

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

-:-

Date of Decision :27.02.2020

**1. CR. No.6035 of 2019**

Usha Panday &Anr.

...Petitioners

Vs.

S.Sikander Singh Dhaliwal

...Respondent

**2. CR. No.2742 of 2019**

Parmod Kumar

...Petitioner

Vs.

S.Sikander Singh Dhaliwal

...Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Ms. Seema Pasricha, Advocate, for the petitioners  
(in C.R No. 6035 of 2019)

Mr. Sandeep Verma, Advocate, for the petitioners.  
(in C.R. No.2742 of 2019)

Mr. Vivek Aggarwal, Advocate, for the respondent.

**ALKA SARIN, J.**

This order of mine shall dispose of two revision petitions i.e. CR. No.6035 of 2019 and CR. No.2742 of 2019. The said revision petitions have been filed challenging the orders dated 29.08.2019 and 02.04.2019, whereby the application moved by the respective tenants for leave to contest under Section 18 (4) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act') was dismissed.

2. In order to decide the present *lis*, the essential facts have been taken from C.R No.6035 of 2019.

3. Landlord-respondent filed a petition under Section 13(B) of the Rent Act on the ground that the landlord-respondent was residing in Canada since 16.03.1994 and had been driving a taxi in Canada. In support of his averments he placed on record attested copy of the passport and other documents alongwith the petition. It is further averred by the landlord-respondent that he was owner and landlord of House No. 247, Sector-20-A, Chandigarh and the tenant-petitioners were in possession of the first and second floors of the demised premises as tenants. It is further averred that the landlord-respondent now wishes to shift back to India along with his family, which consists of his two children aged 18 years and 13 years and, therefore, he required the entire premises which was a 6 marla house for his own use and occupation.

4. Upon notice, the tenant-petitioner filed an application for leave to defend wherein, *inter alia*, it is contended that earlier also similar summons have been received in case titled as "Sikandar Singh Dhaliwal Vs. Usha Panday. In that case too the tenant-petitioner had filed an application for leave to defend within 15 days from the receipt of the summons. The said application was stated to have been dismissed in default and this was a second round of litigation. It is further stated that contrary pleas have been taken in the earlier petition and in the present petition. Firstly qua the area under possession of the tenant-petitioner and secondly qua rate of rent. It is also stated in the application that the subsequent petition on the same ground that too after a period of seven years of the filing of the earlier petition and three years after

the dismissal of the said petition was barred under law.

5. The learned Rent Controller while dismissing the application for grant of leave to defend held that from the perusal of the passport No.R5389561 and Permanent Resident Card I.D No. 2171 29934 issued by the Government of Canada, the foremost requirement for filing a petition under Section 13-B of the Rent Act, was fulfilled, inasmuch as the landlord-respondent has been able to prove that he is NRI and hence entitled to the invoke the provisions of Section 13-B of the Rent Act.

6. The ground raised by the tenant-petitioner that the landlord-respondent has no intention to come back India was also rejected. Further, the contention raised by the tenant-petitioner that in view of the earlier petition having been dismissed, the present petition was not maintainable and was also rejected by holding that the grounds of bonafide requirement or non-payment of rent are recurring causes as also the provisions of Code of Civil Procedure (hereinafter referred to as, 'CPC') were not strictly applicable to the Rent Act and in view thereof, the same would not be a bar to the filing of the present petition.

7. Aggrieved by the said orders dated 29.08.2019 and 02.04.2019, present revision petitions have been preferred by the tenant-petitioners.

8. While laying a challenge to the impugned orders, it has been contended by learned counsel for the tenant-petitioners that this was clearly a case of additional accommodation and hence leave to defend ought to have been granted and in support of the said contention following judgments have been relied upon :-

1. 2001(1) SCC 255, Santosh Devi Soni Vs. Chand Kiran;
2. 2012(1) RCR (Rent) 15 Amarjit Singh Chadha Vs. Col. Jasbir Singh Likhari;
3. 2009(1) RCR (Rent) 33 Mrs. Kushal Thakar Vs. Gurinder Singh;
4. 1990(2) RCR (Rent) 386 K.G.P. Pillai Vs. Subhash ChanderPathania;
5. 1999(1) RCR (Rent) 541 Prakash Chand Gupta Vs. K.S.Gupta;
6. RCR No. 268 of 2012, Date of Decision 25.07.2012 M/s S.K.Seth & Sons Vs. Vijay Bhalla.

9. Per contra, learned counsel for the landlord- respondent has contended that being NRI, the landlord-respondent was entitled to get the premises vacated under Section 13-B of the Rent Act. Section 13-B of the Rent Act is a complete code in itself entitling a Non-Resident Indian to seek eviction and recover immediate possession of a building by him, which is required for his or her own use or by anyone ordinarily living and dependent upon him or her. Irrespective of the number of tenants in the building, the landlord can seek eviction of all the tenants only once in his lifetime under the provisions of Section 13-B of the Rent Act. In support of his contention, he has placed reliance on the following judgments:-

1. C.R No. 5681 of 2012, Decided on 26.04.2019, Raghbir Singh Vs. Surjit Kaur;
2. 2008(2) RCR (Rent) 376 Kamal Raj Bansal Vs. RajpaulSingh;
3. 2008 (2) RCR (Rent) 377 Sh. Sita Ram Vs. Smt. MalwinderKaur;
4. 2006(1) RCR (Rent) 527 Punjab State Electricity

Board and Anr. Vs. Knawar Varinder Singh Sandhar

5. 2007(2) RCR (Rent) 358 Davinder Singh Vs. Kewal Krishan

6. 2006(2) RCR (Rent) 604 Charan Singh Malhi Vs. Smt. Ram Piari&Anr.

7. 2006(2) RCR (Rent) 373 Surinder Kumar Shori Vs. Shakuntala Devi.

