

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

CR No.2465 of 2015 (O&M)

Date of Decision: 18.11.2019

Manjit Lal

.....Petitioner

Versus

Charan Dass

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Ms. Rupinder Kaur Thind, Advocate, for the petitioner.

Mr. Aditya Dassaura, Advocate, for the respondent
in CRs-2465 and 2419-2015.

Mr. Kanwar Goyal, Advocate, for the respondent
in CR-4722-2015.

NIRMALJIT KAUR, J.

This order shall dispose of three revision petitions bearing CR Nos.2465, 2419 and 4722 of 2015, as the issue involved as well as the grounds for dismissing the application under Section 18-A of the amended East Punjab Urban Rent Restriction Act, 1949 (for short, 'the Act') as well as the grounds of appeals are similar. However, for convenience, the facts are taken from CR-2465-2015.

Civil Revision No.2465 of 2015 is filed against the order and judgment dated 23.1.2015 passed by the Rent Controller, Phagwara in rent petition under Section 13-B of the Act.

While praying for setting aside the said order, learned counsel for the petitioner-tenant further submitted that the respondent-landlord does not fall within the definition of Non-Resident-Indian. Secondly, the Rent Controller has ignored the fact that the need of the landlord was not bonafide as one shop adjoining to the shop of Dharampal is lying vacant

since last 11-12 years and one plot measuring 14-15 marlas adjoining to the

disputed shop is also lying vacant since long and the said issue being arguable point, which could only be proved during trial. Therefore, the application under Section 18-A of the Act seeking to obtain the leave to defend and to contest the above noted rent petition, should have been allowed.

Qua the first ground, since, the matter with respect to Section 13-B of the Act was pending before Hon'ble the Apex Court, the matter was being adjourned accordingly to await the decision.

Special Leave Petition (Civil) No.26925 of 2011 titled as Ram Krishan Grover and others vs. Union of India and others, and other connected appeals have since been decided on 14.11.2019, upholding constitutional validity of Section 13-B of the Act.

Learned counsel for the petitioner-tenant therefore, restricted his argument only qua the second ground. Thus, the only question, therefore that remains to be determined before this Court is as to whether the ground raised in the application under Section 18-A of the Act is sufficient to seek permission to obtain the leave to defend.

Section 18-A (4 & 5) of the Act is reproduced as under:-

“18-A. (4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building and/or non-residential building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed

daughter-in-law of such specified landlord or the owner, who is a non-resident Indian in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grandchild or widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian, from obtaining an order for the recovery of possession of the residential building or scheduled building and/or non-residential building, as the case may be, under Section 13-A or Section 13-B.”

A perusal of the Section 18-A shows that the powers to leave to contest is restricted. In order to obtain the right to defend the proceedings, the tenant must show that the NRI-landlord does not satisfy the conditions laid down under Section 13-B of the Act i.e. (a) the landlord was not the owner of the premises for the last five years before the eviction; (b) the landlord has filed eviction petition qua more than one building; (c) the landlord is not NRI. The scope of defence available to the tenant is also challenged before the Hon'ble Apex Court in the case of Baldev Singh Bajwa vs. Monish Saini, (2005) 12 SCC 778 held in para No.18 as under:-

“18. From the aforesaid decisions the requirement of the landlord of the suit accommodation is to be established as a genuine need and not a pretext to get the accommodation vacated. The provisions of Sections 18-A(4) and (5) concede to the tenant's right to defend the proceedings initiated under Section 13-B showing that the requirement of the landlord is not genuine or bona fide. The legislative intent for setting up of a special procedure for NRI landlords is obvious from the legislative text which has been deliberately designed making distinction between the ordinary landlords and special

category of landlords. The Controller's power to give leave to contest the application filed under [Section 13-B](#) is restricted by the condition that the affidavit filed by the tenant discloses such fact as would disentitle the landlord from obtaining an order for recovery of possession. It is needless to say that in the summary proceedings the tenant's right to contest the application would be Civil Appeal arising out of restricted to the parameters of [Section 13-B](#) of the Act. He cannot widen the scope of his defence by relying on any other fact which does not fall within the parameters of [Section 13-B](#). The tenant's defence is restricted and cannot go beyond the scope of the provisions of the Act applicable to the NRI landlord. Under [Section 13-B](#) the landlord is entitled to eviction if he requires the suit accommodation for his or her use or the use of the dependant, who ordinarily lives with him or her. The requirement would necessarily have to be genuine or bona fide requirement and it cannot be said that although the requirement is not genuine or bona fide, he would be entitled to the ejectment of the tenant nor can it be said that in no circumstances will the tenant not be allowed to prove that the requirement of the landlord is not genuine or bona fide. A tenant's right to defend the claim of the landlord under [Section 13-B](#) for ejectment would arise if the tenant could be able to show that the landlord in the proceedings is not an NRI landlord; that he is not the owner thereof or that his ownership is not for the required period of five years before the institution of proceedings and that the landlord's requirement is not bona fide."

The petitioner-tenant in all the above three matters has not been able to show that the respondent-landlord does not satisfy the above mentioned conditions. With respect to the bonafide need of NRI landlord under Section 13-B of the Act, the Hon'ble Apex Court while following the judgment rendered by this Court in the case of Baldev Singh Bajwa (supra)

observed as under:-

“36. The presumption raised with regard to the genuine need of the landlord as pleaded in the petition should not be read as an axiom or self-evident truth, which entitles the landlord and mandates the Court to pass a decree of eviction. This is clear from subsequent elucidation by this Court in paragraphs 20 and 21 in Baldev Singh Bajwa (supra). The true ratio, in our opinion, is reflected in paragraph 25 which reads as under:

“25. On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to an NRI to get one building vacated in a summary manner. A non-resident Indian landlord is required to prove that: (i) he is an NRI; (ii) that he has returned to India permanently or for a temporary period; (iii) requirement of the accommodation by him Civil Appeal arising out of or his dependant is genuine; and (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejection before the Controller.”

From the above, it is clear that the leave to defend is not granted by mere asking but only in case the affidavit specifies that the landlord does not satisfy the condition under Section 13-B of the Act. In the case in hand, the affidavit fails to show the same.

Moreover, the rights of a tenant against any false assertion of bonafide need by a landlord has been well protected by Sub Section 3 of Section 13-B of the Act, which allows the evicted tenant to apply to the Rent Controller for restoration and possession of the building in case the NRI landlord, who has recovered the possession in this Section, lets it out or sells the same before the expiry of the period of five years. The same reads as

under:-

“Where an owner recovers possession of a building under this Section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.”

In view of the above, the present revisions are dismissed being devoid of merits.

18.11.2019
sharmila

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No