petition having been allowed, the matter was ultimately carried up to the Hon'ble Supreme Court where the tenant argued that the landlord could have at the most sought eviction of one of the shops since as per the definition in Section 2(a) of the Act of 1949 even a part of a building could be a building, the Hon'ble Supreme Court held that such restrictive definition of building was not justified in the facts in that case and specifically upheld the decision in ***Baldev Singh Bajwa's*** case.

It has been argued by the learned counsel for the tenants that in the three judgments cited above the attention of the Courts was not drawn towards Section 7-A of the Citizenship Act and towards the definition of NRI under ***The Foreign Exchange Management Act, 1999 (FEMA)***. Article 246 of the Constitution of India lays down that the State Legislature has exclusive power to make laws in respect of any of the matters enumerated in List II in the Seventh Schedule and item No.18 incorporates laws relating to landlords and tenants. In the circumstances it has to be held that for such items the State Legislature would have sovereign and plenary power and consequently it would have unfettered power to define any class of persons (subject of course to constitutional parameters) and any definition made by the Union Parliament could not supersede or override

the same. Thus even if the definitions of Non-Resident Indian (NRI) under any Act of the Union Parliament have different shades and connotations it can not be held that the definition of NRI under the Act of 1949 and the 1995 Act has to correspond to the same. In *Blue Sky Worldwide Travels and another Vs. Harvinder Singh, 2015 (2) RCR (Rent) 49* this exact argument has also been discarded by this Court (though for different reasons) with which also I respectfully concur.

It has further been argued that the judgments cited above only held that the Persons of Indian Origin (PIO) were covered by the definition of NRI under the Act of 1949 but no finding was given whether 'Overseas Citizens of India' (OCI) were also similarly covered. In these cases the Court is concerned with those persons who are covered by the definition of NRI in Section 2(dd) of the Act of 1949 and Section 24 (3) of the 1995 Act and whether such persons are covered by the definition of PIO or OCI would be hardly germane. In my opinion there is no material difference in the definition of the two categories and it is only that under the latter scheme some additional benefits have been granted to such persons.

Learned counsel have further argued that the use of the terms 'settled' and 'return' clearly show that it can cover only such a person who has gone from India and could not be held applicable to a person who was born abroad. The argument though ingenious is flawed. It is not necessary that to 'settle' one must arrive; a person who is born abroad can also be covered under the clause 'permanently or temporarily settled'. Likewise a person who travels to his place of origin (albeit for the first time in his life) can always be said to 'return'.

In the circumstances, the argument that a foreign citizen or a person who was born outside India could not be covered under the definition of NRI has to be held to be invalid. Thus, both the arguments are rejected.

Having answered the common issue in favour of the landlords and against the tenants, I will now proceed to decide the other issues raised in the individual cases.

Learned senior counsel for the tenant has next argued that landlady has miserably failed to even aver the essential requirements of Section 2 (dd) and 13 (B) of the Act of 1949 in so much as there is just a bald assertion that she is NRI and nothing has been mentioned as to when she went abroad and how long she stayed there or for what purpose she had gone abroad.

Learned counsel for the landlady states that along with the eviction petition, the landlady had annexed copy of the passport. This passport revealed that it had been issued on 14.11.2007 at London. It also revealed that her address was shown as '17 STALHAM WAY ILFORD ESSEX 1 G6 2G3, U.K'. It further showed that a previous passport had been issued on 09.03.1998, also at London. As per him, this fact clearly shows that as on 14.11.2007, the landlady had been resident of London for almost 20 years.

Learned senior counsel for the tenant has argued that the Rent Controller has erred in so much as he has not returned any finding that the respondent is NRI. To support this contention, he has relied upon authority ***Smt. Harjit Grewal and others vs. Dr. Vinod Kumar Batra and others 2010 (5) RCR (Civil) 340.*** As regards this contention, learned counsel for the landlady has argued that even though this ground may have been taken in the application for leave to defend but there are five specific contentions raised by learned counsel for the tenant which have all been answered in his submissions. Therefore, the tenant never raised this argument. Moreover, as per him, once the Rent Controller categorically found that the landlady fulfilled all the conditions laid down in the Act there is necessary implication that the findings regarding NRI was given and further, in the context of the passport which has been placed on record and to which reference has been made earlier, there is no infirmity in the order.

I find myself in agreement with the learned counsel for the landlady. Once the Rent Controller held that the landlady fulfilled all the conditions it has to be understood that the finding that she was an NRI is there. The judgment of ***Smt. Harjit Grewal and others (supra)*** is in a

totally different context and is manifestly distinguishable.

In the circumstances, no fault can be found with the order of the Court below.

The petition is dismissed.

CR-7507-2012

Coming to the facts of this case, this petition has been filed by the tenant against the eviction order passed in a petition filed on 16.12.2008.

The second argument is that the landlord-Ved Parkash has not been proved to be the owner of the demised premises. As per the learned counsel for the tenant the sale deed sought to be relied upon mentions khasra number whereas the property in dispute is having municipal number and the landlord has not been able to connect the said khasra number with the property number. In this connection, the learned counsel for the landlord has countered by arguing that the landlord appeared himself and two other persons also appeared who stated that what was purchased by the sale deed was the property in dispute. On the other hand neither the petitioner, nor his predecessor-the original tenant nor his attorney appeared to contradict this testimony. Moreover, the clerk of Municipality, Goraya also appeared as RW-I and accepted that respondent No.1 was reflected as the owner of the property in dispute.

In the circumstances, no fault can be found and therefore the petition is dismissed.

CR-6428-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 31.07.2013.

No other argument has been raised. In the circumstances, the petition is dismissed.

CR-54-2016

Coming to the facts of the present case, this petition has been filed by the tenants against the order declining their request to grant leave to defend and allowing eviction passed in a petition filed on 27.09.2013.

No other argument has been raised. In the circumstances, the petition is dismissed.

CR-472 and CR-492-2016

Coming to the facts of these petitions which have been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 09.10.2013.

No other argument has been raised. In the circumstances, both the revision petitions are dismissed.

CR-15-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 01.04.2013.

In this case the only argument raised is that the landlord being a foreign citizen can not be taken to fall within the term of “Non-Resident Indian”. In view of what has been discussed above there is no merit in this contention.

This petition is dismissed.

CR-5635-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 15.06.2010.

The second argument of learned counsel for the tenant is that the premises was taken on rent by the company M/s Century Instruments Pvt. Ltd but the petition has been filed against its two directors. A perusal of the rent note reveals that the premises was taken on rent by two

Directors namely Mr.Manjit Singh, S/o Sh.Swarn Singh and Mr.Ganpal Lal Thakur, S/o Late Sh.Kanwal Lal Thakur who are described as the directors of M/s Century Instruments Pvt. Ltd.

