

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

CR 6560/2014(O&M)

Date of decision: 28.03.2023

Kamlesh Malhotra

.....Petitioner

Vs.

Arun Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Naveen Sharma, Advocate for the petitioner.
Mr. Vaibhav Sehgal, Advocate for the respondent.

Nidhi Gupta,J.

Present revision petition has been filed by the petitioner/ tenant seeking setting aside of order dated 22.8.2014 passed by Id. Rent Controller, Ludhiana whereby her application u/s 18(4) of The East Punjab Urban Rent Restriction Act,1949 (hereinafter referred to as 'the Act') seeking leave to defend has been rejected and the petition filed by the respondent/landlord u/s 13-B of the Act, for recovery of immediate possession of the residential portion at ground floor comprising of two rooms, one drawing room, dining room, one kitchen, store and three bathrooms and open space, forming part of property No.127-E, Bhai Randhir Singh Nagar, Ludhiana (hereinafter referred to as the 'demised premises') has been allowed.

Facts in brief are that the petitioner was inducted as tenant in the demised premises by the mother of the respondent namely Usha Kumari. It is stated case of the petitioner that rate of rent was settled @ Rs.5500/- per month between the parties. Smt. Usha Kumari, original landlord, died on

28.9.2009 in England. It is pleaded case of the petitioner that after the death of Usha Kumari rent was received by the respondent upto January 2013 and for which no receipt was allegedly issued by the respondent. Thereafter the respondent-NRI landlord, who holds English Passport and therefore, entitled to file petition u/s 13-B of the Act filed the present petition (Annexure P-2) u/s 13-B of the Act seeking ejectment of the petitioner on the ground that the respondent bonafidely and genuinely required demised premises for his personal use and occupation of his family; that the petitioner was in arrears of rent since September 2009; and that the demised premises are the most suitable for the respondent.

Pursuant thereto petitioner filed present application for leave to defend u/s 18(4) of the Act on 18.4.2013 (Annexure P-3). Petitioner contested the ejectment petition filed by the respondent inter alia on the ground that no legal and valid service had been effected by the respondent; respondent is not entitled to claim benefit of Section 13-B of the Act as he cannot claim to be NRI as defined under the Act being a British citizen; respondent has no locus to file the eviction petition u/s 13-B; need of the respondent is not genuine or bonafide; the first and second floors of the building where the demised premises are located are fit for human habitation and can be used by the respondent instead of the demised premises; identity of the respondent is disputed; rent was paid upto January 2013 and that the respondent had failed to disclose whether he intends to return to India permanently or for temporary period; and that the respondent plans to sell the demised property after getting it vacated.

Vide impugned order dated 22.8.2014 the above said application (Annexure P-3) filed by the petitioner seeking leave to defend was

dismissed by the Rent Controller and the ejectment petition filed by the respondent was allowed with a direction to the petitioner to vacate the demised premises within a period of two months from the date of passing of the order.

It is submitted by the Id. Counsel for the petitioner that a perusal of the Passport of the respondent/landlord appended as Annexure P-7 with the present revision petition shows that nationality of the respondent is shown to be British citizen. It is submitted that accordingly the respondent is not an NRI as defined under the Act and was therefore, not competent to seek eviction of the petitioner from the demised premises u/s 13-B of the Act. Counsel for the petitioner refers to judgment of Hon'ble Supreme Court in **Ram Krishan Grover and others v Union of India and others** Law Finder Doc Id # 1621507 and submits that in the said case the Hon'ble Supreme Court has approved the right of the landlord being NRI but not that of a foreign national.

