

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

CR-3041-2015(O&M)

Date of decision:-18.1.2023

Rameshwar Dass

...Petitioner

Versus

Harbans Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Amit Jain, Sr.Advocate with
Mr.Karanbir Singh, Advocate
for the petitioner.

Mr.Sunil Chadha, Sr.Advocate with
Mr.Parvinder Singh, Advocate
for the respondent.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that petitioner Harbans Singh, aged 54 years son of late Sh.Harbhajan Singh @ Pajan Singh, temporarily staying at House No.1348, Phase – 3B2, Mohali had filed a petition under Section 13-B of the East Punjab Urban Rent Restriction Act (hereinafter referred to as the Act) against respondent/tenant Rameshwar Dass son of Rikhi Ram, resident of SCF No.1, Sector 27-C, Chandigarh (hereinafter referred to as the demised premises).

2. *Inter alia* in the petition, the petitioner had contended that originally the demised premises were jointly owned by Surjit Singh and late Harbhajan Singh @ Pajan Singh, both sons of late Naranjan Singh in equal shares; the respondent was inducted as a tenant in the demised premises on 8.9.1978 vide a rent note on payment of Rs.1,100/- per month

as rent; the respondent had increased the rent to Rs.10,000/- per month of his own since May, 2013; however, about a month before filing of the petition (the petition was filed on 19.12.2014), the rent was increased to Rs.10,400/- per month, which was being paid through cheque; that late Harbhajan Singh @ Pajan Singh expired on 28.9.2008 at Delhi and petitioner is his son; Harbhajan Singh @ Pajan Singh had executed a Will dated 26.6.1998 in favour of the petitioner bequeathing the ownership rights in the demised premises to the petitioner, as such after death of late Harbhajan Singh @ Pajan Singh, the petitioner became owner of the demised premises to the extent of rights of late Harbhajan Singh @ Pajan Singh and necessary entry in that regard has been made in the record of Estate Office, Chandigarh; the petitioner is a Non-Resident Indian (hereinafter referred to as NRI) and is joint owner of the property in question for the last more than 5 years; he has decided to return to India to settle here permanently and in order to earn his livelihood, the petitioner intends to open a grocery shop in the demised premises after getting it vacated from the respondent.

The petitioner along with Surjit Singh the other co-owner of the demised premises requested the respondent to vacate such premises but respondent refused to do so. According to the petitioner, Surjit Singh, the other co-owner of the demised premises is also an NRI presently living in Malaysia. According to the petitioner since his need is bona fide, honest and urgent, therefore, the petition be accepted.

3. Notice of the petition was given to respondent/tenant, who put in appearance and filed an application seeking leave to contest the

petition stating that respondent/tenant had come in occupation of the demised premises in the year 1978 through Sh.Niranjan Singh son of Cheta Singh, initially on payment of Rs.1,100/- per month as rent, which was increased from time to time; the respondent/tenant has never paid any rent to Harbans Singh or Harbhajan Singh, therefore, there is no relationship of landlord and tenant between him and the petitioner; the demised premises are owned by Surjit Singh and Harbhajan Singh, whereas the present petition has been filed by Harbans Singh son of Pajan Singh. According to the respondent, Harbans Singh is not son of Harbhajan Singh but is son of Pajan Singh and he has invented a devise to file the present petition as Harbans Singh son of Harbhajan Singh @ Pajan Singh. Therefore, the petition be dismissed.

4. The respondent/tenant further contended that Harbans Singh son of Pajan Singh as is evident from the copy of passport is a foreigner and not NRI since the petitioner not even alleged in the petition that Harbans Singh is a person of Indian origin. The respondent denied that the petitioner requires the demised premises for his own use and occupation contending that the petitioner has not given any reason for his return to India or his planning to settle in India. Furthermore, it is unbelievable that petitioner would settle in India at such a late stage where none of his family members is there. According to the respondent, the petition has been filed with a *mala fide* intention and is a result of unrestricted greed so as to exploit the provisions of Section 13(B) of the Act. He further stated that the petitioner has nowhere stated that he is owner of the premises for a period of more than 5 years and not availed the provisions

of Section 13(B) of the Act. Refuting the remaining assertions, the respondent prayed that he has got a prima facie case in his favour and there are many triable issues, therefore the respondent is entitled to leave to contest the petition.

5. That application was vehemently contested by the petitioner praying for its dismissal.

6. After hearing the arguments, the Rent Controller, Chandigarh vide a detailed order dated 31.3.2015 dismissed the application seeking leave to contest and allowed the petition filed by the petitioner. Resultantly, the respondent/tenant was directed to hand over the vacant possession of the demised premises to the petitioner within one month from the date of passing of the order.

7. This order left the respondent/tenant aggrieved and he has approached this Court by way of filing the present revision petition, notice of which was given to the landlord arrayed as respondent in the present revision petition, who put in appearance through counsel.

