

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

CR No.1383 of 2015 (O&M)
Date of decision: 22.03.2017

Mintu @ Montu

....Petitioner

Versus

Rakesh Chadha

...Respondent

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

Present: Mr.Rajiv Joshi, Advocate, for the petitioner.

Mr.R.D.Rattewal, Advocate, for
Mr.Malkeet Singh, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioner-tenant, is directed against the order dated 22.01.2015, passed by the Rent Controller, Phillaur, whereby leave to contest has been declined.

The reasoning given by the Rent Controller is that the plea taken by the petitioner-tenant was that the possession was on account of deposit of the fee/charges with the Rehabilitation/Sales Department, 50 years back, but the said documents had never been produced, to show that a triable issue arose.

In contrast, the landlord has placed on record copy of the sale certificate dated 19.12.1963 in favour of his father. The certified copy of the municipal record also showed that he was the owner and the father of the present petitioner, Gurnam Singh was tenant @ Rs.150/- per month. Material was placed before the Rent Controller to show that Chunni Lal, father of the respondent had died on 17.11.1998 and thus, keeping in view the fact that the said respondent was an NRI, holding a Canadian passport,

eviction was ordered.

Counsel for the petitioner has vehemently submitted that triable issues were, as such, made out and therefore, leave to contest, should have been granted.

The said argument is not acceptable. Admittedly, the ownership is more than 5 years prior to the date of filing, which was on 12.06.2009, since material was placed on record to show that the original owner, Chunni Lal had died on 17.11.1998. The respondent-landlord, being an NRI, having a Canadian passport, was, thus, entitled for the benefit of Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'). Necessary averments had been made that he had returned to India permanently and *bona fide* required the premises, as such. Resultantly, keeping in view the fact that the landlord was an NRI under Section 2(dd) of the Act and that he had returned to India and is owner of the property, the necessary ingredients were made out an eviction was ordered.

It had been laid down by the Apex Court in **Baldev Singh Bajwa Vs. Monish Saini 2005 (12) SCC 778** that there is a presumption that the need of the landlord is genuine and a *bona fide* one and heavy burden would lie upon the tenant to the contrary. Relevant observations read as under:

“24. Definition of “Non-resident Indian” (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up

employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase “Indian Origin” has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase “origin” refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2 (dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable

to agree with the interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase “return to India” along with the definition of the “NRI” under Section 2 (dd) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

25. When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in

the submissions made by the learned counsel that the words “return to India” under Section 13-B of the Act denotes return to India permanently.”

In *Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452*, a three Judges Bench of the Apex Court has held that narrow and constricted meaning cannot be given to Section 13-B and rejected the argument that only one unit could be got evicted by the NRI and it was held that the object of the Act would be frustrated if the whole building could not be got vacated. Relevant observations read as under:

“12. Reliance was placed on the decision of this Court in Baldev Singh Bajwa v. Monish Saini [JT 2005 (12) SC 442] where the same question had come up for consideration and it was observed that on a plain reading of the provisions of Section 13-B, it would be obvious that once in a life-time possession is given to an NRI to get one building vacated in a summary manner. It was also submitted that the ownership of the Respondent/landlord in respect of only one building had not been disputed by the Petitioners and the only contention that was raised on their behalf was that each separate tenancy in a building would amount to a separate unit and after exhausting the right of summary possession once, it was no longer available to the NRI landlord to exercise such an option for the second time to a particular building, which contention had been negated by the Courts below.

13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made on behalf of the Petitioners. The interpretation sought to be

given to the proviso to Section 13-B(1) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of Section 13-B by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be accepted.

14. The provisions of Section 13-B of the 1949 Act have been correctly interpreted and dealt with in Baldev Singh Bajwa's case (supra) and in that view of the matter, the Special Leave Petitions must fail and are dismissed. I.A. No.2 of 2006 filed in SLP(C) No.11719 of 2006 by Gurdeep Ram to be impleaded as party in his personal capacity, is also disposed of, accordingly."

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 provision, intending to provide speedy remedy to the Non Resident Indians and the Civil Appeal was allowed since the Rent Controller had taken the view that the NRI owner had failed to prove that he was the owner of the property in dispute since the sale deeds could not be co-related to the shops in question. It was noticed in the said case that the tenancy part was not denied and once that was so, the title of the landlord could not be questioned under Section 116 of the Evidence Act, 1872 and Section 13-B was a beneficial piece of legislation. Relevant observation reads as under:

"16. There is considerable authority for the proposition both in India as well as in U.K. that a tenant in possession

of the property cannot deny the title of the landlord. But if he wishes to do so he must first surrender the possession of the property back to him. He cannot, while enjoying the benefit conferred upon him by the benefactor, question latter's title to the property. Section 116 clearly lends itself to that interpretation when it says:

“116. Estoppel of tenant; and of licensee of person in possession.—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

17. We must before parting remind ourselves that Section 13-B is a beneficial provision intended to provide a speedy remedy to NRIs who return to their native places and need property let out by them for their own requirement or the requirement of those who are living with and economically dependent upon them. Their position cannot, therefore, be worse off than what it would have been if they were not Non-Resident Indians. If ordinarily a landlord cannot be asked to prove his title before getting his tenant evicted on any one of the grounds stipulated for such eviction, we see no reason why he should be asked to do so only because he happens to be a Non-Resident Indian. The general principles of Evidence Act including the doctrine of estoppel enshrined in Section 116 are applicable even to the tenants occupying properties of the Non-Resident Indians referred to in the Act.”

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 judgment of the Apex Court in **Swami Nath (supra)**. The said view was further 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.

Thus, from the above discussion, this Court is of the opinion that the impugned order does not warrant any interference by this Court, under revisional jurisdiction and the same is, hereby, dismissed.

22.03.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No