

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

Date of decision : 16.05.2016

..... Petitioner

..... Respondent

None for the respondent.

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. (ORAL)

This petition has been filed against the order of the Rent Controller allowing an eviction petition against the present petitioner.

The respondent had filed the instant petition under Section 13 (B) of the East Punjab Urban Rent Restriction Act, 1949 (for short the Act of 1949) claiming that he was a Non-Resident Indian and had taken retirement in the year 1998 and wanted to come back to India and required the shop in question to start a business of stationery. The first argument of learned counsel for the petitioner is that being a foreign citizen the

respondent would not be covered by the definition of Non-Resident Indian (NRI) as defined under Section 2 (dd) of the Act of 1949. In **Krishan Kumar Vs. Kamla Devi** passed in CR No.3509-2014, decided on 09.05.2016 this argument has been rejected. The second argument raised by learned counsel for the petitioner is that the respondent had not disclosed in his petition that he had two other shops in his possession. In the first place to my mind the plea that non-disclosure entails dismissal would not be available in the present case. The requirement of mandatory disclosure has been incorporated only in Section 13(3) which deals with the personal requirement of a resident Indian. This requirement is not there while seeking eviction under any other ground or under Section 13 (B) which is a special right conferred upon NRIs. In the circumstances, the plea that non-disclosure entails dismissal can not be taken by a tenant in a proceeding under Section 13 (B). Faced with this learned counsel for the petitioner has argued that even if the plea of non-disclosure can not be raised by the tenant in a petition under Section 13 (B), yet in the present case once the landlord was forced to admit in his cross-examination that he had two more shops in his possession it was a case where the Court should have held that the tenant had displaced the presumption of bonafide requirement. It may be mentioned here that the plea regarding availability of two shops was raised in the application under Section 18 (A) and in the reply thereto the landlord-respondent had averred that one of the shops was being used as a garage by him and the other shop was being used as a store. It is against this backdrop of fact that the following extracts from the judgment of the

Supreme Court in *Baldev Singh Bajwa Vs. Monish Saini*, 2006 AIR (SC)

59 requires significance :-

“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-section (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 tenants' 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.”

A reading of the above shows that the mere fact that a landlord has any other premises in his occupation would not be enough especially like in the present case where the landlord has given an explanation that one of the rooms is being used as a garage and the other as a store.

In this view of the matter, I find no error in the order of the Rent Controller and consequently dismiss this petition.

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

16.05.2016

Pooja sharma-I

**(AJAY TEWARI)
JUDGE**