

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

CR 8324/2015 (O&M)

Date of decision: 19.05.2023

Capt. K. Phool Singh (deceased) represented by his LR's**.....Petitioner****Vs.****Rajinder Kumar Kalia****.....Respondent****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. D.V.Sharma, Senior Advocate assisted by
Mr. Tushar Sharma, Advocate for the petitioner.

Mr. Vijay Kumar Jindal, Senior Advocate assisted by
Mr. Divanshu Jain, Advocate for the respondent.

Nidhi Gupta, J.

Present revision petition has been filed by the tenant against the order dated 9.10.2015 passed by the Rent Controller, Chandigarh whereby his application for leave to defend filed u/s 18-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act'), has been dismissed.

Brief facts of the case are that the respondent/landlord filed a petition u/s 13-B of the Act, the same being Rent Petition No.304 of 27.3.2015 (Annexure P-1), seeking ejectment of the petitioner from the tenanted premises describable as "*3 bed rooms, drawing-cum-dining room, kitchen, latrine and bathroom on the ground floor of H.no.1103 (new No.1102), Sector 8-C, Chandigarh*" (hereinafter referred to as the 'demised premises'). The respondent sought the ejectment of the petitioner on grounds of bona-fide personal necessity, as also arrears of rent. It is the pleaded case of the

respondent-landlord that he is an NRI who had settled in England since past several years, and he was owner of the demised premises by way of Sale Deed dated 9.3.1999 which was duly annexed with the ejectment petition, and that he was now 58 years of age and nearing retirement and wanted to leave England and settle in Chandigarh with his family in the last years of his life and therefore, required the demised premises for his own personal use and bonafide necessity. In the rent petition the respondent also stated that he did not occupy any residential premises i.e. residential building in the urban area of Chandigarh, nor has he vacated any such premises after the commencement of the Act. It was also stated in the rent petition that the respondent had never filed any other such petition u/s 13-B of the Act. It was also stated that respondent had earlier filed an ejectment petition against the present petitioner u/s 13 of the Act which had been allowed by the Id. Rent Controller, Chandigarh vide order dated 1.2.2007; against which the petitioner had filed an appeal before the Appellate Authority which was dismissed vide order dated 23.8.2008; which was challenged by the petitioner before this Court vide Civil Revision No.6622 of 2008 which was pending before this Court.

Upon receipt of summons on 5.5.2015 in the ejectment petition, the petitioner herein filed instant application (Annexure P-4) u/s 18-A of the Act for grant of leave to contest. Petitioner filed the said application within the stipulated period of 15 days from the date of receipt of summons. In the said application the petitioner raised the objection that he had received the summons along with copy of petition only, without any Annexures/documents as mentioned in the petition. The petitioner sought leave to contest inter alia, on the ground that the respondent's ownership over the demised premises was not proved as no document of ownership had been supplied; the petitioner also

questioned the NRI status of the respondent; that the respondent did not fulfil the requirement of Section 13-B of the Act as he seldom visited India and never intended to permanently settle in India and therefore, bona fide personal necessity of the respondent was not made out; that the respondent also had other residential accommodation in the urban area of Chandigarh which had deliberately not been disclosed by him; and further stated that the respondent had also initiated ejectment petition u/s 13 of the Act and therefore, present petition u/s 13-B of the Act was not maintainable as parallel proceedings between the same parties, regarding same property, and for same cause of action, cannot be adjudicated/ initiated. Thus, petitioner sought leave to contest on the above said grounds.

Respondent filed reply (Annexure P-5) to the petitioner's application u/s 18-A of the Act wherein it was inter alia clarified/ reiterated that complete set of documents and Annexures had been duly supplied to the petitioner along with the petition. It was also stated that in any event, on 15.5.2015 before the Id. Rent Controller itself, all the relevant and necessary documents were again supplied to the petitioner.

It is this application filed by the petitioner for leave to contest u/s 18-A of the Act which has been dismissed vide impugned order. Hence, present revision petition.

Ld. Senior Counsel appearing for the petitioner-tenant vehemently assails the impugned order inter alia, on the ground that petitioner is a tenant in H.No.1103, Sector 8-C, Chandigarh whereas, the sale deed in favour of the respondent is in respect of H.No.1102, Sector 8-C, Chandigarh. It is submitted that therefore, ownership of the respondent over the demised premises is not proven.

It is next contended that a perusal of Sale Deed dated 9.3.1999 (Annexure P-3), on basis of which the respondent is stated to have acquired ownership over the demised premises, shows that the vendor Smt. Beeban has not mentioned the tenancy in the said sale deed; and in fact, in clause (2) of the said sale deed it has been written “*that the above said vendor has handed over the actual, vacant, physical possession of the said house under sale to the above said vendee*”. It is vehemently submitted by the Id. Senior Counsel for the petitioner that when, as per writing of the vendor Beeban in the sale deed dated 9.3.1999, the respondent had been handed over physical, vacant possession of the property in question, in these circumstances where was the occasion for the respondent, and how could respondent have filed the present ejectment petition. It is submitted by the Id. Senior Counsel, that if the respondent were in actual fact owner of the demised premises then this clause would not have been contained in the sale deed and the correct house number would have found mention in the sale deed. It is submitted that therefore, the ownership of the respondent over the demised premises remains unproved.

