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

CR-5977-2010 (O&M)

Reserved on : 17.11.2022

Date of Decision: 30.11.2022

M/s Pawan Electricals

....Petitioner

VERSUS

Gian Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rishabh Gupta, Advocate for the petitioner.

Mr. H.S. Thiara, Advocate for the respondent.

ALKA SARIN, J.

The present revision petition has been filed by the tenant-petitioner against the order of ejectment passed against him by the Rent Controller, Jalandhar. The landlord-respondent had filed an ejectment application under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the 'Act') which was accepted by the Rent Controller.

The landlord-respondent averred that he is a NRI and is residing in the UK and is holding a British passport. According to the landlord-respondent he is the owner of the premises in dispute in which the tenant-petitioner was inducted as a tenant about 9 years ago. According to the landlord-respondent the tenant-petitioner had failed to pay the rent and that the landlord-respondent required the premises in dispute for his own use and

occupation. As per the landlord-respondent he and his children were settled abroad but due to political and economic uncertainty they had decided to settle in the country of their origin.

The tenant-petitioner filed an application seeking leave to defend which was allowed by the Rent Controller. Thereafter the tenant-petitioner filed a written statement taking the pleas of mis-joinder of parties and that the signatures of the landlord-respondent on the ejectment application and affidavit did not tally with his signatures on his passport. According to the tenant-petitioner the landlord-respondent wanted to either increase the rent or alienate the premises in dispute. It was denied that the landlord-respondent is a NRI or that he fulfilled the requirements of Section 13-B of the Act. It was denied that the landlord-respondent required the premises in dispute for his own use and occupation. It was stated that the landlord-respondent owned several other buildings and did not require premises in dispute for his use and occupation.

The Rent Controller framed the following issues :

1. Whether petitioner is entitled for ejectment of the respondent from the demised premises being NRI u/s 13-B of East Punjab Urban Rent Restriction Act, Punjab ? OPP
2. Whether the petition is bad for non-joinder of necessary parties ? OPR
3. Relief.

On the basis of the pleadings of the parties and the evidence on the record, vide order dated 23.07.2010 the Rent Controller allowed the

ejectment application and ordered eviction of the tenant-petitioner. It was found that the landlord-respondent was a NRI and required the premises in dispute for his own use and occupation. It was also found that the premises in dispute could not be declared to be a residential property. Hence, the present revision petition.

Learned counsel for the tenant-petitioner has contended that the premises in dispute was a residential property and the ejectment of the tenant-petitioner could not have been ordered under Section 13-B of the Act. It was argued that the landlord-respondent had failed to prove that the premises in dispute were required by him for his own use and occupation. It is also contended that the ejectment petition was filed while another petition filed by the wife of the landlord-respondent against another tenant was pending.

Per contra, learned counsel for the landlord-respondent submitted that it had been proved from the passport of the landlord-respondent that he was a NRI. It was also proved from the sale deed in favour of the landlord-respondent that he had been owner of the premises in dispute for almost nine years before filing the ejectment application and therefore the ejectment application under Section 13-B of the Act was maintainable by him. It was submitted that the landlord-respondent by appearing as PW1 had stated and proved that the premises in dispute was required by him as he intended to return to India and run his business. According to counsel the pendency of the wife's ejectment petition when the present ejectment petition was filed under Section 13-B of the Act would be

of no consequence as admittedly the said earlier ejectment petition was not decided.

Heard learned counsel for the parties.

In the present case the landlord-respondent has sought ejectment of the tenant-petitioner from the premises in dispute under Section 13-B of the Act. The benefit of Section 13-B of the Act is available only to a NRI. The landlord-respondent stepped into the witness box and deposed about his status and also proved a copy of his passport Ex.P1. He testified about his intention to return to India and settle here. The tenant-petitioner could not elicit anything from the landlord-respondent to doubt his NRI status or about his intention to return and settle in India. If the object to enact Section 13-B of the Act is kept in mind while reading the definition of NRI under Section 2(dd) of the Act, the only interpretation possible is that a NRI landlord is entitled to seek eviction under Section 13-B of the Act. This is subject to the tenant's right to rebut it but with strong and cogent evidence. As held in the case of **Baldev Singh Bajwa Vs. Monish Saini [(2005) 12 SCC 778]**, in proceedings taken under Section 13-B of the Act by a NRI landlord for the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the ejectment petition is genuine and bonafide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea so that the Rent Controller will be in a position to adjudicate and

decide the question of genuine or bonafide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlords' favour that his requirement of occupation of the premises is real and genuine. In the present case, from the material available on the record, this Court finds that the tenant-petitioner could not prove that the landlord-respondent is not an NRI and that the need of the landlord-respondent is not genuine.

The contention by the tenant-petitioner that the ejectment petition was not maintainable as it was filed while another ejectment petition filed by the wife of the landlord-respondent against another tenant was pending is also to be rejected. This Court in CR-4415-2004 and CR-2540-2007 decided on 07.09.2010 held that *"rights granted to the NRI landlord under Section 13-B of the Act are special rights to get vacant possession at the earliest. These special rights are independent to any other right given under Section 13 of the Act. Hence, rights given under Section 13-B of the Act cannot be curtailed merely because, landlord has filed previous petition under Section 13 of the Act. NRI landlord can exercise his right under Section 13-B of the Act even during the pendency of earlier petition under Section 13 of the Act"*. On 22.08.2012 counsel for the tenant-petitioner had pointed out that SLP against the order passed by this Court was pending in the Supreme Court. As such, on 22.08.2012 this case was adjourned sine die to be listed after the decision in SLP No.189 of 2011. It is undisputed that the said SLP stands dismissed. Thus, the view taken by this Court in CR-4415-2004 and CR-2540-2007 holds the field.

The counsel for the tenant-petitioner has not been able to establish that the premises in dispute was residential and the provisions of Section 13-B of the Act were not applicable.

In view of the discussion above, this Court finds no error of law or jurisdiction by the Rent Controller while passing the impugned order. There is no merit in the present revision petition which is dismissed.

Dismissed.

30.11.2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO