

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

CR No.2002 of 2015 (O&M)

Date of decision: 24.05.2018

Manjit Singh

... Petitioner

Versus

Sudesh Kumar Sharma

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. R.C. Sharma, Advocate
for the petitioner.

Mr. Navin Saini, Advocate
for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 01.12.2014 passed by the Rent Controller, Chandigarh whereby application filed by the petitioner under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for leave to contest the eviction application under Section 13-B of the said Act has been dismissed and the eviction petition has been allowed with a direction to the petitioner to vacate the tenancy premises within a period of two months from the date of passing of the order.

Sudesh Kumar Sharma, owner of house No.2149, Sector 38-C,
Chandigarh, a Canadian citizen through his special power of attorney Sh.

Kanwal Krishan Sharma filed eviction application under Section 13-B of the Act seeking ejectment of the petitioner on the ground of *bona fide* personal requirement. The plea of the respondent-landlord is that he is a Non-Resident Indian and owner of the suit house on the basis of purchase vide sale deed executed in the year 2002. The petitioner is in possession of second floor of the house whereas the ground and first floor are stated to be in occupation of Sh. Kanwal Krishan Sharma, brother of the respondent. As per plea of the respondent, petitioner was inducted as tenant through Sh. Kanwal Krishan Sharma and Sh. Megh Raj Sharma. The second floor in occupation of the petitioner is required for the respondent and his family whenever they visit India for their temporary residence as stay of the respondent and his family in the accommodation of Sh. Kanwal Krishan Sharma amounts to interference in life of Sh. Kanwal Krishan Sharma and petitioner along with his family does not want to live at the mercy of relatives at their houses and different places that causes great hardship and embarrassment to them.

The petitioner filed the application for leave to contest on the grounds detailed in paras A to P of the application dated 05.01.2013. The respondent filed reply to the application controverting the allegation that either the petitioner is not an NRI or his requirement of the demised premises is not *bona fide* or genuine.

After having heard counsel for the parties in the light of materials on record and appreciation of rival submissions made by their

counsel, the learned Rent Controller culled out three issues for determination namely:-

1. Whether the petitioner is Non-Resident Indian as per Section 2(d)(d) of the East Punjab Urban Rent Restriction Act, 1949?
2. Whether the petitioner is not the owner of property in question for the past five years before institution of the present petition?
3. Whether the petitioner needs the premises for his bona fide personal use and occupation?

All the three issues were answered against the petitioner and in favour of the respondent-landlord and accordingly the application for leave to contest was dismissed and eviction order was passed in the terms indicated hereinbefore.

Counsel for the petitioner has assailed the eviction order and dismissal of application for leave to contest primarily on two counts. The first submission made by counsel is that as the respondent is now a Canadian citizen and holder of passport issued by the Canadian Government, he does not fall within the definition of Non-Resident Indian under Section 2(d)(d) of the Act. Another submission made by counsel is that since Sh. Kanwal Krishan Sharma is in occupation of only first floor of the house in question, the ground floor of the house in question is available for the respondent during his short stay in India when otherwise he has visited India twice during the past 10 years.

Counsel for the respondent-landlord, on the contrary, has

supported the impugned order with the submission that as the eviction application has been filed under Section 13-B of the Act, a special provision for benefit of Non-Resident Indian to seek eviction from a building on the ground of *bona fide* personal requirement, plea of the landlord is presumed to be correct unless the tenant is able to prima facie make out that there are triable issues to be decided on the basis of evidence with regard to the following:-

1. The applicant is not Non-Resident Indian.
2. He has not returned to India permanently or for a temporary period.
3. Requirement of accommodation is not genuine.
4. He is not owner of the property for the past 5 years.

It is argued with vehemence that the first contention raised by counsel for the petitioner is squarely answered against him by this Court in **Krishan Kumar Vs. Kamla Devi, CR No.3509 of 2014 along with connected cases, decided on 09.05.2016**. It is further argued that the respondent was born in India and holder of Indian passport but in September 2002, he along with his family travelled to Canada on their Indian passports but later acquired citizenship of Canada and passport was issued by the Canadian Government, therefore, he is entitled to benefit of special provisions under Section 13-B of the Act.

So far as plea of the petitioner with regard to respondent being in occupation of ground floor of the house in question, it is argued that

there is nothing on record to prima facie establish plea of the petitioner/tenant that ground floor of the house in question is lying vacant or the same is not in possession of Sh. Kanwal Krishan Sharma who is in possession of the ground floor and first floor of the house in question. Further argued that an NRI landlord can seek eviction of tenant/tenants from a building by invoking Section 13-B of the Act, the petitioner cannot be heard to say that the respondent cannot seek his eviction by taking benefit of the provisions of Section 13-B of the Act, enacted for the benefit of NRI landlords. In addition, it is argued that the Rent Controller while answering issue No.3 has rightly held that the landlord is the best judge of his need and the tenant is nobody to decide or direct him in this regard. The need has to be seen from the point of view of the landlord and not that of the tenant.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

There is no dispute that the respondent originally belongs to India and had Indian passport when he left for Canada in September 2002. Later, he acquired citizenship of Canada and got passport issued by the Canadian Government. This Court in **Krishan Kumar's case** (supra) has decided a bunch of petitions dealing with similar controversy as has been raised by the petitioner. It has been held that the argument that a foreign citizen or a person who was born outside India could not be covered under the definition of NRI has to be held invalid. In view of ratio laid down in

Krishan Kumar’s case (supra), contention raised by counsel for the petitioner is not tenable and liable to be rejected.

The respondent has raised a categoric plea that the ground and first floor of the house in question is in occupation of Sh. Kanwal Kumar Sharma, his real brother through whom the eviction application has been filed on the basis of special power of attorney in his favour. Firstly, there is no material on record to prima facie prove contention of the petitioner that ground floor of the house in question is lying vacant. This apart, as an NRI landlord is entitled to seek eviction from a building by invoking Section 13-B of the Act coupled with that a landlord is the best judge of his need and the tenant is not entitled to direct him in this regard, plea of the petitioner that requirement of the respondent is not *bona fide* and genuine is misconceived and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

24.05.2018

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes / No
Yes / No