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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: March 13, 2023

Jagjiwan Sharma

....Petitioner

versus

Jaswant Kaur Sehmi

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Rajesh Punj, Advocate for petitioner (tenant).

Mr. Sharan Sethi, Advocate for caveator/respondent (landlady).

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 30.11.2022 passed by learned Rent Controller, Chandigarh whereby eviction petition filed by respondent herein under Section 13B of the East Punjab Urban Rent Restriction Act, 1949 was allowed and petitioner was directed to vacate demised premises, i.e. ground floor of House No.2195, Sector 21-C, Chandigarh and handover its physical and vacant possession to respondent within a period of one month from date of order.

2. Brief recitals, as pleaded in the petition are that petitioner is a senior citizen aged about 80 years. He had joined Indian Army Emergency Commission in 1963 and took premature retirement in 1967 as a Major. His wife, who was working with PNB, died on 02.11.2003. Petitioner is dependent upon family pension of his wife. Since 27.11.1982, petitioner is in occupation of 3 bedrooms, 1 drawing room-cum-dining room, a kitchen and 2 bathrooms on ground floor of House No.2195, Sector 21, Chandigarh. Respondent-landlord is a resident of England since years. Earlier she filed eviction petition against another tenant on 2nd floor, namely Anil Kumar Ghai, which was dismissed on 18.09.2007. Appeal against said order was also dismissed on 20.01.2011 vide judgment (Annexure P-1). After a period of three years, she again filed two eviction petitions (Annexures P-2 and P-3) on 14.11.2014 against petitioner and Anil Kumar Ghai. Petitioner as well as Anil Kumar Ghai filed

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applications to leave to defend. Application by petitioner was dismissed, but application by Anil Kumar Ghai was allowed. Petitioner/landlady preferred CR-15789-2016, which was allowed vide order dated 10.05.2018 (Annexure P-4). During this period, second eviction petition filed against Anil Kumar Ghai was dismissed vide order dated 19.02.2018 (Annexure P-5). Petitioner filed written statement to the eviction petition. An application under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short 'CPC') was filed by the respondent for amendment of pleadings. Learned Rent Controller vide order dated 19.08.2019 (Annexure P-11) allowed the said application.

2.1 Petitioner approached this Court by way of CR-5881-2019 against aforesaid order, which was dismissed for non-prosecution. Thereafter, vide impugned order dated 30.11.2022, learned Rent Controller allowed eviction petition filed by respondent/landlady and directed the petitioner to vacate premises in question.

3. Impugned order dated 30.11.2022 passed by learned Rent Controller, Chandigarh is premised, *inter alia*, on the following reasoning:

"15. The petitioner has sought the possession of the demised premises on the ground of her old age and illness. It is her case that she is unable to climb the stairs. She has also tendered her medical record Ex.P4 in her evidence. In her cross-examination, PW3 voluntarily stated that she visited India to see her father in 1981, 1983 and 1986. She also deposed that she has all her Passports to verify her trips to India. However, the witness was not asked to show her Passport. PW3 deposed that she lastly stayed in India for more than a month in November, 2006. She also deposed that she visited India in the year 1988, 1995, 1997, 2000, 2003, 2005 and 2006. She also deposed that she has all her original Passports from 1988 till date to show her visits to India. She also deposed that her son visits India off and on. She admitted that her brother resides in Chandigarh. She stated that she uses wheel chair for long distances as both her knees were operated. She voluntarily stated that she cannot climb the stairs because of her knee problem. The petitioner also showed a letter written by her to the respondent on VC dated 12.02.2007 vide which she had asked the respondent to vacate the demised premises.

16. Similarly, in his cross-examination, PW4 stated that the petitioner is a British Citizen and is suffering from joint pain and arthritis for the last 8 to 10 years. He also deposed that the petitioner used a stick to walk when she last visited India. He also voluntarily stated that the petitioner has been talking to him on telephone and she wants to pass the rest of her life in Chandigarh.

