

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 8890 of 2015 (O&M)

Date of Decision: 31.01.2020

Sukhdeep Singh alias Prince

... Petitioner(s)

Versus

Rajesh Kumar Lamba and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Karan Nehra and Ms. Matisha Bansal, Advocates
for the petitioner(s).

Mr. Manu K. Bhandari, Advocate
for the respondents.

Anil Kshetarpal, J.

The present revision petition has been filed challenging correctness of an order passed by the learned Rent Controller declining an application under Section 18-A(4) of the East Punjab Urban Rent Restriction Act, 1995 (hereinafter referred to as “the Act”), filed by the tenant seeking leave to defend in a petition filed by the landlord under Section 13-A of the Act.

Legislature has added Section 13-B in the East Punjab Urban Rent Restriction Act, 1949 vide Act No. 9 of 2000 w.e.f. 31.05.2001, conferring Non-Resident Indians (NRIs) enabling a right to recover immediate possession of residential building or scheduled building and/or non-residential building, which reads 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 subsection 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 and the Controller shall make an order accordingly."

Section 18-A of the Act lays down special procedure for disposal of applications under Sections 13-A or 13-B of the Act. Sub Section (4) to Section 18-A of the Act requires a tenant, who wishes to contest the petition, to obtain an order of leave to contest the eviction petition from the learned Rent Controller. Section 18-A (4) is also extracted hereunder:

"18-A. (4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building and/or non-residential building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant".

The land owners filed a petition on 04.02.2012 seeking eviction from building/shop situated opposite Food Corporation of India Godowns,

Sirhind Road, Patiala. The petitioner (tenant) filed an application under Section 18-A (4) of the Act for grant of leave to contest the ejectment petition filed by the owners of the premises which has been declined by the learned Rent Controller.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the paper-book.

Learned counsel for the petitioner has submitted that the landowner claims that the shop is in possession of a sub-tenant. He, hence, submitted that petition under Section 13-B of the Act cannot be filed for delivering immediate possession against a sub-tenant. In other words, he contends that no petition is maintainable under Section 13-B of the Act if the premises is in possession of sub-tenant. He further contended that an affidavit of general power of attorney of the landowner in support of eviction petition filed under Section 13-B of the Act has been filed as such petition is not maintainable. He further submitted that the landlord has not returned to India and, therefore, the petition is not maintainable.

On the other hand, learned counsel for the respondent, while relying upon a judgement passed by the Hon'ble Supreme Court in ***Baldev Singh Bajwa v. Monish Saini 2005(12) SCC 778***, has submitted that the landlord is not required to first return to India and then file a petition. The petition against a sub-tenant is also maintainable. He further submitted that Section 13-B of the Act does not require filing the affidavit of the landowner in person in support of a petition filed under Section 13-B of the Act.

This Court has carefully considered the arguments of learned

counsel for the parties and with their able assistance, gone through the paper-book.

First argument of learned counsel for the petitioner is that petition is not maintainable if sub-tenant is alleged to be in possession cannot be accepted because on careful reading of Section 13-B of the Act and the phraseology used therein, it is apparent that a right has been conferred on the owner to apply for delivering immediate possession of the tenanted premises. Section 13-B of the Act does not use that such petition is maintainable only against the tenant and not against the sub-tenant. What is required is that the premises possession whereof is sought under Section 13-B of the Act, should be let out by him or her.

Still further, argument of learned counsel can be examined from another angle/perspective. The landlord/owner lets out the premises to a tenant. The tenant, thereafter, further sublets the premises to a sub-tenant. Thus, the sub-tenant is a tenant under the tenant. In other words, the tenant is the landlord of a sub-tenant. The scheme of the Act, 1949 clearly lays down that if a tenant further lets out the premises without written permission from the landlord, the original tenant who has sublet the premises without written permission of the landlord is liable to be evicted along with the sub-tenant even under Section 13 of the Act. Thus, once the eviction of a tenant has been sought, it includes sub-tenant also particularly when both have been arrayed as respondents.