In the circumstances, it is not a case where the tenant was a company through its Directors. Consequently the argument that the tenant has not been impleaded is misconceived

This petition is dismissed.

CR-6359-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the eviction order passed in a petition filed on 13.02.2010.

The landlord had sought eviction of the tenant from the premises in dispute which is SCO in Sector 35-C, Chandigarh. Learned counsel for the tenant has argued that during the pendency of this case the ground floor was got vacated and the landlord has rented it out to a liquor vend. Moreover, some of the cabins which are on the first and second floors were got vacated but no business has been started therein.

Learned counsel for the landlord has however argued that as regards the liquor vend the landlord is a partner in the said business and he has started it much after the eviction order and only because the entire building has not been vacated and once the entire building is vacated he wants to utilize the entire SCO and that is why even those cabins on the first and second floors which were got vacated are still lying locked.

In this regard, learned counsel for the landlord has placed reliance on the decision of the Hon'ble Supreme Court in ***Swami Nath (supra)*** and this Court in ***Bhandari General Store and others Vs. Makhan Singh Grewal, (2006) 143 PLR 167.***

I find weight in the argument of learned counsel for the landlord and thus no relief can be granted to the tenant.

In the circumstances, the petition is dismissed.

CR Nos.8365 and 8366-2015

Coming to the facts of the present cases, these are two petitions; one filed against the order declining leave to defend, and the other against the order of the same date allowing the eviction petition filed on 24.10.2013.

Learned counsel for the tenant has argued that the landlord had earlier filed a petition for eviction on the ground of ceasure to occupy but the said petition was dismissed and no reference has been made thereto in the instant petition and, therefore, there is material concealment. He has further argued that in the present petition, a plea was taken that the building was in a dilapidated condition and this issue is triable. The third argument of leaned counsel for the tenant is that while the tenant is residing in the building, the landlord has stated that he wants the building for business-cum-residential purposes.

In my opinion all the three arguments raised by the learned counsel for the tenant have to fail. The fact that an earlier petition was filed on a different ground and was dismissed would have no relevance to the present case and the omission to mention the same in the present petition would not amount to material concealment. Similarly the argument that a plea was taken regarding the dilapidated condition of the building and, therefore, that issue had to be tried also does not hold water. In a petition under Section 13-B of the Act of 1949 such a plea could at the worst be treated as surplusage. As regards the third argument also the Rent Controller has noticed that in the building in dispute there are many tenants both residential and non-residential and the landlord has sought eviction of all the tenants because he wants to come back to India and use the entire building for both residential and commercial purpose.

Consequently both the revision petitions are dismissed.

CR-675-2016

Coming to the facts of this case, this petition has been filed by the tenant questioning the eviction order in a petition filed on 26.04.2012.

The second ground taken is that the landlord is not the sole owner but is a co-owner in the property. This Court in *Smt.Bachan Kaur and others Vs. Kabal Singh and another, 2011 (2) RCR (Civil) 886* has held that a co-owner NRI can seek eviction of the tenant in a building though the tenant was not inducted by such NRI and that it is not necessary that all other co-owners should be NRI.

Resultantly, the present petition is dismissed.

CR-676-2016

Coming to the facts of this case, this petition has been filed against the order allowing the ejectment petition dated 26.04.2012 filed by the landlord and the additional ground is that all co-owners have not been impleaded. This Court in *Smt.Bachan Kaur and others (supra)* has held that a co-owner NRI can seek eviction of the tenant in a building though the tenant was not inducted by such NRI and that it is not necessary that all other co-owners should be NRI.

Resultantly, the present petition is dismissed.

CR-4786-2012 & CR-5089-2012

Coming to the facts of the present case, these two petitions have been filed by the tenants against the eviction orders passed in a petition filed on 12.02.2011 and another filed on 14.01.2011.

Learned senior counsel for the tenants has argued that in this case, the landlord did not categorically aver and prove that he was the owner of the premises in dispute for the last more than five years. Learned counsel for the landlord has pointed out that the landlord had stated that he was the owner of the premises and had placed on record copy of the certificate of 1999 issued by the Chandigarh Administration whereby half share of the property was transferred in the name of the respondent-landlord. As per him, in the context of properties in Chandigarh, the averment that he was the owner, coupled with the date of the certificate would make it clear that the landlord was claiming ownership of the

premises since 1999 and that even in their application for leave to defend, the tenants had not unequivocally denied the title of the landlord but had only stated that he had not placed on record a valid copy of the ownership document. In the reply to the said application, it had been reiterated that the landlord had become the sole owner after transfer of the half share as per the certificate.

Learned senior counsel for the tenants has further argued that the landlord had earlier filed an application for eviction of the present tenants under Section 13 of the Act of 1949 and while appearing as a witness in that case, he had accepted that he had in his possession portion consisting of 2 bed rooms, 1 bath room, 1 kitchen and 1 verandah but he had never stayed in it till date. During that evidence, he had also stated that though he had earlier wanted to shift permanently to India from USA but now he was not in a position to leave USA. He has also admitted that his wife was a party in a partition suit filed by his brother in law and was shown as a shareholder therein. Learned senior counsel for the tenants has further argued that the petition for eviction under Section 13 of the Act of 1949, was withdrawn by the landlord in the year 2009 and this is conclusive evidence of the fact that he did not require the premises for his own use and occupation and, therefore, in the facts and circumstances of the case, leave to contest should have been granted in view of these triable issues. It is further asserted that this eviction petition was filed through Special Power of Attorney and in that power of attorney, only 'power to initiate necessary legal proceedings for eviction of the tenants.....' was mentioned. However, since the present petition was filed under a special provision i.e Section 13-B of the Act of 1949, it was necessary that a specific power in this regard should have been granted under that SPA and the same having not been so specifically granted it could not have been inferred that the power was granted and, therefore, the petition was not maintainable. In support of this, learned senior counsel for the tenants has placed reliance on *Shantilal Khushaldas and Bros P. Ltd v. Smt. Chandanbala Sughir Shah and Anr, 1993(77) Comp Cas 253* and *D.H.M Framji and others v. The*

Eastern Union Bank Ltd., Chittagong, 1951 AIR (Punjab) 371. Learned senior counsel for the tenants has further argued that as regards the 'intention to return' the same has to be taken to be a fact which is in the exclusive knowledge of the landlord and the averments in regard thereto or the testimony in regard thereto could not have been made by a special attorney (brother-in-law). In this regard, he has placed reliance on *Basant Kumar v. Romesh Kumar Deora, 2008(2) RCR (Civil) 176.* Learned senior counsel for the tenants has further argued that in the present case, the landlord has filed two independent petitions on separate dates for eviction of two tenants albeit from the same house. As per him, the legislature has given once in life time chance to NRIs and it would have been a different matter if the respondent had filed either one petition for eviction of both the tenants or at the very least filed two simultaneous petitions by saying and averring in both of them that he needed other portion also and had filed a petition in regard thereto also.

