

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.206 of 2015 (O&M)

Reserved on: 26.04.2017

Date of decision:11.05.2017

Raj Kumar Malhotra

...Petitioner

Versus

Kamlesh Kumari Phull

...Respondent

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

Present: Mr.Vipul Aggarwal, Advocate, for the petitioner.

Mr.Amit Dhawan, Advocate, for the respondent.

G.S. SANDHAWALIA, J.

The petitioner-tenant challenges the eviction order dated 27.05.2014, passed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), whereby eviction has been ordered by the Rent Controller, Jalandhar by coming to the conclusion that all the necessary ingredients, as such, are made out and accordingly, the leave to contest under Section 18-A was denied, while passing the ejectment order.

The eviction petition, from the portion of the house described in the head-note, was filed on the basis of the fact that the landlady had purchased the property on 20.12.1994. The same had been leased out in the year 1999, through Naresh Kumar @ Rs.1500/- per month, which had been enhanced in the year 2003. The need was set up on the ground that the property was to be demolished and a new building had to be constructed for the use and occupation of the landlady who had decided to settle in India. She was holding a Passport issued by the United Kingdom of Great Britain and Northern Ireland and had migrated to England and was born at Nakodar in District Jalandhar on 25.09.1951.

The application was contested by filing petition under Section

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18-A of the Act, that there existed no relationship of landlord-tenant as the property had been leased out by one Naresh Kumar at a sum of Rs.350/- and Rs.10,000/- had been paid as premium to the said person. The ownership was also doubted. An oral agreement to sell for a sum of Rs.3,50,000/- in December, 2006 was set up and it was averred that an attempt had been made to dispossess the tenant who had filed the suit for permanent injunction, which has been granted in favour of the tenant.

In the reply filed by the landlady, it was averred that two different stands had been taken, one that the suit was filed for permanent injunction, claiming that there was a relationship of landlord-tenant and there was an agreement to sell, as such, and therefore, it could not be said that the landlady was not the owner and that the property was required *bona fide* and there was no occasion to sell the same and neither there was any intention as such.

As noticed, the Rent Controller has dismissed the petition by relying upon the presumption under Section 13-B of the Act and keeping in view the judgment of the Apex Court in **Baldev Singh Bajwa Vs. Monish Saini (2005) 12 SCC 778** and of this Court in **Lakhwinder Kumar Vs. Pavittar Kaur (Dead) th. LRs 2010 (1) RCR 588**. It was held that there was a registered sale deed in favour of the landlady measuring 3 marlas 24 sq.yards and she was an NRI and the petition had been filed through a power of attorney. The passport was attached and therefore, the necessary requirements having been made out, the oral agreement with Naresh Kumar Gupta was, accordingly, held out to be of no basis. The right to re-possess under Section 13-B(3) of the Act was also kept in

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mind while ordering ejectment and accordingly, it was held that the ownership was more than 5 years before filing of the present petition and the need was *bona fide*.

The said findings cannot be faulted in view of the law laid down by the Apex Court in **Baldev Singh Bajwa** (supra), **Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452** and **Kamaljit Singh Vs. Sarabjit Singh 2014 (4) RCR (Civil) 252**. It is to be noticed that the Division Bench of this Court in The Division Bench in **Smt. Bachan Kaur and others Vs. Kabal Singh and another, 2011 (2) RCR (Civil) 886** has held that the property which has been leased out on behalf of the NRI person, would also be held to be leased out by him and it would not, as such, make out a triable issue. The requisite ownership of 5 years, as provided under Section 13-B of the Act being there and the presumption in favour of the NRI landlord and his intention to return to India has been rightly noticed. The factum of the landlady having the ownership of the property and being of Indian origin, having been born in Nakodar, have also been taken into account by the Court below. Therefore, the necessary 4 ingredients having been made out, the Rent Controller was well justified in dismissing the application for leave to contest and ordering ejectment.

No fault, as such, could be pointed out by the counsel for the petitioner, in the findings which have, thus, been recorded by the Rent Controller. Accordingly, the present revision petition, being devoid of any merit, is, hereby, dismissed.

11.05.2017

Sailesh

Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No

(G.S. SANDHAWALIA)
JUDGE