IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 7264 of 2012 (O&M)
Date of Decision: December 12, 2016

Satpal

...Petitioner

Versus

Surinder Tamna

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sarju Puri, Advocate
for the petitioner.

Mr. R.S. Athwal, Advocate
for the respondent.

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AUGUSTINE GEORGE MASIH, J.:

CM No.30095-CII of 2012

Annexures P-1 to P-4 are taken on record, subject to all just exceptions.

Application stands disposed of.

CM No.17295-CII of 2015

Affidavit of the respondent is taken on record, subject to all just exceptions.

Application stands disposed of.

CR No. 7264 of 2012

Challenge in this petition is to the order dated 22.10.2012 passed by the Rent Controller, Shaheed Bhagat Singh Nagar, whereby, petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter referred to as '1949 Act') preferred by the respondent-landlord against the petitioner has been allowed.

Briefly, the facts of the case are that the shop in issue is a part of the building which contains three shops of which father of the respondent late Shri Santa Singh was the owner. He executed a Will dated 07.01.1988 in favour of the respondent-landlord-Surinder Tamna. Late Shri Santa Singh died on 10.02.1995 and on the basis of the registered Will dated 07.01.1988, respondent-Surinder Tamna became the landlord of the shops. The shop in question was rented out to the petitioner w.e.f. 31.03.1979 at the rate of ₹ 160/- per month.

Respondent-landlord migrated to United States of America (hereinafter called as 'USA') and started working there and claims himself to be a Non-Resident Indian and since he had become owner of the shop in dispute by inheritance w.e.f. 10.02.1995 i.e. the date of death of his father Shri Santa Singh, he fulfills the requirement of five years' ownership of the shop. He has specifically pleaded that he requires the shop for his personal need and occupation as he has returned from the USA with an intention to permanently settle down in India and start his own business at Nawanshahr by demolishing the entire building including the shop in dispute alongwith the other two shops by constructing a new building in place of the same. He has preferred petitions under Section 13-B of the 1949 Act, against the other two tenants also where the petitions have been allowed by the Rent Controller, Nawanshahr and eviction orders have been passed against them. In support of his claim that he is a Non-Resident Indian, he has produced notarized copy of two passports of which one has been issued by the Indian Embassy on 24.11.1998 in New York where his Indian address as well as address in USA are mentioned. Notarized copy of the certificate of NRI Sabha as also the Photostat copy of Income Tax Return filed by him in USA showing himself to be an income tax assessee. Ex.A-10 is a notarized copy of the passport of the respondent where visa of Australia and of Oslo (Norway) as also stamp of USA has been imprinted. On the basis of these documents, which is supported by the oral evidence of the respondent-landlord and that of the Draftsman who prepared and proved the site plan, the Rent Controller has held the respondent to be a Non-Resident Indian and that he required the demised premises for his personal use and occupation fulfilling the requirements of Section 13-B of the 1949 Act, ordering eviction of the petitioner.

Learned counsel for the petitioner submits that the respondent has not been able to establish that he is a Non-Resident Indian. He contends that the documents which have been placed on record would not show that he had been residing in USA rather had been off and on going to America. As a matter of fact, the respondent had been staying in Norway alongwith his wife, he contends that the intent and purpose of the respondent is merely to get the demised shop vacated from the petitioner and thereafter, alienate the same as he is negotiating with the property dealers for sale of the property. In any case, he does not intend to come back to India and reside here permanently and establish a business. The respondent has not proved that he is immigrant and is residing in a foreign country nor has he established that he has stayed in USA. He contends that merely because off and on he had been visiting USA, he cannot be said to be a Non-Resident Indian. In support of this contention, counsel has placed reliance upon the judgments of this Court in **Jaswinder Singh & another Vs. Mewa Singh & others, 2015 (1) RCR (Rent) 291** and **M/s Chaudhary Auto Division Vs. Ajit Kaur, 2015 (1) RCR (Rent) 267**. He, accordingly, submits that the impugned order passed by the Rent Controller, Nawanshahr, cannot sustain and deserves to be set aside.

On the other hand, counsel for the respondent has reiterated on the basis of the documents referred to above to contend that the respondent is indeed a Non-Resident Indian within the definition under the 1949 Act. He has placed reliance upon the judgments which have been referred to by the Rent Controller in support of the findings that the respondent is a Non-Resident Indian. Prayer has, thus, been made for dismissal of the present revision petition.

I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the records of the case as also the impugned order passed by the authority below.

Ex.A-2 is a notarized copy of the passport of the respondent-landlord which was issued on 24.11.1998 by the Indian Embassy in New York which is a Passport containing Indian as well as the American address. Ex.A-3 is a notarized copy of the certificate of the NRI Sabha. That apart, Ex.A-12 is a Photostat copy of the Income Tax Return filed by the respondent in USA depicting him to be an income tax assessee in that country. Ex.A-10 is the notarized copy of the passport wherein visa of Australia and of Oslo (Norway) as also stamp of USA have been affixed. All these documents apart from the oral evidence which has been led by the respondent goes a long way to show that the respondent had been residing abroad and earning his livelihood. Merely because the wife of the respondent is residing in Norway would not be a ground to presume that he had not been residing in USA. It may be added here that there is a dispute between the respondent and his wife leading to litigation where a decree of divorce has been passed by a Court in USA (Ex.A-7).

The definition of Non-Resident Indian is provided under the 1949 Act and is explained by the Hon'ble Supreme Court in **Baldev Singh Bajwa Vs. Monish Saini, 2005 (4) Law Herald (SC) 561**, and when the same is applied to the case in hand, the respondent fulfills the requirement thereof and therefore, the findings as recorded by the authority below vide its impugned order dated 22.10.2012 cannot be interfered with.

Reliance by the learned counsel for the petitioner on the judgments i.e. *Jaswinder Singh's* case (supra) and *M/s Chaudhary Auto Division'*s case (supra) would not be of any help to the petitioner as those were cases in the peculiar facts and circumstances thereof where the person who was claiming himself to be a Non-Resident Indian had only gone for a short period of time abroad and had then returned back, whereas, present is a case where the same is not the position. These judgments are, therefore, distinguishable on facts.

Respondent having proved his *bona fide* personal requirement which cannot be doubted, this Court finds no merit in the present revision petition and the same is, thus, dismissed.

CM No.30096-CII of 2012

In view of the order passed in the main revision petition, no order is required to be passed in the present application for stay as the same has been rendered infructuous.

Disposed of as such.

(AUGUSTINE GEORGE MASIH)
JUDGE

December 12, 2016
Harish

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No