

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

(1)

**Civil Revision No.1235 of 2014 (O&M)
Date of Decision: May 24, 2018**

Rajesh Behal

.....PETITIONER(s).

VERSUS

M/s Kulwinder Electronics and another

....RESPONDENT(s).

(2)

Civil Revision No.1236 of 2014 (O&M)

Rajesh Behal

.....PETITIONER(s).

VERSUS

Bhupinder Pal & Company and another

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. N.K. Vadhera, Advocate
for the petitioner (s).

Mr. H.S. Brar, Advocate
for the respondent (s).

SURINDER GUPTA, J.

Revision petitioner, a non-resident Indian, filed two separate petitions under Section 13-B of East Punjab Urban Rent Restriction Act, 1949 (later referred to as 'the Rent Act, 1949') seeking ejectment of respondents from two shops under their tenancy on ground floor of Kothi Road, Unntan Mohalla, Nawanshahr (SBS Nagar) being part of property

bearing No.18 of Circle B-7 in the Municipal Record, on the ground of his bona fide need to run a departmental store in the property in question.

As both the revision petitions relate to the shops in the same premises of which ejectment of respondents has been sought as per provisions of Section 13-B of the Rent Act, 1949, the same have been taken up together for disposal by this common order.

The plea of the parties in both the petitions are similar, as such, for the sake of convenience, facts are being taken from the ejectment petition No.4368/2013 (Civil Revision No.1235 of 2014).

The respondents sought leave to defend raising the plea that the petition is not in prescribed form and summons/show cause notice was also not issued in accordance with special procedure and prescribed proforma laid down under the Act; that the petitioner/landlord is not Non-Resident Indian/NRI Specified Landlord as defined in Section 13-B of East Punjab Urban Rent Restriction Act and is residing in India for the last several years; he has also got himself enrolled as voter in the Voter List of State Assembly, Municipal Council, as well as, Parliament of India and availed facilities available only to Resident Indians like ration card from Punjab Civil Supply Deptt., as such, is not entitled to file present petition under Section 13-B of East Punjab Urban Rent Restriction Act. While challenging title of revision petitioner over demised premises, he pleaded that revision petitioner has not placed on file any document of inheritance/death certificate/title deed of the property, in question in the name of his predecessor-in-interest without which he cannot claim ownership concerning the shop in dispute and adjoining property. Smt. Santosh Behl/Santokh was original landlady of the

shops under tenancy of respondent. She left behind four legal heirs i.e. three daughters and one son. This petition is bad for non-joinder of necessary parties. Smt. Rajni Mehta wife of Sh. Ram Vinod Mehta son of Sh. Trilok Chand Mehta, resident of Kangra (Himachal Pradesh) was receiving rent of demised premise(s) for the last several years upto December, 2010. Will of Smt. Santosh Behal, on the basis of which petitioner claims title over suit property was also denied. The respondent alleged that there are important triable issues in this petition, which call for grant of leave to defend. It was also alleged that the respondent/landlord is negotiating the sale of shop in question along with other adjoining shops and rear portion of his property to some property dealer and in order to fetch higher rate/price, he has filed this petition to get the property vacated before sale. He does not require the shop in question for his personal bonafide need and the application for eviction has been filed with malafide intention. The respondent has neither resources nor expertise to start the alleged intended business and the shop in question is not suitable for running the business (departmental store) as stated in petition. That petitioner possesses commercial properties situated at better location, which he has intentionally not disclosed. Detailed Site Plans of other property in his possession were annexed 'A', 'B', 'C', 'D' with application seeking leave to defend. It was also alleged that the petitioner/landlord was in occupation of double storey commercial building situated at Railway Road, Main Commercial Market, Nawanshahr (shown in site plan Annexure E) under his tenancy and he has vacated the same after receiving huge amount running into lacs of rupees as

concealed by landlord/petitioner with malafide intention.

Revision petitioner denied the plea raised by the respondent in his reply, inter-alia, pleading that petition has been filed in prescribed form, summons/show cause notices were also issued as required. The revision petitioner has given his local address in the petition which in no way take away his status as non-resident Indian, who is settled in America for the last 14 years. He last came to India in middle of March, 2011 and stayed here for three weeks before returning to America. He has never got registered himself as a voter in India or obtained any ration card. The premises is owned by the revision petitioner as per registered Will of his mother dated 08.10.1991. He has appointed his sister Rajni Mehta as his attorney to collect rent of the premises. The petitioner required the demised premises for his personal bona fide need and possess required source and expertise to start the business. The premises in question is suitable for the purpose of opening departmental store as the same is situated in commercial hub of the town. He has no other suitable accommodation in his name. He is in occupation of rear portion of demised premises which he uses for residential purpose. The property on northern side of the premises is in possession of wife of petitioner, which is a residential accommodation. The revision petitioner denied that he owns any other commercial building and rebutted the contention of respondent-tenant about other property with plea in para 2 (iv) of the reply to the application seeking leave to defend filed by the tenant, which reads as follows:-

