

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.3760 of 2014

Date of decision: 06.04.2017

Naresh Kumar

....Petitioner

Versus

Gurcharan Singh

...Respondent

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

Present: Mr.Jatinder Singla, Advocate, for the petitioner.

Mr.Harsh Aggarwal, Advocate, for the respondent.

G.S. SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 03.05.2014, passed by the Rent Controller, Sangrur, whereby the application filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act'), while rejecting the application of leave to contest, filed under Section 18-A of the Act.

The reasoning given by the Rent Controller, while dismissing the application, was that the respondent was an NRI, as his passport was issued by the Canadian Government and there was a rent note dated 07.07.2006 and therefore, the tenant could not deny the title of the respondent. Reliance was placed upon **Baldev Singh Bajwa Vs. Monish Saini 2005 (4) RCR (Civil) 492**, to deny the leave to contest. Resultantly, it was held that as per the said judgment, the necessary ingredients, as such, were made out and therefore, ejection has been ordered.

Counsel for the petitioner has referred to a specific objection raised in the application for leave to contest, filed under Section 18-A of the Act, in para No.4, that there was no pleading that the respondent was the owner of the premises in question, in the petition filed under Section 13-B of the Act.

A perusal of the reply filed by the respondent-landlord would also

go on to show that the defence taken was that the rent note was there in his favour and therefore, the title could not be denied until he surrenders the possession. The said defence was, as noticed, accepted by the Rent Controller. The reasoning which has, thus, been given by the Rent Controller, is fallacious and thus, is not liable to be accepted. The Apex Court in **Baldev Singh Bajwa** (supra) has held that 4 necessary ingredients are required before ejectment of a tenant can be done in a summary manner under Section 13-B of the Act. One of the pre-condition is that there has to be ownership for a period of 5 years before instituting the petition. In the present case, the petition was instituted on 20.12.2012. The pleadings under Section 13-B was also that there was a rent note date 07.07.2006.

Counsel for the respondent has tried to justify that in the rent note itself, there was an admission, as such, and therefore, the order was justified.

A perusal of the provisions of Section 13-B of the Act would go on to show that there has to be an ownership of the Non-Resident Indian. Mere admission in the rent note, as such, thus, would not give the title, which would be one of the necessary ingredients, as held out by the Apex Court. In such circumstances, this Court is of the opinion that the necessary ingredients having not been placed before the Rent Controller, inspite of specific objection having been raised, the impugned order is not justified. Reliance was rightly placed upon the judgment in **Adarsh Kumar Kanda Vs. Gurcharan Singh Bedi 2007 (2) RCR 107**, wherein leave to contest was granted as there was no ownership for the last 5 years before filing of the

petitioner under Section 13-B of the Act.

Another irregularity which has come on the face of the record is that inspite of the application having been dismissed, ejectment order was not passed, inspite of the settled law, as laid down by the Full Bench in **Anwar Ali Vs. Gian Kaur 2011(2) RCR(Rent) 604**, that once the leave to contest application is denied, ejectment order is to follow. Accordingly, this Court is constrained to set aside the order dated 03.05.2014 and an opportunity is granted to the landlord to place material of proof of title before the Rent Controller and on the needful being done, a fresh decision shall be taken on the application, filed under Section 18-A of the Act.

Parties to appear before the Trial Court on 01.05.2017.

06.04.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No