It would be appropriate to note that the present petition has been filed by Sukhdeep Singh alias Prince son of late Kuldeep Singh. The owner had filed the present petition through general power of attorney, his father

Ashok Kumar Lamba. It was pleaded in the petition under Section 13-B that Kuldeep Singh, father of Sukhdeep Singh had taken the building on rent from the petitioner with effect from 10.07.1991. Late Kuldeep Singh died in the year 2001 and thereafter the building came in possession of Sukhdeep Singh. It was further pleaded that Sukhdeep Singh has further sublet the shop to respondent No.2-Manmohan Singh without the written consent of the owner. Respondent No.2-Manmohan Singh did not file any application for seeking leave to contest. It is the only the petitioner-Sukhdeep Singh (respondent No.1 in the petition under Section 13-B before the learned Rent Controller), who had filed an application for grant of leave to contest the eviction petition and has filed the present revision petition.

Learned counsel for the petitioner has relied upon a judgment passed in *Narinder Singh v. Kirpa Singh and Others 2006(2) RCR (Rent) 218* to contend that no petition against sub-tenant under Section 13-B is maintainable. This Court has carefully gone through the aforesaid judgment. In the aforesaid judgment, the owner had filed petition under Section 13-B of the Act. It was pleaded in the petition that the original tenant has sublet the tenanted premises. The alleged sub-tenants pleaded that they are tenants under the owner and not under the alleged tenant. The leave to contest was declined by the learned Rent Controller, which was upheld by this Court. The caption/head note prepared by the editorial staff of a law journal does not depict correct picture. What has been held in the aforesaid judgment is that in eviction petition filed under Section 13-B, no relief can be claimed on the ground that the tenanted premises has been sublet without written consent of the owner. A petition under Section 13-B can only be filed on the

ground of bonafide requirement of such an owner or anyone ordinarily living with or dependent on the owner. It is nowhere laid down in the case *Narinder Singh (supra)* that a petition under Section 13-B cannot be filed against a sub-tenant.

Learned counsel for the petitioner has also relied upon a judgment passed in *Basant Kumar v. Romesh Kumar Deora 2008(1) RCR (Rent) 296* in support of the submission that affidavit of the general power of attorney holder cannot be filed. It will be noted here that as per the provisions of the Power of Attorney act, 1882, which have been amended by Amendment Act of 1982, every person has a right to appoint agent for any purpose except specifically prohibited or debarred. The appointment of general power of attorney is based upon law of agency subject to certain exceptions. Whatsoever a person can do himself, he can also do it through an agent. In the present case, power of attorney holder is not a stranger. He is father of the owner. This Court has carefully read the judgment passed in the case of *Basant Kumar (supra)* relied upon by learned counsel for the petitioner. In the aforesaid judgment, the Court while taking note of the various judgments passed by the Hon'ble Supreme Court has remanded the case back to the learned Rent Controller to re-decide the application for leave to contest particularly when the owner has filed his personal affidavit in the revision petition for the first time. The judgments of the Hon'ble Supreme Court, relied upon, are in the context that when a power of attorney holder appears in evidence on behalf of his principal, the Courts are entitled to draw adverse inference based upon the rule that best evidence has not been produced. However, such judgments are subject to certain

exceptions. If the power of attorney holder is in knowledge of the facts of the case and is related to the principal, there is no bar in filing a petition or filing an affidavit in support of the petition.

The next argument of learned counsel for the petitioner that since the landlord has not returned to India, therefore, the petition is not maintainable, stands already answered by the Hon'ble Supreme Court in the case of ***Baldev Singh Bajwa*** (*supra*).

Keeping in view the aforesaid facts, there is no ground to interfere. Hence, dismissed.

(Anil Kshetarpal)
Judge

January 31, 2020
"DK"

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No