

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2003 of 2014 (O&M)

Date of Decision: 03.08.2017

Jagmohan Agnihotri

... Petitioner

Versus

Harjap Singh Ota

... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Karn Singh Cheema, Advocate,
for the petitioner.

Mr. V.K. Jindal, Sr. Advocate,
with Mr. Vikas Gupta, Advocate,
for the respondent.

RAJIV NARAIN RAINA, J.

1. This revision is under Section 15 (V) of the East Punjab Urban Rent Restriction Act, 1949 (for short “the Act”) challenging the order dated January 20, 2014 passed by the learned Rent Controller, Khanna evicting the petitioner tenant on a petition filed under Section 13-B of the Act by the respondent who is NRI and specified landlord. By the impugned order leave to contest the petition has been declined resulting in the eviction of the petitioner from part of the building which is a shop 20' x 40” in Khanna.

2. There has been previous litigation between the parties involving the first suit by the tenant against the landlord seeking permanent injunction not to be dispossessed except by due process of law. The injunction was granted vide order dated September 01, 1999 on the statement of the landlord that he would not dispossess the petitioner except

in accordance with law. The landlord filed an ejectment petition under Section 13 of the Act on the ground of personal use and occupation for opening an office to control his business activities to run a petrol pump in Amloh Road, Khanna and has other business. Again eviction petition was filed on May 30, 2008 on the ground of non-payment of rent which was dismissed as withdrawn on February 06, 2010 because the rent was paid by the tenant. In this petition, the landlord did not invoke his status as specified landlord to recover possession of the demised premises restricting his claim to arrears of rent. Ultimately, the present eviction petition was filed under Section 13-B of the Act before the Rent Controller, Khanna for eviction of the tenant from the shop in dispute. The landlord asserted that he was a Non-Resident Indian and in a support produced his passport issued by the Consulate General of India, New York, his commercial driving licence and Debit Card issued by the Bank of America. The petitioner is a person of Indian origin and classifies as Non-Resident Indian with a right to recover immediate possession of a building for his bona fide requirement and personal necessity. The petitioner was a septuagenarian when the petition was filed. He mentioned the previous litigation in the rent petition. He was born on November 06, 1943. He stated that he was a Law Graduate and was a practicing as Advocate in the Civil Courts at Samrala, Ludhiana and Khanna. He had settled in the United States of America for the last many years. He was hale and hearty and decided to shift to his native place in Khanna because the family belongs to that town. Before he travelled abroad he resided at Samadhi Road, Khanna in the rear operation and on the 1st floor of the shop in question which is part of part of a residential building

owned by the petitioner. He had decided to come back to India to spend the remaining part of his life in his home town. The disputed shop is part of the building. He pleaded that he wanted to demolish the entire structure including the shop after vacation of the tenant to raise a modern construction and he had sufficient funds and capacity to raise a new building. Merely because there is a shop which does not convert the character of the building as residential as it is a combination of both. He asserted that he does not occupy a similar residential building within the municipal limits of Khanna. He asserted that the building is situated at a place which is close to the GT Road and enjoys facilities like bus stand, railway station, bazars etc. which are close to the property and the location is suitable for residence of the landlord in his old age. He asserted that he had not vacated any such or similar building in Khanna after the commencement of the Act without any just and reasonable cause. He asserted that he had never litigated in exercise of his right under Section 13-B of the Act in any of the previous litigations. Even though the earlier petition for arrears of rent is pending he prayed for eviction and for possession of the premises. The learned Rent Controller has declined leave to contest to the tenant finding the need of the landlord as bona fide. Section 13-B is a special provision introduced in the Act in 2001 empowering Non-Resident Indian to recover immediate possession of one building, once in a life time after vacation of premises following eviction. The NRI landlord remains restrained from letting out the premises and in case, he does tenant has a right to apply for re-gaining possession and tenancy. The law is stringent against the landlord to fulfill the purposes of Section 13-B of the

Act which is an extraordinary power which is possessed by Non-Resident Indian who wish to recover one building for the own use and occupation. It is not for the tenant to express his opinion as to the needs of a NRI landlord as to why he need the premises when he chooses one property to seek eviction.

3. I have heard Mr. K.S. Cheema, learned counsel appearing for the petitioner and Mr. V.K. Jindal, Senior Advocate with Mr. Vikas Gupta, learned counsel appearing for the respondent.

4. Mr. Cheema placed a strong reliance on a decision of the Supreme Court in Devinder Kumar v. Nachhattar Singh, 2014 (2) RCR (Rent) 533 to assert that leave to defend ought to have been granted having regard to the fact that three eviction petitions were filed earlier and in at least the last one the landlord did not claim his rights as a NRI landlord/specified landlord. The landlord owned the suit land many years more than the five years required to avail the right under Section 13-B read with Sub Section (4) and (5) of Section 18-A of the Act. In *Devinder Kumar's* case the nature of the three earlier eviction petitions have not been spelled out. It is not determinable from the report whether the three eviction petitions were filed by NRI landlord and were dismissed. Therefore, the ruling can be of no help in the facts of the present case when either the previous litigation including the civil suit and eviction petition were filed prior to coming into force of Section 13-B of the Act which is prior to 2001. The eviction petition filed after coming into force of the Act was only for recovery of arrears of rent on account of default of the tenant not paying rent for the premises. Therefore, after coming into force of the Act the right

under Section 18-A read with Section 13-B was exercised by the present respondent for the first time and all that he had to plead and prove was that he was a bona fide Non-Resident Indian. He required the premises for his use and occupation that he had bona fide requirement and personal necessity to seek eviction from one building and such building was owned by him, at least 5 years prior to the filing of the petition.

5. On the other hand, Mr. Jindal relied on the decision of this Court in Dr. Ved Pal Kaushal v. Harcharan Singh and another, 2010 (4) RCR (Civil) 692; Sat Pal v. Om Parkash, 2007 (2) RCR (Civil) 131 & Avtar Singh v. Ajit Singh, 2007 (1) RCR (Civil) 763 which all help him in seeking dismissal of the revision. The case cited by Mr. Cheema is clearly distinguishable since it cannot be said to be authority when the change made by the State of Punjab in bringing a special procedure for a special class of persons with a right to seek eviction on one building in a life time and its immediate possession. The case is distinguishable on facts. In *Sat Pal* (Supra) this Court held that even if the NRI landlord had filed ejectment petition under the ordinary law of eviction under Section 13 with the coming into force of the special provision during the pendency of earlier litigation, even then NRI landlord is entitled to file fresh application under the special provisions. To seek such a right the NRI landlord must intend to settle in India whether he has actually returned permanently or whether he comes to India on temporary basis. The NRI landlord cannot be stopped from availing the remedy made available by the newly added provision merely because the decisions in earlier ejectment petitions or because of pendency of ejectment petitions filed earlier under the ordinary law. The

Court relied on the decision of the Supreme Court in Baldev Singh Bajwa v. Monish Saini, 2005 (4) RCR (Civil) 492 (SC).

6. For the reasons stated above, I find no error in the order declining leave to contest and ordering the eviction of the tenant from the suit building.

7. As a result, the petition is dismissed. However, in the interest of justice, three months' time is given to the petitioner to vacate the premises and handover its vacant possession to the respondent landlord. The petitioner would file an undertaking on affidavit to this effect before the Rent Controller who will pass appropriate orders thereon.

03.08.2017
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No