8. I have heard learned counsel for the parties besides going through the record.

9. Learned counsel appearing for the revision petitioner has contended that there is no relationship of landlord and tenant between the petitioner and revision petitioner and there is a serious issue with regard to the identity of the petitioner, who claims himself to be son of Harbhajan Singh because in the passport, petitioner is shown to be son of Pajan Singh and not Harbhajan Singh. All these aspects were highlighted before this Court when the revision petition came up for hearing on 6.5.2015,

when the Court observed that there seems to be some confusion regarding the identity of the person, which would require further probe in the matter and therefore issued notice of motion staying the operation of the impugned order. According to the learned counsel for the revision petitioner Pajan Singh and Harbhajan Singh are not one and the same person and petitioner is not proved to be son of Harbhajan Singh. Furthermore, the necessity set up by him in the petition is not genuine. The landlord has invented a devise to file the present petition as Harbans Singh son of Harbhajan Singh @ Pajan Singh. Furthermore, as per ownership record and rent note, the demised premises are owned by Surjit Singh and Harbhajan Singh ,where Harbhajan Singh is no where referred to as Pajan Singh. Overseas death report available on record is also of one Pajan Singh and not Harbhajan Singh. Therefore, leave to contest is required to be granted for proper adjudication of controversy.

10. In support of his contentions, he has referred to judgment **Vijay Kumar Ahluwalia & Ors. Versus Bishan Chand Maheshwari & Anr. 2017(1) RCR(Rent) 210** by the Apex Court wherein it was observed that it is settled principal of law that while considering the grant of leave to contest the eviction proceedings, the Court is not expected to examine merits and demerits of the grounds raised in the application for leave to contest If the Court finds that the grounds raised prima facie disclose a defence, which if accepted, may result in non-suiting the landlord from claiming eviction, the tenant is entitled to leave to contest. The second judgment relied upon was **Joginder Kaur Channa Versus Dinesh Bhatia and another, 2014(3) RCR(Civil)913** wherein it was observed that when

relationship between the parties is denied then it is a triable issue and in such cases leave to defend can be granted.

11. On the other hand, learned counsel for the respondent has vehemently countered the arguments stating that there is absolutely no confusion in the matter about the identity of the petitioner and the respondent is unnecessarily trying to confuse the issue merely because name of his father Harbhajan Singh is mentioned as Pajan Singh in some documents, which is mainly for the reason that in foreign countries like Malaysia, such type of situation can emerge due to difference in pronunciation of particular words/names. He has contended that Harbans Singh has stepped into the shoes of his late father Harbhajan Singh @ Pajan Singh and on the basis of Will, he become co-owner in the property, which is in possession of the revision petitioner as tenant and the petitioner being NRI deserves of coming to India settling down there and doing business has got every right to get possession of the demised premises from the tenant invoking provisions of Section 13-B of the Act, which enable NRI landlord to seek ejectment in such circumstances.

12. After giving a thoughtful consideration to the submissions made by learned counsel for the parties, I do not find any merit in the revision petition. The order passed by learned Rent Controller, Chandigarh is quite detailed and well reasoned and it does not suffer from any illegality or infirmity. The plea put forward in the revision petition that the petitioner is not son of Harbhajan Singh, rather he is son of one Pajan Singh, as such is not landlord qua the tenant has been discussed in detail in para No.8 of the impugned order and referring to various

documents, it has been concluded that Harbhajan Singh and Pajan Singh are one and the same person and this plea has been put forward by respondent just to confuse the Court. I find myself in agreement with the Rent Controller in that regard. The plea so taken was rightly rejected by the Rent Controller and it is bound to fail before this Court also. All the necessary ingredients required have been discussed in the order and it has been concluded that petitioner is NRI, who has returned to India and the premises in dispute are required for his personal use and requirement and further the petitioner is owner in property in dispute for more than five years and that he has not earlier vacated any other premises by filing petition under Section 13-B of the Act. The law on the subject has been discussed while rejecting all the grounds taken by the respondent-tenant, who is revision petitioner before this Court and it was found that no ground was there to grant any leave to contest the petition.

13. The judgments referred to by learned counsel for the revision petitioner are not applicable due to different facts and circumstances of the case and the context in which such observations had been made. The order passed by the Rent Controller, Chandigarh refusing leave to contest to the revision petitioner/tenant can certainly be not termed as suffering from any element of arbitrariness or perversity, rather the same is legal and valid. Merely for the reason that revision petitioner is denying the relationship of landlord and tenant between the parties does not mean that it is so when such relationship is otherwise found to be there and on that account the tenant is not entitled to get leave to contest.

14. Learned counsel for the landlord, who is respondent in the

present revision petition has also referred to certain judgments in support of his contention that leave to contest was rightly declined to the tenant and this revision is without merit. He has contended that in ejectment proceedings, the Rent Controller is not required to decide complicated questions of title or such like issues. In support of his that contention, he has referred to judgment **Kirshan Kumar and others Versus Kamla Devi and others, 2016(1) RCR(Rent) 525** by a Single Judge of this Court. There cannot be any dispute with such proposition of law as observed in the judgment in question.

15. I find that the order passed by Rent Controller, Chandigarh is quite detailed and well reasoned and can certainly be not termed to be perverse or suffering from any element of arbitrariness. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

16. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

18.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No