

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

202

**1. CR-2733-2013(O&M)
Date of Order: 09.12.2021**

RAMESH KUMAR

..Petitioner

Versus

VISHAL JAIN @ RISHAB JAIN

..Respondent

**2. CR-3002-2021(O&M)
Date of Order: 09.12.2021**

VISHAL JAIN @ RISHAB JAIN

..Petitioner

Versus

RAMESH KUMAR

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Kumar Jindal, Sr. Advocate with
Mr. Amandeep Singh, Advocate
for the petitioner.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Ajaivir Singh, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

Civil Revision No.2733 of 2013, has been filed by the tenant.

The respondent in Civil Revision No.2733 of 2013 (Vishal Jain @ Rishab Jain son of late Sh. Vinod Jain), filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter referred to as the 1949 Act), seeking eviction of the tenant. Section 13-B of the 1949 Act enables a Non Resident Indian (NRI) to recover immediate possession of the residential building or scheduled building and/or non-residential building. There is a provision which enables the tenant to seek leave to defend. In the present case, leave to defend was granted. The learned Rent Controller has given an opportunity to both the parties to lead evidence. On appreciation of evidence, the learned Rent Controller has ordered eviction of the tenant. This revision petition has been filed under Section 15(5) of the 1949 Act.

This Bench has heard the learned Senior counsel representing the respective parties and with their able assistance perused the paper book as well as record which was requisitioned.

The learned Senior counsel representing the petitioner has contended that Sh. Rishab Jain has failed to prove his ownership. While elaborating, he contends that Smt. Charan Dei @ Charan Devi Jain, was the owner of the property. She executed a Will, bequeathing the property in dispute in favour of her four grand-children. He submits that in the Will, the property has been bequeathed in favour of Vishal Jain and not Rishab Jain. He contends that the respondent-landlord has failed to prove that he is only known by the name of Vishal Jain. He submits that the Court must draw an adverse inference against the respondent. The second argument of learned Senior counsel representing the petitioner is that the respondent has no intention to come back to India, as after filing the petition on 22.04.2009, the respondent applied for and was granted a British Passport. He, hence, contends that the Court must draw an adverse inference that the respondent does not have an intention to come back to India.

Per contra, the learned Senior counsel representing the respondent while drawing the attention of the Court to the statement of Vishal Jain @ Rishab Jain who has appeared as PW1 before the learned Rent Controller has stated that in fact he is Rishab Jain but is also known as Vishal Jain. He submits that the respondent in his petition under Section 13-B of the 1949 Act, the power of attorney given to the mother as well as in evidence has stated that he is Rishab Jain @ Vishal Jain. He further submits that the respondent applied for British Passport in order to facilitate his visits to UK.

However, that itself cannot be a ground to dismiss the petition particularly when Sh. Rishab Jain has appeared in evidence and has stated on oath that he wished to come back and settle down in his own country.

After having heard the learned Senior counsel representing the parties, this Court proceeds to resolve the controversy. It is not in dispute that Rishab Jain is son of late Sh. Vinod Jain son of Sh. Charan Devi. There is no evidence that late Sh. Vinod Jain had another son with the name of Vishal Jain. In fact, it has come on record that late Sh. Vinod Jain has another son Vinay Jain. There is no evidence that Sh. Vinod Jain has more than two sons. Sh. Rishab Jain has appeared in evidence and stated that his name is Rishab Jain @ Vishal Jain although, in the official record, he is known as Rishab Jain. The initial onus placed on the respondent stands discharged. The petitioner (tenant) has not led any evidence to prove that Sh. Vinod Jain has more than two sons. It is well settled that the civil proceedings are required to be decided on preponderance of probabilities. In the present case, the learned Rent Controller has already on appreciation of evidence found that the evidence of Rishab Jain is worth acceptance. In absence of any perversity, the Revisional Court does not get jurisdiction to interfere.

It may be noted here that once Sh. Rishab Jain appeared in evidence and stated that he is also known with the name of Vishal Jain, hence there is no occasion to draw an adverse inference.

Now, let us examine the second argument of the learned Senior counsel representing the petitioner. At this stage, it will be appropriate to notice Section 13-B of the 1949 Act, which enable a Non Resident Indian who is an owner of a property to file eviction petition in order to recover immediate possession of the tenanted premises. This right is given only once

Indian. The argument of learned Senior counsel representing the petitioner is that since the respondent applied for British Passport after filing the present petition therefore, the Court must draw an adverse inference that he is not serious to return India. In the considered view of the Court, there is no occasion to such an inference in absence of material to that effect merely, because the respondent (landlord) applied for and was issued a British Passport does not necessarily carry on assumption, that the respondent is not interested in coming back to India. Sh. Rishab Jain has appeared in evidence in the year 2012. He had been grilled during the cross-examination however, the counsel representing the tenant failed to impeach his credibility.

Furthermore, a Five Judge Bench of the Hon'ble Supreme Court in *Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh, (2014) 9 SCC 78*, has held that in absence of perversity, the High Court should not interfere in the revisional jurisdiction.

Consequently, the revision petition is dismissed.

In view of the order passed in CR-2733-2013, the learned senior counsel representing the petitioner in CR-3002-2021, prays that this revision petition be dismissed as not pressed.

Ordered accordingly.

All the pending miscellaneous applications, if any, are also disposed of.

December 09, 2021

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**(ANIL KSHETARPAL)
JUDGE**

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