

(1) CR No. 5681 of 2012 (O&M)
Date of decision: April 26, 2019

...Petitioner

...Respondent

...Petitioner

...Respondent

Mr. Imran Ali, Advocate, for
Mr. Mansur Ali, Advocate,
for the respondent.

1. This order shall dispose of the above mentioned two revision petitions as they emerge out of the similar set of facts and involve similar questions of law. However, for the sake of brevity, facts from Civil Revision No. 5681 of 2012 are being extracted. The said revision has been filed against the order dated 30.7.2012 passed by the Rent Controller, Ludhiana, vide which the application filed by the tenant/petitioner under Section 18 (4) of the East Punjab Urban Rent Restriction Act, 1949 (for short '**the Act**') is allowed.

has been dismissed.

2. In brief, facts are that the respondent herein filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 for ejectment of the tenant/petitioner from the premises forming part of property bearing No. B-1-1194 situated at Sessions Chowk, Civil Lines, Ludhiana, inter-alia, on the grounds she is the specified landlady as defined under Section 2 (dd) of the Act and at present is resident of 206-Fallen Leaf Driver, Columbia SC 29229 USA. She returned to India and as such bonafidely required the premises in question for the use and occupation of her husband, who being technically qualified person wanted to start his own business of pesticides, in which he had gained experience of more than 40 years. It was averred that she is owner of the property bearing number 1194 of which the demised premises is a part for the last 5 years and the tenant/petitioner has occupied the said shop at monthly rent of ₹32/- for the last several years and is running a tailoring business therein. She also requires the other portion of the above said property regarding which she had filed ejectment petition against tenants occupying those portions.

3. On notice, the tenant/petitioner herein put in appearance and filed an application under Section 18 (4) of the Act seeking leave to contest the petition on the ground that the petitioner is neither owner nor landlady of the demised premises; nor has he ever paid rent to the respondent. In fact, one Pritpal Singh son of Lal Singh was owner of the building in question and he had let out the demised premises to him. The respondent never conveyed to the petitioner that she has become owner of the demised premises. The sale deed dated 19.7.1988 placed on record was alleged to be

a forged and fabricated document, having been executed by Dhantej Kaur in favour of the petitioner, who herself was not owner of the property in question; nor did the said Dhantej Kaur have any right over the property in question.

4. It was also stated that the petitioner is not a Non-Resident Indian. Rather, she is permanent resident of village Bhanohar, Tehsil Mullanpur, District Ludhiana and the alleged passport produced on the file is a manipulated one. Landlady—Suirjit Kaur and her husband are also owners of a huge property, including land measuring 6 kills near Sahnewal Airport. It was further submitted that the landlady has been filing ejectment applications against various tenants, including M/s Railis (India) Limited. The said company occupied more than 200 square yards of the building in question for the last 35 years, which was got vacated by the petitioner from the said company recently on false grounds that her son Surinderpal Singh intends to come to India to start electronic business, who in fact is permanently settled in USA, as such, the instant eviction petition is not maintainable, as only once application under Section 13-B of the Act can be filed. The landlady also alleged to have got vacated a portion of the said building measuring 200 sq. yards from M/s Reynold Impex, which is lying vacant. It is also stated that most part of the property is non-residential and is lying vacant.

5. The Rent Controller, after hearing learned counsel for the parties and perusing the record, dismissed the application filed by the petitioner under Section 18-A of the Act and directed the petitioner to vacate and hand over the vacant possession of the demised premises to the

petitioner within a period of three months. Hence the present revision.

6. While challenging the impugned order, learned counsel for the petitioner has raised three submissions. Firstly, that the respondent is not a Non-Resident Indian and she is residing in Village Bhanohar, Tehsil Mullanpur, District Ludhiana and thus she is not a specified landlord in terms of Section 2 (dd) of the Act. Secondly, that the respondent is not the landlord of the property in question as no document whatsoever has been produced on the record to show her ownership and thirdly, that in the past, the respondent has got vacated a large portion of said building and thus she has sufficient space to start any business. It was also argued that there was non disclosure of the fact that the landlady had got other premises vacated and there was sufficient accommodation for her husband to start the business. Reliance is placed upon a judgment rendered by the Supreme Court in **Rachpal Singh versus Gurmeet Kaur 2009 (15) SCC 88** to argue that burden is on the landlord to prove her requirement and her status of being an NRI. Reliance is also placed upon the judgments rendered in **Kultar Singh Jogi versus Ranjit Singh 2014 (2) RCR (Rent) 203** , **Harkirat Kaur versus Harvinder Singh 2014 (2) RCR (Rent) 484** **Joginder Kaur Channan vs. Dinesh Bhatia 2014 (2) are RCR (Rent) 148** to argue that once there is a denial of relationship of landlord and tenant, leave to defend can be granted.

7. Per contra, the counsel for the respondent landlord avers that being an NRI the respondent landlady would be entitled to get the premises vacated, while also submitting that the premises are required to set up the business of the husband. It is also argued that under Section 13-B of the Act

the landlady would be entitled to get one building vacated during her lifetime.