Learned counsel for the landlord points out that in the house in dispute there were 2 tenants; Ranjit Puri and Harbhajan Singh Gill. Both the petitions were drafted on the same date though were filed with a gap of about 3 weeks. He has drawn the attention of this court to paragraphs 2, 4 and 10 of the petition filed earlier which are to the following effect :-

“2. That the demised premises are a Two kanal property built up to Double Storey with an Annexe in the rear portion. There is another tenant on the Ground Floor portion of the demised premises.

4. That the demised premises are required by the petitioner/landlord for his as well as his family's personal use and occupation. The petitioner/landlord intends to visit and use the demised premises 'excluding' for himself and for his family members. The petitioner/landlord has requested the respondent/tenant to vacate the demised premises several times, but the respondent/tenant has not acceded to the request of the petitioner/landlord. Constrained by the adamant attitude of the respondent/tenant, the petitioner/landlord served a notice dated 14th June, 2010 upon the respondent/tenant asking him to vacate and hand over the demised premises as the same are required for his personal use and occupation, but to no avail. Copy of the notice is attached

as Annexure P-7.

10. That no such or similar petition has been filed earlier by the petitioner/landlord against the respondent/tenant and decided by any Court of law under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949. As the demised premises i.e. House No.2145, Sector 15-C, Chandigarh is a Single Residential Building, the tenant on the ground floor has also been asked to vacate the portion of the house occupied by him, which does not debar the petitioner/landlord from instituting the present petition.”

As regards the argument about the portion in possession of the landlord, learned counsel for the landlord has argued that in the affidavit (page 3 thereof) before the Rent Controller the landlord had clarified that 2 rooms, one bathroom, one kitchen and one verandah were actually servant quarters and, therefore, the assertion that he could have stayed in that portion is neither here nor there. As regards the testimony that he had earlier wanted to shift permanently to India from USA but now he is not in a position to leave USA, learned counsel for the landlord has argued that permanently shifting is not at all the requirement under the Act of 1949 and even an NRI who wants to come back to India for a short period can get the premises vacated under Section 13-B of the Act of 1949.

Learned counsel for the landlord has also drawn the attention of this Court to the affidavit filed in this Court in support of the application for vacation of stay (para-9) wherein it is mentioned as follows :-

“9. That the continuation of the order is causing extreme undue hardship to the applicant. A period of three years has elapsed after passing of the interim order staying dispossession. The very purpose of the special provision enacted in favour of the persons such as the applicant is being defeated by the delay, and the applicant is being unduly deprived of the enjoyment of his own property in the city without any just cause. It is also submitted that the applicant and his wife who are doctors by profession and had built up their professional life by virtue of sheer diligence and hard work, in the meanwhile, have crossed the age of retirement and are in dire need of the premises for themselves and their family.”

He has further argued that the previous petition under Section 13 was dismissed as withdrawn and the present petition having been filed under the special Act, the withdrawal of the previous petition could not prejudicially affect the landlord.

As regards the judgment cited by the learned senior counsel for the tenants, viz. ***Shantilal Khushaldas and Bros. P. Ltd. (supra)*** which was relating to winding up of a company, wherein the Bombay High Court held as follows :-

“18. In so far as civil suits and proceedings before ordinary courts are concerned, the parties are permitted to be represented by their agents and for that matter, as noticed earlier, the agent has authority not only to appear and file applications but to act or take all such steps as may be possible for a party himself. The recognised agents are those who are holding powers of attorney authorising them to do or make such appearance, applications, acts as the case may be. For that matter, the other categories or persons included are spoken to in clause (b) of rule 2 of Order 3. Even service of a process on a recognized agent is permitted and such service on the agent is equally valid. In the matter of pleadings under rule 15, Order 6, persons acquainted with the facts of the case are permitted to verify them, which are otherwise required to be verified by the parties themselves.”

In the circumstances, it has to be held that the above judgment does not advance the case of the tenants. As regards the judgment passed by this Court in ***D.H.M.Framji and others-Judgment-debtors (supra)*** this Court held that the power of attorney itself restricted its application to do the acts enumerated either at Dhaka or any other place where the bank may have any branches and consequently held that he could not file a petition for execution at Shimla. In the case of ***Basant Kumar (supra)*** this Court while holding that the power of attorney could not give evidence with regard to facts on the principle could have knowledge 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 present case admittedly the respondent filed his own affidavit in reply to the application under Section 18-A.

Learned senior counsel for the tenants has further argued that the landlord had claimed that he required the premises for his own use and that of his wife and other family members. In these circumstances it was incumbent upon him to have clarified and clearly aver that his wife did not own any other property but in the earlier case he had accepted that his wife had a share in her father's house in Chandigarh also. In this context he has relied upon a judgment passed by this Court in ***Ravinder Sood and another Vs. Mohan Lal, 2013 (2) RCR (Rent) 91.*** In that case it was held as follows in para 6:-

“6. If the landlord, therefore, had one house in the name of the son, another house in the name of his wife and yet another house which he had rented apart from the property which he was already in occupation of, then unless the landlord had given clear evidence that the possession of other buildings in the name of his wife or son were not sufficient or they had been rented out by the wife or son and hence they were not themselves in position to secure vacant possession or the landlord was pleading for any specific inconveniences relating to the possession of the remaining building, the test of bona fides cannot be said to be satisfied.”

He has further relied upon a judgment passed by this Court in ***Nelson Christopher Vs. Pritam Singh, 2010 (1) RCR (Rent) 16,*** where in it was held as follows :-

“10. Therefore, from the affidavit of the petitioner, it was to be seen whether the respondent was dis-entitled from getting the possession of the demised premises. In order to succeed, he was to prove that he bona fide required that premises for his use and occupation. It stands proved from the facts that the respondent owns and possesses another house in the same urban area and nothing was said by the respondent as to what was the ground of preference for getting the demised premises vacated. From the affidavit of the tenant it prime facie stands proved that the respondent shall be dis-entitled to the recovery

of the possession of the demised premises on the ground taken by him in the application under Section 13-B of the Act. Therefore, the finding recorded by the Rent Controller cannot be sustained and is liable to be set aside.”

