

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

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IN VIRTUAL COURT

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CR No. 348 of 2016 (O & M)

Date of decision : 27.10.2021

Harjit Singh

.....Petitioner

Vs.

Harcharan Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Anish Setia, Advocate, for the petitioner

Mr. Vivek Thakur, Advocate, for the respondent

Rajbir Sehrawat, J. (Oral)

This petition has been filed against the order dated 21.11.2015, passed by the Rent Controller, NRI Cases, Jalandhar, whereby the petition was allowed and it was ordered that the respondent will hand over the vacant possession of the demised premises to the petitioner peacefully, within a period of two months from the date of the said order, failing which the petitioner will be entitled to take vacant possession of the same with the assistance of the Court.

The brief facts of the case are; that the respondent herein is a Non-Resident Indian (NRI) and had filed the eviction petition before the Rent Controller for eviction of the present petitioner/tenant from the property bearing House No. 207, Urban Estate, Phase I, Jalandhar; under Section 13-B

of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act'), claiming that he need the house for his own use after returning from abroad.

The property on rent in question included the first floor of the said house which consisted of two bed rooms, dining room, drawing room, store, one kitchen and two bathrooms. Initially, the rent was fixed at Rs.3600/-per month. The petitioner/tenant continued paying the rent to the respondent/landlord. However, subsequently even the payment of rent was stopped. It was further averred in the petition that the landlord has been residing in Canada, however, he intended to settle down in India-his mother land for spending rest of his life. Accordingly, the eviction petition was filed. The said eviction petition was allowed by the Rent Controller. Aggrieved against the said judgment/order, the present petition has been preferred by the petitioner/tenant.

Arguing the case, learned counsel for the petitioner/tenant has submitted that the Rent Controller has gone wrong in law in not taking note of the fact that the respondent/landlord has not proved the passport as per requirements of the law. It is only a marked document. Hence, his status as an NRI is not proved on record. The counsel has relied upon the judgment rendered in **'Narbada Devi Gupta v. Birendra Kumar Jaiswal and another; 2004 (1) PLR 405'** in this regard to argue that mere marking of a document does not make the document as proved. Still further, it is submitted by counsel for the petitioner/tenant that the petition filed through power of attorney is not maintainable. The power of attorney cannot depose as to the facts pleaded in the rent petition. Hence, the Rent Controller could not have passed the order of eviction. Counsel has relied upon the judgment rendered in **'Man Kaur v.**

Kartar Singh Saugha; 2010 (4) Civil Court Cases 792'. As supplement to this argument, counsel for the petitioner has further submitted that the attempt of the respondent/landlord to get the petitioner/tenant evicted is not *bona-fide*. He is having other properties in India. Taking his argument further, counsel for the petitioner has submitted that the respondent/landlord has not come to the Court with clean hands. To support his contention the counsel for the petitioner has submitted that the respondent/landlord has not disclosed in the rent petition that he owned other ancestral properties in India; as well. Counsel has relied upon the judgment rendered in '**Daljit Sharma v. Moti Lal; 2009 (4) PLR 85'** to support his contention that the landlord has to be non-suited for not coming to the Court with clean hands. Still further, counsel has argued that for maintaining a rent petition for eviction under Section 13-B of the Act, the landlord has to prove both the facts; that he is the owner of the property, as well as, he is the landlord in the tenancy. In the present case, it has not been proved that he is the landlord in the tenancy, although the ownership is not disputed. Counsel has submitted in this regard that earlier the petitioner/tenant himself had filed a suit for injunction, impleading the wife of the respondent/landlord as the defendant, for restraining her from interfering in the peaceful possession of the petitioner. That suit was decreed in favour of the present petitioner. In that suit, the wife of the respondent/landlord had made a statement that she will not interfere in the peaceful possession of the present petitioner. Hence, it is established that it is the wife of the respondent/landlord who is the landlord in the present tenancy. Accordingly, the eviction petition on behalf of the respondent itself was not maintainable. In the end, counsel for the petitioner has submitted that it has come in evidence that the

respondent/landlord owns a house in Canada, which was recently built by availing loan; and also that the sons and daughters of the respondent/landlord are well settled in Canada. Hence, it is almost improbable that the respondent/landlord would need to come to India. The entire effort of the respondent/landlord is to get the property vacated from the petitioner/tenant, so as to dispose of the same.