“The plot shown in the alleged map with boundaries, north Mandi Farm, Sought-Karyam road, East property of Prem Singh, West-property of others, has nothing to

do with the petitioner Rakesh Behal and he has no concern with the same. The property allegedly shown in double storey hall, on the northern side of which Railway road, south plot of others, East Rupeshi Beauty Parlour and training centre, west High Class Jewellar, has nothing to do with the petitioner and he has no concern with the same. The plot shown in the map situated in village Karyam Road behind K.C. Estate is of course is ownership with possession of petitioner Rajesh Behal. **This plot is residential plot situated out of municipal limit of Nawanshahr and is part of khasra No.43//2 (8/0), 95//2/2(1-16), 1(5-7), 56//4(8-0), 5(7-18), 6/1(0-19), which was also earlier owned by Smt. Santosh deceased his mother and the same the petitioner acquired through the said Will.** The plot situated in Satgur Nagar Nawanshahr is of course the ownership with possession of Rajesh Behal which is situated in residential locality and which he purchased through registered sale deed dated 15.10.1981, registered on 16.10.1981 and the same is part of khasra Nos. 1810(0-9), 1823(2-6), 3281/2588(0-2), 1805(2-5), 1807(2-7), 3119/1812-1813(18-4), thus has no bearing in this case. Rest of the allegations made in this part are incorrect.”

The revision petitioner denied that he was tenant in property at Railway Road or had vacated the same. He pleaded his no concern with that property. All the other averments of the respondents-tenants were also contested, controverted and denied.

Perusal of the order passed by the Rent Controller shows that the petitioner was held to be a Non-Resident Indian. The petitioner had also produced documents of his title over the demised premises and the learned Rent Controller observed that the demised premises belong to him which he

had inherited from his mother. However, learned Rent Controller allowed the leave to defend only on the ground that tenant has put on record various site plans to show the properties of landlord and these were taken as disputed question of fact creating triable issues in the present petition. With these observations, leave to defend was allowed.

As per Section 18(a)(v) of the Rent Act, 1949, leave to contest may be allowed to the tenant in application filed by the landlord under Section 13-B of the Rent Act, 1949 if the affidavit filed by the tenant discloses such fact as would disentitle the specified landlord from obtaining an order for recovery of possession of the premises (residential, scheduled or non-residential) under Section 13-B of the Rent Act, 1949.

On perusal of the order of learned Rent Controller, I find that the Rent Controller has discussed in detail the arguments but has not come up with any findings except on two points that the petitioner is NRI and demised premises belongs to him. Section 13-B of Rent Act, 1949, authorises a Non-Resident Indian to seek possession of any building, residential, Scheduled or non-residential, which is required for his or her use or for the use of any one ordinarily living with or dependent on him or her. Provisions of Section 13-B of Rent Act, 1949 clearly show that the landlord has been given the discretion to chose any residential or non-residential building and seek the ejectment of the tenant from it, as such, even if a non-resident Indian own any other property, he can exercise his discretion to eject tenant(s) from a building of his choice, which he require for his use as per provisions of Section 13(B) of the Rent Act, 1949.

From the order of Rent Controller, it appears that leave to

defend was allowed only because the tenant has placed on record various site plans to show the properties of landlord and learned Rent Controller considered this as disputed question of fact. The relevant observations of learned Rent Controller to this effect are as follows:-

“If the application of the applicant/tenant is seen he has put on record various site plans to show the properties of the landlord these are the disputed question of facts which create triable issues in the present petition.”

Now, I have a look on the plea raised by the tenant/respondent in his application seeking leave to defend. In para 2 (iv), he has raised certain plea regarding the demised premises which are enumerated as follows:-

Firstly, the petitioner has not placed on file document of inheritance/death certificate/title deed of the property in question in the name of his predecessor in interest. Smt. Santosh Behal, landlady had left behind four legal heirs i.e. three daughters and one son, as such, this petition is bad for non-joinder of necessary parties. The rent of the demised premises was paid to Rajni Mehta wife of Ram Vinod Mehta, as such, petitioner has no locus standi to file the present petition.

The above plea of the respondent-tenant was negated by learned Rent Controller with the observation that suit property belongs to revision petitioner Rajesh Behal which he inherited from his mother. The plea of the respondent-tenant that petitioner is not Non-Resident Indian was also negated by the Rent Controller with the observation that the petitioner has been able to show that he is an NRI.