It is further submitted that a perusal of para 5 of the ejectment petition P2 filed by the respondent shows that the averment made therein by the respondent is that "the petitioner though settled in England has all his relatives and in-laws in India and intends to visit India regularly. The portion in possession of the respondent is most suitable for the requirement of the petitioner. Though the upper portion of the property is lying vacant but the said portion is unfit and unsafe for the use and occupation of the petitioner and his family members. the upper portion has been damaged by the excessive dampness and all the woodwork including beds, doors, windows and their frames have been infested by white ants. The entire portion emits foul and unbearable smell and the entire portion requires reconstruction and renovation, the portion in possession of respondent is most suitable for the requirements of

the petitioner. The petitioners do not own any other property nor has invoked the provision u/s 13B of the East Punjab Urban Rent Restriction Act against any other tenant. Thus, the petitioner immediately requires the premises for his personal use and occupation". It is submitted by the Id. Counsel for the petitioner that accordingly the second ingredient as required under Section 13-B i.e. that the respondent/landlord has permanently returned to India and has settled in India primarily is also missing and therefore, the impugned order is unsustainable on this ground as well. As regards personal necessity, Id. Counsel for the petitioner submits that it is nowhere disclosed as to how personal necessity of the respondent is made out. As regards the building being unfit and unsafe for human habitation, Id. Counsel for the petitioner submits that the said averment that the building is unsafe was made by the respondent/landlord in the year 2013 when he filed the ejectment petition, however, despite the fact that 10 years had passed thereafter the first and second floor were still sustaining without any repair work. It is further submitted that petitioner is a good tenant and has been paying her dues regularly and there is no arrears of rent. It is submitted that accordingly the impugned order deserves to be set aside.

In response, it is submitted by the Id. Counsel for the respondent that this Court in **Lakhwinder Kumar v Pavitter Kaur (dead) through LRs, Law Finder Doc Id # 210565**, in para 37 has held as follows:-

"37. Having heard learned counsel for the parties at some length, I do not find any merit in the contention noticed above. The Supreme Court has already clarified in Baldev Singh Bajwa's case (supra) that it is not necessary for a Non-Resident Indian-landlord to return permanently to India. Even if the respondent-landlord requires the demised premises for his occasional visits to

India, that need sufficiently fulfills the requirement of law. Under Section 13B of the Act, the Court shall presume the genuineness and bonafide personal need of the NRI-landlord and a heavy onus lies on the tenant to lead cogent evidence and rebut that strong presumption. Assuming that the Attorney of the respondent-landlord does not come forward or depose, the fact remains that the respondent has specifically pleaded and not controverted by the petitioners to some extent that he is more than 70 years old; he is a patient of high blood pressure and heart ailment; he requires the ground floor of the demised premises as it is risky for him to climb to the first floor of the premises and that the accommodation on the first floor is otherwise insufficient for him and his relatives who oftenly visit him whenever he is in India. No evidence has been led by the petitioner-tenants to refute the age of the respondent-landlord or that he does not occasionally visit India or has no relatives in India who might visit him whenever he comes to India. Similarly, there is no evidence led by the petitioner-tenants to show that there is any other premises available with the respondent-landlord or that the ground floor of the demised premises cannot be used for the residential purposes. It is pertinent to mention here that after availing 12 opportunities, the petitioner in the first case produced no evidence except his own deposition which is wholly insufficient to discharge the onerous burden created by Section 13B of the Act. The vague and evasive assertions made by the petitioners that the respondent wants to sell the demised premises at a premium, not only lack material support but are otherwise inconsistent with the object behind Sub-Section (3) of Section 13B read with Section 19 of the Act in terms whereof, an evicted tenant can not only seek restoration of his possession if the landlord fails to occupy the demised premises but a defaulting landlord can be prosecuted as well".

It is submitted that accordingly contention of the petitioner that the respondent/landlord had not stated unequivocally that he intends to return to India permanently is misplaced in view of the law as laid down in the above referred to judgment.

