

M/s Laxmi Oil Expeller Co., Oil Expeller and Spare Parts, through its proprietors Yash Pal and Darshan Lal (died) through LRs

.....Petitioners

Versus

Mohinderjit Kaur Thiara

.....Respondent

**CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR**

Present: Mr. H.S. Thiara, Advocate  
for the petitioners.

Mr. Parminder Singh-I, Advocate  
for the applicant.

Ms. Rupinder Kaur Thind, Advocate  
for the respondent.

**NIRMALJIT KAUR, J. (ORAL)**

**CM-4266-CII-2017**

Learned counsel for the applicant, at the outset, withdrew his application for being impleaded as party with a statement that even though he may be the owner in terms of the Will but his mother is a trustee as per the Will, therefore, he has no objection if his mother Mohinderjit Kaur Thiara has filed an eviction petition and his consent is duly implied.

Accordingly, the CM is dismissed as withdrawn in view of the statement by learned counsel for the applicant.

**Main Case**

The present revision petition is filed against the order dated 14.10.2014, passed by the Rent Controller, Phagwara (for short, the Rent Controller), vide which, the application of the petitioner seeking leave to

contest, was dismissed.

While praying for setting aside the said order, learned counsel for the petitioners submitted that the very eviction petition was not maintainable at the behest of Mohinderjit Kaur Thiara, as she had no legal right. As per the Will and testament of Munsha Singh, entire property and trust were given to grand nephew Harsev Singh Thiara. Therefore, the only rightful owner was Harsev Singh Thiara (Junior) and respondent-Mohinderjit Kaur was only a trustee of the estate of Munsha Singh for a limited period and had no personal right in the property in question. Therefore, she was neither the landlady nor the owner of the property. Hence, she could not invoke the provisions of Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, the Rent Act) for eviction of the petitioner.

While issuing notice of motion, the argument raised by learned counsel for the petitioner was that Mohinderjit Kaur Thiara does not fall in the definition of “Non Residents of India” as she is a citizen of United States of America. The matter as to whether the citizens of other countries fall in the definition of “Non Residents of India” was stated to be pending before the Hon'ble Apex Court and therefore, in these circumstances, the order of the ejectment was stayed.

It is not disputed that the said SLP has since been decided and the issue has been decided against the petitioner/tenant and Mohinderjit Kaur Thiara, at whose behest, the eviction petition was filed, was an NRI and therefore, entitled to invoke the provisions of Section 13-B of the Rent Act.

Therefore, at this stage, learned counsel for the petitioners gave up the first argument and agitated his second argument that she is neither the landlady nor the owner of the property in question.

A perusal of the impugned order shows that the Rent Controller has gone into the detail of each argument so raised by the petitioner/tenant and each argument has been dealt thread bare.

After hearing learned counsel for the parties and having gone through the order as well as the submissions made before this Court, following admitted facts have emerged:

- a) Mohinderjit Kaur Thiara is the wife of Harsev Singh Thiara.
- b) The said Harsev Singh Thiara inherited the property from Munsha Singh leaving behind a Will. Meanwhile, Harsev Singh Thiara too died.

Some of the relevant portion of the Will are reproduced below:

“Sixth, Should Harsev Singh Thiara be unable or unwilling to serve as Trustee under paragraph fifth, I appoint his wife, Mohinderjit Kaur Thiara to serve as Trustee. Should Mohinderjit Kaur Thiara be unable or unwilling to serve as Trustee under paragraph Fifth, I appoint the Bank of America N.T.S.A. to serve as Trustee.

Seventh, Except as otherwise provided in this Will I have intentionally to provide herein for any of my heirs living at the date of my death.”

“Ninth, I hereby nominate, constitute and appoint my nephew, Harsev Singh Thiara to be the executor of this, my last Will and Testament to serve without bond, in the event my nephew is unable or unwilling to serve as Executor for any reason, then in

that event, I name his wife, Mohinderjit Kaur Thiara, to serve as Executrix, without bond. In the event Mohinderjit Kaur Thiara is unable to or unwilling to serve as Executrix for any reason, then in that event, I name Bank of America, N.T.S.A. to serve as Executor.”

Therefore, a Codicil was issued as under:

“Second, I hereby amend paragraph Sixth of my said Last Will and Testament to read as follows:

Should Harshev Singh Thiara be unable or unwilling to serve as Trustee under paragraph Fifth, I appoint his wife, Mohinderjit Kaur to serve as Trustee. Should Mohinderjit Kaur Thiara be unable or unwilling to serve as Trustee under paragraph Fifth, I appoint Harjit Kaur Thiara and Harminder Kaur Thiara jointly to serve as co-Trustees under paragraph Fifth.”

A perusal of the above shows that Mohinderjit Kaur Thiara was also appointed to serve as a Trustee. After the death of her husband Harsev Singh Thiara, she was the Trustee. She is willing and capable to pursuing the interest of the Trustee. In these circumstances, it cannot be said that Mohinderjit Kaur Thiara had no locus-standi to file the eviction petition. In any case, the argument that it could only be filed at the behest of Harsev Singh Thiara (Junior) son of Harsev Singh Thiara will not change the complexion of either the rent petition, the grounds on which it is filed and nor the basis or the result. More so, when said Harsev Singh (Junior) has withdrawn his application for impleading himself as a party with a statement that he may be the owner but Mohinderjit Kaur Thiara being his mother as well as Trustee, has both a right to file and his consent for filing the eviction petition too is admittedly implied.

In view of the above, the revision petition is dismissed being devoid of any merit.

04.12.2019

sandeep

(NIRMALJIT KAUR)  
JUDGE

Whether Speaking/Reasoned

:

Yes/No

Whether Reportable

:

Yes/No