

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.2374 of 2015 (O&M)
Decided on : 18.05.2017

Monjit Kaur

... Petitioner

Versus

Faqir Chand

... Respondent

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

Present: Mr. Sandeep Khunger, Advocate
for the petitioner.

Mr. Deepak Aggarwal, Advocate
for the respondent.

G.S. Sandhawalia, J. (Oral)

The petitioner-landlady challenges the order dated 24.02.2015 (Annexure P-5), whereby leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') has been granted for the second time on untenable reasons, in spite of an earlier order having been passed in favour of the petitioner-landlady in ***Civil Revision No.6417 of 2013 on 03.12.2014*** (Annexure P-4) *inter se* the parties.

Specific principles had been laid down by this Court as to what is the jurisdiction under Section 13-B of the Rent Controller at the time of granting leave to contest, in view of the settled law in '***Baldev Singh Bajwa vs. Monish Saini***', 2005 (4) RCR (Civil) 492. The order impugned, however, does not show that the Rent Controller has applied its mind to the binding precedent of this Court, *inter se* the parties on an earlier occasion and blindly granted leave to contest on totally untenable grounds being

biased by the fact that some other family member owned commercial property in the town of Bathinda.

The distinction between under Section 13 (3) and 13-B, seems to have been blurred in the mind of the Rent Controller while deciding the application for leave to contest. The said leave to contest had been granted solely being blinded by the fact that on an earlier occasion her Predecessor-in-Interest had granted leave to contest. Therefore, since issues had already been framed earlier the case has unnecessarily been put to trial, without taking into the account the fact that the Apex Court in '**Kamaljit Singh Vs. Sarabjit Singh' 2014 (4) PLR 828** has also held that Section 13-B of the Act is a piece of beneficial legislation for providing speedy remedy to the NRI landlord by way of providing summary eviction.

The Rent Controller while reproducing the four ingredients, which are required for ordering eviction under Section 13-B in paragraph No.6 has taken into account the ownership of a building belonging to the son of the landlady and the alleged admission of two shops, which were lying vacant, of the landlady.

A perusal of the reply to the application whereby leave to contest was again taken into consideration dated 13.08.2013 (Annexure P-2) would go on to show that it was the case of the tenant that the applicant and her son had constructed two shops independently, which were lying vacant on the land bearing *Khasra No.5110/438 (0-4)* situated in Lal Singh Basti, Municipal Corporation, Bathinda. Similarly, it was

averred that she owns another shop just two shops away from the shop in question, which had been sold and the copy of the sale deed had been attached.

The response by the landlady to the said grounds raised for leave to contest was that the property belongs to Sukhjinder Singh, who is stated to be the son and the same was not ideal for carrying on any business. Specific averment was also made that she owned only one commercial building consisting of two shops and one shop was with the present respondent and the other one with Amit Kumar. Similarly the alleged sale which had taken place was also clarified that it was to raise money required for the purchase of a residential house. Even otherwise there is no such bar that once a property was sold in the year 2012, the present petition instituted in the year 2013 would necessarily require leave to contest. It was further stated the shop was on rent and vacation of the same was not in sight as on the date of execution of the sale deed.

The provisions of Section 13-B provides that an NRI landlord can get one building vacated of three separate categories during the lifetime. The discussion has already been made on an earlier occasion *inter se* the parties. The ground for leave to contest on the ground of the ownership of another family member would not be one of that grounds which would raise triable issues as such. The independent right to seek of an NRI landlord, thus, would arise irrespective of the fact that another family member might be owning some other property and would not be as

such a bar to file a application under Section 13-B for which necessarily leave to contest has to be granted as a matter of rule.

Accordingly, in view of the above, the present revision petition stands allowed. The impugned order dated 24.02.2015 (Annexure P-5) is set aside.

The Rent Controller will decide the matter afresh within a period of two months from the receipt of the certified copy of this order, keeping in view the observations made on the earlier occasion and as noted above.

MAY 18, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No