Learned counsel for the landlord has argued that even if the wife of the landlord was shown to have a share in her father's house it was no where pleaded that she was in occupation thereof and actually that house was in the occupation of the father-in-law and brother-in-law of the landlord. Learned counsel for the landlord has argued that in this case the attorney was his brother-in-law who is a close family member, and the landlord filed his own affidavit in reply to the application for leave to defend wherein he reasserted and reconfirmed the assertions made on his behalf by the attorney. He has relied upon a judgment passed by this Court in ***Maan Chand @ Man Chand Vs. Maya Devi Panesar, 2015 (2) RCR (Rent) 210***, wherein this Court has held as follows :-

“4. Learned counsel for the petitioner has argued that this petition was filed by the general power of attorney of the landlady namely Nirmal Kaur (her daughter). The power of attorney executed in favour of Nirmal Kaur is dated 28.08.2012. The petition was filed on 02.01.2013 and in this power of attorney, no specific authority was given to Nirmal Kaur to file this petition.

5. The above argument of learned counsel for the petitioner has no basis. The power of attorney Annexure P-2 is a general power of attorney authorising Nirmal Kaur to deal with the entire property of the petitioner. The powers given to the attorney include the authority to file petition, written statement, replication, application, appeal in any court of law and to appoint/constitute any pleader, advocate or attorney. It was nowhere required or expected to be specifically mentioned in this general power of attorney regarding the authority of attorney-holder to file petition under Section 13-B of the Act. This power is implicit on the perusal of the general power of attorney (Annexure P-2).

6. Learned counsel for the petitioner has further argued that the pleadings in the petition were signed by the attorney, as such, the bona fide requirement as pleaded, cannot be taken to be that of respondent-landlady and affidavit of landlady was

required. The basic purpose of executing power of attorney was to give the authority to sell, mortgage the property of the respondent and not for filing a petition under Section 13-B of the Act.

7. *The above argument of learned counsel for the petitioner are also not made out on perusal of the general power of attorney (Annexure P-2). Being a general power of attorney holder, Smt. Nirmal Kaur was competent to file the petition, sign the pleadings and no separate affidavit of landlady was required with regard to her bona fide requirement."*

He has also relied upon a judgment passed by this Court in ***Narinder Kumar Goyal Vs. Mrs. Navneet Kaur Gill and another, 2013 (2) RCR (Rent) 9***, wherein this Court held as follows :-

"2. A summary adjudication in the application to leave to defend is an intervention by a Court to see whether there exists something tenable for consideration and the statutory provision providing for a fast track should be suspended for the benefit of the person who seeks such leave and allow for a full fledged contest..... The other line of defence which is taken by the tenant is that the power of attorney holder does not have a power to institute the case. It is a flimsy argument for a tenant to take. It is not uncommon that NRI landlord resorts to Court through a local resident Indians to prosecute the case and to that extent the device of power of attorney to institute a case cannot be a ground for a tenant to plead that the power of attorney is not valid. I do not find any tenable defence for a tenant to allow for a leave to defend and if the Court below has refused leave, I will find no error to interfere in revision."

He has further relied upon a judgment passed by this Court in ***Shri Sita Ram Vs. Smt. Malwinder Kaur, 2008 (2) RCR (Rent) 377***, wherein it was held as follows :-

*"6. Reliance is placed upon the judgment of Hon'ble Supreme Court in the case of **Baldev Singh Bajwa V. Monish Saini, JT 2005 (12) SC 442**, to contend that it was necessary for the landlord to prove that his requirement was with respect to the building in dispute which according to the learned counsel for the petitioner is not fulfilled in the present case.*

7. *However, on consideration of the matter, I find no force in the contention raised by the learned counsel for the*

*petitioner. Hon'ble Supreme Court in the case of **Baldev Singh Bajwa V. Monish Saini** (Supra) has laid down that NRI landlord can maintain a petition under Section 13-B of the Act through Power of Attorney. It was not necessary for the landlord to have given detailed reasons for seeking eviction in Power of Attorney.*

8. Once he has given authority to seek eviction it cannot be said that the application was not competent in law nor any mala fide could be attributed to the landlord as sufficient safeguards are provided under the statute for repossession in case landlord fails to occupy the building for statutory period."

In my opinion the argument of the learned counsel for the landlord carries more weight. The judgments passed in ***Shantilal Khushaldas and Bros. P. Ltd. (supra)*** and ***D.H.M.Framji and others-Judgment-debtors (supra)*** are clearly distinguishable while those of ***Maan Chand @ Man Chand (supra)***, ***Narinder Kumar Goyal (supra)*** and ***Shri Sita Ram (supra)*** apply with all force. Moreover the judgment passed in ***Basant Kumar (supra)*** actually helps the landlord.

In the circumstances, the fact that the petition was filed through power of attorney can not be held against the landlord.

As regards the argument that the wife of the landlord had a share in her residential house the same can also not hold him dis-entitled to evict the tenant. In our country it is highly unlikely to expect a man to stay in the house of his father-in-law and further to hold that such a man would not have a bonafide requirement to stay in his own house. As regards the argument that the landlord had in his possession two rooms and a bath room etc. the same would also not help the tenants as held by this Court in ***Rakesh Sharma Vs. Harmesh Singh, 2015 (1) RCR (Rent) 589*** and ***Prem Kumar Patel Vs. Inderjit Singh Grewal, 2002 (2) RCR (Rent) 203.***

As regards the contention that the landlord did not prove that he was the owner for 5 years, the argument of the learned counsel for the landlord carries more weight. Once the transfer certificate issued by the Chandigarh Administration was placed on the record, it was not necessary

for the landlord to have put into evidence the conveyance deed and the transfer certificate would be proof of the fact that the landlord was the owner from the date thereof. Similarly the argument that the previous petition filed under Section 13 was withdrawn would also not help the landlord since this petition was filed under a new right created by a new statute.

In the circumstances, the petitions are dismissed.

CR-6832-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 29.07.2011.

The second argument of counsel for the tenant is that the landlady has not made any averment in terms of the parameters laid down in Section 2(dd) of the Act of 1949. As per him, it is incumbent for a landlady to plead those parameters or any one of them which may be applicable in the case.

Learned counsel for the landlady has, however, argued that as per the pleaded case of the landlady, she was a Canadian citizen and has come back to India after having lived there for about 9 years and, therefore, it cannot be said that there is any material which may be lacking in her pleadings.

Second argument raised by learned counsel for the tenant is that the instant petition was filed through the general power of attorney and an attorney cannot depose every thing which can be deposed by the principal. Learned counsel for the landlady has argued that the above plea would not in any case be applicable in the present case because the GPA is the husband of the tenant. Learned counsel for the tenant has also argued that there is no averment that on the date of the filing of the petition, the principal was alive or that the GPA was still in existence. Learned counsel for the landlady has argued that these facts may be germane in a case where

a stranger is claiming to be attorney but where the petition is filed through the husband who is the attorney, this fact would not be germane as held in **CR-4786** and **CR-5089-2012 (supra)**.