On the other hand, counsel for the respondent/landlord has submitted that the document of passport, which is marked by the Court and is not exhibited, is otherwise also irrelevant. The definition of 'NRI' as given in Section 2 (dd) of the Act requires only two conditions for establishing the status of the person as NRI; as required under the Act. These conditions are; that a person should be of Indian origin and that he should be temporarily or permanently settled outside India. In the present case, the petitioner/tenant has categorically admitted both these facts in the written statement filed by him. Hence, the admission, being the best evidence, the passport need not be proved as per the requirements of the law. Counsel has relied upon the judgment rendered in '**Ahmedsaheb (deceased) by LRs and others v. Sayed Ismail; 2012 (8) SCC 516**' in this regard. Qua the question of filing of petition by the power of attorney, counsel for the respondent/landlord has relied upon the judgment in the case of '**Amarjit Singh v. Amarjit Kaur; (2012) 168 PLR 726**' to argue that in case of NRI landlord, he need not come personally present to file the petition. His petition is maintainable even if he has to return subsequently. On the question of the landlord being the owner and the landlord, both, the counsel for the respondent has submitted that it is not even disputed that the petitioner had been paying rent to the present

respondent/landlord. The petitioner has duly admitted this aspect in his written statement filed to para No.5 of the rent petition. In the end, counsel for the respondent has submitted that the petitioner/tenant is a person of dishonest disposition. Although he was given on rent only the first floor of the property, however, he has grabbed even the ground floor claiming to be the care taker of the same. Since, the respondent/landlord is coming to India now, therefore, anyone of the excuses being put forward by the petitioner/tenant should not be taken into consideration by the Court. The petitioner deserves to be evicted from the property forthwith.

Having heard counsel for the parties and having perused the case file, this Court does not find any substance in the arguments raised by learned counsel for the petitioner. Undisputedly, the petitioner is a tenant in the premises. The factum of the respondent being landlord also could not be disputed by the present petitioner. Although he has raised an objection that the respondent is not the landlord, rather his wife is the landlord, however, even this argument is liable to be noted only to be rejected. Undisputedly, the petitioner has been paying rent to the respondent/landlord. Therefore, the petitioner cannot take a turn around and start disputing the status as a landlord. Otherwise also, the sole basis for raising the argument qua status of the tenant and landlord is some litigation between the present petitioner and wife of the respondent. However, the said litigation is irrelevant for the purpose of present petition. Neither the respondent/landlord was a party to that litigation nor has the Civil Court recorded any positive finding to the effect that it was the wife of the respondent who was the landlord in the tenancy with the petitioner. Another undisputed fact which has come on record is that the property in

question was earlier owned by the wife of the respondent. However, the said property was sold by the wife to the respondent way-back in 1987. Therefore, if the petitioner happened to be a tenant before 1987, then he shall be taken to be the tenant under the respondent thereafter, and if the tenancy started after 1987, then the petitioner is, obviously, a tenant under the respondent only. In any case, only prohibition against NRI landlord is that he cannot file a petition under Section 13-B of the Act before expiry of 5 years from the date of purchase of the property under tenancy. In the present case, the said requirement is more than fulfilled because the property was purchased by the respondent decades before filing the eviction petition in the present case.

Although counsel for the petitioner has raised the question of non-proving of the passport of the respondent/landlord, however, that argument is totally irrelevant. In the eviction petition itself, the respondent had pleaded that he is residing in Canada and that he intends to settle in India after returning from Canada. These averments have not been disputed by the petitioner/tenant in the written statement filed by him. Rather the same has been duly admitted by him in his averments in the written statement. Accordingly, the requirement of the respondent being a NRI landlord within the meaning of Section 2 (dd) of the Act is duly fulfilled. Hence, even if the passport is not proved as per the law and the same is not exhibited; that is rendered as an irrelevant fact. The admission being the best evidence, no further proof of the factum of the petitioner being NRI and thus, being entitled to file eviction petition under Section 13-B of the Act is required. This Court finds the reliance of counsel for the respondent upon **Sayed Ismail's case** (supra) to be well placed. On the other hand, the judgment relied upon by

counsel for the petitioner is not relevant for the present case because of the factum of an admission having been made by the petitioner/tenant in the written statement, as well as, admissions made by him in cross examination while appearing as witness before the Rent Controller.