17. Even in his cross-examination, RW1 admitted that the husband of the petitioner has died and both her children are settled in U.K. He admitted that the petitioner is free from her responsibilities. He also admitted that the petitioner is a heart patient and had undergone Angioplasty. He also admitted that the petitioner had undergone knee replacement surgery. He admitted the medical record of the petitioner on the Court file. He also admitted that the petitioner is suffering from old age problems which are progressive in nature. He also admitted that climbing stairs with the above mentioned ailments is very difficult. He also admitted that the petitioner is unable to climb the stairs leading to the first floor of the demised premises. He also admitted that Chandigarh is surrounded with very good medical facilities. He stated that he does not know if maximum deaths occurred during Covid in U.K. and USA. He also stated that he does not know if climate of U.K. being cold is not conducive for elderly people. He admitted that the brother of the petitioner resides in Chandigarh. He also admitted that the petitioner has right to stay in her own house. He also admitted that the ground floor in his possession is more suitable for the petitioner considering her age and ailment as compared to the first floor. He also admitted that the petitioner has the right to live and die in the place where she desires. He also admitted that nurses and servants are easily available in Chandigarh who look after ailing persons.

18. In view of the medical record Ex.P4 and the aforesaid admissions by RW1, it has been duly proved that the petitioner is suffering from heart ailments and she has also undergone total knee replacement. RW1 has also admitted that the petitioner is unable to climb the stairs leading to the first floor. Therefore, it is duly proved that the accommodation at first floor of the house in question is not suitable for the petitioner.

19. PW3 and PW4 have deposed that the petitioner wants to come and live in India in her old age with her brother. It is natural for any old age person to spend the rest of her life in the country of her origin along with her siblings. RW1 has admitted that PW3 is free from all her responsibilities as both her children are settled. Nothing favorable could be extracted from the cross-examination of PW3 or PW4 to suggest that the personal need of the petitioner is false. The petitioner has duly explained as to why she never visited India after the year 2006. Firstly, the petitioner is more than 80 years old and cannot travel frequently. Secondly, she had no accommodation to live in India as only the ground floor is suitable to her due to her old age and heart and knee ailments. Therefore, the Court is satisfied that the petitioner requires the demised premises for her own personal need as she wants to spend the remaining years of her life in India in the company of her brother.

20. An argument has been raised by the Counsel for the respondent that it was necessary for the petitioner to come to India for filing the present petition under Section 13-B of the Act. In order to rebut the said averment of the respondent's counsel, the counsel for the petitioner has referred to the case titled as "Charanjit Singh Vs. Harbax Singh Kalsi", decided by the Hon'ble Punjab and Haryana High Court, Law Finder ID #399789. It has been held in para no. 10 of the aforesaid judgment that it is not the requirement of law that the NRI should come to India first and only then he would be entitled for seeking eviction of his tenant under Section 13-B of the Rent Act. Therefore, the Court is satisfied that once the landlord has specifically stated that she has decided to return to India because she wants to spend last days of her

life in India, it is not necessary for her to first return to India for availing the right under Section 13-B of the Rent Act.

21. The Counsel for the respondent has referred to certified copies of judgments Ex.RA and Ex.RB on record. Vide judgment Ex.RA, the rent petition filed under Section 13-B of the Rent Act by the petitioner against Anil Kumar Ghai qua second floor of the same house was dismissed. Vide judgment Ex.RB, the rent petition filed under Section 13 of the Rent Act by the petitioner on the ground of personal necessity against Anil Kumar Ghai qua second floor of the same house was dismissed. The following has been held by the Hon'ble Punjab and Haryana High Court in para no. 8 of the judgment in case titled as "Devinder Kumar Vs. Nachhatar Singh", Law Finder Doc ID #1814855 :-

"...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."

22. In the aforesaid case, the landlord had earlier filed three eviction petitions against the tenant on various grounds but none of them succeeded. The Hon'ble Court held that this fact by itself does not lead to the conclusion that requirement of the landlord is not bonafide.