It is further submitted that the GPA dated 5.6.1998 issued by the owner of the demised premises Smt. Beeban in favour of one Shiv Kumar Sard is merely attested by Notary Public and is not registered one. It is submitted that therefore, the sale deed dated 9.3.1999 executed on the basis of the said GPA which has not even been embossed is therefore, not a reliable document and again points to the fact that the ownership of the respondent over the demised premises is questionable as GPA is not executed in accordance with law.

In respect of GPA it is also submitted that the said GPA is a forged document as is evident from the fact that page numbering on page 1 of

the said GPA is at the bottom, whereas on page 2 it is at the top. Moreover, page 1 of the said GPA does not bear the signatures of Smt. Beeban and therefore, it is clear that the same is a forged document and no sale deed could have been executed on the basis thereof.

Ld. Senior Counsel further submits that even the claim of the respondent that he is NRI is doubtful as a perusal of his passport (Annexure P-2) shows that place of birth of the respondent has been mentioned therein as 'Mulewalkhera'. It is submitted that it is nowhere stated in the passport that said Mulewalkhera is situated in India, and it is very much possible that said place Mulewalkhera is situated in Pakistan. It is submitted that for the respondent to be considered as NRI as defined u/s 2(dd) of the Act, the respondent has to be person of Indian origin, however, this fact has not been established on record in the present case. It is submitted that this objection of the petitioner has been duly noted by the Id. Rent Controller in para 5 of the impugned order, however, Id. Rent Controller has moved on the presumption that Mulewalkhera is in India. It is submitted that this presumption on the part of the Rent Controller is baseless and without foundation, and vitiates the impugned order.

Ld. Senior Counsel further submits that even otherwise the respondent is a notorious character against whom serious allegations including rape have been made. It is submitted that this is evident from news item Annexure P-11.

Ld. Sr. Counsel submits that therefore, these are all triable issues which had been raised by the petitioner before the Id. Rent Controller, and therefore, Id. Rent Controller could not have summarily dismissed the petitioner's application for leave to defend, and that no opportunity has been

given to the petitioner to prove these issues as petitioner's application for leave to defend has been dismissed in the first instance itself.

In support of his submissions, Id. Senior Counsel for the petitioner relies upon **Badami (deceased) by her L.R. v Bhali (SC)**, Law Finder Doc Id # 371044; **S.P.Changalvaraya Naidu (dead) by L.Rs. v Jagannath (dead) by L.Rs.**, Law Finder Doc Id # 39279; and **Kamaljit Singh v Sarabjit Singh (SC)**, Law Finder Doc Id # 606956.

Per contra, it is submitted by the Id. Senior Counsel for the respondent/ landlord that as regards:

1. Statutory Requirements of Section 13-B:

As per Section 13-B of the Act, there are only three necessary ingredients for a petition under the said provision to succeed:

- a) that the landlord is a Non-resident Indian;
- b) that the landlord should be the owner of the property for the last five years; and
- c) that the landlord should require the same for his or her use or for the use of anyone ordinarily living with him/her and is dependent on him or her.

It is submitted that in the present case, the respondent-landlord fulfills each of the above three necessary ingredients. In support, Id. Senior Counsel relies upon decision of the Hon'ble Supreme Court of India in **Baldev Singh Bajwa v. Monish Saini (2005) 12 SCC 778**, wherein it has been inter-alia, held that it is not necessary for NRI landlord to permanently return to India; and Court shall presume that need of landlord is genuine and bona fide; and Tenant would be entitled for leave to contest only if he makes a 'strong case'.

2. Non-Resident Indian:

It is submitted by Ld. Senior Counsel that the term 'Non-Resident Indian' has been defined under Section 2(dd) of the Act. It is submitted that in the Eviction petition (Annexure P-1) it is unambiguously stated that the respondent is an NRI. To attest this fact, the passport of the respondent is also attached, which shows him to be a British citizen. In this regard, Ld. Senior Counsel refers to the decision of this Court in the case of **Sohan Lal V. Swaran Kaur Law Finder Doc. Id # 64511**; which has been affirmed by the Hon'ble Supreme Court in the case of **Baldev Singh Bajwa** (supra). It is submitted that in the case of **Ram Krishan Grover V. Union of India bearing Civil Appeal No. 8597 of 2019**, also, the Hon'ble Supreme Court has upheld the decision of Baldev Singh Bajwa (supra).

