

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

1. C.R. No. 7876 of 2013

Ashok KumarPetitioner

versus

Narinder Singh ...Respondent

2. C.R. No. 7921 of 2013

Sital SinghPetitioner

versus

Narinder Singh ...Respondent

Date of decision : 02.07.2018

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjay Tangri, Advocate
for the petitioner.

Mr. Harish Sharma, Advocate
for the respondent.

RITU BAHRI, J.

This order of mine shall dispose of the above two petitions wherein challenge is to the order dated 25.04.2013 passed by learned Rent Controller, Jalandhar.

Brief facts of the case are that Narinder Singh-Landlord filed rent applications against the petitioners for immediate possession by eviction from the shops on the ground that he is NRI who is settled in Malaysia. He is a holder of passport issued by Malaysian Government. He is owner of building No. B-VII-622/2 having purchased the same vide registered sale deed dated 01.11.1957. The

said building is a double story building consisting of three shops on the ground floor facing railway road and room and hall on the first floor along with stairs situated at Railway Road, Jalandhar. The respondent has decided to return to India for settling here and requires the entire building including the tenanted premises and wants to remodel the entire building and construct a modern well equipped utility, general merchandise store.

The petitioners filed application under Section 18-a(4) of the Rent Act seeking leave of the Court to contest the petition *inter alia* on the ground that the respondent is neither NRI nor he had gone for the purpose of employment. The basic ingredients of Section 13-B of the Act are not fulfilled. There is no relationship between landlord and tenant between the parties. The respondent is well settled abroad and is still living there and has no intention to return to India.

The learned Rent Controller allowed the application filed by the respondent and ordered the petitioners to be evicted from the tenanted premises dismissing the objection raised by the petitioners that since the property had been acquired by JIT, Jalandhar, the respondent is not the owner of the property in question, as there was nothing on record to show that the property has been acquired in any acquisition proceedings. The respondent is still shown to be the owner of the premises i.e property No. BVII-12-622/2 in the T.S.-I Form, assessment register for the year 2010-11 and receipt of the Municipal Corporation, Jalandhar dated 03.08.2011.

It has further been held that the description of the property as mentioned in the sale deed and existing at spot is the similar and site plan shows that property is situated at new railway road. Though, boundaries of the property has been shown different from the sale deed, but it is not to forget that the property in question was purchased in the year 1956 and

during that period, many changes might have taken place surrounding the property. Moreover, in order to prove that property is different from the sale deed, applicant has not placed on record any site plan from which it can be revealed that there are two different properties.

The respondent has proved that he is NRI, as from the passport it is clear that the nationality of the respondent has been written as Malaysia. The respondent was held to be owner of the disputed property for more than 05 years prior to the filing of the rent application.

Learned counsel for the petitioners is seeking setting aside of the impugned order that since the alleged attorney through whom the ejectment petition was filed, is a partner of the respondent and in fact a property dealer and thus, the property is not required for the purpose as alleged in the petition.

Reference has been made to a judgment of this Court in a case of ***Hardev Singh vs. Surjit Kaur, 2008(3) RCR (Civil) 631*** whereby a landlady who lived in Canada filed an eviction petition through her attorney on the ground that she wanted to shift and settle in India. But since landlady did not appear as witness, her attorney appeared on her behalf, the matter was remitted back to Rent Controller to give opportunity to landlady to depose about her necessity. The Attorney can appear as witness on behalf of the principal and depose about the facts which are in his personal knowledge or about those acts which he had performed as an attorney on behalf of the principal, but attorney cannot appear as witness to depose about the facts which are in the personal knowledge of the principal.

Heard learned counsel for the parties.

Reference at this stage can be made to a judgment passed by this

Court in a case of ***Shri Sita Ram vs. Smt Malwinder Kaur, 2008(4) R.C.R***

(Civil) 548 whereby the respondent-landlord was residing in Canada and sought eviction of the petitioner through power of attorney. The petition filed by the tenant was dismissed and it has been held that it was not necessary for the landlord to have given detailed reasons for seeking eviction in power of attorney. The landlord can file eviction petition through his/her Power of Attorney. While referring to the judgment of Hon'ble the Supreme Court in a case of **Baldev Singh Bajwa v. Monish Saini, JT 2005(12) 442**, this Court observed as under:-

7. *However, on consideration of the matter, I find no force in the contention raised by the learned counsel for the petitioner. Hon'ble the Supreme Court in the case of **Baldev Singh Bajwa v. Monish Saini (supra)** has laid down that NRI landlord can maintain a petition under Section 13-B of the Act through Power of Attorney. It was not necessary for the landlord to have given detailed reasons for seeking eviction in Power of Attorney.*

