

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

Civil Misc. No.6302-CII of 2017 in/and
Civil Revision No.6889 of 2013(O&M)
Date of decision: 19.04.2017

Junaid Ali Khan

...Petitioner

Versus

Baljit Singh Dhanoa and another

...Respondents

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

Present: Mr. Arihant Jain, Advocate for the petitioner.

Mr. Jagnahar Singh, Advocate for the respondents.

G.S.SANDHAWALIA, J. (Oral)

Civil Misc. No.6302-2017

This is an application for restoration of the revision petition which was dismissed in default on 7.3.2017.

Notice of Civil Misc. Application to the counsel for the respondents.

Mr. Jagnahar Singh, Advocate accepts notice on behalf of the respondents and submits that he has no objection if the petition is restored to its original number and the same be decided on merits.

Accordingly, the Civil Misc. Application is allowed and the petition is restored to its original number.

Civil Revision No.6889 of 2013

With consent of the counsel for the parties, the main case is taken on board for hearing.

Challenge made by the petitioner is to the order dated 16.7.2013 passed by the Rent Controller, SAS Nagar Mohali under Section

13-B of the East Punjab Rent Restriction Act, 1949 (hereinafter referred to as “the Act”) whereby application for leave to contest has been declined and resultantly eviction order had been passed.

Counsel for the petitioner has vehemently submitted that need is allegedly of respondent no.2 who is born in Pakistan and having Canadian passport, therefore, she would not fall under the definition of Non Resident Indian. It is further submitted that property was let out by one Smt. D.K.Bal who was mother-in-law of respondent no.1-Baljit Singh and therefore, premises were not let out as such by the respondents and triable issues as such are arising since there was contradiction in the petition filed under Section 13-B and reply to the application filed under Section 18-A of the Act.

A perusal of the paper-book would go on to show that the averments made in the petition under Section 13-B of the Act were that respondents who are mother and son claimed that they had purchased the property in the year 2004 vide sale deed dated 7.4.2004. The premises in question are bearing house no.3011, Phase VII, SAS Nagar Mohali and they leased out the ground floor and first floor of the house to the present petitioner who was the tenant in the house in question however the garage and the annexee area were in their possession. It was further averred that Smt. Nachhattar Kaur Dhanoa-respondent no.2 and her husband were old aged persons and suffering from many chronic illnesses. The husband had also suffered a stroke and he was not feeling comfortable at Canada and could not stay over there further. The doctor had advised him to stay in India. Accordingly, averment was made that they wanted to shift permanently to India and one room and annexee was very small as per their

requirements and standard of living. The husband of Smt. Nachhattar Kaur Dhanoa had also suffered a stroke and could not climb the stairs and required to stay on the ground floor and the rest of the family needed the first floor immediately. It was further mentioned that the suit for permanent injunction had also been filed by the tenant and he had refused to vacate the premises in question. In such circumstances, the petition under Section 13-B of the Act which had been verified at Canada has been filed.

An application under Section 18-A of the Act for leave to contest was filed wherein the plea taken was that the petition under Section 13-B of the Act was filed with malafide intention. The tenant was already in occupation of the ground floor as well as the first floor and dispossession had been stayed. There was no relationship of landlord and tenant between the parties as the property was leased out by husband of Smt. D.K.Bal, who was the mother-in-law of Baljit Singh-respondent no.1 to the wife of the present petitioner and the receipt of rent was used to be issued in favour of Smt. Junaid Parveen. It was also averred that the landlord being citizens of Canada had no intention to shift to India and annexee portion and garage was sufficient accommodation for them.

In reply filed by the landlords, it was averred that no triable issue was arising as such and even the application was not supported by affidavit. It is submitted that the landlords were of Indian Origin and the premises are required for the parents of respondent no.1-Baljit Singh. They used to come and stay in India for several months and had to stay in hotels. The premises were taken on rent by Junaid Ali Khan, the present petitioner as well as his wife, namely, Junaid Parveen from Smt. D.K.Bal, mother-in-law of Baljit Singh as the landlords were in Canada in those days and they

had paid the rent to her. The civil suit had been filed by the present petitioner that he had taken the premises on rent and now he could not turn around that he was not the tenant in the premises in question as both husband and wife were living in the said premises. Thus the premises were required for their own use and occupation and the garage portion and annexee were not sufficient and they had to stay in hotels during their visit to India and sometimes the wife of the Baljit Singh, landlord use to live with her mother at Mohali. It was not mandatory that the owner himself should let out the premises to the tenant and issue receipt himself and any authorised person could do the same.