3. Ownership:

As regards ownership, it is submitted by Ld. Senior Counsel for the respondent that it has been unambiguously stated in Para No.2 of the Eviction Petition itself that the present respondent is owner and landlord of the demised premises i.e House No.1103, Sector 8-C, Chandigarh, which has now been given a new number i.e. House No.1102. In furtherance of the same, sale deed in respect of the said house was also duly attached with the petition.

4. Bonafide - No other Property in Occupation of Respondent:

It is submitted by Ld. Senior Counsel that it has been categorically averred in the Eviction Petition itself (Para 4 (i)) that the since the present respondent wishes to return back to India, therefore the premises are bona fide required by him and his family for their own personal use and

occupation. It has also been duly stated that the present respondent does not occupy or has vacated any residential property in the urban area concerned.

Further, in the latest decision of this Court in the case titled as **Harjit Singh V. Harcharan Singh (P&H): Law Finder Doc ID # 1916127**, it has been held that the concept of bona fide is not to be seen and bears no significance and relevance in the case of a petition under Section 13-B of the Act.

5. Procedure for Disposal of Application under Section 13-A/13-B of the Act provided under Section 18A of the Act:

The next contention of the Ld. Senior Counsel is that Section 18-A of the Act deals with the procedure that is to be followed in case of an application under Section 13A or Section 13B of the Act. It is submitted that a bare perusal of the provision leads to the irresistible conclusion that Leave to Contest can only be granted on the basis of the affidavit filed by the tenant before the Rent Controller, and the Rent Controller cannot travel beyond the grounds contained in the said affidavit. It is submitted that in the present case, petitioner has not raised any of the abovesaid grounds in his affidavit/application for leave to contest, which are now pleaded and argued by him in the present Revision Petition.

In support of above contention, Id. Senior Counsel cites judgment of the Hon'ble Supreme Court in **Precision Steel and Engineering Works and V. Prem Deva Niranjana Deva Tayal (1982) 3 SCC 270** and the decision this Court in the case of **Rakesh Sharma V. Harmesh Singh Law Finder Doc Id # 663581**, wherein it has been held that in a petition u/s 13B of the Act, Rent Controller is only to adjudicate upon the issues and has to grant leave to contest on the basis of affidavit filed.

6. Grounds taken in the application for Leave to Contest:

As regards the grounds taken by the petitioner in his application for Leave to Contest, it is submitted by Id. Senior Counsel:

a) That it has been averred that documents as mentioned in the Eviction Petition were not supplied, however a bare perusal of the Eviction Petition would indicate that they were duly annexed and supplied. It is submitted that a bare perusal of the rent petition Annexure P-1 shows that in para 2 thereof, it has been categorically stated that a copy of the sale deed was duly annexed with the petition. It is submitted that therefore, it is clear that petitioner was not caught by surprise as the sale deed was duly attached with the rent petition. That even if the version of the petitioner is believed, admittedly the documents were again supplied in the Court itself on 15.05.2015 which finds mention in the reply filed by the landlord to the leave to contest application.

Ld. Senior Counsel submits that it is very pertinent to mention that the petitioner had stated in his application for leave to contest that on receipt of allegedly unsupplied documents, he had reserved his right to file an amended application for grant of leave to contest. It is submitted that however, though annexed documents formed part of the ejectment petition, which were duly re-supplied to the petitioner on 15.5.2015, no initiative was taken to amend the said application for leave to contest despite availability of a wide time frame of 5 months, as the impugned Order was passed on 09.10.2015.

b) That as it was further stated that mandatory provisions of Section 13-B were not complied with as no proof of ownership of the building was attached, however in the reply to the said Application (Annexure P-5) it has been clarified that all the documents including the sale

deed have been duly supplied and all confusion sought to be generated by the petitioner with regard to House No. 1103/ new no. 1102 has been sufficiently explained. It is submitted that further, as a matter of abundant caution, a comprehensive reply has been filed to Civil Misc. Application No. 11765-CII-2017 wherein even the amended sale deed has been placed on record as per the relevant Notification issued by the Estate Office, Chandigarh which clearly provides that the amendment in the sale deed will not change its nature or the rights of the parties created thereto. It is submitted that therefore, ownership of the respondent over the demised premises cannot be doubted.

c) That in the said application for Leave to Contest, the validity and applicability of the Notification dated 09.10.2010 in urban area of Chandigarh has been doubted. However, the said notification has been upheld by the Hon'ble Supreme Court in the case of **Ram Krishan Grover** (supra) thereby removing any shadow of doubt on the said aspect.

d) That further, aspersions were cast regarding the NRI status of the present respondent as it was stated that no copy of passport has been attached. However, the said documents including the copy of the passport which sufficiently establishes the "NRI Status" of the present respondent were duly annexed and supplied.

