

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

Sr. No.109

CR-141-2021 (O&M)
Date of decision : 29.1.2021

Devinder Kumar

..... Petitioner

VERSUS

Nachhatar Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Amit Kohar, Advocate and
Mr. Saksham Mahajan, Advocate, for the petitioner.

SUDHIR MITTAL, J.

The petitioner is the tenant. He is aggrieved because, order dated 18.2.2020 ordering his eviction from the demised premises has been passed in a petition filed by the landlord under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Rent Act').

The demised premises is a shop in the front portion of property bearing No.B-XIX-1342 situated in Haibowal Khurd, Tehsil & District Ludhiana. The petitioner has been the tenant in the said shop since 18.7.1990 when a rent note was executed between him and the original owner, namely, Surjit Singh. The landlord-respondent purchased property bearing No.B-XIX-1342 from Surjit Singh vide registered sale deed dated 13.6.1995. It appears that Surjit Singh had also sought eviction of the petitioner through a petition filed under Section 13-A of the Rent Act before he sold the property, but the same was dismissed vide judgment dated 21.7.1995.

In response to the eviction petition, the tenant-petitioner sought leave to defend. The same was declined by the Rent Controller vide order dated 22.8.2012 and the order was upheld by the High Court. A special leave petition was preferred by the tenant which was converted into CA-10528-2014. The appeal was allowed by the Supreme Court of India vide order dated 25.11.2014 on the ground that the tenant had raised triable issues regarding the bona fides of the landlord-respondent and thus, leave to defend should have been granted. Consequently, the tenant-petitioner filed his written statement, wherein apart from other facts, it was stated that there had been previous litigation between the parties which showed that the need was not bona fide. The landlord-respondent had filed a petition for eviction on the ground of non-payment of rent on 30.10.1996 and the same was dismissed vide order dated 11.12.2004. During the pendency thereof, a petition for eviction on the ground of material alteration was filed on 1.8.2001, which was also dismissed vide order dated 18.1.2006. A third petition for eviction on the ground of subletting was filed on 8.5.2003 and the same has also been dismissed. This establishes the mala fides of the landlord-respondent. The mala fides are further evident from the fact that an attempt was made by the landlord-respondent to illegally interfere in the possession of the tenant-petitioner which led to the registration of FIR No.18 dated 4.3.1996 registered at Police Station, Sarabha Nagar, Ludhiana, under Sections 456 and 427 IPC. This was soon after the landlord-respondent had purchased the premises in dispute and the fact conclusively shows the intention of the landlord to evict the tenant by hook and crook. The landlord retired from Government service in the year 2006 and he could have sought

eviction of the tenant under Section 13-A of the Rent Act, in case, his need was bona fide, however, no such attempt was made by him.

Learned senior counsel for the petitioner has firstly argued that the eviction petition should have been dismissed on the ground of defective pleadings as it has nowhere been stated in the eviction petition that the landlord-respondent was an NRI, the date he went abroad, the purpose thereof and when he intended to return. In this context, reference has been made to the definition of “Non-Resident Indian” given in Section 2 (dd) of the Rent Act, according to which, a Non-Resident Indian is a person who is settled abroad permanently or temporarily for an uncertain period, either on account of employment or business or any other purpose. The argument is that unless and until complete details regarding stay outside India are pleaded, the landlord-respondent cannot succeed because, he would not be covered by the definition of “Non-Resident Indian”. Reliance has been placed on a judgment of the Supreme Court in Bachhaj Nahar Vs. Nilima Mandal and another, 2008 (17) SCC 491.

The argument is mis-conceived. There is no statutory requirement of pleading facts regarding the date on which the landlord went abroad, the reason therefor and when he intended to return and thus, it is futile to argue that the pleadings are defective. Further, a perusal of the eviction petition shows that relevant facts regarding the petitioner being a “Non-Resident Indian” have been pleaded. Copy of his passport has also been annexed, wherein, the visa has been endorsed. That apart, the term “Non-Resident Indian” has been specifically mentioned in various paragraphs of the eviction petition. It has also been pleaded that being a

Non-Resident Indian the landlord-respondent is entitled to get the premises in dispute vacated under the provisions of law once in a life-time. It may also be noted that eviction petition has been filed under Section 13-B of the Rent Act which is a provision meant for eviction of tenant(s) by Non-Resident Indian landlords only. Thus, it cannot be said that the tenant-petitioner was misled by lack of pleadings. The judgment in Bachhaj Nahar (supra) is distinguishable. The said judgment holds that non-framing of issues due to lack of pleadings would be fatal to the case of a plaintiff, where the defendant had been misled thereby. The importance of pleadings has been stressed because otherwise, the attention of the Court or all the parties cannot be focused on a particular claim. Such a situation does not exist in the present case.

It has next been argued that the need of the landlord-respondent is not bona fide. This is allegedly evident from the fact that (a) it has been proved on record that another vacant property is in possession of the landlord-respondent and (b) three earlier eviction petitions had been filed on various grounds, but none of them succeeded coupled with the fact that petition under Section 13-A of the Rent Act was not filed, even though, the same could have been done post-retirement in the year 2006. In this regard, reliance has been placed upon another judgment of the Supreme Court in Baldev Singh Bajwa Vs. Monish Saini, 2005 (12) SCC 778.

The question, thus, is whether the factum of another vacant property being in possession of the landlord-respondent and filing of earlier eviction petitions coupled with fact of non-filing of a petition under Section 13-A of the Rent Act can lead to the inference that the need of the landlord-respondent is not bona fide ?

The landlord-respondent has not concealed the previous litigation. On the contrary, all details thereof have been pleaded in the eviction petition. This, by itself does not lead to the conclusion that the requirement of the landlord is not bona fide. Past efforts to get the tenant evicted cannot reflect upon the present need so long as the landlord is able to bring his case within the four corners of Section 13-B of the Rent Act. Non-filing of a petition under Section 13-A of the Rent Act also does not lead to an inference that the requirement is not bona fide. At that stage, in his life the landlord-respondent wanted to go abroad and work for some more time and this fact cannot disentitle him to exercise his rights available under the law on a future date.

The fact that another property is available to the landlord also is not sufficient to non-suit him. The said property bears No.1445 and from the cross-examination of PW-2, it is established that it is double-storied and the first floor is in possession of the landlord-respondent. Further, it is on record that he and his wife are aged persons and are unable to climb stairs. Thus, he has chosen to get the demised premises vacated so that he can demolish the same and construct suitable accommodation on the ground floor. Under no circumstances, can such facts lead to a conclusion that the necessity is not genuine. It is settled law that a tenant cannot dictate to the landlord, which particular property is more suitable for him.

In view of the above, it is held that the tenant-petitioner has failed to dislodge the bonafides of the landlord-respondent. The judgment in Baldev Singh Bajwa (supra) does not help the case of the petitioner. The said judgment only holds that the presumption in law in favour of the landlord can be rebutted by the tenant by leading cogent evidence. No such

evidence has been led by the tenant. Baldev Singh Bajwa's case (supra) further holds that to succeed under Section 13-B of the Rent Act, a landlord has to prove that (a) he is an NRI; (b) that he has returned to India permanently or temporarily, (c) requirement of the accommodation is genuine and (d) he is owner of the property for five years before institution of ejectment proceedings. These facts have been established on record as is evident from the passport (Ex. P-3), PR Card issued by Canadian Government (Ex.P-5) and sale deed (Ex.P-6). The findings of the Rent Controller thus, cannot be termed to be perverse.

For the aforementioned reasons, the petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

29.1.2021

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No