

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 5519 of 2018 (O&M)
Date of Decision : 15.11.2018

Krishna @ Kishan Chand (deceased) through LRsPetitioner

Versus

Gurdial Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gulzar Mohd., Advocate
for the petitioner.

Surinder Gupta, J.

This is revision against order dated 18.05.2018, whereby petition filed by respondent-Gurdial Singh under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Rent Act') was allowed and the petitioner was ordered to be ejected from the shop situated on the highway leading from Garhshankar to Hoshiarpur in the urban area of Mahilpur.

2. Respondent-landlord sought possession of the shop in question in his capacity as Non-Resident Indian (NRI). He has pleaded that he intends to pass last days of his life at his native place Mahilpur and required the shop in dispute alongwith adjoining shop for his personal use to start some business. He has further alleged that towards north of the building in dispute there is vacant site and adjoining that vacant site a shop, which is quite old, is lying vacant and is in possession of the petitioner. That shop is in dilapidated condition and is insufficient to start a suitable business.

3. The petitioner contested the petition *inter alia* pleading that

the respondent is about 70 years of age suffering from many diseases, as such, is not in a position to do any work. He is getting handsome pension from Canadian Government and is living there with his entire family. In fact respondent-landlord intends to sell the property in dispute and was negotiating for the said purpose with many property dealers but his deal could not mature as the property dealers want vacant possession of the premises. The petitioner was also given offer to purchase the shop in dispute. The shop in question constitutes one building and adjoining shop, which is in possession of Ramesh Kumar, constitutes a separate building and both these shops have separate roof heights, as such, this petition is not maintainable under Section 13-B of the Rent Act. It was further alleged that respondent-landlord owns 14 shops adjoining Khalsa College, Mahilpur and is also owner of vacant plot of about 10 *marlas* situated on the Garhshankar to Hoshiarpur Road, which is 20 to 30 *karams* from the shop in dispute. He has also not disclosed the business, which he wants to start in shop in dispute.

4. Learned Rent Controller, Garhshankar refuted all the pleas raised by the petitioner in his application and allowed the petition filed by the respondent-landlord.

5. While challenging the order passed by learned Rent Controller, learned counsel for the petitioner has raised four points, which are enumerated as follows:-

- (i) The shop in dispute was not rented out by the respondent-landlord. It was in fact rented out by his father, namely, Sansar Singh, as such, petition under

Section 13-B of the Rent Act is not maintainable.

- (ii) Respondent-landlord is in possession of 14 other shops and in case he has to start some business, he could chose better located shop instead of the shop in possession of the petitioner.
- (iii) Respondent-landlord has also sought ejectment of another tenant, namely, Ramesh Kumar from the adjoining shop, which is not part of this building. He could file only one petition under Section 13-B of the Rent Act seeking ejectment of tenant(s) from one building.
- (iv) Respondent-landlord is 72 years of age suffering from many diseases, as such, is not in a position to carry on any business. He has also not specified as to what business he intends to start in the demised premises.

6. The above issues raised by learned counsel for the petitioner were answered by the respondent-landlord in his reply, copy of which has been placed on file as Annexure P-4. He admitted that the shop in dispute was let out by his father, Sansar Singh, who died in the year 1999 and was succeeded by his wife, namely, Amar Kaur and son(s).

7. As per provisions of Section 13-B (1) of the Rent Act an owner, Non-Resident Indian, is entitled to move application under Section 13-B of the Rent Act seeking ejectment of the tenant if the premises is required for his or her use. This right is however available to the Non-Resident Indian only after a period of five years from the date of

becoming owner of such building. This is not disputed that father of respondent-landlord had died in the year 1999 and this petition was filed in July, 2013, as such, respondent-landlord was authorized to file this petition. The mere fact that shop was let out by father of respondent-landlord creates no hindrance or incapacitate the respondent-landlord while seeking ejectment of the petitioner under Section 13-B of the Rent Act.

8. Learned counsel for the petitioner has also admitted that other 14 shops owned by the respondent-landlord and his brothers are with different tenants. In these circumstances the option lies with the landlord to chose as to which shop/shops in the building are suitable for his need to start a business. The respondent-landlord has specifically stated in his application that he intends to start his business in the shop in question and the adjoining shop by joining the property situated towards east, north and south of the building. Towards north of the building in dispute, there is vacant site and a shop lying vacant, which is in dilapidated condition. Against the tenant in adjoining shop he has filed separate ejectment petition. The law is not disputed that the landlord is master of his choice. He cannot be dictated as to which shop he should chose to start his business. This argument of learned counsel for the petitioner also has no merit that respondent-landlord has not disclosed the business he intends to start. That stage has not arrived. It is only after getting possession of the shop in question that the respondent-landlord can decide about the feasibility of the business he intends to start. There is no purpose of disclosing the business he intends to start at the time of

filing the petition as by the time ejectment is ordered and possession is delivered the business he intends to start may find many competitors in that area or may not be economically viable. The argument of learned counsel for the petitioner to this effect is discarded.

9. The respondent-landlord has explained in his petition that he has also filed separate petition against the tenant in adjoining shop, who has refused to vacate the shop for his business purposes. Learned counsel for the petitioner has admitted that the shop in possession of Ramesh Kumar is adjoining the shop in dispute but has argued that the shop of petitioner and shop in possession of Ramesh Kumar were constructed at separate point of time, as such, cannot be taken as part of the same building.

10. The above argument of learned counsel for the petitioner has no merit as the word 'same building' has a wider definition. The petitioner has alleged that respondent-landlord owns 14 other shops in that area. He has not argued that the shops are in different buildings. The shop of Ramesh Kumar is part of those 14 other shops. Even if shops in possession of petitioner and Ramesh Kumar were constructed at different point of time these remain to be part of same building. The petitioner has not produced any document or has referred to the same at the time of argument to show that the shop of petitioner and of Ramesh Kumar are part of different buildings, thereby disentitling the respondent-landlord from seeking ejectment of both the tenants under Section 13-B of the Rent Act.

11. Learned counsel for the petitioner has argued that the

respondent-landlord is an old man of 72 years of age and is suffering from many diseases, as such, cannot do any business. However, about the ailments of respondent-landlord no evidence was admittedly produced before learned Rent Controller. In these days of advance technology a person is not required to sit on the shop. He can manage his business while sitting at home or even from far away places, with the help of gadgets and software. This cannot be believed that a person, who is 70 years or more of age, is not in a position to do any business, as such, argument of learned counsel for the petitioner to this effect has no merit and is discarded.

12. No other point has been argued by learned counsel for the petitioner.

13. In view of my above discussion, I find no merit in this petition and the same is dismissed. The order passed by learned Rent Controller is upheld.

November 15, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No