e) That it has been argued that two parallel proceedings regarding same property cannot run simultaneously, however this is an absolutely erroneous viewpoint as Section 13 and Section 13-B are completely different remedies, as has also been explained by this Court in the cases titled as **Dalip Singh V. Gurdip Singh 2011 (2) R.C.R. Rent 411**; and **M/s Trehan Auto Parts V. Kuldip Singh Saini 2010 (1) R.C.R. 9**.

f) That it has been averred in the application for Leave to Contest that the date of letting out the premises has not been mentioned, however the same is not required by the statutory provision and irrespective of that, the landlord-tenant relationship between parties has already been admitted by the petitioner.

g) That it has been averred in Leave to Contest that the respondent owns other properties which have not been disclosed whereas, it has been clearly stated in the Eviction Petition as well as in the reply to said application that present respondent does not own any other residential property in the urban area concerned. It is submitted that moreover, nothing has been placed on record by the petitioner in support of his baseless allegation against the respondent.

7. Additional Arguments on behalf of the respondent:

Besides the above arguments of merits, it is additionally submitted by Id. Senior Counsel for the respondent-landlord that:

a) The documents/arguments which are being sought to be produced/raised before this Court by the petitioner for the first time cannot be considered as, it is a duly crystallized position of law under Section 18-A(5) of the Act, Leave to Contest has to be granted only on the basis of the application for leave to contest which forms a part of record of the Rent Controller.

b) That before the present Eviction Petition u/s 13-B, an Eviction Petition under Section 13 of the Act qua the same property was filed by the respondent, wherein there was no dispute qua landlord-tenant relationship or ownership, and eviction of the petitioner was ordered vide concurrent findings by the Ld. Rent Controller and the Appellate Authority.

c) That the argument that the present respondent has not returned to India also stands settled by the decisions rendered in the case of **Baldev Singh Bajwa(supra)** and **Sunil Kumar (since deceased) through his LRs and Anr. v. Poonam Prashar 2020(2) R.C.R.(Rent) 55.**

d) It is lastly submitted that the respondent/landlord has not been receiving any rent, and is only being paid Rs.15,000/- by way of mesne profits as directed by this Court in the other pending CR 6622/2008.

In rebuttal, it is submitted by the Id. Senior Counsel for the petitioner that as per Section 2(dd) of the Act, it is necessary that the respondent be of Indian origin. However, in the present case a perusal of the rent petition shows that it has nowhere been mentioned therein that the respondent is of Indian origin. It is submitted that admittedly, respondent holds a British passport, however, no presumption can be drawn that Mulewalkhera is in India. It is further submitted that even a perusal of the sale deed shows that there is no whisper therein that the petitioner is a tenant with the respondent. It is reiterated that the sale deed by way of which respondent has claimed ownership of the demised premises is a fraudulent document not executed in accordance with law which fact could only have been proved by the petitioner during trial. It is further submitted that respondent is required to return to India and in fact, petitioner is not required to pay mesne profits/damages as the same are due only from a tenant.

No other argument is made on behalf of the parties.

I have heard Id. Senior Counsel for the parties and perused the voluminous file in great detail with their very able assistance. Id. Counsel have also filed their respective comprehensive Written Submissions, in which

pleadings and arguments as noticed above have been reiterated. The same have been duly considered by this Court.

An application for leave to contest is maintainable u/s 18-A of the Act. The relevant part of the said provision is reproduced hereunder:

“Section 18A :

...(4) The tenant on whom the service of summons has been declared to have been validly made under subsection (3), shall have no right to contest the prayer for eviction from the [residential building or scheduled building and/or non residential building], as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord [or the owner, who is non resident Indian] in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the specified landlord or, as the case may be, the widow, widower, child, grand- child or widowed daughter-in-law [or the owner, who is non resident Indian] of such specified landlord from obtaining an order for the recovery of possession of the [residential building or scheduled building and/or non residential building], as the case may be, under [section 13-A or section 13-B...”

A bare perusal of the above provision leads to the irresistible conclusion that Leave to Contest can only be granted on the basis of the affidavit filed by the tenant before the Rent Controller, and the Rent Controller cannot travel beyond the grounds contained in the said affidavit. In the present case, a perusal of the Leave to Contest application (Annexure P-4) filed by the petitioner u/s 18-A of the Act shows that the only grounds on which the petitioner had sought leave to defend are that: (a) no documents or annexures as mentioned in the ejectment petition were provided to the petitioner along with the rent petition; (b) document of ownership of the demised premises was not supplied to the petitioner; (c) no document including passport of the respondent had been attached with the rent petition to show that he was NRI and had been in England and the petitioner did not have any knowledge of respondent being an NRI; (d) respondent was resorting to pressure tactics with mala fide intention to get the demised premises vacated from the petitioner; (e) parallel proceedings between the same parties regarding the same property and same cause of action could not be permitted; (f) bona fide personal necessity of the respondent is not borne out as the respondent has no cause or personal necessity to come to India as he seldom visits India as he is well settled in England; and that (g) respondent has number of residential accommodation in the urban area of Chandigarh. In totality, it is just the above said grounds, which have been raised by the petitioner in his application for leave to contest. Clearly, therefore, the grounds now sought to be raised by the petitioner before this Court were not pleaded by him before the Rent Controller.

