

In the High Court of Punjab and Haryana at Chandigarh

CR No.5706 of 2014(O&M)

Date of Decision: May 24th 2018

Dinesh Mohan Tyagi

---Petitioner

vs.

Harjinder Singh Babra

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ankur Gupta, Advocate
for the petitioner
Mr. Amit Jhanji, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 5.5.2014 passed by the Rent Controller, Chandigarh whereby application under Section 18-A (4 & 5) of the East Punjab Rent Restriction Act, 1949 (in short “the Act”) seeking leave to contest, in the eviction petition filed under Section 13-B of the Act, by the petitioner-tenant has been dismissed and eviction application filed by Harjinder Singh Babra one of the co-owners of the house in question and alleged landlord has been allowed and the petitioner has been directed to leave the demised premises within a period of 60 days from the date of order.

The facts relevant for disposal of the present petition are that the respondent-landlord filed application under Section 13-B of the Act for ejectment of the petitioner-tenant on the allegations that respondent-landlord was born in India and thereafter settled in United Kingdom, acquired citizenship of United

Kingdom, has been issued passport by United Kingdom Authority and he comes under the definition of NRI under the Act. The property in question i.e. House No. 1088, Sector -15B, Chandigarh has three floors and was initially owned and possessed by Smt. Piar Kaur, mother of the respondent. After her death on 18.5.1999, suit property has been transferred in the name of respondent and his three brothers in equal shares on the basis of Registered Will by the Estate Office vide letter dated 16.1.2003. The petitioner was inducted as a tenant on first floor of the suit house consisting of four rooms, one kitchen, one bath room and toilet in the month of May 2003 at a monthly rent of Rs. 5000/- excluding water and electricity charges with the consent of the respondent and all three brothers. The rent was increased from time to time and lastly the petitioner paid rent @ Rs. 6800/- per month upto November 2010 duly received by Sh. Avtar Singh, brother of the respondent on behalf of all the brothers. Later, the oral settlement was reduced into writing on 18.11.2010 and the entire first floor will be owned and possessed by the respondent as per agreement between the brothers.

Respondent was initially working as Prison Officer in United Kingdom and retired in May 2010. He made several requests to the petitioner to vacate the premises as the same is required for his own use for residential purpose but in vain. Respondent has shifted to India and wants to permanently settle at Chandigarh and now a days he is residing with his brother Avtar Singh on the ground floor and facing huge problems as Avtar Singh is having six family members.

The petitioner caused appearance and filed application for leave to contest inter alia on the following grounds:-

1. The respondent is not putting up at the ground floor of the house in question.
2. Ownership of first floor of the house vested in him by virtue of alleged family settlement dated 18.11.2010 and a period of five

years has not passed after he became alleged owner of premises in question.

3. The respondent is not even born in India. Parents of the respondent were putting up at Darusalem in Tanzania and the respondent was born there. The respondent has spent his entire life out of India, therefore, he is not entitled to maintain the eviction application under Section 13-B of the Act.
4. Except inheriting share in the suit property, the respondent does not have any interest in India. He does not have cordial relations with his brother who is living on ground floor. He does not hold Indian Passport.
5. The respondent is neither the owner of premises nor landlord of the petitioner. From day one, rent is being paid to brother of the respondent.
6. After retirement, being a British citizen, the respondent is getting all the facilities of being a senior citizen there which can not be imagined by him in India, therefore, respondent has no intention to settle in India.
7. The sole objective is to have the premises by abuse of special provisions meant for NRIs and thereupon sell the premises at market rate. The respondent is owning two residential specious houses in England. He has also purchased immovable property in Dubai. His son and daughter are also settled in United Kingdom and himself is running an NGO.

The respondent filed reply to the application controverting averments on the basis whereof the petitioner-tenant prayed for leave to contest. It is averred that the respondent is from Indian Origin, definition of NRI is not only meant for those who are holding Indian passport and continue to be Indian

citizens but it extends to those categories of Indians who are living abroad, whether citizens or non citizens, whether born in India or abroad, whether carrying Indian or foreign passport.

After having heard counsel for the parties in the light of rival contentions raised in the application for leave to contest and reply thereto, the Rent Controller rejected plea of the petitioner for his entitlement to contest the proceedings initiated by the respondent-landlord and eventually the application for leave to contest was dismissed and order of eviction was passed, as noticed hereinbefore.

The first submission made by counsel for the petitioner-tenant is that plea of the respondent that he was born in India gets falsified and belied from the passport produced by him wherein it has been mentioned that he was born in Arusha Tanzania on 8.9.1949. It is argued with vehemence that as the respondent is guilty of making a false and misleading statement that he is of Indian origin having born in India, application for leave to contest is liable to be allowed on this score alone.

Another submission made by counsel is that as per plea of the respondent, the first floor of the suit house in which the petitioner is a tenant came to vest in the respondent vide oral settlement dated 18.11.2010. As the application for eviction has been filed in March 2012, therefore, the same is not maintainable as the respondent was not owner of the premises in question five years prior to institution of eviction proceedings.

Counsel for the petitioner would urge that the respondent was neither born in India nor even resided in India since his birth in September 1949. He is a British citizen holding passport issued by the United Kingdom Government. He retired from prison department and is getting all the facilities of being a senior citizen there which creates a serious doubt that the respondent was to return to India and settle in the property in question. The last submission made by counsel

is that if the Rent Controller finds that the grounds raised prima facie disclose a defence which, if accepted, may result in non suiting the landlord from claiming eviction, the tenant is entitled to obtain leave to contest the petition on merits. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **Vijay Kumar Ahluwalia and others vs. Bishan Chand Maheshwari and another (2017) 3 Supreme Court Cases 189**. Further reference has been made to judgment of this Court **Harwinder Pal Kaur and another vs. Kuldeep Singh Gurm @ Kuldeep Singh and others 2011(2) RCR (Civil) 804**.