Ld. Counsel for the respondent then relies upon 3-Judge Bench of the Hon'ble Supreme Court in the case of **Balwant Singh @ Bant Singh and another v Sudarshan Kumar and another**, Law Finder Doc Id # **1800986**, to submit that it is not open to the petitioner/tenant to dictate terms to the respondent/landlord or make any suggestion as regards the available space. In this respect, paras 11, 12 and 13 of the judgment are relevant and reproduced hereunder:-

"11. On the above aspect, it is not for the tenant to dictate how much space is adequate for the proposed business venture or to suggest that the available space with the landlord will be adequate. Insofar as the earlier eviction proceeding, the concerned vacant shops under possession of the landlords were duly disclosed, but the case of the landlord is that the premises/space under their possession is insufficient for the proposed furniture business. On the age aspect, it is seen that the respondents are also senior citizens but that has not affected their desire to continue their business in the tenanted premises. Therefore, age cannot be factored against the landlords in their proposed business.

12. The Rent Controller in denying right to contest to the tenants and ordering handover of vacant possession to the landlord had noted that the landlord had returned to India and required the premises for his bona fide need and accordingly, the summary proceedings under Section 13B for recovery of possession of the entire building was found to be justified. It was also adverted

that the present proceedings under Section 13B is the first one filed by the landlord to secure eviction and the earlier proceedings was under Section 13 of the Act. Moreover, there is no bar for a Non-resident Indian to get a building of choice vacated, under Section 13B of the Act.

13. On consideration of the above aspects, the genuine need of the appellants to secure vacant possession of the premises for the proposed business is found to be established. According to us, the adequacy or otherwise of the space available with the landlord for the business in mind is not for the tenant to dictate. The special procedure for NRI landlord was deliberately designed by the Legislature to speedily secure possession of tenanted premises for bona fide need of the NRI landlords and such legislative intent to confer the right of summary eviction, as a one time measure cannot be frustrated, without strong reason".

Learned counsel for the respondent also relies upon judgment of this Court in **Premi Lal v Sohan Singh @ Chanan Singh Rayat, Law Finder Doc Id # 1928100** to submit that in similar circumstances, this Court had held as follows: -

"10. Learned counsel for the revisionist has almost taken the same objections, which are there in the application moved by him seeking leave to contest, the details of which have been given supra. Learned Rent Controller, Ludhiana has dealt with all such objections in detail. To prove that petitioner is a Non-Resident Indian having foreign citizenship and is owner of the property in question for last 5 years of the petition, the petitioner had placed on record photocopy of his British Passport bearing No.466428294 as well as photocopies of British passports of his family members. He had further placed on record copy of sale deed No.3950 dated 4.6.1958 showing

him to be owner of the house, of which the demised premises form a part, since the year 1958. The Apex Court in judgment Baldev Singh Bajwa v. Monish Saini, 2005 (2) LAR SC 464 had categorically observed that definition of Non-Resident Indian under the Act contemplates that any person, who is of a Indian region and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period. The petitioner is covered by this definition of Non-Resident Indian, therefore, he has got every right to file petitioner under Section 13-B of the Act.

11. As far as ownership of the demised premises is concerned, the petitioner has placed on record copy of the sale deed in his favour, which prima facie goes to show his ownership and furthermore in a civil suit filed by present revisionist Premi Lal against landlord Sohan Singh @ Chanan Singh and another, Civil Judge (Jr.Divn.), Ludhiana vide judgment and decree dated 2.7.2014 had given a finding that revisionist Premi Lal was in possession of the demised premises as lawful tenant under Sohan Singh @ Chanan Singh since year 2001 and such tenancy was oral coupled with delivery of possession. The revisionist is bound by such observations. Even otherwise, the fact that revisionist had filed a suit for grant of permanent injunction against respondent - Sohan Singh @ Chanan Singh and another goes to show that he admitted the defendant to be his landlord and relationship of landlord and tenant comes out to be there. Under Section 116 of the Evidence Act, a tenant cannot deny title of his landlord at the beginning of the tenancy. It is specific case of the petitioner that he has got extended family of 17 members and he along with his aged wife intend to shift to India so as to spent the remaining years