23. Further, the ground raised by the petitioner in the present rent petition is different from the grounds raised by the petitioner in the previous rent petitions against Anil Kumar Ghai. Therefore, the dismissal of previous rent petitions filed by the petitioner against Anil Kumar Ghai have no bearing on the facts of the present case.

24. Ld. Counsel for the respondent has also argued that petition under Section 13-B of Rent Act can only be filed by a landlord once in his lifetime. As the earlier petition u/s 13-B filed by the landlord against Anil Kumar Ghai was dismissed vide judgment Ex.RA, the present rent petition under Section 13-B is not maintainable. The Counsel for the petitioner has denied the said averment and has argued that the landlord is entitled to get eviction qua one property under Section 13-B once in his lifetime. Since, the earlier rent petition under Section 13-B was dismissed vide judgment Ex.RA, the said bar would not be applicable upon the petitioner. The Court has perused the proviso to Section 13-B (1) of the East Punjab Urban Rent Restriction Act, 1949. It states that the right under Section 13-B shall be available only once during the lifetime of such an owner. Meaning thereby, that the bar of the proviso to Section 13-B (1) of the said Act will only be applicable if the landlord succeeds in getting the eviction under Section 13-B of the Rent Act. Accordingly, the aforesaid contention of the Ld. Counsel for the respondent is also not tenable. Accordingly, issue no. 1 is decided in favour of the petitioner and against the respondent."

4. Having heard the arguments of learned counsels for the parties, there is no room for interference in the aforesaid valid reasons recorded by learned Tribunal.

5. No material irregularity in law or procedure has been committed by the learned Tribunal, so as to exercise extraordinary revisional jurisdiction herein.

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6. Apart therefrom, I am unable to persuade myself with insipidity of argument of learned counsel for petitioner that since personal necessity was disbelieved in another collateral proceeding instituted by respondent-landlady *qua* her second floor of the same premises in view of dismissal of her rent petition by learned Rent Controller twice over vide two different proceedings disposed by virtue of final orders dated 18.09.2007 and 19.02.2018, and therefore, she cannot file rent petition once again pleading personal necessity *qua* ground floor of the same house. He further argues that even with respect to ground floor, same reasons have been given *qua* personal necessity as were given for second floor.

6.1 The inherent fallacy of the argument is borne out from the fact that landlady had undergone knee surgery which most certainly is a change of circumstance and, it is palatable to common sense that a person, at this stage, having undergone knee replacement surgery, would be able to climb up to second floor of the premises nay even climbing half a staircase is almost an impossible task at the age of 83 (born on 01.12.1939) years with both knees replaced. Be that as it may, evidence *qua* her personal necessity has remained unimpeached and as so as factum of knees replacement. In the premise, dismissal of rent petition *qua* second floor on the ground of personal necessity does not in any manner non-suit respondent-landlady to seek eviction of ground floor on the same very personal necessity.

7. Learned counsel for petitioner also canvassed a lopsided argument that Senior Citizen-landlady has one son and a daughter, are well settled overseas and they ought to provide her alternative residence, in case, she has necessity of the same instead of her choosing to file eviction petition against petitioner-tenant. On being asked by the Court, as to where are children of the petitioner, he apprised that they are also well settled, though in India. It is rather intriguing that petitioner himself chooses not to avail same option, but instead expects that respondent-landlady should look to her children for shelter, even when she herself owns the house and had made it with a

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hope that in the evening of her life, she should have a shelter of her own rather than being necessarily dependent on others much against her wishes and pride.

8. In the premise, instant revision petition is dismissed.
9. On a Court query, learned counsel for respondent, who appears on caveat, fairly concedes that given age and stage of petitioner being a Senior Citizen, respondent-landlady is willing to give 6 months w.e.f. today to vacate premises during which she will not institute any execution proceedings.
10. Accordingly, petitioner is given 6 months’ time from today to vacate premises in question. It is made clear that in case, petitioner does not vacate within the stipulated period, respondent-landlady shall be entitled to mesne profits including damages for the period of 6 months as well as further period till the handing over of vacant possession of the premises by the petitioner.
11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

March 13, 2023

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No