8. *Once he has given authority to seek eviction it cannot be said that the applicant was not competent in law nor any mala fide could be attributed to the landlord as sufficient safeguards are provided under the statute for repossession in case landlord fails to occupy the building for statutory period.”*

Reference at this stage can be made to **Baldev Singh Bajwa's case (supra)** wherein the NRI landlord was seeking eviction of the tenant. It has been held that the Court shall presume that the need of the landlord is genuine and bona fide. The tenant is entitled to prove that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. Mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption the landlord's favour. In para 23 to 25, it has been observed as under:-

the Act of 1949, it must be proved by the NRI landlord that he has permanently returned to India or that his intentions are to permanently return to India. The intention to permanently settle down in India should be read into words ``return'' used in [Section 13-B](#). The specific category of NRI landlord has been created by the Legislature with the intention to provide relief to them who are intending to settle down in India or take up business in India only. Learned counsel appearing for the landlords have submitted that from the very definition of the NRI in [Section 2\(dd\)](#) of the Act, it is not necessary for the NRI-landlord to permanently return to India either for the purpose of his residence or for non-residential purpose.

24. *Definition of ``Non-resident Indian'' (NRI) under the Act contemplates that any person who is of an Indian origin, and who has 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 to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase ``Indian Origin'' has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase ``origin'' refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of [Section 2](#) (dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of [Section 2](#) (dd) and [13-B](#) sought to be placed by the learned counsel. Return to India could*

not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase ``return to India" along with the definition of the ``NRI" under [Section 2\(dd\)](#) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

25. *When we read [Section 13-B](#) along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under [Section 13-B](#) of the Act. All that is required under [Section 13-B](#) is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under [Section 13-B](#), a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words ``return to India" under [Section 13-B](#) of the Act denotes return to India permanently.*

Reference at this stage can further be made to a judgment of this Court in a case of **Krishan Kumar and others vs. Kamla Devi and others, 2016(1) R.C.R (Rent) 525** whereby **it has been held that petition filed through power of attorney not to be held against landlord. In para 58 and 62, it has been observed as under:-**

58. *Learned counsel for the landlord has argued that even if the wife of the landlord was shown to have a share in her father's house it was no where pleaded that she was in occupation thereof and actually that house was in the occupation of the father-in-law and brother-in-law of the landlord. Learned counsel for the landlord has argued that in this case the attorney was his brother-in-law who is a close family member, and the landlord filed his own affidavit in reply to the application for leave to defend wherein he reasserted and reconfirmed the assertions made on his behalf by the attorney. He has relied upon a judgment*

*passed by this Court in **Maan Chand @ Man Chand Vs. Maya Devi Panesar, 2015 (2) RCR (Rent) 210**, wherein this Court has held as follows :-*

4. Learned counsel for the petitioner has argued that this petition was filed by the general power of attorney of the landlady namely Nirmal Kaur (her daughter). The power of attorney executed in favour of Nirmal Kaur is dated 28.08.2012. The petition was filed on 02.01.2013 and in this power of attorney, no specific authority was given to Nirmal Kaur to file this petition.

5. The above argument of learned counsel for the petitioner has no basis. The power of attorney Annexure P-2 is a general power of attorney authorising Nirmal Kaur to deal with the entire property of the petitioner. The powers given to the attorney include the authority to file petition, written statement, replication, application, appeal in any court of law and to appoint/constitute any pleader, advocate or attorney. It was nowhere required or expected to be specifically mentioned in this general power of attorney regarding the authority of attorney-holder to file petition under Section 13-B of the Act. This power is implicit on the perusal of the general power of attorney (Annexure P-2).

6. Learned counsel for the petitioner has further argued that the pleadings in the petition were signed by the attorney, as such, the bona fide requirement as pleaded, cannot be taken to be that of respondent-landlady and affidavit of landlady was 29 of 51 required. The basic purpose of executing power of attorney was to give the authority to sell, mortgage the property of the respondent and not for filing a petition under Section 13-B of the Act.

7. The above argument of learned counsel for the petitioner are also not made out on perusal of the general power of attorney (Annexure P-2). Being a general power of attorney holder, Smt. Nirmal Kaur was competent to file the petition, sign the pleadings and no separate affidavit of landlady was required with regard to her bona fide requirement."

62. In the circumstances, the fact that the petition was filed through power of attorney can not be held against the landlord.

wo SLP's filed against this judgment has also been dismissed by Hon'ble the Supreme Court.

Applying the ratio of the above mentioned judgments to the facts of the present case, the petitions are dismissed as the tenant cannot take a ground that since the eviction petition was filed through power of attorney, the eviction petition filed by the landlord is bad in law. The tenant has further failed to prove that the requirement of the landlord is not genuine.

The petitions are dismissed.

02.07.2018
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>