

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.1000 of 2014 (O&M)

Reserved on: 26.04.2017

Date of decision:09.05.2017

Rajiv Panwar

....Petitioner

Versus

Bahal Singh Dhindsa

...Respondent

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Ashish Aggarwal, Sr.Advocate
with Mr.Ankit Chowdhri, Advocate, for the petitioner.

Mr.Rahul Rampal, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The present revision petition, filed by the petitioner-tenant, under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), challenges the order dated 29.11.2013, passed by the Rent Controller, Ludhiana, whereby ejectment has been ordered under Section 13-B of the Act, after the leave to contest was granted and on the basis of the evidence which has come on record.

The reasoning which weighed with the Rent Controller was that the respondent had proved on record his status as an NRI as he had placed on record his Passport which had been issued by the United Kingdom of Great Britain and Northern Ireland (Ex.A1) and the driving licence (Ex.A2), issued by the UK authorities. Reliance has also been placed upon the certificates of the Bank as Ex.A4, to show that he was holding NRE accounts. The ownership aspect was also taken into consideration by noticing that TS-I Form (Ex.A5), issued by the Municipal Corporation of Ludhiana, showed the ownership and the 2 agreements to sell which had been initially executed by the Ludhiana Improvement Trust on 24.03.1965

CR-1000-2014 (O&M)

as Ex.A6. The subsequent sale deeds of the year 1988 (Ex.A8) and 1982 (Ex.A9) along with the siteplan (Ex.A10) were taken into consideration. Permission to raise construction and the sanction given (Exs.A11 & A12) by the Town Planner of the Municipal Corporation were taken into consideration to hold that there were 2 plots in which the house was constructed and they were abutting each other and the relationship had been admitted of the landlord-tenant, as per the cross-examination itself.

It was held that there being one Municipal Council Number being allotted to both the plots, which was bearing No.B-XX-3687 and eviction was, thus, sought from one building and it all showed that one house was constructed. Resultantly, keeping in view the fact that there was ownership for the last more than 5 years and the fact that there was civil litigation *inter se* in between wherein it was contended that some portion of the property was kept with the landlord, it was held that the landlord was entitled for the eviction order. The property was *bona fide* required for him and his family members and the defence that it was a case of partial ejectment, was, accordingly, rejected on the ground that the courtyard which was common, was being used and it cannot be held to be part of the tenancy. Similarly, the defence of the petitioner that the petition should be stayed under Section 10 CPC, was also rejected on the ground that no argument had been raised and neither any fact has come on record as to why there should be stay.

The findings above were sought to be diluted by the Senior Counsel, appearing on behalf of the tenant on the ground that there was partial ejectment which was not permissible and reliance was placed upon

CR-1000-2014 (O&M)

the judgment of the Apex Court in ***Moti Lal Vs. Nanak Chand 1970 RSJ 99*** and ***Habibunnisa Begum Vs. G.Doraikannu Chettiar (Dead) by LRs 1999 (9) SCR 473***. It was submitted that there were 2 plots bearing No.50-51-B and therefore, one petition would not lie, as such.

The said argument is but to be noticed and rejected, being without any basis. It is not disputed that a Civil Suit was filed on 10.11.2010 (Ex.A14), prior in time, by the petitioner-tenant also, whereby he sought injunction from being dispossessed from the portion of house No.50-51-B, Sarabha Nagar, Ludhiana. The premises described by him was one drawing room, one bedroom, kitchen, bathroom-cum-toilet, on the ground floor and open garrage and courtyard, on the ground that he was tenant in the said premises. The premises had further been described and had been shown in red-colour in the site plan and the boundaries which have been mentioned showed that on one side, there was a road and on one side, there was a house of late Shri J.S.Sidhu and on the other side, there was a house of Krishna Kumari Aggarwal. The premises which are now sought to be evicted, vide the petition under Section 13-B of the Act (Ex.A14), which was instituted on 17.11.2010, showed that the description was the same.

In the suit filed, it was the case of the petitioner that he was a tenant in the premises since February, 2003 and the present respondent and his son were seeking to dispossess him. Therefore, the relationship, as such, was admitted and even the description of the property *inter se* the parties was admitted. The petitioner was also successful in getting *ad interim* injunction on 03.12.2011, on the basis of the said suit. The

landlord had pleaded in his petition, filed under Section 13-B that he was a Non-Resident Indian and had settled in United Kingdom and was of Indian origin and the perusal of the Passport would also go on to show that he was born in Jagowal. It has been averred that he along with his son-Manjit Singh and wife of Manjit, namely, Harinder Kaur were in India since 30.10.2010 and decided to permanently settle in the Jagowal District, Sangrur. It was alleged that he was running a charitable trust under the name of Bhai Budh Singh Charitable Trust (Regd.) at Village Jagowal and the whole of the family was involved in social services in India and United Kingdom. The accommodation in the present occupation was one drawing room, one bedroom, kitchen, bathroom-cum-toilet, which was not sufficient. He was also of old age and was a freedom fighter and was imprisoned in the year 1942. The complete premises were, accordingly, sought to be vacated and he wanted to spend the last years in India and no other property was in his occupation except the one mentioned.

