

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4065 of 2016(O&M)

Date of decision: 9.5.2017

Surjit Kaur

...Petitioner

Versus

Mohinder Singh

...Respondent

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

Present: Mr. Sarju Puri, Advocate for the petitioner.

None for the respondent.

G.S.SANDHAWALIA, J. (Oral)

The present petition is directed against the order dated 3.5.2016 whereby leave to contest has been declined by the Rent Controller, SBS Nagar on the ground that no triable issue arises and there is presumption of bonafide requirement of the landlord who was an NRI and having passport of United Kingdom and intended to return to India. Resultantly, keeping in view the observation of the Apex Court in ***Baldev Singh Bajwa Vs. Monish Saini, 2005 (4) RCR (Civil) 492*** leave to contest has been declined.

Counsel for the petitioner has rightly pointed out that the petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") was based on the sale deed dated 25.3.1992 and the allegation that there was relationship of landlord and tenant as such was denied, therefore, respondent was not entitled for eviction in a summary manner being owner of house in question for more than last five years. It is pointed out that the petition was filed on 7.3.2013 and prior to that the respondent had himself filed a suit for mandatory

injunction/ordering the defendant to cease to use and occupy the house in question which is now alleged to be tenanted premises and relationship of landlord and tenancy has been set up.

A perusal of the order dated 2.8.2012 (Annexure P/5) would go on to show that the said suit was withdrawn in view of the statement suffered by counsel for the landlord before the Civil Judge (Senior Division), SBS Nagar.

Objection as such have also been raised by filing an application under Section 18-A of the Act before the Rent Controller. The plea taken was that the respondent was kept in the house as domestic help and even her husband had been implicated in a case of dacoity. The landlord was owner of big Kothi in the village where he resides when he comes to India. In reply to the factum of earlier stand, the same was only defended by taking the plea that the tenant is estopped to deny the title of the landlord. The ownership aspect of another property was also side stepped by taking the plea that there was no property possessed of semi commercial, residential or otherwise in the urban area of Nawanshahr and house in question was required for personal use and occupation. It was further submitted that the landlord was having a house at village Bazidpur but the same was about 15 Kms. away from Nawanshahr and the said house was in lonely place and therefore, he wanted to reside at SBS Nagar.

Keeping in view the above contrasting stand as such which has been taken regarding relationship of landlord and tenant, triable issue as such was raised which the Rent Controller, SBS Nagar failed to appreciate.

Keeping in view the judgment in **Nelson Christopher Vs. Pritam Singh** 2010(1) PLR 311 wherein it was held that once the alternative

accommodation is available and triable issue has been raised, leave to contest is to be granted. The relevant para reads as under:-

“In the present case, the respondent has tried to suppress the fact that he owns and possesses another house in the urban area concerned. He has come out with a plea that the said house is owned and possessed by him and still he requires the demised premises for his use and occupation. In these circumstances, he is not entitled to the benefit of the observation made in the above said judgment.

9. In the case of Inderjeet Kaur's case (supra), it was held by the Apex Court that "assertions and counter assertions in the affidavits of the parties may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion unless there is strong and acceptable evidence available to show that facts disclosed in the application filed by tenant seeking leave to defend were either frivolous, untenable or most unreasonable. At the stage of granting leave, real test should be whether facts disclosed in the application/affidavit seeking leave to defend prima facie show that land lord would be dis-entitled from obtaining an order of eviction and not whether at the end the defence may fail."

Accordingly, the present petition is allowed and the impugned order dated 3.5.2016 passed by the Rent Controller, SBS Nagar is set aside. The petitioner-tenant is permitted to file written statement.

Needless to say that the Rent Controller, SBS Nagar shall dispose of the petition as expeditiously as possible preferably by 31.3.2018.

May 09, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No

Pardeep Kumar
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Punjab and Haryana High Court,
Chandigarh