

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

Civil Revision No.5893 of 2012 (O&M)

Reserved on: 16.05.2017

Decided on : 31.05.2017

Rajesh Kumar

... Petitioner

Versus

Balbir Singh Calay and others

... Respondents

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

Present : Mr. Arun K. Bakshi, Advocate
for the petitioner.

Mr. H.S. Bhullar, Advocate
for the respondents.

G.S. Sandhawalia, J.

The present revision petition is directed against the order dated 24.08.012 passed by the Rent Controller, Ludhiana, whereby the application for leave to contest under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as '1949 Act') filed by the petitioner was dismissed and Rent Controller found that there was a sale deed dated 19.04.1966 in favour of the respondents/landlords and, therefore, the requisite ownership period of 5 years prior to the filing of the petition on 14.10.2011 was present and thus the necessary 4 ingredients were made out.

The passport of respondent No.3, namely, Amarjit Singh Calay went on show that he was NRI, since the same was issued by United Kingdom, Great Britain and Northern Ireland. Resultantly, keeping in view the presumption that there is a bonafide requirement as

such and there was a intention to return to India eviction has been ordered.

Mr. Bakshi submitted that leave to contest should have been granted as there was triable issue and petition had been filed through the attorney for the other respondents and other respondents had not put their passport on record. Reliance was placed upon the judgment passed in **'Basant Kaur Vs. Romesh Kumar Deora' 2008 (4) PLR 313** in support of the said contention.

A perusal of the paper-book would go on to show that it was the case of the respondents who all are legal heirs of the deceased Surjit Singh who had died in the year 1994 that the petition had been filed by respondent No.3 herein as a attorney of respondents No.1, 2 and 4, whereas respondent No.5 had filed it being the owner. Respondent No.3 had further appointed Rajwinder Singh and Jatinder Singh as their attorney for signing the petitions. It was pleaded that the original owner was the husband of respondent No.4 and father of other respondents who were residing in the house in question with other family members who had migrated to England. The petitioner-tenant was in possession of portion of house in question i.e. B-XV-154-56/9 G.T. Road, Millar Ganj, Ludhiana shown in red colour, which was being used as a shop and had been rented out by Surjit Singh. After his death the rent was being paid to his widow Smt. Kulwant Kaur till April 2009.

Accordingly, eviction was sought on the ground that Amarjit

Singh was an NRI and had migrated to England and had a passport of United Kingdom and had become British Citizen. He had returned to India to settle here and the premises were required for his personal use and occupation of all the petitioners. The family members of the other respondents were visiting and would also use and occupy the premises in question. Separate petitions were also being filed for vacation of two other shops which were with one Rajesh Kumar.

The leave to contest was filed by the petitioner that they had no intention to shift to India and did not require the premises in question. They were permanently employed at England and were not exclusive owners of the building. They were claiming to be co-owners of the property and were not entitled to seek eviction and they had not produced any document regarding the ownership. Resultantly, leave to contest was sought on the ground that the eviction petition was filed to sell the building through her attorney, which was not permissible.

In the reply the respondents/landlords took the plea that the property was owned by their father and husband of respondent No.4 and had been inherited by as they stepped into the shoes. They being the owner have a right to get the property evicted and they had intention to return to India. The tenant had been inducted by their father and even in the records of the Municipal Corporation the property had been transferred in their favour and there existed a relationship of landlord and tenant between the parties. It was the only property stated to be available with the petitioners and it was denied that there was any intention to sell

or any property dealer had visited the tenant. The portion under tenancy was to be got vacated and utilized by them for residence purpose and a petition had already been filed against the other tenant Kirpal Singh and in the absence of any other residential or non-residential building being available in Ludhiana as well as in Punjab, the need was set up and it was alleged that there was no ground to grant leave to contest.

