

CR-5391-2019

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

CR No.5391 of 2019(O&M)
Decided on: 24.10.2019

Moti Lal

.....Petitioner

versus

Kuldeep Kaur

....Respondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.Ankur Ghai, Advocate for
Mr.Nitin Sachdeva, Advocate
for the petitioner.

DR.RAVI RANJAN, J. (Oral Judgment)

This civil revision has been preferred under Section 18-A(8) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as “the Rent Act”) assailing the decision dated 06.08.2019 of the Rent Controller, Ludhiana, taken in Case No.RA/30664/13 by which the application filed by the petitioner-landlord (Respondent herein) on the ground of personal necessity has been allowed and the respondent-tenant has been directed to vacate the demised premises forthwith and hand over the vacant possession in favour of the petitioner-landlord.

1. Brief facts which would be necessary for consideration of the *lis*, stands narrated as under:

The petitioner-landlord-Kuldeep Kaur filed a petition under Section 13-B of the Rent Act seeking ejectment of the tenant from the tenanted premises which stood described in the petition itself. It has been

averred by the landlord that she has become the owner of demised premises, which comprises of one shop, passage, court yard and shed, on the basis of the registered sale deed dated 05.06.1991. She claims herself to be Non-Resident Indian (NRI) who has permanent shifted to London and residing there since 17.02.1979 but she is still holding Indian Passport and doing a catering business at London. She further claimed that the respondent-Moti Lal is a tenant in the demised premises at monthly rental of Rs.2,000/- vide the tenancy created in the year 2000. The eviction was sought on the ground that the petitioner-landlady herself required the demised premises for her *bona fide* need and occupation. It is averred that she, being an Indian by birth, keeps on visiting India frequently and now her children are grown up, thus, she intends to come back to India and settle permanently in the evening of her life and wants to start her own catering business in India with the help of her husband and her younger daughter who also wants to settle in India. She claimed that since she is doing a catering business at London she is having vast experience of such type of business. Though she has stated that she is having other property at Ludhiana which is a plot in Guru Teg Bhadur Nagar, near Chanidgarh Road, but the same is away from main Chandigarh Road and not suitable for the business purpose rather the property in question situated on main Chandigarh Road, would be more suitable for such business. The Rent Case was filed as, according to the petitioner-landlord, the respondent/tenant did not pay any heed to her request for vacating the tenanted premises.

2. The respondent-tenant-petitioner appeared in response to the notice and filed his reply objecting the eviction chiefly on the ground that the petitioner-landlord is not an NRI and in fact she has not gone outside India for taking any employment and to carry on her business or vocation in the year 1979. All her children are British Citizen and married and settled there. The petitioner-landlord does not intend to return to India as she is not an NRI. That apart, another stand has been taken that the petitioner is not the owner of the property and, as such, there is no relationship of landlady and tenant because the property was let out to the respondent by Pritam Singh in the year 2000 at the monthly rental of Rs.800/-. Before the death of aforesaid Pritam Singh, the respondent-tenant used to pay Rs.1700/- as rent till 10.08.2010. It has also been averred that the respondent/tenant also filed a suit for permanent injunction against Balwinders Singh son of aforesaid Pritam Singh but it is admitted on record that *ex parte* ejectment order dated 23.07.2009 was obtained by Ranjit Kaur and to stay the operation of the said order the respondent-tenant paid Rs.66,000/- as rent, w.e.f. 01.10.2007 to 30.06.2010 to Ranjit Kaur being attorney of the petitioner-respondent, thereafter, the *ex parte* decree was set aside.

3. On appreciation of pleadings of the parties framed following issues:

- i. Whether the petitioner is entitled to ejectment of respondent from the demises premises as prayed for?OPP
- ii. Whether the petition of the petitioner is not maintainable in the present form?OPR

iii. Whether the petitioner is neither owner nor landlord of demised premises? OPR

iv. Relief.

4. The petitioner-landlady, in order to prove her case, got herself examined as PW1 reiterating the version of the petition and also tendered and proved the documents Ex.P1 to Ex.P3, which are Site Plan, copy of her passport and Sale Deed of the demised premises respectively.