Learned counsel for the tenant has raised another argument also. As per him the lease period was till 30.09.2011 and the petition for eviction was filed on 29.07.2011 and consequently it was not maintainable on this ground. Learned counsel for the landlady has raised threefold arguments. Firstly he states that the agreement being unregistered and being a rent agreement for a period of more than 11 months is inadmissible in evidence. To this learned counsel for the tenant has countered by placing reliance on the judgment of the Hon'ble Supreme Court in **Ahmedsaheb (d) by LRs and others vs. Sayed Ismail, reported as 2013(1) RLR 305**, where their Lordships held that an admitted fact could be taken note of. As per him, in the present case also it was the respondent-landlord who had placed the agreement on record and therefore he could not now turn around and argue that the period of lease was not as per the said agreement.

Learned counsel for the landlady has raised two further submissions. As per him the previous agreement had come to an end on 31.05.2007 and the present agreement started with the following sentence:-

“Further to the existing agreement between Mrs. Kamal Gurtaj Singh wife of Col. Gurtaj Singh & Shri Gurinder Singh Gill son of Late Shri Narinder Singh Gill.....”.

As per the learned counsel for the landlady, the period of extension of four years would start from the date the original agreement had come to an end i.e. 01.06.2007 and thus the period of lease would expire on 31.05.2011 and merely because the rent was increased w.e.f. 01.10.2007 would not mean that agreement would start from 01.10.2007. In the alternative he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Bombay Tyres Int. Ltd. and another vs. K.S. Prakash (dead) by LRs and others, reported as 1997(6) SCC 69**, wherein their Lordships were confronted with a situation as to whether a petition for eviction on the ground of personal

necessity could be filed before the contractual period of lease was over and held as follows:-

“On the facts of the case we do not propose to decide the larger question as to whether the decision of the Karnataka High Court in Shri Ramakrishna Theatre case is still good law, or stands overruled by the later decision of this Court in Shri Lakshmi Venkateshwara case. We leave the larger question of law open, to be decided in an appropriate case on a future occasion. Since the tenancy in this case stood terminated and the findings regarding the bonafide need of the landlord and other aspects are in favour of the landlord, with which we concur, we are of the view, that the special leave petition is without merit.”

It is urged that even if the lease was taken to be till 30.09.2011 yet in view of this judgment the petition for eviction cannot be held to be not maintainable.

In my considered opinion, while the first argument of learned counsel for the tenant is correct, the argument of learned counsel for the landlady with regard to the date from which the agreement is deemed to have taken effect has more weight. Once it is mentioned that the agreement 'is further to the existing agreement' it would obviously give rise to the inference that it would take effect from the date immediately after the date on which the previous agreement had come to an end notwithstanding the fact that the rent was increased from a subsequent date.

In this case there is an application for mesne profits and the learned counsel for the landlady has prayed to decide the same as well. Since the issue of mesne profits has to be decided as an interim measure at the initiation of the petition hardly any purpose would be served to decide it when the main case is being decided. In the circumstances, the petition and the application for mesne profits are both dismissed.

CR-5850-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his prayer for leave to defend and the consequent eviction orders.

Learned counsel for the tenant has argued that apart from the argument of the eligibility of the landlady to maintain the present petition the fact is that the present case was filed on 21.07.2014. On that date the 1995 Act had already come into operation and therefore, the present petition under Section 13 (B) of the repealed Act could not have been filed at all.

The Punjab Rent Act was passed by the legislature in the year 1995 but came into force w.e.f. 30.11.2013. The sections relevant for our purpose would be Sections 3 (1) (a), 38, 50 and 75 of the 1995 Act which are quoted herein below (apart from Section 24 (3) quoted earlier :-

Section 3 (1) (a)

*“Premises exempted from the operation of the Act.-- (1) Nothing in this Act shall apply,-
(a) to any premises let out before the commencement of this Act;”*

Section 38

“Procedure to be followed by Rent Authority.---

(1) No order which prejudicially affects any person shall be made by the Rent Authority under this Act without giving him a reasonable opportunity of showing cause against the order proposed to be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Rent Authority.

(2) Subject to any rule made under this Act and other provisions of this Act, the Rent Authority shall, while holding an enquiry in any proceeding before him follow as for as may be the practice and procedure of a court of small causes, including the recording of evidence.

(3) The Rent Authority shall not ordinarily allow more than three adjournments at the request of a party throughout the proceedings and in case he decides to do so, he shall inform the chairman the reasons therefore and order to pay the other party the reasonable cost.

(4) The Rent Authority shall issue summons in relation to every application under this Act in the form specified in Schedule III to this Act.

(5) The Rent Authority shall, in addition to, and simultaneously with the issue of summons for service on the opposite party, also direct the summons to be served by registered post, acknowledgement due, under certificate of

posting addressed to the opposite party or his agent authorised to accept the service at the place where the opposite party or his agent actually and voluntarily resides or carries on business or personally works for gain, and shall also direct affixing of the same on the door of the premises in dispute and get a manadi in this behalf. This shall constitute valid service of summons.

(6) (a) An application under section 19 for cutting off essential service shall be dealt with in accordance with the procedure specified in this sub-section.

(b) The Rent Authority shall commence the hearing of the application within seven days of the filing thereof and shall dispose of the same within thirty days of starting of such hearing, failing such commencement of hearing of application within such time, the Rent Authority shall inform the [Appellate Authority] the reasons therefor.

(7) (a) Every application by a landlord for the recovery of possession of any premises on the ground specified in clause (d) or clause (e) or clause (g) of sub-section (2) of section 20 or under section 21, or under section 22 or under section 23 or under section 24 or under section 31 shall be dealt with in accordance with the procedure specified in this sub-section.

(b) The tenant on whom the summons is duly served in accordance with sub-section (5) in the Form specified in schedule III to this act shall not contest the prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Rent Authority as hereinafter provided; and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the landlord 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 on the ground aforesaid.

(c) The Rent Authority shall give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises.

(d) Where leave is granted to the tenant to contest the application, the Rent Authority shall ordinarily commence the hearing of the application within seven days of the grant of such leave and shall provide day to day hearing and shall dispose of the application within thirty days of starting of

such hearing failing such commencement of hearing or disposal of application within such time, the Rent Authority shall inform the [Appellate Authority] the reasons therefor.

(e) Where the leave to contest under clause (c) is denied to the tenant he may file an application for review before the Rent Authority within ten days of such denial and the Rent Authority shall endeavour to dispose of such application within seven days of its filing.