Secondly, the tenant has raised issue that the revision petitioner

is negotiating the sale of the suit property with some property dealer and he neither possesses resources nor expertise to start intended business (Departmental Store). He had also taken the plea that premises in question are not suitable for running the business stated in the petitions. It is no more res-integra that no such plea could be raised by the tenant while seeking leave to defend. He cannot raise the question of choice of premises by the landlord for his business or his expertise or resources. The plea of respondent that revision petitioner intend to sell demise premises is without any basis and could not be looked into. Even learned Rent Controller has not taken note of this plea while allowing leave to defend to the respondent.

The next plea taken by the tenant is that the petitioner has other commercial properties situated at better location within the municipal limit and regarding those properties, he placed on record certain site plans. The copies of site plans were shown to me during the course of arguments. These properties are plots or some residential properties. As already discussed, it is choice of the landlord as to which property is suitable for his business and tenant has no role to play in suggesting the landlord to start his business in some other property. Even otherwise, this plea that petitioner/landlord owns some residential plots in or outside the urban limits of Nawanshahr, give rise to no disputed question of facts. Landlord cannot be asked to start commercial activities in residential area or a plot.

As discussed above, landlord has given details of the other properties owned by him and there remains nothing disputed about this fact and leave to defend certainly could not be allowed to the tenant only on the

sole ground that he has placed on record site plans of certain plots alleged to be owned by the petitioner. The Rent Controller was required to concentrate on the fact as to whether the demised premises can be got vacated for use by the NRI landlord as per provisions of Section 13-B of the Rent Act, 1949. Instead of concentrating on this fact, learned Rent Controller appears to have gone astray and allowed leave to defend only on the ground that certain site plans have been placed on file, without taking note of the fact as to whether these site plans are relevant or material while allowing leave to defend. Firstly, it was not found that petitioner possessed any other commercial building. Even if, he is in possession of some other commercial building as well, law permits him to chose the building he intends to get vacated under Section 13-B of the Rent Act, 1949. In the case of ***Rajnish Jain and others Vs. Krishan Kant 2010(1) PLR 275***, Single Bench of this Court has observed in para 10 of the judgment as follows:-

“10. It is categorical case of the respondent that he has floated a Corporation under the name of Krishan and Vicky Joshi Foundation, the main function of which is religious, charitable and educational. He has already donated lacs of rupees to number of educational institutes. He wants to run the office of that Corporation in the demised shop. It is not necessary that the Corporation must have a registered branch office in this country for running the said work in the demised shop. The need of the respondent is genuine and bona fide. It is for the NRI-landlord to make choice of the building and leave to contest cannot be granted to the petitioner merely on the ground that he or his family has a house near the shop in dispute or that he owns another shop in the same urban area.”

In case of ***Smt. Kamla Devi Vs. Didar Singh 2011 (1) R.C.R. (Rent) 494***, a Co-ordinate Bench of this Court has observed in para 11 and 12 as follows:-

“(11). The question ‘as to whether or not the demised premises is required by the petitioner-landlady for her personal necessity’ has to be seen in the light of the legislative intent and object behind Section 13-B of the Act, which has been inserted by way of Act No.IX of 2001.. The Non-Resident Indian (NRI)/landlord, who is owner of the premises for a period of over five years before filing of the eviction petition is entitled to seek immediate possession of the let out premises through summary procedure and even if there are more than one residential, scheduled or non-scheduled building owned by him, the provision makes “it open to him or her to make an application” under the said provision “in respect of only one residential building or one scheduled building and/or one non-residential building each chosen by him or her”. Suffice it to say that Section 13-B of the Act is a special provision which enables the NRI/landlord-cum-owner to select the premises of his/her choice and seek eviction of his/her tenant through summary procedure. This is what precisely has been done by the petitioner-landlady. She has categorically mentioned in the eviction petition that she requires the demised premises to start her own business. She even deposed on oath to the same effect as PW1.

(12). In ***Baldev Singh Bajwa versus Monish Saini, (2005) 12 SCC 778***, the Supreme Court held that there is a statutory presumption of genuine need in favour of the NRI/landlord unless rebutted by the tenant by leading some cogent and strong evidence.”

As a sequel of my above discussion, the orders passed by learned Rent Controller in both the petitions allowing leave to defend, as such, are illegal, perverse and not legally sustainable, hence, are set aside. The applications filed by respondents-tenant seeking leave to defend are dismissed. In consequent effect of dismissal of leave to defend, respondents are ordered to be ejected from the demised premises. They are directed to vacate and hand over the vacant possession of the both the demised shops to the revision petitioner within a period of three months, provided that during this period, entire arrears of rent due upto 31st of May, 2018 is paid within two weeks and he keeps on paying the agreed rent to the revision petitioner-landlord on or before 10th day of each subsequent month, failing which revision petitioner/landlord will be entitled to seek ejectment of respondents forthwith.

May 24, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***