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

Date of Decision: 08.01.2020

CR-7788-2017 (O&M)

Jatinder Kumar Sanan

....Petitioner

Versus

Neeraj Mathawan and another

...Respondents

CR-7367-2017 (O&M)

B. R. Verma

....Petitioner

Versus

Neeraj Mathawan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anand S. Miglani, Advocate
for the petitioner in CR No. 7788 of 2017.

Mr. Amit Dhawan, Advocate
for the petitioner in CR No. 7367 of 2017

Mr. Sunil Chadha, Sr. Advocate with
Mr. Namish Sodhi, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

By this order, two revision petitions filed by tenants arising from two eviction petitions filed by the landlord on similar ground shall stand disposed of. Learned counsel for the parties also agreed that both the revision petitions can be conveniently disposed of by a common order.

Brief facts of the case are that the owner- Neeraj Mathawan S/o

Ved Prakash resides in USA. He filed two applications for ejectment of the tenants from separate shops under Section 13 B of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act'). Section 13 B of the Act gives a special right to a Non Resident Indian who wishes to return to his home land. Section 13-B of the aforesaid Act is extracted as under:

“13-B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accrue to Non-Resident Indian.-- (1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:

Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this

section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building the Controller shall make an order accordingly.”

On careful reading of Section 13 B of the Act, it is apparent that right to file petition has been given to an owner who wishes to return to his country of his origin. The requirement is that he should be owner of the property for a minimum period of five years before filing the petition. The owner is entitled to exercise this special right only once during his lifetime.

Respondent- owner filed eviction petitions by asserting that he is owner of the property since the year 1977. The petition was filed in the year 2012. After leave to defend was granted, the parties were granted opportunity to lead evidence. The learned Rent Controller by a common judgment ordered ejectment of the tenants. No appeal against the judgment passed by the Rent Controller under Section 13 B of the Act is maintainable. Hence, the present revision petition.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgment passed by the Rent Controller. These revision petitions were kept pending awaiting for the judgment of the Hon'ble Supreme Court on the issue as to whether a NRI land-owner, holding a foreign passport, falls under the definition of NRI as defined under the Act. The aforesaid matter has now been decided by the Hon'ble Supreme Court under civil appeal No. 8597 of 2019 Ram Krishan Grover and others Vs. Union of India and others reported as 2019 (2) R.C.R. (Rent) 703. It has been held that a person of Indian origin holding a foreign

Learned counsel for the petitioners have raised two contentions. That the respondent- land owner has failed to prove that he was owner for a period of five years prior to the filing of the ejectment petition. Second, since the land owner himself has not appeared in the witness box to face cross examination, therefore adverse inference is to be drawn against him and hence bonafide necessity of the petitioner is not proved.

On the other hand, learned counsel for the respondent- land owner has pointed out that in the ejectment petition, it was specifically pleaded that the respondent had become owner of the entire building, which is in one unit, in the year 1977. Respondent- land owner appeared through his brother, who is a general power of attorney holder and proved that fact. Learned counsel for the respondent has read over the statement of Aman Mathawan. He has deposed that originally Smt. Devki Rani, grand mother of the land owner, was owner of the property. She willed it away in favour of respondent Neeraj Mathawan. He hence submit that respondent is proved to be owner of the premises for more than five years before filing of the petition.

He further submitted that the petition was filed by the owner under his own signatures. However, since he settled in USA, he cannot expected to come and attend the hearing on each and every date spanning over years, therefore he appointed him as his attorney. The proceedings before the Rent Controller remain pending for approximately five years. Brother of the owner is in knowledge of all the facts. When he appeared in evidence, he answered all the questions put to him by learned counsel representing the tenants. He hence submitted that there is no occasion for drawing adverse inference against the owner.

On consideration of the matter, this Court is of the opinion that

there is no substance in the present revision petitions. Respondent- landlord has not only pleaded that he is owner of the premises since 1977 but in evidence also evidence to prove that fact has been led. On reading of the deposition of Aman Mathawan, who has appeared on behalf of the respondent- owner, it is apparent that the counsel for the tenants could not extract any significant fact which may support the case of the tenants.

Learned counsel appearing for the tenants while reading the statement of Aman Mathawan has tried to impress upon this Court that previously, father of the respondent- landlord used to receive the rent for the year 2009. He hence submitted that the court should assume that the respondent has become owner in the year 2009 only.

This Court does not find force in the aforesaid submission because the right under Section 13 B of the Act has been conferred on the owner. Father of a landowner, who is settled abroad, can collect rent on behalf of his son. Under Section 13 B of the Act, the right to seek eviction is with the owner of the premises and not to the landlord.

It is pertinent to note that Aman Mathawan, when appeared in evidence, has answered all the questions which were put to him by learned counsel representing the tenants. Aman Mathawan is real brother of the respondent Neeraj Mathawan. No doubt efforts should be made by the party to appear himself in evidence, however, there can be cases where it is not possible to appear and depose personally in the Court like in the present case where respondent is settled in USA. The power of attorney holder is not a stranger. He is brother of the respondent- owner. Once he has answered all the questions, adverse inference against respondent cannot be withdrawn, only on non appearance of the owner.

In view thereof, there is no ground to interfere in the findings of the Courts below.

Consequently, both the revision petitions shall stand dismissed.

However, petitioners are granted three months time to hand over the possession of the premises to the respondent.

January 08, 2020
Mehak Huria

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No