8. I have heard the counsel for the parties and with their assistance have also gone through the pleadings.

9. There is no dispute that Section 13-B of the Act is a complete Code in itself and once a person establishes himself to be a Non-Resident Indian, he would be entitled under Section 13-B of the Act to seek eviction of tenants from one building during his lifetime. There may be one tenant in the same building or multiple tenants and eviction can be sought of all or one tenants only once in his lifetime under the provisions of Section 13-B of the Act. The law is well settled in this regard. Reliance can be placed upon judgments rendered by the Supreme Court in **Baldev Singh Versus Monish Saini 2005 (2) RCR Rent 470** and **Kamaljit Singh Vs Sarabjit Singh 2014 (2) RCR (Rent) 249**. In **Baldev Singh's case (supra)**, it has been held that an NRI landlord residing permanently/temporarily in another country can get accommodation vacated for his needs or the need of his dependents who ordinarily live with him, and intend to come back to India. What can be culled out from the aforesaid judgment is that:

(1) NRI landlord should be owner of building for 5 years before he applied to Controller for possession.

(2) He should require the same for his own use or for use of any one ordinarily living with him and is dependent on him.

(3) Right under Section 13-B of immediate possession could be availed of only once during the lifetime of such an owner/NRI landlord.

(4) NRI landlord has choice to select one among several other residential buildings and or non-residential buildings.

(5) If the NRI landlord of building gets possession under Section 13-B(3), he shall neither transfer it either by sale or by any other mode nor he shall let it out for the period of five years - In case of breach, tenant is entitled to seek restoration of possession.

10. The Rent Controller has held the respondent to be an NRI by taking into account the notarized copy of the passport bearing No. 3362 2672 along with notarized copy of the visa reflecting the presence of the respondent in India. The petitioner herein was not able to place anything on the record to rebut the stand of the respondent. It is for the tenant to prove with strong cogent evidence that the landlord is not an NRI, and the mere assertion in the application seeking leave to contest would not be sufficient.

11. An argument has also been raised by the counsel for the petitioner that the respondent has failed to mention in the petition that she had got other portion of the building vacated. However, this argument is without any substance since there is no such requirement while seeking eviction under a special right conferred upon an NRI under Section 13- B of the Act. In **M/S Commando Caterers Private Limited and another Versus Shinder Singh Mandair 2018(1) RCR (Rent) 108**, it has been held that *“However, this court is of the opinion that the said plea of non-disclosure entails dismissal of ejectment application, would not be available in the present case. The requirement of mandatory disclosure of other properties has been incorporated only in Section 13 (3), which deals with the personal requirement of a resident Indian. This requirement is not there while seeking eviction under any other ground or under Section 13 (B), which is a special right conferred upon NRI. In the circumstances, the plea*

that non disclosure/concealment regarding other properties entails dismissal of ejectment application, cannot be taken by a tenant in a proceeding under Section 13 (B)." Section 13-B is a complete Code itself and it does not require that the NRI landlord seeking eviction has to plead anything other than his requirement of the premises for his own use and occupation and to satisfy that he is owner of building for the last 5 years. As long as these ingredients are met, the landlord would be entitled to seek eviction. There is a strong presumption in favour of a landlord seeking eviction that his requirement of occupation of the premises is real and genuine. The tenant can contest the ejectment application, on the ground the the need of the landlord is not bona fide. In the instant case, the respondent has taken a specific plea that the premises are required to set up the business of a pesticide for the husband who has since retired, which plea has been sought to be negated by the petitioner only on the ground that the husband of the respondent is old and would not be able to run the business. This plea is not sufficient to dispute the bona fide need of the respondent.

12. The Rent Controller, taking into account that the sale deed executed in favour of the respondent landlord showing her to be the owner of the building for more than 5 years from the date of filing of the ejectment application and also the fact that she was an NRI, dismissed the application for leave to contest under Section 18A of the East Punjab Urban Rent Restriction Act 1949, on the grounds that it is not uncommon for people living abroad in their old age to return back to India.

13. The judgments as relied upon by the counsel for the petitioner are distinguishable and not applicable to the facts of the present case. No

triable issues arise for adjudication by the Rent Controller for allowing the application for leave to contest, since the respondent has been able to establish that she is an NRI as specified under section 2 (dd) of the East Punjab Urban Rent Restriction Act 1949 and is owner of the building for more than 5 years. As has been held in **Baldev Singh Bajwas's case (Supra)** that if an enquiry in the allegations of landlords need regarding the bona fide and genuineness is permitted, then the legislative intent of immediate delivery of possession of the accommodation would be defeated. Even the argument raised that the petitioner is not a tenant under the landlord since the property was not let out by him, is an argument which is untenable. In **Pritam Singh versus Dilbagh Rai 2007 (2) L.A.R. 492**, it has been held that there is no condition under section 13B of the Act of 1949, that eviction can be sought only by the person who rented out the premises.

14. Therefore, finding no infirmity in the order of the Rent Controller declining the applications for leave to contest, both the revision petitions stand dismissed.

April 26, 2019
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No