

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

444

CR No.5311 of 2012 (O&M)
Date of Decision: 10.07.2023
Reserved on: 25.05.2023

Paramjit Singh

... Petitioner

Versus

Satnam Singh

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Argued by: Mr. Kartik Gupta, Advocate,
for the petitioner.

Mr. G.S. Kaura, Advocate,
for the respondent.

MANISHA BATRA, J.

1. The instant revision petition has been preferred against the order dated 15.05.2012 passed by learned Rent Controller, Dasuya in Rent Petition No.64 of 2010 titled as *Satnam Singh v. Paramjit Singh* filed under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short “Act, 1949”) whereby an application filed by the present revision petitioner (respondent in the main petition) for grant of leave to contest the rent petition, had been dismissed and he was directed to vacate the shop described in the head note of the petition (hereinafter to be mentioned as the “demised shop”) within a period of two months and to deliver vacant possession of the same to the petitioner.

2. For the sake of convenience, the parties shall be referred to hereunder as per their original nomenclature as given in the main

petition.

3. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioner Satnam Singh through his father and General Power of Attorney holder Sh. Balkar Singh filed the above mentioned petition seeking ejectment of the respondent on the grounds that he along with his brother had purchased a plot vide sale deed dated 22.05.1996. They had partitioned this plot and on the land of his share in the said plot, the petitioner had constructed the demised shop. This shop had been rented out to the respondent, through the father of the petitioner as he himself was living in a foreign country and is an NRI. The petitioner pleaded that he wanted to return to India and to start his own business in the demised shop. He did not have any other shop in India. The respondent owned two shops adjoining the demised shop. He was requested to vacate the demised shop but failed to do so. Hence, prayer had been made for directing the respondent to vacate the demised shop.

4. The respondent appeared in response to the notice and filed application for grant of leave to contest the petition on the ground that the petitioner was not an NRI. He did not hold any P.I.O. Card issued by the Ministry of External Affairs and did not qualify to be an NRI. More so, he was not landlord/owner of the demised shop. The respondent had never been inducted as a tenant over this shop by him. The co-owner of the demised had not been impleaded as a party. The petitioner was well settled in Germany and was doing his business there and had no reason to settle in India. While asserting that no cause of action had accrued in favour of the petitioner and further that he was estopped from filing the petition, it was

prayed that the respondent deserved to be given permission for leave to contest the petition.

5. In response to the abovesaid application, the petitioner filed reply controverting the pleas taken in the application and re-asserting those of the petition and prayed for dismissal of the same.

6. The learned Rent Controller after hearing the contentions raised by both the parties, dismissed the application vide order dated 15.05.2012.

7. Feeling aggrieved, the present revision petition has been filed by the respondent-revision petitioner on the grounds and it has been argued by his counsel that the impugned order dated 15.05.2012 was not sustainable in the eyes of law. It was argued that the learned Rent Controller had committed a grave error in dismissing the application as filed by the applicant, for leave to contest. The observations made by learned Rent Controller were based on conjectures and surmises. He did not apply his judicious mind. The petitioner was not proved to be Non-Resident Indian falling under the definition of Section 2 (dd) of the Act, 1949. He was held to be an NRI on the basis of documents which were not admissible in evidence. The petitioner had not returned back to India which was one of the essential requirements of the Act, 1949. There was nothing on record to show that he had any intention to return and to settle in India either. He had nowhere pleaded that he had gone abroad for any of the reasons as specified in Clauses (a) to (c) of Section 2 (dd). Several triable issues were involved in this case which could be raised by the respondent-revision petitioner only after leave to contest was granted to him but this aspect had not been considered by the learned Rent Controller. Therefore, it was argued that the

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impugned order dated 15.05.2012 was liable to be set aside, the revision petition deserved to be accepted and his application for leave to contest under Section 13-B of the Act, 1949 deserved to be allowed.

8. Per contra, it was argued by learned counsel for the petitioner that the findings as given by learned Rent Controller while dismissing the application filed by the respondent were well reasoned and did not warrant any interference. The respondent had not filed any affidavit in compliance of sub Section (4) of Section 18-A of the Act, 1949 which was mandatory requirement of law and for want of that, application has been rightly dismissed. The petitioner had produced sufficient material on record to prove that he was an NRI residing in Germany. He bonafidely and genuinely required the demised shop for starting his own business. Mere assertion on the part of the respondent was not sufficient to rebut the presumption in favour of the petitioner which was strong being landlord. The respondent had not been able to make out a triable case. The petitioner was entitled to seek ejectment of the respondent under Section 13-B of the Act, 1949 even if he was considered to be owning the demised shop jointly with his brother. The learned Rent Controller had rightly obligated to pass ejectment order summarily as contemplated by Section 18-A of the Act, 1949. With these broad submissions, it was urged that the revision petition was devoid of any merits and was liable to be dismissed.