(8) Every application made to the Rent Authority shall be heard as expeditiously as possible and subject to the provisions of sub-section (6) and (7), endeavour shall be made to conclude the hearing and to dispose of the application within six months of its being filed.

(9) In all proceedings before him, the Rent Authority shall consider the question of costs and award such costs to or against any party as the Rent Authority considers reasonable.

(10) When the ejectment decree is passed under this Act, the Rent Authority shall in addition pass order for recovery of arrears of rent and other charges alongwith interest at the rate of fifteen per cent per annum, recoverable as arrears of Land Revenue.”

Section 50

“50. Jurisdiction, powers and authority of the Appellate Authority:-

(1) Save as otherwise expressly provided in this Act, the State Government may, by a general or special order, by notification confer on such officers and authorities, as it may think fit, the powers of Appellate Authority in relation to-

(a) all appeals against the orders of the Rent Authority under this Act;

(b) any other matter, except the registration of agreements referred to in sub-section (2) of section 4 of this Act, arising from the provisions of this Act; and

(c) review of its own orders and decisions.

(2) The Appellate Authority may, either suo moto or on application of any of the parties and after notice to the parties and after hearing such of them as it may desire to be heard, call for record of any case pending before the Rent Authority under this Act, and either itself try the case or give direction for disposal of the case to such Rent Authority.

(3) Any person aggrieved by an order passed or a decision made by a Rent Authority may, within thirty days from the

date of such order or decision, prefer an appeal, in writing, to the Appellate Authority in the prescribed form and accompanied by certified copy of the order or decision appealed against:

Provided that an appeal may be entertained after the expiry of the said period of thirty days, if the appellant satisfies the Appellate Authority that he had sufficient cause for not preferring the appeal within the specified period.

(4) In computing the aforesaid period of thirty days, the time taken in obtaining certified copy of the order or decision to be appealed against shall be excluded.

(5) An appeal shall lie to the Appellate Authority from every order or decision of Rent Authority made under this Act both on question of law and facts:

Provided that no appeal shall lie against an order or decision of the Rent Authority made under section 21 or section 33 of this Act.-----xxxx-----xxxx.”

Section 75

“Repeal and savings. -- (1) *On the commencement of this Act, the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No.III of 1949), is hereby repealed:*

Provided that such repeal shall not affect,-

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed;

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed under the Act so repealed; and

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

(2) Notwithstanding the repeal of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act No.III of 1949), under sub-section (1), all cases and other proceedings in respect of the premises, other than owned by a non-resident Indian, let out prior to the commencement of this Act shall be governed and disposed of in accordance with the provisions of the Act so repealed.”

Section 3 (1) (a) lays down that the provisions of this Act shall not apply to any premises which are let out before the commencement of this Act; the implication being that even if the premises are owned by an NRI and were let out before the commencement of this Act they would have to be dealt with under the Act of 1949. On the other hand Section 24 (3) says that any future petition to be filed by an NRI would be under the present Act notwithstanding the fact that the premises were let out prior to the commencement of this Act. Section 75(1) provides that the East Punjab Urban Rent Restriction Act, 1949 would stand repealed but such repeal should not affect, inter alia any legal proceeding with regard to any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act and any legal proceedings may be instituted, continued or enforced in respect of any such right, liberty, privilege or obligation. Section 75 (2) on the other hand stipulates that premises let out prior to the coming into force of this Act would be governed by the provisions of the repealed Act {in terms of Section 3(1) (a) supra}, except those owned by NRIs. Thus within the same Act we have not only anomalous but even contradictory provisions with regard to NRI-landlords.

As per Section 3 all properties which are let out prior to 30.11.2013 would have to be governed by the Act of 1949 but as per Section 75 (2) this would not apply to properties of NRI-landlords. Section 24 (3) makes a different provision. It lays down that any petition filed after 30.11.2013 by an NRI-landlord would have to be filed under the provisions of the 1995 Act notwithstanding the fact that it was let out prior to 30.11.2013. Section 75 (1) also strikes a discordant note and says that any legal proceedings for any remedy for a right which has accrued may be instituted, continued or enforced under the Act of 1949. It is trite to say that all words of every legislation have to be given due effect and all provisions have to be harmoniously construed as far as possible. Support can be taken from *Union of India & Ors. Vs. Dileep Kumar Singh, Civil Appeal Nos.2466-2467 of 2015 arising out of SLP (Civil) Nos.25565-25569 of 2014* decided on 26.02.2015, wherein the Hon'ble Supreme Court held

that :-

“17. This Judgment has been subsequently followed by the High Court of Australia in Project Blue Sky Inc. v. Australian Broadcasting Authority, 153 ALR 490, in the following terms: “A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions.”

Keeping these two principles in mind as well as the principle of 'dominant and subservient provisions' as explained by the Supreme Court in ***Commercial Tax Officer, Rajasthan Vs. M/s Binani Cement Ltd. and another, (2014) 3 SCR,1*** the only harmonious construction which would give effect to these disparate provisions would be to hold that as regards NRI-landlords, those cases which were filed prior to 30.11.2013 would be taken up under the Act of 1949 and those which were filed after that date would have to be filed and proceeded under the 1995 Act, notwithstanding the date of the tenancy.

Apart from these procedural aspects, the three material changes in the substantive law as regards NRI between the Act of 1949 and the 1995 Act are that under the Act of 1949 the NRI need not return to India for permanent residence while under the 1995 Act he has to return to India permanently. Secondly under the Act of 1949 there was a stipulation that the NRI should have owned the building for five years while there was no such requirement under the 1995 Act. Thirdly under the Act of 1949 a further condition was laid down to the effect that the right of summary eviction would be available only once in a life time and this limitation is imposed upon Landlords mentioned in Section 24(1) of the 1995 Act but is not applicable to NRIs. In sum, one additional condition (viz permanent residence) has been imposed by the 1995 Act, while two conditions (viz ownership for 5 years and the one time in life restriction) have been

removed. The next major change is with regard to the remedy provided against an order passed by the Rent Controller. Under the Act of 1949 the remedy of appeal was taken away and under Section 18(A) only a revision lay before this Court. Under the 1995 Act Section 38(7) (e) provides a remedy to a tenant to file an application for review against an order declining leave to defend and Section 50 permits an appeal against any final order.

Coming to the averments of the present case, in her eviction petition the landlady averred that she is an old lady aged 72 years and in the evening of her life, wants to stay permanently in India with her husband. Resultantly, as regards the additional condition imposed, learned counsel for the tenant is not in a position to deny that the necessary averment that the landlady wants to come back permanently to India is present in the petition. Therefore, the issue which survives before this Court is whether the landlady can be non-suited for the reason that though the substantive requirement of the 1995 Act has been met yet the petition has been filed under the Act of 1949.