To rebut the evidence brought on record by the petitioner-landlady, the respondent-tenant stepped into the witness box and examined himself as RW1 and also examined official witnesses Navkiran and Jaspreet Singh as RW2 to depose orally before the Rent Controller. That apart, various documents (Ex.R1 to Ex.R25) were also brought on record.

5. The Rent Controller, upon appreciation of the materials on record including the evidence led by the parties, held that there exists a landlady-tenant relationship and also that the petitioner-landlady is in *bona fide* need of the demised premises and hence, has ordered for eviction of the tenant. Hence, this civil revision has been filed.

6. In the aforesaid background of the factual matrix, I have heard learned counsel for the tenant-petitioner.

So for the landlady-tenant relationship is concerned, it is true that the respondent-tenant-petitioner has contended that he used to pay rent to Pritam Singh, i.e., the father-in-law of the petitioner-respondent but at the same time, it also stands admitted in the pleading that *ex parte* eviction order was obtained in favour of the landlady-respondent on 23.07.2009 in another suit and for staying the operation of the order the respondent-

tenant-petitioner paid Rs.66,000/- as rent w.e.f. 01.10.2007 to 30.06.2010, meaning thereby the respondent-tenant had paid rent to the petitioner-respondent-landlady who was being represented through her attorney, v.i.z, Ranjit Kaur in a rent petition filed in the year 2008. That apart, Ex.P3, i.e. sale deed of the demised premises in favour of Kuldeep Kaur stood proved on record from which it is crystal clear that Kuldeep Kaur was registered buyer of the demised premises as back in the year 1991 itself. Therefore, the father-in-law, if was receiving the rent, he must be receiving on her behalf as she was residing at London. A registered documents definitely carries a presumption of genuineness especially when the respondent-tenant could not dispute the said document and PW1 has also withstood the test of cross-examination. The respondent-tenant-petitioner miserably failed to adduce any evidence to rebut the relationship of landlady and tenant proved by the petitioner-landlady.

7. The petitioner/respondent-tenant also questioned the status of the respondent/petitioner-Kuldeep Kaur as NRI. Learned counsel for the revision petitioner vehemently argued that respondent-Kuldeep Kaur does not fall under the definition of NRI. For better appreciation Section 2(dd) of the Rent Act, which defines NRI, is extracted and quoted as under:

2. Definitions- In this Act, unless there is anything repugnant in the subject or context:-

- (a) X X X X X X X X X X X X X X X X
- (b) X X X X X X X X X X X X X X X X
- (c) X X X X X X X X X X X X X X X X
- (d) X X X X X X X X X X X X X X X X

[(dd) “Non-resident India” means a person of India origin, who is either permanently or temporarily settled outside India in either case-

- (a) for or on taking up employment outside India; or
- (b) for carrying on a business or vocation outside India; or
- (c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for a uncertain period;]
- (e) X X X X X X X X X X X X X X X X
- (f) X X X X X X X X X X X X X X X X
- (g) X X X X X X X X X X X X X X X X
- (h) X X X X X X X X X X X X X X X X
- (hh) X X X X X X X X X X X X X X X X
- (i) X X X X X X X X X X X X X X X X
- (j) X X X X X X X X X X X X X X X X

From the perusal of the definition NRI under the Rent Act, it transpires that a person must be of Indian origin irrespective of the fact that the he is permanently or temporarily settled outside India for taking up employment or carrying on business or vocation outside India or for any other purpose, which indicates his/her intention to stay outside India for an uncertain period to qualify himself/herself as NRI. The Hon'ble Supreme Court in **“Baldev Singh Bajwa vs. Monish Saini”, 2005(12) SCC 778,** has held as under:

- “23. It is further contended that for according relief under Section 13-B of the Act of 1949, it must be proved by the NRI landlord that he has permanently returned to India or that his intentions are to permanently return to India. The intention to permanently settle down in India should be read into words “return” used in Section 13-B. The specific category of NRI landlord has been created by the Legislature with the intention to provide relief to them who are intending to settle down in India or take up business in India only. Learned counsel appearing for the landlords have submitted that from the very definition of the NRI in Section 2(dd) of the Act, it is not necessary for the NRI-landlord to permanently return to India either for the purpose of his residence or for non-residential purpose.
- 24. Definition of “Non-resident Indian” (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an

uncertain period, would be a Non-resident Indian. Thus to be a NRI, it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase "Indian Origin" has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase "origin" refers to persons parentage or ancestry. The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four corners of Section 2 (dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase "return to India" along with the definition of the "NRI" under Section 2(dd) of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent resident outside India being NRI can claim ejectment.

