

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

Civil Revision No.766 of 2018(O&M)

Date of Decision: April 17, 2018

Gurjeet Kaur

---Petitioner

Versus

Gurmeet Kaur

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr. Rajiv Kataria Advocate for the petitioner

**Mr. R.L. Batta Sr. Advocate with
Mr. Mandeep K. Sajjan for the caveator-respondent**

HARINDER SINGH SIDHU, J.

This revision has been filed impugning the order dated 18.12.2017 of the learned Rent Controller, Chandigarh, whereby, the eviction petition filed by the respondent-landlady has been allowed and the petitioner-tenant directed to vacate the demised premises i.e. H.No. 632, Sector 11-B, Chandigarh.

The respondent-landlady filed the petition under Section 13-B of the East Punjab Urban Restriction Act, 1949 as applicable to Chandigarh for eviction of the tenant on the grounds of (i) non payment of rent and (ii) bonafide personal necessity. The ground of non-payment of rent, however, was not pressed.

It was claimed by her in the eviction petition that she is a non-resident Indian and was staying at Auckland (New Zealand). Her husband

Gurmohan Singh Saini was the owner and landlord of H.No.632, Sector 11-

B, Chandigarh. The ground floor except garage had been rented out to the tenant through registered lease dated 16.01.2001. Her husband expired on 23.4.2013 leaving behind his widow Gurmit Kaur-landlady and two sons Harinder Singh Saini and Bupinder Singh Saini. During his life time, her husband had executed a registered will dated 16.09.2005 in her favour. As per the said Will she was the owner of the said property. She claimed that she had decided to return back to India to spent the rest of her life in her hometown at Chandigarh. She was suffering from various diseases related to old age that is back ache, cervical, knee problem and had been advised not to climb up the stairs. Hence, the accommodation at the first floor was not suitable and she required the entire ground floor for her bonafide personal need. She also pleaded that she was not in occupation of any other residential premises in the urban area of Chandigarh, Panchkula and Mohali nor had she vacated any such premises without sufficient cause since the enforcement of the Act.

The tenant contested the eviction petition pleading that the landlady was not an NRI within the meaning of Section 2(dd) of the Act. The petition was pre-mature as the statutory period of five years since becoming owner had not been completed. He also pleaded that he was a also a tenant on a room of the first floor and the landlady had sought partial ejectment which could not be allowed. Her bonafide need was also contested.

The learned Rent Controller held that it was undisputed from the evidence on record that the husband of the landlady was a Non-resident Indian. It had been so established from the death certificate issued by the

certificate dated 3.9.2013 issued by the Government Ex. P-12 which had been tendered in evidence by her. She had also produced on record her Passport Ex.P10. She had stated that she used to live in India as well as in New Zealand. She had come to India on 22.05.2016 and since then had been living in India. Regarding the argument that the statutory provision of five years had not been completed the Court held that as her husband the original landlord was a Non-resident Indian and she had become the owner thereof in terms of the WILL executed by him in her favour the period of ownership of both had to be clubbed for computing the five year period. Reliance was placed on a Division Bench judgment of this Court in **Yogesh Kumar Walia vs. Joginder Singh, 2012(4) Law Herald 3109 (DB)**.

Regarding the argument of the tenant that the petition was liable to be dismissed on the ground that in seeking eviction only of the ground floor of the house partial eviction had been sought as the tenant was in occupation of one room including washroom and a store on the first floor of which eviction had not been sought, the Ld. Rent Controller held that in respect of the first floor the tenant had pleaded an oral tenancy in his favour but had led no evidence to prove the same. The time, date or year when the oral tenancy was entered into was not specified. The tenant had not even stepped into the witness box. His father as his Attorney no doubt had stepped into the witness box but he evidently could not depose regarding facts which were especially within the knowledge of the tenant.

Finding the need of the landlady to be bonafide the eviction of the tenant was ordered.