The legal position in this regard is very clear. A 3-Judge Bench of Hon'ble the Supreme Court in the case of **Precision Steel and Engineering Works v Prem Deva Niranjana Deva Tayal, (1982) 3 SCC 270**, has held that

at the stage of granting leave, affidavit of tenant is the only relevant document.

Para 19 of the said judgment is pertinent, and is reproduced hereunder:-

“19. It is indisputable that while examining the affidavit of the tenant filed under section 25B (4) for the purpose of granting or refusing to grant leave to contest the petition the landlord who has initiated the action has to be heard. It would follow as a necessary corollary that the landlord may controvert the averments made in the affidavit of the tenant but the decision to grant or refuse leave must be based on the facts disclosed in the affidavit. If they are controverted by the landlord that fact may be borne in mind but if the facts disclosed in the affidavit of the tenant are contested by way of proof or disproof or producing evidence in the form of other affidavits or documents that would not be permissible. It is not the stage of proof of facts, it is only a stage of disclosure of facts. Undoubtedly, the rules of natural justice apart from the adversary system we follow must permit the landlord to contest affidavit filed by the tenant and he can do so by controverting the same by an affidavit. That would be an affidavit in reply because tenant's affidavit is the main affidavit being treated as an application seeking leave to contest the petition. But, the matter should end there. Any attempt at investigating the facts whether they appear to be proved or disproved is beyond the scope of sub-section (5) of section 25B. Viewed from this angle the decision in Mohan Lal's case rendered by the Full Bench of the Delhi High Court is far in excess of the requirement of section 25B (5) and the view taken therein does not commend to us”.

(Emphasis supplied)

In my view, it is a very clear proposition of law that leave to contest can be granted only and only on the basis of grounds contained in the application filed by the tenant under Section 18-A of the Act. As noted above,

the present application for leave to contest (Annexure P-4) does not contain the grounds now sought to be raised by the petitioner before this Court. In his application the petitioner has primarily raised only the grounds regarding ownership, and questioning the NRI status of the respondent etc.. Admittedly, the grounds now sought to be raised by the petitioner, were not pleaded or argued by him before the Id. Rent Controller. Accordingly, as per the above said pronouncement it is not open to the Id. Rent Controller to travel beyond the grounds raised by the tenant in his application for leave to contest, and as per law, petitioner is not permitted to raise the present issues. Id. Senior Counsel for the petitioner was unable to dispute this position in law.

The ostensible reason cited on behalf of the petitioner for not raising the present issues before the Id. Rent Controller is that necessary relevant documents were not supplied to him. In para 1 of the said application (Annexure P4) the petitioner had said that he received copy of the rent petition only, without any Annexures and/or documents in the petition. Accordingly, petitioner had *“reserved his right to amend the application for grant of leave to contest as and when the documents will be supplied by the petitioner to the respondent”*. Even if petitioner’s contention that relevant documents were not provided to him alongwith the ejectment petition were to be accepted, admittedly, subsequently, on 15.5.2015 itself, the said documents were duly supplied to the petitioner before the Id. Rent Controller itself. Yet, thereafter, the petitioner made no effort to amend his application for leave to defend and incorporate therein the present grounds now raised by him. In my view, for this reason too, the petitioner cannot be permitted to make submissions/ take grounds which are extraneous to the application for leave to contest.

Even a perusal of the reply (Annexure P-5) filed by the respondent to the petitioner's application u/s 18-A shows that it has been categorically stated therein that *"complete set of the petition containing the annexures and documents was sent to the respondent. It is stated that the petition is maintainable. It is further stated that the respondent appeared in this Hon'ble Court on 15.5.2015 and documents were again supplied to the respondent. The respondent has now falsely stated that the documents and annexures were not supplied to the respondent"*. Petitioner has nowhere denied that documents were duly supplied to the petitioner on 15.5.2015. However, despite this the petitioner chose not to amend his application for leave to contest. Therefore, at this stage the petitioner cannot be permitted to raise the extraneous grounds, which are beyond the pleadings as contained in the application u/s 18-A of the Act.

