

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR NO.4169-2019 (O&M)
DATE OF DECISION:-15.07.2019

BALRAM KRISHAN

...PETITIONER...

V.

PARAMJIT

...RESPONDENT...

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Anish Setia, Advocate,
for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision, petitioner-tenant has laid challenge to order dated 03.04.2019 of the appellate authority, affirming the order of the Rent Controller, Jalandhar dated 01.10.2018, whereby his application seeking leave to contest the eviction petition under Section 24(3) of the Punjab Rent Act, 1995 (for short, "Act"), was rejected.

Briefly, respondent filed an eviction petition under Section 24(3) of the Act, on the ground of bona fide necessity pleadings that he had old age parents, residing with him at Birmingham and his parents being in advanced age were suffering with various old age ailments. The climate of United kingdom does not suit them. Therefore, they were intending to return to India and settle permanently in Jalandhar as their relatives and friends are leaving nearby.

Upon notice, the revisionist filed application seeking leave to

contest eviction petition filed against him, which after, hotly contested, was dismissed on 01.10.2018.

Being dissatisfied, the revisionist approached the first appellate authority, who too, dismissing his appeal, affirmed the order of rent controller dated 01.10.2018.

Learned counsel contends that revisionist had specifically denied his relationship with the respondent that of a tenant and landlord. Earlier, in eviction petition filed by respondent for recovery of arrears of rent, revisionist took a categorical stand that respondent was not his landlord. Rather, one Gurnam Chand was his landlord, whereupon, respondent withdrew his said petition and filed another one through Gurnam Chand pleading that Gurnam Chand was his attorney and the demise premises was rented out to the revisionist by him through Gurnam Chand. In the said petition, provisional rent was paid to Gurnam Chand. Both the courts below have failed to appreciate the above fact and that revisionist was liable to be permitted to contest the eviction petition. That apart, the respondent annexed only photocopy of his passport with the eviction petition. As per Section 67 of the Evidence Act, he was required to come present in person before the rent controller and to prove his "NRI" character. Both the courts below have failed further to appreciate that without presence of the respondent, he could not have been declared as "NRI" and that there was no evidence on record that respondent ever intended to shift permanently to India and settle in the demise premises, because till date

he never appeared before the rent controller and has got filed the instant eviction petition only through his attorney. He has placed reliance upon judgments of Hon'ble Supreme Court titled as "**Narbada Devi Gupta vs. Birendra Kumar Jaiswal and another**", 2004 AIR (SC) 175, "**Rachpal Singh and others vs. Gurmit Kaur and others**", 2009 AIR (SC) 2448 as well as of this Court titled as "**Joginder Kaur Channa vs. Dinesh Bhatia and another**", 2014(3) RCR (Civil) 913.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner and going through citations referred to above, this Court finds instant revision completely devoid of any merit for the reasons:-

This Court, while exercising its revisional jurisdiction, has very limited power, which can only be exercised in following three infirmities committed by the lower courts below:-

- (i) if the courts below have exceeded their jurisdiction;
- (ii) have exercised their jurisdiction illegally and;
- (iii) have not exercised their jurisdiction diligently.

Learned counsel for the petitioner has not been able to point out any such infirmity.

Section 67 of the Evidence Act has no application at the time of deciding a question as to whether leave to defend is to be granted to the tenant or not, inasmuch as, in case, the respondent would fail to prove his "NRI" character before the rent controller, during further proceedings, his claim would definitely be negated by the rent

controller. Therefore, arguments of learned counsel for the petitioner in this respect are misconceived.

Moreso, it is well settled that, in case, respondent would fail to prove his ownership over the demised premises, in that eventuality, also his eviction petition would be dismissed. Simple challenge of the petitioner to the title of the respondent is not sufficient to grant him leave to defend, inasmuch as, according to him he was inducted as tenant by Gurnam Chand, who has specifically clarified before the rent controller that he had inducted the petitioner in the demised premises as authorised representative of the respondent. Therefore, as on date, there is no ambiguity qua the title of the respondent over the demised premises under the tenancy of the petitioner. It is always for a landlord, who wants to take benefit of Section 24(3) of the Act to prove his intention to return to India and settle permanently. Therefore, in case, respondent would fail to do so, his eviction petition would be dismissed. It seems that petitioner wants to take advantage of the lengthy process of law in the courts of India to retain his possession illegally over the demised premises, taking all available pleas, which every tenant now a days does in almost every eviction petition against him. The entire burden as on date is upon the respondent-landlord to prove his case under Section 24(3) of the Act, in which, the petitioner has nothing to contribute, inasmuch as, in case, respondent would fail to prove any of the objections discussed herein, his eviction petition would fail. The petitioner has not been able to make out any case for

grant of leave to defend.

I have gone through the judgments of both the courts below and find no infirmity and illegality in the same.

The authorities relied upon by learned counsel for the appellant are completely distinguishable being not identical to the present case. Therefore, no benefit of the same can be given to the petitioner.

In view of the discussion made above, this Court is not inclined to differ with the concurrent findings recorded by both the courts below. Hence, the instant petition is dismissed.

15.07.2019

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(RAMENDRA JAIN)
JUDGE

whether speaking/reasoned:

Yes/No

whether reportable:

Yes/No