Mr. Rajiv Kataria Learned counsel for the tenant- the revision

petitioner argued that in the eviction petition, it was nowhere pleaded that

the husband of the landlady was an NRI. No evidence to prove that he was NRI was produced. There was no assertion even in the affidavit of the landlady that her husband from whom she inherited the property was also an NRI. He referred to para no.11 of the pleadings in the eviction petition in which it was only stated that the landlady is not in occupation of any other residential premises etc. Even though an objection was taken in the written statement that the petition was not maintainable under Section 13B of the 1949 Act as the minimum statutory period of five years after becoming owner had not expired no evidence in support of his being an NRI was produced. Mr. Kataria further argued that as there were no pleadings regarding the NRI status of the husband of the landlady no evidence on this aspect could be looked into. He argued that even from the documents on record the NRI status of the husband of the landlady is not established.

It was further argued that the petition was liable to be dismissed as it has not been mentioned that the landlady was not in occupation of a part of the first floor.

Mr. R.L. Batta, learned senior counsel appearing for the respondent-caveator, on the other hand, maintained that the revision petition is without basis. He stated that the landlady appearing as PW-1 had placed on record the death certificate of her husband Ex.P1, the letter of the New Zealand Immigration Service dated 11.4.2005 in response to the Application for residence etc. filed by her and her husband as Ex.P6. He argued that these official documents of the Government of New Zealand clearly go to establish that the husband of the landlady was an NRI. He further argued that the strict rules of the Code of Civil Procedure are not applicable to rent

proceedings. The case was instituted under Section 13B and proceeded on

the premise that the husband of the landlady was also an NRI and the tenant was fully aware of this.

Heard Ld. Counsel for the parties and perused the record.

The first question that needs to be determined is whether the documents proved on record establish the NRI status of the husband of the petitioner.

Ex.P6 dated 11.4.2005 is a letter from the New Zealand Immigration Service addressed to Gurmohan Saini, husband of the landlady and the landlady in response to their application for residence. The same is reproduced below:-

“
New Zealand
Immigration Service
11 April, 2005
Application NO.: HD 5382035
Client Number: 26802166

Mr. Gurmohan Saini
4/73A Princes Street,
Otahuhu
Auckland

Dear Sir,

APPLICATION FOR RESIDENCE, INCLUDING;

Gurmohan Singh Saini DOB: 07/Sep/1943
Gurmit Kaur Saini DOB: 14/Feb/1948

We are writing with regard to your application for a residence permit which was accepted for consideration on 01 April, 2004.

We are pleased to inform you that your application for a residence permit in New Zealand has been approved in principle.

A Migrant Levy of NZ \$600 is payable. The Migrant Levy is largely used to:

- Fund Research into the outcomes of immigration
- Contribute to the teaching of English as a second language in the compulsory (primary and secondary) school sector

It would be helpful if you could provide this requirement as soon as possible to allow for your residence permit to be issued as quickly as possible. Please forward your valid passport(s) or travel document (s) along with the documentation requested above.

Please note that it is important to you to meet this requirement by 11 November 2005. If the requirement is not met within this time, the New Zealand Immigration Service may decline your application. Please contact this office if you have good reason for not being able to meet this requirement within this time.

A residence permit will entitle you to live, work and study in New Zealand. This permit expires when you leave New Zealand. A valid returning resident's visa is required to enable you to be issued with another residence permit on your return to New Zealand.

You will shortly be issued with a returning resident's visa. Returning resident's visas are issued for two years in the first instance. The issue of a further returning resident's visa after this time may depend on the amount of time that you have spent in New Zealand during the previous two years and your tax residence status during that period. For information about obtaining a further returning resident's visa, please refer to your nearest office of the New Zealand Immigration Service.

We trust that this will be welcome news and wish you well for your future in New Zealand.

