

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

**Civil Revision No.7715 of 2013 (O&M)
Decided on : 07.02.2017**

Phoolan Rani and others

... Petitioners

Versus

Niranjan Singh Bahra

... Respondent

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

Present : Mr. C.L. Sharma, Advocate
for the petitioners.

None for the respondent.

G.S. Sandhawalia, J. (Oral)

The petitioners challenge the order dated 21.11.2013, whereby the Rent Controller has allowed the petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'Act') of the respondent-landlord and directed eviction on the ground that the leave to contest has already been dismissed.

The petitioner had sought eviction under the said provisions on the ground that he was residing in U.K and is a Non-Resident Indian and co-owner in the property in dispute, which was let out @ ₹84/- per month. He was a aged person and wanted to return to India and entitled to get immediate possession of the property in dispute. The petitioner had been inducted as a tenant and had been asked to vacate.

The argument which has now been raised is that the power of attorney had put in appearance and, therefore, landlord had not put in appearance and that he only was a co-owner is without any basis. It is settled principle that at the stage of leave to contest, the petition under

Section 13-B is maintainable through the attorney.

The Hon'ble Supreme Court also while deciding '**Baldev Singh Bajwa Vs. Monish Saini**' JT 2005 (12) SC 442, 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."

The said view also followed by this Court in '**Amarjit Singh Vs. Amarjit Kaur**' 2012 (4) PLR 726. 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.

As noticed the application of leave to contest was declined as finds mention in the order itself. The petitioners have not challenged the said order, whereby leave to contest has been declined.

The Full Bench of this Court in '**Anwar Ali Vs. Gian Kaur**' 2012 (2) PLR 554 has held that after rejection of the leave to contest, an order of ejectment follow straightway. The relevant portion reads as

under:-

“2. A conjoint reading of the aforesaid two provisions of the Act would go to show that the legislature in its wisdom thought it is necessary to engraft provisions for expeditious disposal of petitions for eviction filed by Non- residential landlord. Under Section 13-B, leave to defend, has to be sought by a tenant and only upon such leave being granted, it would be open for the tenant to contest the claim of the landlord with regard to his requirement of the tenanted premises. Once leave is refused, Section 18-A (4) introduces a deeming provision by which the claim of the landlord with regard to the need for the premises is to be presumed.

3. Apart from the specific provisions of the Act, reproduced above, particularly those contained in sub-section 4 of Section 18-A, the Apex Court in **Baldev Singh Bajwa v. Monish Saini, 2005(2) R.C.R.(Rent) 470 : 2005(4) R.C.R.(Civil) 492 : AIR 2006 Supreme Court 59** had occasion to deal with the very same provisions of the Act. After an elaborate discussion, which is available in the text of the judgment, the Apex Court came to a conclusion that the provisions of Section 13-B wafid-require the tenant to bring on record evidence of a very strong character to rebut the legal presumption that is inbuilt in Section 18-A of the Act with regard to the need of the N.R.I. landlord in respect of the tenanted premise. Only upon such convincing evidence being laid i before the Rent Controller, leave to defend can be granted, failing which, obviously, the legal presumption with regard to the need of the landlord would continue to hold the field.”

xxxxxxxxxxx

5. The above discussions would lead us to the conclusion that(in a situation where under Section 13-B of the Act, leave is refused to the tenant to defend the proceedings brought by the N.R.I. landlord, eviction of the tenant has to be ordered as an automatic consequence.

The Division Bench in '**Bachan Kaur and others Vs. Kabal**

Singh and others' 2011 (1) RCR (Rent) 368 has held that co-owner is

owner of each part and is entitled to seek ejectment for benefit of all co-owners under Section 13-B of the Act. The relevant paragraph reads as under:-

“10. A co-owner is owner of each part of the property in husband like manner with other co-owners. He is entitled to seek ejectment of tenant in premises for benefit and for the benefit of all other co-owners. Such right is subject to one exception that none of the remaining co-owner objects to such action of the petitioning co-owner. If one of the owners happens to be a NRI, he does not relinquish his character and status as that of co-owner. Thus an order of ejectment obtained by a NRI - co-owner will bind other co-owners but will not entitle other NRI and/or an co-owner to seek ejectment of tenant from another building either owned solely by such co-owner or jointly with other persons as co-owner in exercise of right of eviction granted to an NRI by [Section 13-B](#) of the Punjab Act. Thus in respect of first question of law, it is held that a co-owner, who is Non-Resident Indian, even when other co-owners are not Non-Resident Indians, can maintain a petition for ejectment for the benefit of all the co-owners.”

Accordingly, there is no merit in the present revision petition and same is, accordingly, dismissed.

FEBRUARY 07, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No