In this regard, above said 3-Judge Bench decision of the Hon'ble the Supreme Court in the case of **Precision Steel (supra)** has been followed by this Court in **Rakesh Sharma v Harmesh Singh, Law Finder Doc Id # 663581**, relevant head note/ excerpts of which are reproduced hereunder:-

"B. East Punjab Urban Rent Restriction Act, 1949, Sections 13B and 18A - Eviction petition - NRI Landlord - Leave to defend - Rent Controller is only to adjudicate upon the issues and has to grant leave to contest on the basis of affidavit filed - The affidavit has to disclose some triable issues and in the absence of the same, the application under Section 18A of the Act, for granting leave to defend cannot be allowed, on the asking - Only a prima facie case is to be made out so that the necessary ingredients of Sections 2 (dd) and 13B of the Act having fulfilled and in case they have been fulfilled, the order of

ejection is to follow - Leave to defend is to be within the parameters raised in the application under Section 18A(4) (5) of the Act - The Rent Controller has, thus, to decide on the basis of cogent and material facts having been placed in support of the leave to contest application”.

Thus, the legal position in this respect is crystal clear and strictly speaking, present revision petition is liable to be rejected on this short ground itself. However, this Court shall deal with all arguments so ably and vehemently raised by Id. Senior Counsel for the petitioner.

It has also been submitted on part of the petitioner that respondent is not an NRI. The definition of ‘NRI’ for the purposes of this Act is contained in Section 2(dd) thereof, which is reproduced hereinbelow:

“(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;”

A bare perusal of the above provision indicates that ‘NRI’ is a ‘person of Indian origin’, who ‘settles outside India’ either ‘permanently or temporarily’ to pursue his ‘employment/ vocation’. In the present case, the petitioner has doubted the Indian origins of the respondent as, his passport does not state that birthplace of the respondent ‘Mulewalkhera’ is in India. In my view, this submission on behalf of the petitioner holds no merit as there is nothing on record to show that Mulewalkhera does not fall within India. On the

contrary, this Court takes judicial notice of the fact that when searched on Search Engine Google, Mulewalkhera is shown to be “a village in Shahkot in Jalandhar district of Punjab State, India. It is located 5 kilometres (3.1 mi) from Shahkot, 20 kilometres (12 mi) from Nakodar, 43 kilometres (27 mi) from district headquarter Jalandhar and 174 kilometres (108 mi) from state capital Chandigarh”. It is therefore, clear that the respondent is of Indian origin, as required under Section 2(dd) of the Act; and thus, it cannot be said that respondent is not an NRI. Therefore, ejectment petition filed by the respondent u/s 13B of the Act is maintainable.

As regards contention of the petitioner that two parallel proceedings in respect of same property between same parties and same cause of action cannot be permitted, reliance can be placed upon judgment of this Court in **Dalip Singh v Gurdip Singh**, Law Finder doc Id # 273827 the relevant excerpt of which is extracted below:-

"C. East Punjab Urban Rent Restriction Act, 1949, Sections 13B and 18A(4) - Remedy emanating from Section 13-B is entirely different from the one under Section 13 - Therefore proceedings taken by landlord for ejectment under general provisions of the Act could not bar the landlord to pursue his petition under Section 13-B - Pendency of any petition under Section 13 on behalf of petitioner is meaningless.

.....15. It may also be relevant to mention at this stage that in view of the judgment of this Court in the case of M/s Trehan Auto Parts v. Kuldeep Singh Sahi, 2009 (2) RCR (Rent) 680, wherein it has been held that remedy emanating from section 13-B is entirely different from the one under Section 13 and, therefore, the proceedings taken by the landlord for ejectment under the general provision of the Act could not debar landlord to pursue his petition

under section 13-B, the pendency of any petition under section 13 of the Act on behalf of the petitioner is meaningless and argument raised in this regard is liable to be rejected.

In this respect reference may also be made to another judgment of this Court in **M/s Trehan Auto Parts v Kuldip Sahi, Law Finder Doc Id # 253196,** wherein it has been held as follows:

"East Punjab Urban Rent Restriction Act, 1949, Sections 13B and 14 - Eviction suit by NRI landlord - Summary rejection - NRI landlord filed suit of eviction under Section 13B - Tenant moved an application under Section 14 seeking rejection of ejectment petition on the ground that landlord had earlier filed an eviction petition under Section 13 which was dismissed - Held, remedy emanating from Section 13B is entirely different from the one under Section 13 - Hence, the proceedings taken by landlord for ejectment under the general provision of Act could not debar landlord to pursue petition under Section 13 - B because this is a special provision Connected with welfare of NRI landlord - Hence, application liable to be dismissed.

.....11. Meaning thereby, the entire different procedure has been provided for summary ejectment of a tenant for a specified Non-Resident-Indian-landlord under Section 13B of the Act which cannot possibly be equated in any manner with the ordinary remedy provided under Section 13 of the Act for the purpose of Section 14 of the Act. The remedy emanating from Section 13B of the Act is entirely different from the remedy under Section 13 of the Act. Therefore, it cannot possibly be said that the earlier petition filed under Section 13 of the Act by the landlord would preclude him from filing the present petition under Section 13B of the Act in any manner. Hence, the other proceedings

which have been taken by the landlord for ejectment under the general provision of the Act would not debar the landlord to pursue his petition under Section 13B of the Act because this provision is a special provision connected with the welfare of the Non-Resident-Indians in this regard.

12. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the trial of the main petition, the present revision petition is hereby dismissed with no order as to costs in the obtaining circumstances of the case."

From a reading of the above pronouncements it follows that Section 13 and 13B are two distinct remedies available to the landlord, and proceedings filed by the landlord under general provisions of the Act would not bar him from pursuing remedy available to him u/s 13B of the Act.

Further, it is also pertinent that in his application for leave to contest (Annexure P-4), petitioner has duly admitted that earlier rent petition filed by the respondent had been allowed by the Rent Controller vide order dated 1.2.2007, which was upheld by the Id. Appellate Authority, Chandigarh vide order dated 23.8.2008; and it has also been admitted that Revision Petition No.6622 of 2008 is pending before this Court against the said orders. Petitioner has not denied that in the said proceedings the petitioner has admitted the landlord-tenant relationship between the parties, and has in fact, admitted all the grounds/ objections raised by the petitioner herein. Therefore too, the petitioner cannot be permitted to raise all the present grounds in the present proceedings as in the earlier petition the same have been admitted. In fact, in my view, the very fact that the petitioner has admitted parallel proceedings between the same parties regarding same property and same cause of action,

implies an admission on part of the petitioner in respect of all other facts contained in pending Civil Revision 6622 of 2008.

As regards the next contention of the petitioner that ownership of respondent over the demised premises is not proven, it needs be noticed that in the application u/s 18-A of the Act nothing has been shown by the petitioner that H.No.1102 and #1103 are two different properties. Moreover, this ground was never raised by the petitioner before the Id. Rent Controller and therefore, there was no occasion for the respondent to clarify the facts in this regard. Perusal of the record shows that the original sale deed (Annexure P-3) pertains to *“H.No.1103, Sector 8-C, Chandigarh old Plot No.71, Sector 8-C, Chandigarh, covered area 2000 square feet, area 528 square yards”*. Thus, earlier, the demised premises bore the H.No.1103. However, subsequently, vide Memo No. 32073, RP 886/G-I dated 25.9.1997, the said number was changed by the Chandigarh Administration to new H.No.1102. Accordingly, respondent had executed an amended sale deed dated 24.8.2000 (Annexure R-C) in respect of the demised premises. A perusal of the same shows that it is *“in respect of No.1102, Sector 8-C, Chandigarh, old Plot No.71, Sector 8-C, Chandigarh, Street E, covered area 2000 square feet, area 528 square yards.”* Further, it is categorically stated in the said sale deed that *“And whereas the proposed amendment will not in any way change the nature of the sale deed”*. It is not the dmesne of this Court to enter into these issues. However, prima facie, in my considered opinion, the petitioner is deliberately seeking to obfuscate the issue, whereas the facts are clear and unambiguous on record. Moreover, nothing whatsoever has been produced by the petitioner to controvert these facts as noticed above.

As regards contention on behalf of the petitioner that need of the respondent is not bona fide, the issue is no longer res integra as, the Hon'ble Supreme Court in **Baldev Singh Bajwa (supra)** has categorically held that proceedings u/s 13-B of the Act are summary in nature and the Court shall presume that need of the landlord is genuine and bona fide. It has also been submitted on behalf of the petitioner that the respondent is owner of other properties in the urban area of Chandigarh. However, besides a bald averment in this regard, nothing in support of said contention has been placed on record by the petitioner. Both the above contentions are laid to rest by decision of this Court in case of **Harjit Singh (supra)**, wherein this Court has held as follows:

“9. Another argument which has been raised by learned counsel for the petitioner is that since the respondent has not disclosed the other properties owned by him in India, therefore, the respondent/landlord had not come to the Court with clean hands, and therefore, his petition had to be dismissed for this reason only. Counsel has relied upon the judgment rendered in Daljit Sharma's case (supra) in this regard. However, this argument of counsel for the petitioner is also liable to be rejected for two reasons. Firstly, the petitioner/tenant has not brought anything on record to show that the respondent/landlord owned any other specific property. There is no pleading in this regard on the part of the petitioner, nor any evidence; giving details to this effect, has been led. Therefore, the reliance by counsel for the petitioner/tenant upon the judgment rendered in Daljit Sharma's case (supra) is unfounded. Secondly, the fact that NRI owns other properties is not any bar for the NRI to file eviction petition. Rather, Section 13-B of the Act gives an option to the NRI landlord to choose the property to be got vacated; if he owns more than one properties. Moreover, a landlord filing eviction petition

under Section 13- B of the Act, cannot be non-suited only for the reasons that he has not come with clean hands. Needless to say, that such a petition is filed by NRI landlord under a particular statute and before a 'persona designata', specified under that statute. Hence, the same has to be filed, considered and decided strictly as per the parameters laid down in the Act; irrespective of the fact whether such a person comes to the Court with clean, coloured, soiled or dirty hands. This aspect is totally irrelevant if the respondent/landlord is otherwise able to prove the ingredients required of him for filing and maintaining the petition as such. Still further, it deserves to be noted that requirements of pleadings, as contained in CPC, are not strictly applicable in case of rent petition. Therefore, even in exercise of any inherent powers; the Court; or as statutory authority the Rent Controller; cannot dismiss a petition merely on the ground that the landlord had not filed the petition with clean hands.” (emphasis supplied)