The Rent Controller noticed that the site plan and copy of the sale deed in favour of the father, namely, Surjit Singh, which had been placed alongwith the receipts of the house tax and copy of assessment register entries for the year 1995-1996. The attorney's given by other family members to respondent No.3 was accordingly taken into consideration and alongwith the sale deed which had been executed by Krishna Wanti in favour of the father regarding the building in question way back in the year 1966. The copy of the assessment register would go on to show that after the death of Surjit Singh, the property had been transferred in their names in the year 1995-1996, whereas the petition was filed in the year 2011 and, thus, they were owners on succession having opened up. No other person was alleged to be the owner to whom the rent had been paid and therefore, the relationship as such has not been denied and no triable issue has been made out and keeping in view the TSI Form issued by the Municipal Corporation and the ejectment order, thus, has rightly been passed.

The said order does not suffer from any infirmity as such, which would, thus, warrant any interference, keeping in view the law laid

down by the Apex Court in ***Baldev Singh Bajwa vs. Monish Saini, 2005 (4) RCR (Civil) 492.***

Counsel for the petitioner has placed reliance upon the judgment of the Apex Court in '***Devinder Kumar Vs. Nachhatar Singh' 2015 (1) RCR (Civil)***, to contend that leave to contest should have been granted. However, in the said case, the Apex Court noticed that three eviction petitions have been filed by the erstwhile owners which had been dismissed and the property had been purchased in the year 1995 and there was a rent note in favour of the tenant who was there in possession since 1990 under the earlier owner. It was in such circumstances, keeping in view the fact that there was also a suit for mandatory injunction filed inter se the parties, therefore, leave to contest was granted.

In the present case, the property had been inherited by respondents through their father and husband and it is not disputed as such that entries have been made by the Corporation in favour of the legal representatives, after the death of Surjit Singh in 1994. The petition was filed in the year 2011 and, therefore, the presumption of the bonafide requirement was correctly made out by the Rent Controller, who has rightly ordered eviction.

The argument raised that the attorney was prosecuting the case would also be of no help, since, it has been held by this Court in the case of '***Amarjit Singh Vs. Amarjit Kaur' 2012 (4) PLR 726*** that in ***Basant Kaur (supra)*** the judgment relied upon, the observations made in ***Baldev Singh Bajwa (supra)*** whereby the petition can be prosecuted

through an attorney at a stage of leave to contest were not noticed. The relevant part of the above said judgment reads as under:-

*“9. The Hon'ble Supreme Court also while deciding Baldev Singh Bajwa's case (supra) and going into the facts of one case (**Gurbachan Singh Badhan v. Gurcharan Singh**), held as under:-*

"The High Court has upheld the order passed by the controller and held that the landlord/ respondent is the owner of the property for more than the five years and that it is not necessary for an NRI to personally come and file the petition; and that if the petition is filed through an attorney and the NRI comes later, requirement of Section 13-B is satisfied. There are no particulars given about the other properties held by the landlord and in the absence of cogent material placed before the Controller as to the other properties alleged to have been held by the landlord, the burden placed on the tenant to rebut the presumption that the need of the landlord is genuine and bonafide, would not stand discharged and thus there is no ground to interfere with the decision of the High Court."

*10. Thus, keeping in view the binding precedent of the Hon'ble Supreme Court, it cannot be said that the petition filed through power of attorney is not maintainable. The judgment referred by the counsel for the petitioner in **Basant Kumar's case (supra)** has not taken into consideration the judgment of the Hon'ble Supreme Court in **Baldev Singh Bajwa's case (supra)**, the relevant paragraph thereof has been reproduced above.*

In the present case as noticed all the landlords are the legal heirs of Surjit Singh Calay and, therefore, even if they had executed attorneys in favour of each other for prosecuting the eviction petition and if one of the attorney further delegated the power to another person to

look after the litigation, no such fault can be found in the said action.

Resultantly, the argument put forth does not as such raise any triable issue, which would warrant interference. The premises are part of a residential house, which are required for the need of the family members and, therefore, keeping in mind that the landlord is the best judge of his needs, the tennat cannot as such question the eviction on the grounds of bonafide requirement.

Accordingly, the present revision petition is dismissed.

May 31, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No