An application under Section 18-A for leave to contest having been preferred and leave having been granted, detailed written statement was, accordingly, filed. It was alleged that the petitioner was also in possession of a store, open courtyard situated towards the west side portion of the property along with the garrage and was using the same for parking his car. The case of partial ejectment was, thus, projected that possession was not being sought from all the portions and that the properties were two separate properties and having different boundaries and not one building. The petition was nothing but an abuse

CR-1000-2014 (O&M)

of the judicial process and reference was made to the suit for permanent injunction which had been earlier filed against him. Complaints moved by the landlord before the NRI police station were also referred to and that he was being harassed. It was denied that there was a single municipal number and that the need was *bona fide* in any manner.

In the replication filed, the factum of the possession of the store open courtyard situated in the western portion of the property was denied and the fact that the petitioner was using the said portion for parking of the car. The contents of the petition were reiterated and the fact that there were registered sale deeds in favour of the landlord were averred. It was mentioned that stay had already been granted in favour of the tenant and there was a chain of litigation, as such, *inter se* the parties.

A perusal of the cross-examination of the petitioner-tenant would go on to show that he also admitted that the property was taken on rent in the year 2003. The plea was set up that respondent was only a landlord and not the owner. It was admitted that he had filed a suit for permanent injunction against the father and the son and that they had purchased 2 plots adjoining each other. He had also admitted that there were no other tenants in the property constructed and that the respondents when they come to India had stayed in that property. The factum of having filed the suit for permanent injunction was admitted. He tried to deny the fact that the suit filed by him, he had not mentioned that he was in possession of the open space in the courtyard and he denied the factum that he had threatened the landlord.

The above sequence of events and glance of the site-plan

(Ex.A16) would go on to show that the tenancy, as such, is at one corner towards the property of Smt.Krishna Kumari where there is a drawing room, one bedroom, one kitchen. As noticed above, in the suit filed earlier, there was no mention that there was any occupation of the garrage or any other room on the other side of the property which has now been alleged to say that eviction was being sought from part of the tenanted premises. The petitioner, thus, cannot blow hot and cold at the same time. The suit had been filed at a prior point of time and at that point of time, he was well aware as to what were the tenanted premises. Merely because there was an open courtyard which he might have an access and which is common, would not, as such, give him a right to allege that eviction has not been sought from the said premises. It is to be noticed that the respondent-landlord is an NRI and visiting India on and of. The petitioner was, thus, in exclusive possession of the common area, as such and would be using the premises which were not even tenanted and which had a common access to the courtyard and an open portion where the car was being parked.

The necessary ingredients, as provided under Section 13-B of the Act for eviction from the building, has, accordingly, been proved that the ownership is more than 5 years at the time of filing of the petition, since it was in the year 1982 and 1988. The landlord had stepped into the witness-box and had deposed his intention to come back. It has been further proved that he is a person of Indian origin and falls within the definition of Section 2(dd) of the Act and all the conditions, as such, mentioned in the judgment in **Baldev Singh Bajwa Vs. Monish**

Saini (2005) 12 SCC 778 are met out.

The contention that matters are pending consideration before the Apex Court, pertaining to Section 13-B of the Act are also without any basis. In Krishan Kumar & others Vs. Kamla Devi & others 2016 (1) RCR (Rent) 525, the said issue was raised, which was repelled, keeping in view the judgments of the Apex Court in Baldev Singh Bajwa (supra) and Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452. The said view has been upheld by dismissing the two appeals, i.e., SLP Nos.15366 & 15367 of 2016, on 11.01.2017, which arose out of the said judgment.

It is further to be noticed that nothing has been brought on record that any fresh reference is pending before the Apex Court before a Larger Bench, wherein the correctness of the judgments in Baldev Singh Bajwa (supra) and Swami Nath (supra), have been doubted. Resultantly, the last straw being clutched at by the Senior Counsel that proceedings should be deferred on that account, is also without any basis. Merely because other SLPs are pending on merits, would not, as such, give an absolute right, as such, to the petitioner, to carry on in occupation of the premises. In Kamaljit Vs. Sarabjit Singh 2014 (2) RCR (Rent) 249, it has been held by the Apex Court that Section 13-B is a beneficial piece of legislation, intending to provide speedy remedy to the Non Resident Indians, for eviction in a summary manner.

In the present case, triable issues were sought to be raised which has been rightly rejected by noticing that there was a common sanctioned plan carried out in the 2 plots having a common municipal

CR-1000-2014 (O&M)

number granted to the building. As per Section 13-B, eviction can be sought from one building and therefore, merely because there were 2 plots measuring 200 sq.yards each and constructed upon a total area of 400 sq.yards, would not disentitle the respondent from seeking eviction, as admittedly, there was only one building situated on the plots.

The findings which have been recorded by the Rent Controller are well justified, in the facts and circumstances and accordingly, the present revision petition deserves no further consideration and the same is, hereby dismissed.

09.05.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*