10. Learned counsel for the landlord-respondent further states that reliance can be placed upon judgments rendered by the Hon'ble Supreme Court in cases of Baldev Singh Vs. Monish Saini 2005(2) RCC Rent 470 and Kamaljit Singh Vs. Sarabjit Singh 2014 (2) RCR 249, wherein it has been held that an NRI landlord residing permanently/temporarily in another Country can get a building vacated for his needs or that of his dependents, ordinarily residing with him and interest to come back.. The relevant extract from Baldev Singh's case (Supra) is reproduced below:-

*“(1) NRI landlord should be owner of building for 05 years before he applied to Controller for possession.*

*(2) He should require the same for his own use or for use of any one ordinarily living with him and is dependent on him.*

*(3) Right under Section 13-B of immediate possession could be availed of only once during the lifetime of such an owner/NRI landlord.*

*(4) NRI landlord has choice to select one among several other residential buildings and or non-residential buildings.*

*(5) If the NRI landlord of building gets possession under*

*Section 13-B(3), he shall neither transfer it either by sale or by any other mode nor he shall let it out for a period of five years – In case of breach, tenant is entitled to seek restoration of possession.”*

11. The Rent Controller while dismissing the application for leave to contest has held that the NRI status of the landlord-respondent is duly reflected in the documents produced by him, which included the passport and his Permanent Residency Card.

12. Learned counsel for the tenant-petitioners has not been able to point out any material on the record to rebut the stand of the landlord-respondent. It is trite that when an eviction is sought by a NRI landlord a heavy burden lies on the tenant to prove that the requirement of the landlord is not genuine and the tenant will necessarily have to give all facts and particulars supported by documentary evidence to support his plea.

13. The argument raised by learned counsel for the tenant-petitioners that this was a case of additional accommodation in the same building is without any substance, inasmuch as the said ground cannot be raised in a case filed under Section 13-B of the Rent Act. Landlord under Section 13-B of the Rent Act is entitled to get only one building vacated irrespective of the number of tenants and the choice of building has been left to the landlord. That being so, the plea of additional accommodation cannot possibly be raised in an application filed under Section 18(A) of the Rent Act for leave to contest.

14. Further, the argument raised by learned counsel for the tenant-petitioners that the present petition was barred because of the dismissal in

default of the earlier petition filed by the landlord-respondent, also deserves to be rejected. Section 13-B of the Rent Act gives a right to the landlord to recover immediate possession of a building on his return. In the present cases, it is not the stand taken by the tenant-petitioners that any building has already been got vacated by the landlord-respondent under Section 13-B of the Rent Act.

15. It is trite that the provisions of CPC are not applicable in *stricto sensu* to rent proceedings. The said proposition is supported by the following judgments, relevant portions from the said judgments are also extracted below:-

**1981 (2) RCR (Rent) 23, Ram Dass Vs. Sukhdev Kaur &Ors :-**

*“It would be thus manifest on principle as also from the relevant statutory provisions that the Civil Procedure Code as such does not govern the proceedings under the Act, except to the limited extent provided for under Sections 16 and 17 thereof, Even by applying these provisions most liberally one cannot bring in either expressly or necessary implication the rest of the provisions of the Civil Procedure Code. In particular it would be evidence that the specific and detailed provisions proprio vigore to the rent jurisdiction. The Controllers and the Appellate Authorities being persona designate are entitled to devise their own procedure within the confines prescribed by the Act itself.”*

**2002(2) RCR (Rent) 87 Vijay Kumar &Ors. Vs. Durga Ashram**

**Charitable Trust etc. :-**

*“10. From the aforesaid observations, it becomes crystal clear that provisions of Order 41 Rule 23 and Rule 25 had been held to be inapplicable as it would amount to unnecessary delay in the finalisation of the proceedings before the Rent Controller and the Appellate Authority. A perusal of the underlined portions of the observations quoted above makes it abundantly clear that the specific intent of the Legislature was to provide a special and expeditious procedure for the disposal of the matters under the Act. The procedure applicable to Civil Courts was to be avoided, The Rent Controller and the Appellate Authority were left to devise their own procedure free from technicalities and formalities of the CPC which govern the Civil Courts. The Division Bench has again stressed that the underlying principle was to rid the authorities under the Act from the shackles of technicality and procedure and to provide a summary and expeditious mode of disposal. If that be the avowed purpose for enacting the [Rent Act](#), the Rent Controller and the Appellate Authority are free to adopt any procedure which will lead to an expeditious decision provided the procedure adopted is neither arbitrary nor unreasonable.”*

**2008(1) R.C.R (Rent) 304 Hariender Kaur Vs. Sharan Gurdev Singh:-**

*“8. As held in N.R. Narayan Swamy’s case (supra), grounds*

*of bonafide requirement or non-payment of rent is a recurring cause. Even otherwise, the principles regulating the procedure under the Civil Procedure Code are not strictly applicable to the proceedings under the Act. In view of the position as noticed, it is not possible to hold that withdrawing a petition under Section 13 of the Act can act as res-judicata for the petitioner to prosecute his petition under Section 13-B of the Act.”*

16. That being so, I do not find any merit in the argument raised by learned counsel for the tenant-petitioners.

17. The judgments relied upon by learned counsel for the tenant-petitioners do not pertain to Section 13-B of the Rent Act and hence have no applicability in the present petitions.

18. In view of the above, I do not find any infirmity or perversity in the order passed by the learned Rent Controller declining the application for leave to contest.

19. Accordingly, C.R No. 6035 of 2019 and C.R.2742 of 2019 are dismissed.

20. Since, the above-mentioned revision petitions have dismissed, applications, if any, are also dismissed.

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(ALKA SARIN)  
JUDGE

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No