

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.3368 of 2012 (O&M)
Decided on : 14.02.2017**

R.D. Singh, Principal New Public School and another

... Petitioners

Versus

Kirpal Singh Sethi

... Respondent

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

Present : Mr. Gurpreet Singh, Advocate
for the petitioners.

Mr. Lalit Thakur, Advocate
for the respondent.

G.S. Sandhawalia, J. (Oral)

The present petition has been filed by the tenant against the order of the Rent Controller, Chandigarh dated 28.04.2012 (Annexure P-6), whereby while declining application under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'Act'), the rent petition filed under Section 13-B of the Act of the respondent-landlord was allowed and directions were issued to vacate premises within 3 months from the date of the order.

The Rent Controller rejected the plea of the tenant that on an earlier occasion the petition under Section 13 of the Act of the landlord had been dismissed. Keeping in view the judgment of the Apex Court in ***'Baldev Singh Bajwa Vs. Monish Saini' 2002 (4) RCR (Civil) 492***, it was held that provisions under Section 13-B would as such give a right to the landlord to seek eviction, since 14 years had passed when the earlier application filed and, therefore, there was change in circumstances.

Accordingly, it was held that since the landlord is the best judge of his requirements, therefore, no triable issue as such arose and leave to contest was declined.

A perusal of leave to contest application (Annexure P-4) filed by the tenant would go on to show that on an earlier occasion Rent Petition No.305 of 1998 on the ground of personal necessity had been dismissed by the Rent Controller on 07.09.2005 (Annexure P-1) which has been upheld by the Appellate Authority vide order dated 30.08.2007 (Annexure P-2). The plea taken that there was sub-letting on an earlier occasion had also been rejected and the tenant was paying the rent and the bonafide requirement of the petitioner had been doubted.

The said application was replied on account of the fact that there was change in circumstances and the landlord and his wife were old persons and residing in Thailand and it did not suit them and, therefore, the premises were required. It was further alleged that one Shanti Harbans Singh had taken the house in dispute on rent many years back and which she had sublet the same to the present petitioners who are in occupation.

It is settled principle that leave to contest application is to be granted only in case there is a triable issue which is raised inter se the parties. In the petition under Section 13-B of the Act, four ingredients which are to be present are that:-

- (1) The person has to be an NRI as defined under the Act;
- (2) that he has to desire that he wants to come back

permanently to India;

(3) that the ownership of the property should be of the five year before the filing of the application and

(4) that there is a bonafide requirement of the property in question.

As a matter of fact it has been found on an earlier occasion in the year 2005, in the petition instituted in 1998 that the bonafide element was missing *inter se* the parties itself. Thereafter the matter was taken up to the Appellate Authority unsuccessfully by the respondent-landlord which dismissed the petition on 30.08.2007 (Annexure P-2). Three years later present petition under Section 13-B of the Act has been filed in 2010 which was allowed on the premise that there was no triable issue as such.

The said reasoning on the face of it cannot be accepted. If the requirement had arisen it was again to be tested on the question after leading evidence as such once *inter se* the dispute has been settled between the parties that there was no bonafide requirement.

It is not disputed that proposition of law that the bonafide requirement can also arise at a subsequent point of time and a second petition is maintainable. But, in the facts and circumstances once the claim of the landlord had been rejected on an earlier occasion it would have been appropriate if leave to contest should have been granted as a triable issue was being raised.

Counsel for the petitioner is well justified in placing reliance upon '**Hans Raj Vs. Malkiat Kaur**' 2009 (2) RCR (Rent) 667 wherein

similar dispute arose, whereby after a period of two years the landlord had filed a petition and leave to contest had been declined. The relevant portion of the said judgment reads as under:-

“6. It is well settled that in order to seek immediate eviction of a tenant through the summary procedure as provided under Section 18-A of the Act, a NRI-Specified Landlord is required to fulfill the statutory conditions laid down under Section 13-B of the Act viz. (i) he/she should be the owner of the premises for a period of at least 5 years before filing the eviction petition and (ii) he/she requires the premises for his/her own use and occupation or for a person dependent on him/her.

7. If a tenant questions the credibility of any of these ingredients and his plea is supported with some cogent material, in my considered view, it would constitute a triable issue and justify the grant of leave to contest. Suffice it to observe that the statutory presumption that the need of the Specified Landlord for the demised premises is genuine and bonafide, is rebuttable. The objection taken by the petitioner-tenant on the basis of previous judgment dated 24.7.2002 gives rise to a triable issue, therefore, the Rent Controller ought to have granted leave to contest on that count.

8. For the reasons aforesaid, this revision petition is allowed; the impugned order dated 17.12.2007 is set-aside and the application of the petitioner- tenant for leave to contest is allowed.”

It is to be noticed that provisions of Section 13-B were extended on 09.10.2009 to Chandigarh. It is apparently, thereafter, the application was filed by taking advantage of the extension of Section 13-B of the Act, which was made applicable in Chandigarh also. Even otherwise, if the said provision has not been there, the petition had to be filed again under Section 13 and eviction could only have been ordered after the evidence and not in a summary manner, which has now been

done.

Accordingly, the order dated 28.04.2012 (Annexure P-6) is not justified and the same is set aside. The tenant will file his necessary reply to the petition under Section 13-B of the Act. However, keeping in view the fact that the plea is again on account of bonafide requirement of an aged NRI, it would be appropriate that the matter is concluded by 31.03.2018 by the Rent Controller.

FEBRUARY 14, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No