

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

236

CR-5149-2018

Date of Decision : December 13, 2019

INDER PAL

.....Petitioner

VERSUS

CHANDER KANT

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present : Mr. Vikram Anand, Advocate
for the petitioner.

Mr. Anil Shukla, Advocate
for the respondent.

NIRMALJIT KAUR, J. (Oral)

The present revision petition has been filed against the order dated 26.3.2018 passed by the Rent Controller, Kapurthala as well as the order dated 12.7.2018 passed by Additional District Judge, Kapurthala whereby the application of the petitioner-tenant for leave to contest was dismissed.

While praying for setting aside both the orders, learned counsel for the petitioner has raised two fold arguments. Firstly, the landlord has not pleaded that she is residing in India or has returned to India. The failure to plead the same renders the very eviction petition as not maintainable. As per Section 24(3) of the Punjab Rent Act, 1995 (hereinafter referred to as '**the Act**') it is mandatory to plead that she is a non-resident Indian and has returned to India permanently. In the present case, landlord is admittedly residing in Germany and does not reside in

India. Reliance is placed on the judgment rendered by this Court in the case of **Krishan Kumar and others Vs. Kamla Devi and others, 2016 (1) RCR(Rent) 525** to contend that landlord has to return to India permanently to avail the remedy under Section 24(3) of the Act.

Secondly, both the Courts below have ignored that the respondent is only a co-owner and a co-owner has no right to file the eviction petition.

Learned counsel for the parties are heard at length.

The first argument raised by the learned counsel for the petitioner-tenant cannot be sustained. The provisions of Section 24(3) of the Act requiring the non-residents Indian to return to India for permanent residence has been dealt with by the learned Single Bench of this Court vide detailed judgment rendered in the case of Krishan Kumar (supra) wherein it is held that apart from other procedural aspects, one of the requirement under 1995 Act is that the landlord has to return to India permanently. In the said case of Krishan Kumar (supra), the landlady was residing abroad but the landlady had specifically averred in her eviction petition that she wanted to return to India and stay permanently in India with her husband which was held to be sufficient compliance of the provisions of Section 24(3) of the Act. In the present case also, as is evident from the judgments of the trial Court as well as of the Appellate Court that the respondent landlord had specifically pleaded in the petition and had expressed his decision to permanently shift to India alongwith his business. For convenience, the same is reproduced as under:-

“The petitioner needs the immediate possession of the premises in question so that he can run his business in the premises in question. The petitioner is shifting permanently to India and will shift his business as well.”

Applying the same test as laid down in the judgment rendered in the case of Krishan Kumar (supra) which is relied upon by the learned counsel for the petitioner himself to the facts of the present case, this Court does not find any deficiency in the pleadings of the landlord which are in consonance with the requirement of Section 24(3) of the Act.

There is another way to look at it. As per Section 29(1), in case landlord does not occupy or re-lets the premises within 3 years, the evicted tenant can be put back in premises. Hence, the right of the tenant is protected to the said extent, in case the pleadings are found false.

The second argument of learned counsel for the petitioner-tenant that the respondent-landlord cannot file eviction petition in his capacity as a co-owner too has no merit. The same judgment i.e. Krishan Kumar's case (Supra) as referred by learned counsel for the petitioner-tenant himself is a complete answer to the said argument. Para No.43 of the said judgment reads as under:-

“The second ground taken is that the landlord is not the sole owner but is a co-owner in the property. This Court in ***Smt.Bachan Kaur and others Vs. Kabal Singh and another, 2011 (2) RCR (Civil) 886*** has held that a co-owner NRI can seek eviction of the tenant in a building though the tenant was not inducted by such NRI and that it is not necessary that all other co-owners should be NRI.”

Therefore, the said issue is no more res-integra.

Accordingly, the present revision petition is dismissed being devoid of merit.

December 13, 2019
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(NIRMALJIT KAUR)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No