In my considered opinion the provisions of the 1995 Act as detailed above, are to say the least, confusing. In view of the anomalous position a landlord can not be blamed for not having understood the true import and the interplay between the two Acts. In this situation the only equitable decision on this aspect can be that those NRIs-Landlords who filed petitions after the coming into force of the 1995 Act and made the averments required under the said Act would be entitled to file formal applications for amendment of number of the Section and the title of the Act mentioned therein. However, these tenants would be entitled to the statutory benefits conferred by the 1995 Act in so much as they would have the right to file an application for review against the order declining leave to defend as well as the right to file an appeal against an order of eviction. Such landlords who have not made the necessary averments required by Section 24 of the 1995 Act would however have to be non-suited though they would have the right to file fresh petitions conforming to the

requirements of the 1995 Act.

Moreover once it is held that the 1995 Act is applicable, it would be incumbent upon the Rent Controller to first pass an order on the application for leave to defend and after allowing the aggrieved party time to file a review application, then pass a separate final order. It has been argued that a Full Bench of this Court in *Anwar Ali Vs. Gian Kaur, 2011 Vol.2 RCR (Rent), 604* had laid down that in the case of NRIs the order of eviction is a consequential order to an order declining leave to defend. However that ruling came on an analysis of the Act of 1949 and would not be applicable to proceedings under the 1995 Act for the reason that now a provision has been made for filing a review against the order declining an application for leave to defend.

In the circumstances, the petition is allowed and the impugned order whereby leave to defend has been rejected and eviction has been allowed, is set aside. The landlady would be required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to re-decide the application for leave to defend under the 1995 Act.

CR-7708-2015, CR-7437-2015, CR-7438-2015, CR-7439-2015, CR-7435-2015, CR-7436-2015 and CR-7453-2015

Coming to the facts of these petitions which have been filed by the tenants against the orders declining their request to grant leave to defend and allowing eviction passed in the petitions filed on 12/13.08.2014.

Learned counsel for the tenants states that these petitions were filed on 12/13.08.2014 when the 1995 Act had already come into force. However, it is not disputed that the essential averment with regard to permanent residence has been made.

In view of the order passed in CR-5850-2015, these petitions are allowed and the impugned orders whereby leave to defend has been

rejected and eviction has been allowed, are set aside. The landlord would be required to file formal applications for amendment within one month of the date of receipt of certified copy of this order and if it is so done the applications for amendment shall be allowed. The Rent Controller will then proceed to re-decide the applications for leave to defend under the 1995 Act.

Learned counsel for the landlord has further argued that while admitting these petitions the Court had directed the tenants to clear the arrears of rent but the same has not been done till date. They are directed to do so within one month, failing which, the petitions would be deemed to be dismissed.

CR-5862-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 24.03.2014.

Learned counsel for the tenant has argued that the property does not fall within the urban area. The Rent Controller held that as per the notification bearing No.10/7/2011-5LG-III dated 18.11.2011 the entire area of Village Mehatpur has been now constituted into a Nagar Council. I agree with this argument.

Apart from the argument that the landlord is a foreign citizen, the other argument of learned counsel is that this petition was filed after coming into force the 1995 Act. However, it is not disputed that the essential averment with regard to permanent residence has been made.

In view of the order passed in CR-5850-2015, the petition is allowed and the impugned order whereby leave to defend has been rejected and eviction has been allowed, is set aside. The landlord would be required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to re-decide the application for leave to defend under the 1995 Act.

CR-7687, 7689 and 7690-2015

Coming to the facts of these petitions, the same have been filed by the tenants against the orders declining their request to grant leave to defend and allowing eviction passed in the petitions filed on 19.07.2014.

Learned senior counsel for the tenants has argued that the petitions were filed after coming into force the 1995 Act and there are various other grounds also which are available to the tenants to challenge the order refusing leave to defend.

Learned senior counsel for the landladies has, however, pointed out that in para no.7 of the original eviction petition, the landladies have categorically averred that they want to come back to India and spend their remaining life here and this averment is in conformity with the requirement of the 1995 Act.

In view of the order passed in CR-5850-2015, these petitions are allowed and the impugned orders whereby leave to defend has been rejected and eviction has been allowed, are set aside. The landladies would be required to file formal applications for amendment within one month of the date of receipt of certified copy of this order and if it is so done the applications for amendment shall be allowed. The Rent Controller will then proceed to re-decide the applications for leave to defend under the 1995 Act.

CR-5698-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 23.03.2015.

Apart from the argument regarding the foreign citizenship of the landlord, the learned counsel for the tenant has pointed out that the petition was filed on 23.03.2015 and therefore, it had to be filed under the 1995 Act but the same was filed under the Act of 1949. Moreover there is

no averment regarding permanent return of the landlord in the eviction petition.

Learned counsel for the landlord is not in a position to deny this fact.

In view of the order passed in CR-5850-2015, the petition is allowed. It is held that the rent petition is not maintainable. The landlord would be at liberty to file a fresh petition on the same cause of action under the 1995 Act.

CR-7095-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 22.02.2014.

The second argument raised is that the petition has been filed after coming into force of the 1995 Act and therefore, the petition would have to be maintained under the Act of 1949 which has been extended to Chandigarh.

In my opinion, this argument would not be applicable since the property in dispute is located in Chandigarh to which the 1995 Act has not been extended.

Resultantly, the petition is dismissed.

CR-8418-2015

Coming to the facts of the present case, this petition has been filed by the tenants against the order declining their request to grant leave to defend and allowing eviction passed in a petition filed on 29.04.2015.

The learned Deputy Advocate General, Punjab has argued that the petition was filed in the year 2015 and therefore it should have been filed under the 1995 Act. Learned senior counsel appearing on behalf of the landlords has argued that as regards Chandigarh, the 1995 Act has not been made applicable.

Learned Deputy Advocate General, Punjab has further argued that all the co-owners have not filed the petition for eviction and therefore, the present petition is not maintainable. Learned senior counsel for the landlords has relied upon the judgment of this Court in *Smt.Bachan Kaur and others (supra)* to counter this argument.

Having considered the rival arguments, the present petition is liable to be dismissed. The 1995 Act has not been extended to Chandigarh and, therefore, the first plea of learned Deputy Advocate General, Punjab has to be rejected. The second ground taken also covered against the petitioner by the judgment in *Smt.Bachan Kaur and others (supra)*.

The present petition is dismissed.

CR-8679-2015

Coming to the facts of the present case, this petition has been filed by the tenants against the order declining their request to grant leave to defend and allowing eviction passed in a petition filed on 03.12.2014.