9. This Court while exercising its revisional powers had duly considered the contentions raised by both the sides and has minutely gone through the record. Section 13-B of the Act, 1949 provides that where an owner of a premises is an Non-Resident Indian and if he requires the same

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for his use and for the use of any of his dependent and if he is owner of such premises for a period of more than five years, he may seek ejectment of the tenant summarily as per the procedure laid down in Section 18-A of the Act, 1949. The tenant has been given a limited right under Section 18-A (4) of the Act, 1949 i.e. to apply and seek leave to contest the petition. For the purpose of Section 13-B, the Rent Controller is required to satisfy himself that the petitioner is a Non-Resident Indian; that he is owner/landlord of the demised premises; that the demised premises is commercial in nature and further that the same is required by the NRI landlord for his bona fide use. If the petitioner satisfies these ingredients, and the tenant is unable to make out a triable case, then it is obligatory on the part of the landlord to pass an ejectment order. In the instant case, the petitioner has claimed to have purchased the land over which the demised shop has been built along with his brother Gurnam Singh. He asserted that a partition had been effected between himself and his brother and the land over which the demised shop is constructed had fallen to his share which had been rented out to the respondent i.e. present revision petitioner. Though the petitioner has not produced any document on record to show that the partition of the land over which the demised shop has been constructed has been effected between himself and his brother, however, even in the absence of any material coming on record to this effect, this Court is inclined to hold that even on assuming the petitioner to be co-owner of the demised shop, still there was no bar for him to file the petition seeking ejectment of the respondent as there is no such requirement of law and even if a landlord is not proved to be the sole owner of the property in dispute, he can take up the proceedings

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under Section 13-B of the Act, 1949. In this regard, this Court draws reliance upon **Baldev Singh Bajwa v. Monish Saini**, 2005 (2) R.C.R. (Rent) 470, wherein the Hon'ble Apex Court had observed so. Reliance can also be placed upon **Kundan Singh v. Lal Singh**, 2005 (1) RCR (Rent) 194, wherein a Bench of this Court had also observed so. As such, it is held that the argument as raised by the revision petitioner-respondent that since the petitioner was not proved to be the exclusive owner of the demised shop, therefore, he could not seek ejectment of the respondent, is liable to be rejected.

10. Another contention as raised by the revision petitioner-respondent was that the petitioner was not proved to be an NRI which was rejected by learned Rent Controller. Non Resident Indian i.e. NRI has been defined under Section 2 (dd) of the Act, 1949 as a person of Indian Origin, who is either permanently or temporarily settled outside India in either case:

- (a) for or on taking up employment outside India;
- (b) for carrying on a business or vocation outside India;
- (c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period.

11. In the present case, the petitioner-landlord has placed on record a copy of his Overseas Citizen of India, Certificate of Registration showing him that in the year 2007, he had been issued such certificate by the Government of Frankfurt (Germany). He also placed on record copy of identity cards issued by NRI Sabha Punjab showing him to be a resident of Germany. No material to the contrary has been produced on record by the revision petitioner and he simply pleaded that the petitioner did not hold

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PIO card as issued by the Ministry of External Affairs of India and, therefore, did not qualify to be an NRI. In the considered opinion of this Court, the learned Rent Controller had rightly rejected the contention of the revision petitioner to this effect as the documents produced on record by the petitioner were sufficient to prove that he was staying in Germany since the year 2007 and had been working there. As such, there is nothing on record to prove that the petitioner was not an NRI. Even the respondent has admitted that petitioner is settled in Germany. The learned Rent Controller had observed that the petitioner had satisfied all the three ingredients required for the purpose of seeking ejectment of the respondent-revision petitioner from the demised shop. The demised shop is admittedly a commercial property. It is well settled proposition of law that the landlord is the master of his requirement and if his need appears to be genuine, he can seek ejectment of the tenant from the rented premises. In this case, the petitioner submitted that he wants to come back and start his own business in the demised shop and has got no other shop anywhere in India. Learned counsel for the revision petitioner contended that since the petitioner-landlord had not actually returned to India therefore, he had failed to prove his bona fide. In the opinion of this Court, this contention had rightly been rejected by learned Rent Controller as it was not necessary for the landlord to actually return to India to establish that his need to get the demised shop vacated was genuine. In the present case, on going through the material placed on record before learned Rent Controller, it stands established that the petitioner landlord is a Non Resident Indian and has been staying there for a period of more than five years. It is well settled that in the proceedings

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taken up under Section 13-B of the Act, 1949 by the NRI landlords for the ejectment of the tenant, the Court shall presume that landlords need as pleaded in the petition is genuine and bona fide and a heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. Reliance in this regard can be placed upon **Baldev Singh Bajwa's** case (Supra) wherein the Hon'ble Apex Court had observed so. The revision petitioner tenant had raised a mere assertion that the need of the landlord is not bona fide which cannot be stated to be sufficient to rebut the strong presumption in favour of the landlord that his requirement of occupation of the premises is real and genuine. The landlord wants the demised premises to be utilized for running his own business. In the opinion of this Court, he being himself the best judge of his requirement, the learned Rent Controller had rightly held that his need was bona fide. The petitioner landlord has proved all the three ingredients i.e. NRI status, his being owner of the demised shop for more than five years and his bona fide requirement for the demised shop and, therefore, nothing else was required to be proved from his side. The revision petitioner, on the other hand, has failed to make out a triable case. Rather he has even failed to file an affidavit as mandatorily required to be filed under Sub Section (4) of Section 18-A of the Act, 1949 in support of his pleadings and since the learned Rent Controller after considering all these aspects had declined to grant leave to defend to the revision petitioner, therefore, we see no ground to interfere with the well reasoned order as passed by the learned Rent Controller and do not find any merit in the revision petition. The same is accordingly dismissed. There is no order as to costs.

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12. Miscellaneous application(s), if any, also stand disposed of.

10.07.2023
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(MANISHA BATRA)
JUDGE

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