

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7104-2017(O&M)

Date of decision: 29.01.2020

Satish Aggarwal

.....Petitioner

Versus

Davinder Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sanjeev Pandit, Advocate for the petitioner

Mr. Sunil Agnihotri, Advocate for the respondent

ANIL KSHETARPAL, J. (ORAL)

The tenant-petitioner has filed the present revision petition assailing the correctness of order dated 8.8.2017 passed by learned Rent Controller rejecting leave to contest as provided under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Act of 1949'). Legislature has made a provision by adding Section 13-B to the Act of 1949, entitling Non Resident Indians to file ejectment petition to recover immediate possession of residential building or scheduled building or non-residential building under the Act of 1949. The tenant has been given right to seek leave to contest in accordance with Section 18-A of the Act of 1949. Such application filed by the tenant as noted above has been dismissed.

This Court has heard learned counsel for the parties at length

and with their able assistance has gone through the paper book. Learned counsel for the petitioner-tenant submits that respondent-owner is not proved to be owner for a period of 5 years prior to the filing of the petition and therefore, petition is not maintainable. He further submits that the respondent-owner has not returned to India and therefore, the petition is not maintainable. He further submits that petition under Section 13-B of the Act of 1949 was filed through an attorney and therefore, requirement of the landlord is not bona fide, particularly, when attorney is not embossed.

This Court has considered the submissions, however, finds no substance therein for the following reasons:-

i) Chunni Lal, father of respondent-owner was undisputed owner of the property. He died on 6.6.1990. Suit property was inherited by widow Sitawanti who also died on 29.2.1992. On her death, as per her Will dated 5.2.1992, respondent-Davinder Kumar became the owner.

Learned counsel for the petitioner while drawing attention of the Court to Annexure P-7 has submitted that in the Municipal record, change in the entry has been made only on 27.5.2013. Therefore, Davinder Kumar-respondent has become owner of the suit property on that day. Argument of the learned counsel for the petitioner has a fundamental error. The ownership of immovable property, never remains in abeyance. The moment previous owner dies, the property passes on to his/her heir. Entry in the municipal record is not a document of title. The entry in the revenue record or municipal record is only for updating the

record. Hence, Davinder Kumar became owner in the year 1992 itself, when Smt. Sita Wanti died.

Next argument of the learned counsel for the petitioner that since Davinder Kumar has not returned to India therefore, cannot maintain the petition under Section 13-B of the Act of 1949, has already been answered by the Hon'ble Supreme Court in the case of 'Baldev Singh Bajwa vs. Monish Saini' (2005) 12 SCC 778. It has been held that it is not necessary for the owner to first settle in India and thereafter file a petition for eviction of the tenant. A landlord cannot be expected to shift to India and sit idle hoping that one day eviction order will be passed. Such interpretation would not be in the interest of justice.

Next argument of the learned counsel for the petitioner that the present petition could not be filed through power of attorney is also required to be noted and rejected, particularly, when learned counsel for the petitioner failed to point out any requirement under the Act of 1949 requiring the filing of the petition personally. A power of attorney is an agent and acts on behalf of the owner. In absence of any prohibition or restriction, it would not be appropriate for the Court to hold that petition filed under Section 13-B of the Act, 1949, through power of attorney is not maintainable. Further, power of attorney holder in the present case is not a stranger. She is sister of owner-Davinder Kumar.

Last argument of the learned counsel for the petitioner is to be noted and rejected, particularly, when the petitioner-tenant did not seek leave to contest on this ground. Learned counsel for the petitioner could not draw attention of the Court to that part of the impugned order

where this aspect was pressed.

Hence, no ground to interfere is made out. Dismissed.

29.01.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No