Yours sincerely
sd/-
Gerald Butler
Immigration Officer”

This document clearly establishes that both the landlady and her husband had been granted residence permit for stay in New Zealand. This residence permit entitled them to live, work and study in New Zealand. The death certificate of the husband of the landlady Ex.P1 issued by the New Zealand authorities mentions his Place of birth as India. It also mentions his usual home address in New Zealand. Against the column – ‘if not born in New Zealand number of years lived here: 6 is mentioned. This clearly indicates that prior to his death, Gurmohan Singh Saini had been living in New Zealand for six years.

Section 2(dd) of 1949 Act reads as under:-

“2(dd) : “Non-resident Indian” means a person of Indian origin, who is either permanently or temporarily settled outside India in either case -

- (a) for or on taking up employment outside India; or*
- (b) for carrying on a business or vocation outside India; or*

(c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for a uncertain period.”

The above documents clearly established that Gurmohan Singh Saini, husband of the landlady had been staying in New Zealand for six years before his death. Hence he was a Non-resident Indian. The landlady (his widow) had inherited the property from him in terms of Will dated 16.09.2005. Her NRI status had been clearly established from the certificate dated 3.9.2013 issued by the Government of India. The learned Rent Controller has rightly relied on the decision of this Court in **Yogesh Kumar Walia's** case (supra) to conclude that she was not required to wait for five years after becoming an owner for filing the petition as the original owner (her husband) was also an NRI and the period of ownership of both of them could be clubbed for reckoning the five year period.

The argument of learned counsel for the petitioner that as there were no specific pleadings in the eviction petition that the husband of the landlady was NRI, evidence to that effect could not be looked out is also without merit.

It is well settled that rent proceedings are not to be compared with ordinary civil suits. Hence, there cannot be any rigid or dogmatic approach in regard to the pleadings and evidence adduced therein. If the parties are aware about the case that they have to meet and have led evidence then even if there is no pleading, the same could be considered by Rent Controller. Hon'ble Supreme Court in **Ram Narain Arora v. Asha Rani, (1999) 1 SCC 141** observed as under:

“11. There cannot be a pedantic or a dogmatic approach in the matter of analysis of pleadings or of the evidence adduced thereto. It is no doubt

true that if the pleadings are clearly set out, it would be easy for the court to decide the matter. But if the pleadings are lacking or vague and if both parties have understood what was the case pleaded and put forth with reference to requirement of law and placed such material before the court, neither party is prejudiced. If we analyse from this angle, we do not think that the High Court was not justified in interfering with the order made by the Rent Controller.”

To the same effect are the observations of this Court in **Dr. S.S. Mann v. A.K. Sharma (P&H) 2013(4) R.C.R.(Civil) 1054 :**

“8. It is cardinal principle of law that technicalities are handmaids of justice and they should not be hindrance in imparting substantial justice. In the present case, it has not been shown by learned Counsel for the tenant as to how any prejudice has been caused to him by non-pleading of the ingredients as referred by him in his arguments. No doubt, the pleading of all the ingredients are necessary for any person to seek relief, but at the same time if the party leads positive evidence to prove a certain ingredient, although not pleaded then the Court cannot throw him away on mere technicalities, if it is otherwise proved that no prejudice has been caused to him.....”

In the instant case, the eviction was sought under Section 13B of the 1949 Act. The tenant in his written statement had raised the objection that the petition is premature as the statutory period of five years had not expired. It was in that context that the land lady proved the documents Ex P-1 (death certificate of her husband) and Ex P-6 (letter of the New Zealand Immigration Service) which proved NRI status of her husband. Thus it cannot be said that the tenant was not aware of what was sought to be proved. Hence no prejudice was caused to her.

The arguments of the tenant with regard to partial eviction have been negatived by the Ld. Rent Controller. The tenancy of a room and washroom on the first floor was not established. The bona fide need of the

land lady was also proved on record. There is no infirmity in those findings.

Thus, there is no merit in this petition and the same is dismissed.

April 17, 2018

**(HARINDER SINGH SIDHU)
JUDGE**

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No