of their life in India while residing in their house of which the demised premises form a part presently in possession of Premi Lal - tenant, whose ejectment is being sought for. Therefore, the requirement of the petitioner comes to be bona fide. There is nothing on record to show that the petitioner/landlord wants to get the premises vacated just to let out the same at higher rate of rent. Even otherwise, a safeguard has been provided under Sub-Section 3 of Section 13-B of the Act itself where an owner recovers possession of a building under this section then he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building failing which the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of said building and Controller may make an order accordingly. Therefore, if for a moment the objection raised by the tenant is accepted that the petitioner landlord wants to get the demised premises vacated just to let it out at higher rate of rent, he cannot possibly do so for a period of five years after getting it vacated and if he does so before expiry of that period, the tenant shall have a right to recover the possession by invoking Sub-Section 3 of Section 13-B of the Act. There is nothing on record and even the revisionist does not allege anywhere that petitioner/landlord has got any alternative accommodation where he along with his wife and children can put up at Ludhiana, where the petitioner and his wife want to spend their remaining life. As rightly observed by the Rent Controller, Ludhiana, the tenant cannot dictate any term to the landlord with regard to any other place where he can settle down equally comfortable or in a better manner. The petitioner/landlord who comes within the definition of specified landlord certainly has a right to get the demised premises vacated from the respondent -

tenant and respondent - tenant cannot deny that right by raising any number of such pleas."

It is submitted by the Id. Counsel for the respondent that a conjoint reading of the above said judgments show that all the contentions raised by the petitioner do not bear scrutiny in view of the enunciated and established law.

No other argument has been raised on behalf of the parties.

Heard Id. Counsel for the parties.

Perusal of the record of the case shows that ownership of the respondent over the demised premises five years prior to the filing of the ejectment petition is not disputed. To maintain a petition u/s 13-B of the Act the following ingredients are to be proved: -

- (i) The applicant is NRI;
- (ii) He/she must return to India;
- (iii) He/she is owner of the demised premises;
- (iv) His/her ownership is for more than five years prior to the filing of the ejectment petition;
- (v) The building is required for his/her own use or for use of anyone ordinarily living with the landlord;
- (vi) The right is availed only once during lifetime.

Section 2(dd) reads as under:-

[(dd) "Non-resident Indian" means 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; or

(b) for carrying on a business or vocation outside India; or

(c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for a uncertain period;]

Though it has been pleaded by Id. Counsel for the petitioner that the landlord is not an NRI as defined under Section 2(dd) of the Act, however, ratio of the judgment relied upon by the Id. Counsel for respondent in **Premi Lal's** case (supra) shows that this Court has held therein even a holder of British passport would be covered by the definition of NRI as contained in the Act. Even the Hon'ble Supreme Court in **Baldev Singh Bajwa v. Monish Saini**, 2005(2) LAR SC 464, has held that NRI under the Act is a person of Indian origin who has settled either permanently or temporarily outside India for taking employment or for carrying on business or vocation outside India or for any other purpose which require his staying outside India for uncertain period. Accordingly, in view of above undisputed position in law the contention of Id. Counsel for the petitioner to the effect that the respondent is not an NRI deserves to be rejected. Furthermore, the issue is no more res integra as Hon'ble Supreme Court in the case of **Baldev Singh Bajwa v Monish Saini (2005) 12 SCC 778** has held as follows: -

"6. Appellant in this case is a tenant of the disputed shop which was leased out to him vide Rent Note dated 14.3.1985 by Monish Saini, landlord with the consent of other landlords. The landlord was born in Delhi and later migrated to United Kingdom for employment and settled there. He holds a Canadian Passport and is doing service in U.K. The landlord filed an ejectment petition invoking Section 13-B of the Act of 1949 by making averments that the tenant-appellant was bound to surrender immediate possession of the disputed shop to him. He had claimed the status of Non-Resident Indian (hereinafter to be referred to as 'NRI') as per definition under Section 2(dd) of the