Learned counsel for the tenants has argued that actually the landlord had allegedly purchased this property in the year 2005 but the real fact is that a sham transaction of sale was entered into between the landlord and his brother just so that the property could be got vacated under the guise of Section 13-B of the Act of 1949. It has also been argued that the petition was filed in the year 2014 and at that time the 1995 Act had come into operation and therefore, the petition could have been filed only under that Act.

The first argument of learned counsel for the tenants can not prevail. The Rent Controller is not to decide complicated question of title or whether a sale deed is a sham transaction. In view of the sale deed the tenant can not argue that the purchaser is not the landlord.

As regards the second argument learned counsel for the tenants has argued that the necessary averments of permanent residence were made in the petition. In view of the order passed in CR-5850-2015, the petition is allowed and the impugned order whereby leave to defend has been rejected

and eviction has been allowed, is set aside. The landlord would be required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to re-decide the application for leave to defend under the 1995 Act.

CR-1958-2016, CR-1968-2016, CR-1976-2016, CR-1987-2016 and CR-7363-2015

Coming to the facts of these cases, these five petitions have been filed by the tenants against the orders declining their request to grant leave to defend and allowing eviction passed in petitions filed in the year 2014. The additional ground is that the petitions were filed after the coming into force of the 1995 Act. Learned counsel for the tenants have, however, very fairly accepted that the petitions contain the necessary averments which are mandated by Section 24 of the 1995 Act and in so much as the landlords have averred that they are intending to come back permanently to India.

In view of the order passed in CR-5850-2015, these petitions are allowed and the impugned orders whereby leave to defend has been rejected and eviction has been allowed, are set aside. The landlords would be required to file formal applications for amendment within one month of the date of receipt of certified copy of these orders and if it is so done the applications for amendment shall be allowed. The Rent Controller will then proceed to re-decide the applications for leave to defend under the 1995 Act.

CR-2263-2016

In this petition the slight difference is that even though the main ground taken is that the landlord is a foreign citizen yet the prayer made before the Rent Controller was to stay the proceedings which was declined. Apart from that the legal issue raised by the learned counsel is

that the petition was filed after coming into force of the 1995 Act. However, it is not disputed that the essential averment with regard to permanent residence has been made.

In the circumstances, even though the petition against the order declining stay has to fail yet to avoid multiplicity of proceedings it is directed that the landlord would be at liberty to file an application for amendment in terms of the orders passed in CR-5850-2015 and thereafter the Rent Controller will decide the application for leave to defend in the light of the 1995 Act.

Petition is dismissed with the above directions.

CR-6394-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 08.12.2014.

Apart from the main ground, learned counsel for the tenant has argued that in this case the landlord has sought 'additional accommodation' and in such a case leave to defend had to be granted. He has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of ***Santosh Devi Soni vs. Chand Kiran, 2001(1) SCC 255***. Learned counsel for the landlord has countered by arguing that in the eviction petition the landlord had stated that he had in his possession one bedroom, drawing room, one kitchen and a half portion of lobby. It has further been pleaded that in the rest of the ground floor the petitioner was a tenant and there was another tenant on the first floor and the accommodation in possession of the landlord was not sufficient since it would be required for accommodating his relatives and guests. As per the learned counsel for the tenant this cannot be construed to be a plea for additional accommodation because a requirement for relatives has to be taken as personal requirement and if the argument raised by learned counsel for the tenant is accepted it can lead to absurd results because then it may be argued that a landlord who wants accommodation for his wife and children is actually praying for 'additional

accommodation'. In my opinion, the plea of the learned counsel for the landlord carries more weight. The person who has actually one bedroom set can definitely have bonafide need and requirement for more accommodation.

Learned counsel for the tenant has further argued that the petition for eviction was filed after the coming into force of the 1995 Act. Learned counsel for the landlord has argued that from the averments made in the petition the requirement of Section 24 of the 1995 Act has been met. In view of the order passed in CR-5850-2015, the petition is allowed and the impugned order whereby leave to defend has been rejected and eviction has been allowed, is set aside. The landlord would be required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to re-decide the application for leave to defend under the 1995 Act.

CR-7601-2015

Coming to the facts of the present case, this petition has been filed by the tenant against the order declining his request to grant leave to defend and allowing eviction passed in a petition filed on 28.04.2015. Apart from the main ground, it is argued that the present petition was filed after coming into force the 1995 Act. Learned counsel for the landlord has argued that firstly, the application for leave to defend was filed beyond the prescribed period and secondly, the averments in the petition are in conformity with the requirement of the 1995 Act.

In view of the order passed in CR-5850-2015, the petition is allowed and the impugned order whereby leave to defend has been rejected and eviction has been allowed, is set aside. The landlord would be required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to re-decide the application for leave to defend under the 1995 Act.

CR-6776-2016

Coming to the facts of the present case, this petition has been filed by the tenants against the order declining their request to grant leave to defend and consequent eviction passed in a petition filed on 09.12.2013.

The second argument raised is that in the application for leave to defend, the tenants had taken a plea that in the same building there was another 'Baithak-cum-shop' which the respondent could very easily use to start his business. The third argument is that the landlord has also filed another application for eviction of the tenant under the NRI law.

Learned counsel for the landlord has argued that by himself terming the said premises as 'Baithak-cum-shop', the tenants have accepted that it is not a regular shop. He has further argued that under the 1995 Act, there is no such provision that the landlord can only file a petition once in a lifetime and has pointed out that the averments in the petition are in conformity with the requirement of the 1995 Act.

In view of the order passed in CR-5850-2015, the petition is allowed and the impugned order whereby leave to defend has been rejected and eviction has been allowed, is set aside. The landlord would be required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to re-decide the application for leave to defend under the 1995 Act.

CR-399-2016

Coming to the facts of the present case, this petition has been filed by the tenants against the order declining their request to grant leave to defend and allowing eviction passed in a petition filed on 12.08.2015.

Apart from the argument that the landlord is a foreign citizen, the other argument of learned counsel for the tenant is that the petition has been filed after coming into force the 1995 Act and the landlord has not proved that he was owner for 5 years.

As noticed in CR-5850-2015 there is no requirement under the 1995 Act that the landlord should have been owner for 5 years. As regards the argument that the petition has been filed after coming into force of the 1995 Act learned counsel for the landlord has pointed out that the averments in the petition are in conformity with the requirement of the 1995 Act.

In view of the order passed in CR-5850-2015, the petition is allowed and the impugned order whereby leave to defend has been rejected and eviction has been allowed, is set aside. The landlord would be required to file a formal application for amendment within one month of the date of receipt of certified copy of this order and if it is so done the application for amendment shall be allowed. The Rent Controller will then proceed to re-decide the application for leave to defend under the 1995 Act.

09.05.2016

Pooja Sharma-I

(AJAY TEWARI)
JUDGE