

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.2136 of 2014 (O&M)
Date of decision: 29.03.2017

Kamal Kumar & another

....Petitioners

Versus

Avtar Singh

...Respondent

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

Present: Mr.Vikas Bahl, Sr.Advocate
with Mr.Nitish Garg, Advocate, for the petitioners.

Mr.M.K.Chaudhary, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition, filed by the petitioners-tenant, is directed against the order dated 21.01.2014, whereby leave to contest has been declined by the Rent Controller, Shaheed Bhagat Singh Nagar, in the petition filed by the respondent-landlord, under Section 13-B on the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), on the ground that there was no triable issue, as such, raised.

Learned Senior Counsel for the petitioners has vehemently submitted that since in CR-2135-2014, leave to contest has been granted of the adjoining shop, therefore, same relief should also be granted in the present case. It is further submitted that the title, as such, is disputed and therefore, on the basis of the Will, the Rent Controller is not justified in declining the leave to contest. The last argument raised is that the matters are still pending before the Apex Court and since the landlord is a Canadian citizen, therefore, the issue requires consideration.

Firstly, it is to be noticed that the Apex Court in **Baldev Singh Bajwa Vs. Monish Saini 2005 (12) SCC 778** and **Kamaljit Vs. Sarabjit Singh 2014 (2) RCR (Rent) 249**, has gone on to hold that Section 13-B is a beneficial piece of legislation and is meant for providing speedy remedy to the NRI, the issue which has been repeatedly raised that the matter is pending before the Apex Court and therefore, requires consideration, is also to be rejected, in view of the fact that matter was considered by a Co-ordinate Bench in **Krishan Kumar & others Vs. Kamla Devi & others 2016 (1) RCR (Rent) 525** and the said issue was repelled, keeping in view the judgment of a Three Judges Bench of the Apex Court in **Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452**. 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.

Merely because some cases are still pending before the Apex Court, on their own peculiar facts and circumstances, as such, would not raise a triable issue which the Rent Controller would have to go into on this account. The said argument is without any basis, since nothing has been pointed out 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.

The second issue regarding grant of leave to contest in the connected matter also, would not detain this Court for long. In the said case, the alleged tenant turned out to be a co-owner, being a nephew of the landlord, having separate inheritable rights in the property and therefore, the order of the Rent Controller was set aside and leave to contest was granted.

Lastly, the third issue regarding the ownership that there is no such document of title, also would not need much consideration. In the petition filed under Section 13-B, it has been specifically alleged that Pritam Singh was the original owner who executed the Will in favour of his wife- Rattan Kaur on 02.01.1989. After his death on 08.09.1991, Rattan Kaur became the owner of the property and she executed one registered Will dated 06.02.2001 in favour of the respondent-Avtar Singh along with two brothers, namely, Balbir Singh and Pritpal Singh. She expired on 16.05.2001 and it is on the basis of being a co-owner in the property, the eviction petition was preferred, as the petitioners were inducted as tenants by Pritam Singh, the father of the respondents on 12.04.1986. Once inducted as a tenant, they cannot question the title of the landlord under Section 13-B, keeping in view the provisions of Section 116 of the Indian Evidence Act, 1872. Resultantly, the necessary 4 ingredients regarding the ownership of 5 years prior to the date of filing of the petition, which was filed on 17.03.2008, is duly satisfied, and the title, after the death of Rattan Kaur, as succession had opened up, was that of the petitioner, being co-owner and therefore, the 5 years' period was already there. The factum of permanently returned to India has also been pleaded and the presumption to its correctness has been laid down in **Baldev Singh Bajwa's case** (supra). Keeping in view the fact that the landlord is a Canadian citizen, to which, there is no dispute, which has already been noticed earlier, the ingredient of Section 2(dd) have been satisfied. A perusal of the Passport (Annexure P4) would go on to show that the place of birth of the landlord was Banga, which is the place where the shop is located and therefore, he is a person of Indian origin. Thus, all the necessary ingredients

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have been noticed by the Rent Controller and are present, making out no case for grant of leave to contest.

Accordingly, finding no ground to interfere in the well reasoned order passed by the Rent Controller, the present revision petition is, hereby, dismissed.

29.03.2017

Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*