25. When we read Section 13-B along with the definition of the NRI it is apparent that the person who is a permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that a NRI should return to India and claim the premises for his/her use or for the use of any dependent ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to Indian with an intention to permanently settle in India. A NRI may require the accommodation for expansion of his business which he is carrying on in other country or requires the accommodation for his temporary stay. Under Section 13-B, a NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependent on him and is ordinarily living with him, which makes it clear that although a NRI resides permanently in other country, he could get the accommodation vacated for the need of his dependent who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel

that the words “return to India” under Section 13-B of the Act denotes return to India permanently.”

It is apparent from the above that the Hon'ble Supreme Court has observed that origin refers to persons parentage or ancestry. So far the petitioner-respondent-landlady is concerned, the Rent Controller correctly held that it is evident from the materials on record she is a person of India origin who went abroad and, as such, since this would indicate her intention to stay outside India for uncertain period, she would definitely fall within the scop and ambit of NRI as per the definition under Section 2(dd) of the Rent Act.

A learned Single Bench of this Court in “**Sohan Lal vs. Swaran Kaur**” 2000(3) RCR (Rent) 407, has held that it is not necessary that NRI must return permanently or he must file a petition for eviction of tenant after he/she has returned to India.

8. Learned counsel for the tenant has next contended that the respondent-landlady does have any intention to come back to India and though she has stated that she intends to start a catering business with her youngest daughter, the daughter has not been examined and, as such, this issue does not stand proved. In my view this limb of argument is only noted to be rejected for the reason that by making pleadings and leading evidence, petitioner-respondent-landlady has already established her *bona fide* need and if she wants to start a catering business in India which she was already doing at London, that should not be questioned by the respondent-tenant-petitioner. It is well settled that landlord's requirement should not be seen through the window of suspicion, unless there is strong

evidence against such *bona fide* need or requirement. That being not present in this case, this limb of argument is also not tenable and non-examination of the youngest daughter would not be fatal in this matter.

9. That apart, it has also been argued that the alternative place is also available to the respondent/landlady, but in my view it is well established that the landlord/landlady would be the best judge of his/her requirement and even if she is in ownership or possession of other accommodation in the same area, that would not be a bar to the NRI to get building of his/her choice vacated under Section 13-B of the Rent Act. This has to be kept in mind that ejectment of tenant under Section 13-B of the Rent Act, is once a lifetime benefit given to the NRI for his/her *bona fide* requirement.

10. Lastly, it has vehemently been argued on behalf of the tenant-petitioner that in the cross-examination PW1 has stated that she wants to sell her property. From reading of the cross-examination it appears that there may be possibility of slip of pen as in place of “*galat hai*”, it is recorded as “*gall hai*” for the reason that in her entire pleading or examination-of-chief no such intention has been disclosed and it is not even the case of the respondent-landlady-petitioner also either in pleadings or evidence that the eviction is being sought for the purpose of selling the property. Further, Section 13-B of the Rent Act, is quite clear that owner would be debarred from transferring the property through sale or any other means or rent it out to some other person for a period of five years from the date of taking possession upon ejection of the tenant. Therefore, that

part of the cross-examination or such limb of argument would be meaningless as, for five years, she can neither let it out to some other person nor can she alienate it.

Having considered the submissions made on behalf of the petitioner and the materials available on record, I am of the opinion that no good ground could be raised by the revisionist-petitioner-tenant warranting interference in the impugned order of eviction passed by the Rent Controller.

In the result, this civil revision is dismissed.

October 24, 2019
dharamvir

(DR. RAVI RANJAN)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable :	Yes