The Rent Controller, Mohali accordingly keeping in view the judgment of the Apex Court in ***Baldev Singh Bajwa vs. Monish Saini, 2005 (4) RCR (Civil) 492*** came to the conclusion that no triable issue was arising. The respondents were permanent residents of Canada and therefore, application was allowed. It was rightly noticed that false plea had been taken as the suit had been filed against Baljit Singh and Smt. D.K.Bal in which it was pleaded that he had taken the premises on rent from defendant no.2 Smt. D.K.Bal who was none other than but the mother-in-law of respondent no.1-Baljit Singh herein. It was accordingly held that he could not be allowed to deviate from the pleadings which were made and no triable issue as such was arising. The findings recorded by the Rent Controller, Mohali are well justified.

The necessary ingredients have been duly established. The property in question was purchased by the landlords vide sale deed dated 7.4.2004 and the application under Section 13-B of the Act was filed on 24.7.2012. Necessary requisite period of ownership for five years was

already there.

The argument which is now raised that the mother-respondent no.2 was born in Western Pakistan and therefore, she is not Indian is to be noticed only to be brushed aside as the residents of Punjab who were displaced during partition and have further migrated for seeking employment to other parts of the world and have been issued passports by other countries and have shown intention of return to India are necessarily persons of Indian origin and therefore, it cannot be said that the respondent no.2 is not of Indian origin as defined under Section 2(dd) of the Act. The Apex Court in '**Kamaljit Singh Vs. Sarabjit Singh**' 2014 (4) PLR 828 has held that the said Act is a beneficial piece of legislation and NRIs are entitled for eviction from the premises by summary proceedings and the object of Act would be frustrated if they have to go through the normal trial and contest the petitions. It has been categorically averred that the landlady who is aged and her husband is not keeping well and staying in Canada wants to come back to India to spend her last days in her own country. It was also averred that they are forced to stay in hotels when they visit to India. In such circumstances, the bonafide requirement of the landlords is justified. It is a matter of fact that in the suit for permanent injunction filed by the tenant, the petitioner himself had taken the plea that the premises in question were taken on rent by him and now he cannot turn around that the relationship of landlord and tenant does not exist and his wife is the tenant to raise a triable issue. He would necessarily have to be bound down by the principle of estoppel and having taken benefit of the relationship and got a injunction now cannot turn around and plead to contrary.

In the present case, the property was let out by the mother-in-law of respondent no.1 and therefore, the argument raised that the property was not let out by the said respondent is without any basis. The Division Bench in ***Smt. Bachan Kaur Vs. Kabul Singh and another 2011(1) RCR (Rent) 368*** has held that if property is let out by some one else on behalf of NRI instead of letting out by the landlord himself, it would amount to letting out by the NRI landlord and no triable issue as such would arise on this account.

The argument which has been raised that the matter pertaining to Section 13-B of the Act is pending before the Apex Court is to be repelled by noticing that the view in *Baldev Singh Bajwa's case (supra)* had been followed by the three Judge Bench in ***Swami Nath vs. Nirmal Singh, 2010 (2) RCR 388*** wherein, it had been held that a restrictive definition was not justified. The relevant part reads as under:-

“13. We have carefully considered the submissions made on behalf of the respective parties and we are unable to agree with the submissions made 1 on behalf of the Petitioners. The interpretation sought to be given to the proviso to Section 13-B(1) of the 1949 Act would lead to an absurd situation which was not contemplated by the legislature while introducing the provisions of Section 13-B by way of amendment in 2001. The very object of the amendment would be frustrated if the narrow and constricted meaning being canvassed on behalf of the petitioners is to be accepted.

14. The provisions of Section 13-B of the 1949 Act have been correctly interpreted and dealt with in *Baldev Singh Bajwa's case (supra)* and in that view of the matter, the Special Leave Petitions must fail and are dismissed. I.A. No.2 of 2006 filed in SLP(C) No.11719 of 2006 by Gurdeep Ram to be impleaded as party in his personal capacity, is also disposed of, accordingly.”

Similar argument was raised before this Court in ***Krishan Kumar and others vs. Kamla Devi and others, 2016 (1) RCR (Rent) 525*** which was repelled by placing reliance upon earlier judgments of the Apex Court noticed above. The said view has been further upheld by the Apex Court whereby it dismissed two appeals i.e. SLP Nos.15366 and 15367 of 2016, which arose out of the judgment in *Krishan Kumar's case (supra)* on 11.01.2017. No material has been placed before this Court to show that any reference is pending before a Larger Bench regarding the issue of definition of the NRI or that the above view has been doubted.

Resultantly, the findings recorded by the Rent Controller, Mohali vide impugned order dated 16.7.2013 do not suffer from any infirmity or illegality which would warrant interference by this Court.

Accordingly, the present revision petition is dismissed.

April 19, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No