Another argument raised by counsel for the petitioner is that the petition could not have been filed by the respondent/landlord through power of attorney, nor could the attorney have deposed on behalf of NRI landlord; because the bona-fide of the necessity of landlord is within personal knowledge of landlord only. However, this Court finds substance in the argument of counsel for the respondent/landlord in this regard as well. As has been held by this Court in **Amarjit Singh's case** (supra), the NRI landlord is entitled to file the petition through power of attorney as well. This has also been held by the Hon'ble Supreme Court in '**Baldev Singh Bajwa v. Monish Saini; (2005) 12 SCC 778**' that the NRI landlord can file a petition through power of attorney holder and he can return even subsequently. Hence, this argument raised by counsel for the petitioner is also liable to be noted only to be rejected. There is another reasons why this argument is irrelevant in case of eviction petition on behalf of an NRI landlord. In case of NRI landlord seeking eviction under Section 13-B of the Act, the only factum which is required to be proved is that he is NRI and that he need the house in question for his personal requirement. On the basis of this assertion he can get the possession back immediately. These facts need no special deposition or personal knowledge which could be within the specific knowledge of the NRI landlord only. The factum of a person being NRI can be a matter of record or can be a matter of admission between the parties. The requirement of returning to India can be conveyed by

the concerned NRI landlord even through the power of attorney holder. No other requirement, like that of *bona-fide* personal necessity, as are required to be proved as a particular state of mind in case of an ordinary eviction petition under the Act, are applicable in case of the NRI landlord. NRI landlord is not required to show any *bona-fide* necessity as such. He is required to prove only the requirement by pleading that he is returning to India. With this assertion he can recover the possession immediately. The provision as contained in Section 13-B of the Act is a special provision which has been created as an exception to the ordinary provision for eviction on the basis of personal necessity under Section 13 of the Act. Hence, the provision has to be given a liberal interpretation in favour of the landlord as such. Hence, no further restrictive requirements can be read into this provision by notional interpolation of any language which is not contained in the provisions of the Act. Therefore, any special knowledge or the factum of state of mind of NRI landlord; beyond the fact that he is intending to return to India, is totally irrelevant if he otherwise pleads his personal requirement, may be, even for totally *mala-fide* reasons. He is not required to show any *bona-fides* to get his property vacated. Needless to say that the tenant is already protected under the other related provisions of the Act, if the NRI landlord gets the property vacated for *mala-fide* reasons. The provisions to ensure *bona-fides* in an action by NRI landlord against a tenant, as were considered appropriate by the legislation, are contained in Section 13-B of the Act itself which entitles the tenant to get the possession of the property back in case of the landlord lets out the property to anybody else within a period of 5 years. Hence, the argument that the NRI landlord is required to prove the *bona-fides* in an action against a tenant is

totally misconceived.

Another argument which has been raised by learned counsel for the petitioner is that since the respondent has not disclosed the other properties owned by him in India, therefore, the respondent/landlord had not come to the Court with clean hands, and therefore, his petition had to be dismissed for this reason only. Counsel has relied upon the judgment rendered in **Daljit Sharma's case** (supra) in this regard. However, this argument of counsel for the petitioner is also liable to be rejected for two reasons. Firstly, the petitioner/tenant has not brought anything on record to show that the respondent/landlord owned any other specific property. There is no pleading in this regard on the part of the petitioner, nor any evidence; giving details to this effect, has been led. Therefore, the reliance by counsel for the petitioner/tenant upon the judgment rendered in **Daljit Sharma's case** (supra) is unfounded. Secondly, the fact that NRI owns other properties is not any bar for the NRI to file eviction petition. Rather, Section 13-B of the Act gives an option to the NRI landlord to choose the property to be got vacated; if he owns more than one properties. Moreover, a landlord filing eviction petition under Section 13-B of the Act, cannot be non-suited only for the reasons that he has not come with clean hands. Needless to say, that such a petition is filed by NRI landlord under a particular statute and before a 'persona designata', specified under that statute. Hence, the same has to be filed, considered and decided strictly as per the parameters laid down in the Act; irrespective of the fact whether such a person comes to the Court with clean, coloured, soiled or dirty hands. This aspect is totally irrelevant if the respondent/landlord is otherwise able to prove the ingredients required of him for filing and maintaining the petition as such.

Still further, it deserves to be noted that requirements of pleadings, as contained in CPC, are not strictly applicable in case of rent petition. Therefore, even in exercise of any inherent powers; the Court; or as statutory authority the Rent Controller; cannot dismiss a petition merely on the ground that the landlord had not filed the petition with clean hands.

In view of the above, finding no merit in the present petition, the same is dismissed. As a consequence, the petitioner/tenant is directed to vacate the property within a period of two weeks from today. If the said premises is not vacated within two weeks, then the respondent/landlord shall be entitled to take possession of the same by taking police help without requirement of seeking any further order from the Court. Still further, it is ordered that if any article/item of the petitioner/tenant is found lying in the property in question after the period of two weeks from today, the same shall be deemed to have been forfeited to the respondent/landlord and he shall be entitled to appropriate the same or disposed of the same as his own property.

All the pending miscellaneous applications, if any, stand disposed of accordingly.

(RAJBIR SEHRAWAT)
JUDGE

27.10.2021

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No