Act. Ejectment was sought on the allegation that he wanted to start business of Transport and Goods Carrier in which he had acquired sufficient experience. On notice of application for eviction, the appellant-tenant filed an affidavit seeking leave to contest, as required under Section 18-A(5) of the Act of 1949. The tenant pointed out that the landlord holds a Canadian Passport and he was living in U.K. and came to India on Tourist Visa and, therefore, has not returned to India permanently. It was also pleaded that respondent did not require the shop as he and his family own various shops around the shop in dispute and had been letting out the same from time to time. The affidavit also mentioned that one very big shop of the respondent-landlord and his family remained vacant and possessed by them. Previously also the ejectment of the premises on other grounds was dismissed. That the respondent could not be regarded as a NRI as there is no likelihood of his return to India for the purpose of doing business. That the ejectment petition by invoking Section 13-B of the Act of 1949 was merely to seek ejectment from the shop in dispute without there being bonafide need. The Controller declined the prayer of the tenant to contest and allowed the petition filed by the respondent under Section 13-B of the Act of 1949 and directed tenant to handover possession of the shop in dispute to the landlord. The Controller held the landlord to be a special category of landlord, i.e., NRI. Controller held that there was no need to ascertain the intention of the landlord regarding his settlement in India as specific penal provision has been incorporated in the Act to counter that. He further held that the availability of other buildings or accommodation could not be a ground to deny a NRI the possession of any building of his choice. The Controller further observed that the tenant in his affidavit had not cared to specify the properties by giving number, location or area of the properties owned by the landlord in the same locality. The

Controller also held that dismissal of the previous proceedings for ejectment would not be sufficient to non-suit the landlord."

As regards the contention of the ld. Counsel for the petitioner that the respondent/landlord has made no clear statement that he intends to permanently return to India, as required under the Act, in my view the said contention too is misplaced in view of the judgment of this Court in the case of **Lakhwinder Kumar** (supra) wherein the provision has been interpreted by this Court to mean that even if the demised premises are required by the respondent for his occasional visits, the same fulfils the requirement of law.

Third contention of the ld. Counsel for the petitioner that personal necessity of the respondent landlord is not genuine, is also misplaced in view of the established position in law that it is not for the tenant to dictate terms to the landlord and that the landlord is the best judge of his need and requirement. Ld. Counsel for the petitioner has not cited any judgment(s) to the contrary. Needless to say that in such cases presumption has to be in favour of the landlord and in the present case nothing has been presented by the petitioner to rebut the case put forth by the respondent/landlord. Even otherwise, as already noticed above the Act itself provides safeguard as under sub-section (3) of Section 13-B read with Section 19 of the Act, an evicted tenant can not only seek restoration of his possession if the landlord fails to occupy the demised premises but can also prosecute the defaulting landlord. Even otherwise, as per the provision itself, this right is available to landlord only once in lifetime and in respect of one amongst several and in respect of one building. Sub-section(3) of the Section 13-B further stipulates that it is not open to the landlord to transfer possession of the demised premises by way of sale or any other means or even let it out before the expiry of five years from

the date of taking possession of the said building. In view of the safeguard as contained in the provision itself, the contention of the Id. Counsel for the petitioner that the respondent wants to sell the property after getting it vacated is also misplaced.

Furthermore, it is petitioner’s own case that he has paid rent to the respondent upto January 2013. Accordingly, the petitioner has admitted the landlord/tenant relationship between the parties. In view of said admission on the part of the petitioner, it is not open to the petitioner to dispute identity of the respondent/landlord.

Still further, a Full Bench of this Court in Anwar Ali v Gian Kaur 2001(2) (Rent) 604 has held that once leave to contest has been declined it entails immediate ejectment of the tenant from the demised premises. In the present case the petitioner has been in possession of the demised premises since 2014 in pursuance of order dated 30.9.2014 of this Court.

In view of the discussion hereinabove, I find no error in the order impugned herein whereby the petitioner’s prayer for leave to contest has been rejected and the ejectment application filed by the respondent has been allowed.

Dismissed.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

28.03.2023
Joshi/ps-I

Whether speaking/reasoned	Yes
Whether reportable	Yes/No