

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

204

CR No.2086 of 2012 (O&M)

Date of decision: 30.05.2017

Natha Singh Mechanic

....Petitioner

Versus

Joginder Kaur Sahota @ Harjinder Kaur & another

...Respondents

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

Present: Mr.Ajay Kaushik, Advocate, for
Mr.Dinesh Ghai, Advocate, for the petitioner.

Mr.R.S.Atwal, Advocate, for the respondents.

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petition, filed by the petitioner-tenant, is to the order passed by the Rent Controller, Phagwara dated 05.03.2012 whereby leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act') was declined and ejectment was directed under Section 13-B, on the ground that the necessary four ingredients had been made out, as held out in **Baldev Singh Bajwa Vs. Monish Saini 2005 (12) SCC 778.**

A perusal of the petition filed by the respondent-landlady under Section 13-B of the Act on 21.09.2011 would go on to show that it was her case that the premises had been taken on rent on 25.02.1991 for running the mechanic shop and let out by the late husband of respondent No.1 and father of respondent No.2. The deceased was a Non-Resident Indian of Indian origin and had died on 17.10.2009 and after his death the respondents had stepped into his shoes, who were also Non-Resident Indians having settled in Australia and having returned and wanted to get possession of the premises. Reference was made to the revenue record for the demised premises as per sale deed date 27.11.1987.

It is to be noticed that the Rent Controller came to the conclusion that the property had been purchased both by deceased and respondent No.1-Harjinder Kaur in equal shares and, therefore, the requisite period of 5 years was existing to order eviction. It was also held that since necessary averments had been made that they had returned to India and being Non-Resident Indians they were entitled for eviction, keeping in view the judgment of the Apex Court.

In the application under Section 18-A of the Act, specific contention was raised that the landlords were already in possession of a big building which also abuts the GT Road and possession of which was with the respondents and they could run any business in the said building but they had not started any business and therefore, the presumption of *bona fide* was, accordingly, questioned. Copy of the site-plan and photographs appended would also go on to show that there is no doubt, as such, regarding the said aspect, regarding existence of 2 other shops. Annexure P6/A would also show that the back side of the shop in question was totally open and there were 2 other shops adjoining the shop in question. This aspect has been dealt by the Rent Controller in a cursory manner in as much on the principle that it is for the landlord to decide how to deal with his property and the tenant is not to dictate to the landlord. However, the said principle which has been relied upon by the Rent Controller is not to be applied when leave to contest is to be granted.

It is settled principle that leave to contest is to be only on the

basis of the affidavit filed and once a triable issue regarding the sufficiency, as such, of accommodation available was pleaded in the application under Section 18-A of the Act and it is not denied that there were adjacent vacant shops and the claim of the landlady was that the business is to be done from the tenanted premises. Sufficient material was, thus, brought on record and therefore, leave to contest should have been granted. The factum of alternative accommodation once being available, then leave to contest as such should have been granted keeping in view the principle laid down by this Court in *Nelson Christopher vs. Pritam Singh, 2010 (1) RCR (Rent) 16* wherein, it has been held that once there is ownership of another house in the same urban area and the landlord did not show as to what was the ground of preference, leave to contest is to be granted. The relevant para reads thus:-

“10. Therefore, from the affidavit of the petitioner, it was to be seen whether the respondent was dis-entitled from getting the possession of the demised premises. In order to succeed, he was to prove that he bona fide required that premises for his use and occupation. It stands proved from the facts that the respondent owns and possesses another house in the same urban area and nothing was said by the respondent as to what was the ground of preference for getting the demised premises vacated. From the affidavit of the tenant it prime facie stands proved that the respondent shall be dis-entitled to the recovery of the possession of the demised premises on the ground taken by him in the application under Section 13-B of the Act. Therefore, the finding recorded by the Rent Controller cannot be sustained and is liable to be set aside.”

Resultantly, keeping in view the said principle, the present revision petition is allowed, the impugned order dated 05.03.2012 is set

aside. The tenant will be permitted to file written statement. Needless to say that since it is an application under Section 13-B, the trial shall be completed by 31.12.2018, by the Rent Controller.

30.05.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>