

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.3880 of 2012 (O&M)

Harbhajan Singh

....Petitioner

Versus

Balraj Singh Sanghera

...Respondent

CR No.4031 of 2012 (O&M)

Panna Lal

....Petitioner

Versus

Balraj Singh Sanghera

...Respondent

Date of decision: 05.04.2017

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

Present: Mr.S.K.Sharma, Advocate, for the petitioner(s).

Mr.S.S.Chatrath, Advocate, for the respondent(s).

G.S. SANDHAWALIA, J. (Oral)

Challenge in the present revision petitions, filed by the 2 tenants, is to the order passed by the Rent Controller, Jalandhar on 04.05.2012, whereby leave to contest has been declined and ejectment has been ordered under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the 'Act').

It is not disputed that possession is sought of the shops in question which are part of the property nos. B-XIII/1/1/5, New Vijay Nagar, Old Canal Road, near Puli Basti Nau, Jalandhar City. Challenge was sought on the ground that the respondent, who was a Non-Resident Indian and holding a British Passport and was an Indian by birth, had gone to the United Kingdom 40 years back and settled there along with his wife, for

taking up employment. He was owner of 3/20 share in the property along with his wife and the building was owned by his wife, brother and sister-in-law, vide 3 sale deeds dated 01.04.1982, 07.04.1982 and 06.10.1982, 3/5 share was of the said persons. Vide 2 other sale deeds also dated 06.10.1982 and 15.10.1982, the remaining 2/5 share was also owned by his brother-Harjinder Singh and his wife-Tarsem Kaur. Thus, approximately the property covered 9 marlas 204 sq.ft., in which the petitioner was a tenant at Rs.400/-. It was the case of the landlord that he retired from the his job in United Kingdom w.e.f. 31.03.2010 and returned to India. Similarly, his wife also retired and returned to India. The premises were required for opening a modern car service centre and an outlet for sale/purchase of premium segment cars, in order to earn their livelihood, as it was ideally situated and resultantly, the application was filed on 08.04.2010.

The petition was contested by filing an application under Section 18-A of the Act, seeking leave to contest, on the ground that the ownership was only to the extent of 3/20 and the property in dispute was taken from the brother, who was the original owner of the property and their existed no relationship of landlord and tenant. The petition was filed under Section 13-B of the Act, to take the benefit of summary eviction and therefore, there was no *bona fide* requirement and the shops were to be re-let at a higher rate after getting the same vacated and the *bona fide* necessity was, thus, questioned.

The Rent Controller took into account the fact that the

landlord was Indian by birth and the passport had been placed on record, showing the place of birth at Jalandhar and therefore, being of Indian origin and also a British citizen, it was held that he fell under the category of Non-Resident Indian. Merely because he had a nominal share to the extent of 3/20 in the property, it was held that co-owners are entitled for seeking eviction under Section 13-B of the Act, by placing reliance upon **Ravinder Pal Mohindra Vs. Gurbachan Singh & others 2006 (3) RCR (Civil) 708**. It was noticed that the ownership was more than 5 years and the fact that the shop had been taken on rent from Harjinder Singh, his brother, who was also the owner of the property. Reliance was also placed upon **Lakhwinder Kumar Vs. Pavittar Kaur (Dead) th. LRs 2010 (1) RCR 588** that even if the premises are let out by co-owner or an authorized person, by the NRI landlord, it shall amount to letting out the premises for and on behalf of such owner and it was held that there was sufficient protection under the Act to negate the defence, as such, that the shop was to be leased out and accordingly, the necessary ingredients having been fulfilled, eviction was ordered.

Counsel for the petitioner has, accordingly, argued that a triable issue, as such, is made out, since the area owned was nominal, as such, and therefore, leave to contest should have been granted.

The said argument is but to be noticed and rejected. Under Section 13-B of the Act, the landlord is entitled to get a complete building evicted under the summary procedure. The Division Bench in **Smt. Bachan Kaur and others Vs. Kabal Singh and another, 2011 (2)**

RCR (Civil) 886 has held that the NRI co-owner can seek eviction of the tenant under Section 13-B of the Act from the building not inducted by such NRI and it is not necessary that all other co-owners should be NRIs and there should be no objection for other co-owners. As noticed, it is a one family *inter se* which holds complete title of the building and therefore, the objection, as such, questioning the amount of the share holding is itself without any basis. It is a family agreement and therefore, under the Indian Evidence Act, 1872, the tenant cannot question as to how and to what portion the landlord is owner in possession.

The Apex Court in Baldev Singh Bajwa Vs. Monish Saini (2005) 12 SCC 778 has laid down the principles and it has also been held that there is a presumption in favour of the NRI owner. The said view has further been approved by a Three Judges Bench of Apex Court in Swami Nath Vs. Nirmal Singh 2010 (9) SCC 452 wherein it has been held that no restrictive meaning is to be given. Thereafter, in Kamaljit Singh Vs. Sarabjit Singh 2014 (4) RCR (Civil) 252 it has further been held by the Apex Court that it is a beneficial piece of legislation and the purpose of providing speedy remedy of eviction to NRIs who return to their native places and therefore, leave to contest has been rightly declined, as such, as no triable issue had been raised.

The argument, thus, which has, now, been raised that some other shop was already in occupation would be not of much help, since the pleadings itself show that a consolidated area is required for reconstruction and therefore, even if one shop was vacated, the same

cannot be utilized for which purpose eviction was sought.

Accordingly, this Court is of the opinion that there is no legal infirmity or irregularity, as such, in the orders impugned which would warrant interference by this Court under revisional jurisdiction and the present revision petitions are, consequently, dismissed.

05.04.2017

Sailesh

Whether speaking/reasoned:

Whether Reportable:

Yes/No

Yes/No

(G.S. SANDHAWALIA)
JUDGE