

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

112

**CR-1732-2019(O&M)
Date of Order: 29.03.2022**

SAT PAL

..Petitioner

Versus

GURMIT SINGH AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Akhil Kashyap, Advocate
for Mr. Parveen K. Kataria, Advocate
for the petitioner.

Mr. Navjot Singh Wahniwal, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

The petitioner is a tenant. He has been ordered to be evicted by the Rent Controller in a petition filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as “the 1949 Act”).

Some facts are required to be noticed.

The respondent Gurmit Singh claiming to be a Non-resident Indian (hereinafter referred to as “the NRI”), filed petition under Section 13-B of the 1949 Act. Section 13-B of the 1949 Act enables NRI landlords to get immediate possession of the tenanted premises on the ground of bona fide necessity. The petition was filed through an attorney. It was asserted that the NRI landlord wishes to come back to settle in India. On notice, the petitioner appeared and sought leave to contest which was granted by the Rent Controller. The petitioner was afforded an opportunity to lead evidence after framing of the issues and the Rent Controller ordered his ejectment vide order dated 22.10.2018. The aforesaid order has been assailed in the present petition.

The learned counsel representing the petitioner contends that the Rent Controller erred in failing to frame issue with regard to the question as to whether Gurmit Singh is an NRI or not? He while relying upon the judgment in **Dwarka Dass Vs. Surjit Kaur, Civil Revision No.2412 of 2015, decided on 05.07.2018**, submits that the judgment passed by the Rent Controller is liable to be set aside and the case deserves to be remitted back to the Rent Controller for re-decision after framing the issue. He further contends that the petitioner was never summoned in accordance with Section 18-A of the 1949 Act.

Per contra, the learned counsel representing the Gurmit Singh submits that the tenant has himself admitted that the respondent is a NRI. He further submits that when the landlord appeared in evidence as AW-2, no suggestion on this aspect of matter was given to the landlord by the learned counsel representing the tenant. He further submits that the respondent has proved that he is a NRI by producing a copy of the passport Ex.A-24. It is further contended that once the leave to contest was granted and the petitioner has been granted an opportunity to lead evidence, the defect in the summoning, if any, pales into insignificance.

This Court with the able assistance of the learned counsel representing the parties has gone through the order passed by a Coordinate Bench in **Dwarka Dass's case (supra)**. In the facts of the case, the Court held that a separate issue is required to be framed and decided as to whether the landlord falls within the purview and ambit of NRI. Section 2(d) of the Act. In the present case, as already noticed, the respondent is proved to be a NRI particularly when the petitioner himself admits that fact. The Rent

Controller has discussed the aforesaid aspect. The failure to frame an issue may be an irregularity. However, it does not result in vitiating the trial of the case or the judgment.

The same is the answer to the second argument of the learned counsel representing the petitioner.

Once, the Rent Controller on an application of the petitioner has granted him leave to contest and, thereafter, the petitioner has been granted an opportunity to lead evidence, the defect in the summoning, if any, becomes irrelevant. Rules of procedure are framed in order to advance the cause of justice. Violation of procedural law unless vitiates the trial, cannot be made a basis to set aside a valid judgment delivered on merits.

Further, the scope of jurisdiction while hearing the revision petition is narrow in view of the judgment passed by the Five Judge Bench in **Hindustan Petroleum Corporation Limited Vs. Dilbahar Singh (2014) 9 SCC 78.**

Hence, no ground to interfere is made out.

Dismissed.

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

March 29th, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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