Counsel for the respondent, on the contrary, has refuted contentions of counsel for the petitioner and supported the impugned order with the submissions that the respondent falls under the definition of NRI under Section 2(dd) of the Act that contemplates any person who is of Indian origin and who is settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period. Further argued that if NRI landlord seeks eviction of a tenant on the ground of bona fide requirement, tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds and is able to show that the landlord is not NRI landlord or he is not owner of the premises or he is not owner for last five years before institution of the proceedings or landlord's requirement is not bona fide and is a pretext to get accommodation vacated. For this purpose, reliance has been placed upon judgment of Hon'ble the Supreme Court **Baldev Singh Bajwa vs. Monish Saini 2005(2) RCR (Rent) 470**.

With regard to the respondent having acquired ownership rights of the suit premises in the year 2010 or the period of five years having not expired before filing of the eviction application, it is argued that there is no dispute that suit house was previously owned by mother of the respondent who passed away

in the year 1999 and the property was inherited by the respondent and his brothers on the basis of Will recorded in the office of Estate Officer, UT Chandigarh and even the petitioner was inducted as a tenant subsequent to the respondent having become owner of the suit house, therefore, he is entitled to seek ejectment of the petitioner for benefit of all other co-owners subject to that none of the remaining co-owners objects to such acts of the respondent. In support of his contention, he has relied upon the Division Bench judgment of this Court **Smt. Bachan Kaur and others vs. Kabal Singh and another 2011(2) RCR(Civil) 886**. In addition, it is argued that as the respondent became owner of the suit house in the year 1999 and the eviction petition was filed in 2012, contention raised by the petitioner that the respondent is short of prescribed period of five years to initiate eviction proceedings is misconceived and should be rejected.

Counsel for the respondent would argue that an NRI can seek ejectment of his tenant even if he does not want to settle in India permanently and he requires the premises for use during his temporary stay in India. Reference again has been made to judgment of Hon'ble the Supreme Court in **Baldev Singh Bajwa's case (supra)**.

I have heard counsel for the parties, perused the paper book particularly the order impugned and the judgments cited at Bar.

Counsel for the respondent has fairly conceded that he is not in a position to substantiate contention of the respondent that he was born in India though later settled in United Kingdom. It has been submitted that in view of entry in the passport that the respondent was born at Arusha Tanzania in September 1949, plea raised in the eviction petition that he was born in India is not factually correct. The respondent in para 1 of the eviction application would say that he is of Indian origin and his parents were also of Indian origin. He was born in India and thereafter settled in United Kingdom, attained citizenship of United Kingdom, falls within the definition of NRI provided under the Act. Plea

of the respondent that he is of Indian origin on the basis of birth gets falsified and belied as he was born in Tanzania. The petitioner tenant in application for leave to contest (Annexure P4) has raised the plea in sub para (c) of para 2 that the respondent is not even Indian born, his parents were putting up at Darusalem in Tanzania. The respondent was born there. During regime of the then dictator of Tanzania namely Idi-Amin, he launched a campaign to turn out all the Indians from his country. Under these circumstances, parents of the respondent shifted to India and the respondent to London where he continues to put up till date.

The respondent has not placed on record any document that his parents are of Indian origin or they were born in India. As has been noticed hereinbefore, plea of the respondent that he was born in India gets falsified and belied from his own document i.e. entry in his passport. As the respondent has failed to produce any materials on record that his parents are of Indian origin and the basis on which they can be called to be of Indian origin, it is difficult to accept contention of the respondent that he falls within the definition of NRI in view of observations of Hon'ble the Supreme Court in para 24 of the judgment in **Baldev Singh Bajwa's case (supra)** wherein it has been held that the persons whose parent, grand parents or great-grand parents were born in India and permanently resided in India would be an NRI for the purpose of the Act. In this view of the matter, I am of the considered opinion that the petitioner has been able to make out a case to challenge plea of the respondent that he is an NRI and this fact alone is sufficient to prima facie raise a triable issue that needs to be decided on the basis of evidence to be adduced by the parties after application for leave to contest is allowed.

The plea raised by the petitioner qua the respondent being not owner of the suit house for the past five years before filing of eviction proceedings prima facie does not appear to be correct as the respondent became co-owner of the suit house in the year 1999 even before the petitioner was inducted as a tenant

on the first floor of the suit house in the year 2003. Contention raised by counsel for the respondent in this regard is squarely answered in his favour by the Division Bench of this Court in **Smt. Bachan Kaur and others' case (supra)**. As has been rightly argued by counsel for the respondent, it is not incumbent for the NRI landlord to prove that he wants to settle in India permanently or to say that he can seek eviction of his tenant even for his temporary stay in India but subject to the condition that his requirement for the premises in question must be bona fide and not a pretext to get the premises vacated. Without dilating further, as it may cause prejudice to the parties at the time of final adjudication by the Rent Controller, the petitioner is entitled to contest the proceedings on the first ground alone that the respondent is not an NRI.

For the foregoing reasons, the petition is allowed. The impugned order is set aside. The application for leave to contest is allowed. The Rent Controller is directed to dispose of the case expeditiously by following procedure laid down in the Act, in accordance with law. No order as to costs.

(Rekha Mittal)
Judge

May 24th 2018

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes/No