Before parting, reference may also be made to judgment of this Court in **Sunbeam Traders and others v Urmil Rao**, Law Finder doc Id # **418688**. Section 13-A mentioned in the abovesaid judgment may be read as *pari materia* with Section 13-B for the purposes of present case. Relevant extract of the abovesaid judgment is reproduced hereinafter: -

"Leave to contest - Onus was entirely upon petitioners (tenants) to show that they have made out a valid ground for allowing the application for leave to contest and merely on asserting certain facts which are not supported by even prima facie documents, application for leave to contest cannot be permitted on mere bald assertions.

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tenant can only be permitted to challenge the eviction petition under Section 13A of the Act on the grounds which are tenable and supported by certain documents - Which prima facie influence the view of a Rent Controller to observe that evidence is required to be taken - Without there being any strong prima facie case, the Rent Controller should not ordinarily allow the application of leave to contest, as the entire purpose of the beneficial legislation as envisaged under Section 13A of the Act would stand defeated, if the bald assertions made by the tenants are permitted to be considered.

10. On the other hand, learned Counsel for the respondent (landlady) has argued that there is no quarrel to the proposition that has been raised by learned Counsel for the petitioners (tenants) that only the application for leave to contest and affidavit are to be seen, but the learned Rent Controller has also to see from the perusal of the affidavit and application for leave to contest that whether the tenant has made out a case for grant of leave to contest or not. In the present case, petitioners (tenants) have miserably failed to make out a case for grant of leave to contest and thus the learned Rent Controller has rightly declined the said application.

11. Secondly, it has been argued that the categorical stand taken by the petitioners (tenants) is that they acknowledge themselves to be a tenant and do not claim themselves to be owners of the property of demised premises. It is their case that they had taken the premises on rent from one G.S. Sandhu in June 1974 and have been paying rent to him ever since and thereafter to his wife Mrs. Pritam Kaur till May, 1996. However, there is no explanation coming forth as to who is this G.S. Sandhu and how the premises was let out by him. There is no supporting document to this fact which has been placed on record by the

petitioners(tenants) along with their application for leave to contest and thus, it is a mere averment which is not supported on any concrete basis. It has also been argued by learned Counsel for the respondent (landlady) that the petitioners (tenants) have themselves placed on record all sale deeds which relate back from the original owner to the present respondent (landlady) which proves that the property was bought by the respondent(landlady) from the actual owner. It has also been argued at bar that none of the previous owners have challenged the sale deed till date and thus, the locus is only with the previous owners to challenge the sale deed and not with the petitioners (tenants) to dispute the title of a landlord.

16. Since the registered sale deed was produced on record by the respondent (landlady) at the time of the filing of the application for leave to contest, therefore, prima facie it has to be held that the sale deed was duly and validly executed for valuable consideration and same is not a sham and fictitious document. In proceedings under Section 13A of the Act, the Rent Controller is only required to see as to whether prima facie, landlord has been able to prove his ownership over the property by producing a valid document or not. Since, as held earlier, respondent (landlady) has placed on record the registered sale deed, which carries presumption of truth regarding its due and valid execution this Court has no hesitation in holding that the respondent(landlady) is the owner of demised property.

19. This Court is of the opinion that a tenant can only be permitted to challenge the eviction petition under Section 13A of the Act on the grounds which are tenable and are supported by certain documents which prima facie influence the view of a Rent Controller to observe that evidence is required to be taken. Without there being any strong prima facie case, the Rent Controller should not

ordinarily allow the application of leave to contest, as the entire purpose of the beneficial legislation as envisaged under Section 13A of the Act would stand defeated, if the bald assertions made by the tenants are permitted to be considered.

As regards the judgments cited on behalf of the petitioner, the same pertain to and are in support of the contention that a judgment or decree obtained by playing fraud upon the Court is a nullity. However, petitioner can derive no support from the same, as petitioner has failed to establish any fraud on part of the respondent before the Id. Rent Controller.

Accordingly, in view of the discussion herein above, I find no merit in this revision petition and the same is hereby, **dismissed**.

Petitioners are directed to handover vacant possession of the demised premises within three months from date of receipt of certified copy of this order.

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

(Nidhi Gupta)
Judge

19.05.2023
Joshi

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