

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-1752-2009 (O&M)
Date of Decision: May 02, 2024

Ved Parkash and another
...Petitioners

Versus

Bhupinder Singh Bansal
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.M.L.Sarin, Senior Advocate with
Ms.Himani Sarin, Advocate
for the petitioners.

Mr.D.S.Patwalia, Senior Advocate with
Mr.A.S.Chadha, Advocate
for the respondent.

ARCHANA PURI, J.

Petitioner Ved Parkash, proprietor of M/s Goldy Juice Bar, in the capacity of being tenant of the shop, described by boundaries, forming part of property bearing municipal No.B-XVII-243, Taraf Karabara, Model Town Road, Bharat Nagar, Ludhiana, has filed the present revision petition.

In the instant revision petition, the petitioners-tenant challenged the denial of leave to defend and consequential order of eviction passed in the ejectment petition filed under Section 13B of the East Punjab Urban Rent Restriction Act, 1949.

The facts germane, to be noticed, are as follows:-

That, Bhupinder Singh Bansal, NRI had invoked the special provision

under Section 13B of the ibid Act, for recovery of immediate possession of demised shop. It was pleaded that property bearing No.B-XVII-243, Taraf Karabara, Model Town Road, Bharat Nagar, Ludhiana, was purchased by Smt.Chand Kaur, wife of Bhag Singh (mother of the respondent-landlord), vide sale deed dated 05.03.1952. After the death of Chand Kaur on 13.03.1996, the respondent-landlord, along with his brothers, namely Devinder Singh Bansal, Jaswant Singh Bansal, Bhagwant Singh Bansal and Amarjit Bansal, inherited the property in question, in equal shares and their names stood duly incorporated in the municipal records as well as revenue records.

Initially, Sh.Buta Ram, father of Ved Parkash was inducted as a tenant in respect of demised shop, out of the property, referred above @ Rs.50/- per month and after the death of Buta Ram, tenant Ved Parkash stepped into his shoes and started paying rent to the respondent-landlord against receipts. The rent stood paid uptill May 2001. Also, it was averred that respondent is one of the owner/landlord and his brothers, who are co-owners of the property in question, have given a General Power of Attorney, in favour of the Bhupinder Singh Bansal to file the ejectment petition and to do all acts in that relation of their share in the entire property, of which the said shop is a part. Thus, on this basis, it was claimed that there exists relationship of landlord and tenant, between the parties.

Further, it was also averred that the respondent is 'Non-resident Indian' and intended to return to India to settle down here in Ludhiana City, where he is presently residing with his relatives. He has no accommodation of his own in useable and worth living condition. He has only one property

in question in India as well as for his other family members. Besides the same, also it was averred that he wants to make his children learn Indian culture and Sikh tenements.

Furthermore, it was averred in the ejectment petition by the landlord that the shop in question is on the front portion of the property. In all, there are four tenants including the present respondent in the building, against whom, he is going to file separate eviction petitions, as he cannot use the premises in an effective manner, without getting all the shops vacated. All the shops are said to be part of one building and were converted into different shops, while constructing walls under single roof. Moreover, it was averred that the shop in occupation of the tenant was required by the landlord for his business use and occupation, as the rear portion of the property cannot be put to any use, without getting the shops vacated, as the front is required to be enlarged, to open showroom/office, the area where the property is located, being residential/commercial.

Also therein, it was asserted that the landlord intends to open exclusive furniture showroom on the ground floor and to keep his residence on the first floor. The property will also become spacious, which is requirement of time and need of the landlord. The remaining portion of the property, which is in possession of the owners-landlords, is in dilapidated condition and is unsafe and unfit for human habitation. There is only 5 feet passage for ingress and outgress to that portion and the owners/landlords cannot use the remaining portion of the property. Due to narrow passage, the larger part of the property cannot be used. As such, to run effective business, it needs proper elevation and display, sufficient ingress and

ougress, which can be provided by demolishing the entire property.

Hence, the petition under Section 13B of the ibid Act.

The case set up by Ved Parkash for leave to defend the ejectment petition, is stated, as follows:-

That, the ejection petition under Section 13B of the Act, filed by the landlord, is totally false and frivolous and abuse of process of law. The respondent is neither the owner-landlord of the property in question, nor he is son or legal heir of Chand Kaur, who used to collect rent from the tenant, through her attorney Sh.Niranjan Singh, who used to collect the rent from the tenant against proper receipts. Niranjan Singh never informed the tenant that Smt.Chand Kaur had died and the respondent is her legal heir nor any notice has been given by the respondent to him, disclosing that Smt.Chand Kaur had died and he is her legal heir.

Furthermore, it was asserted by the tenant that he came to know that the entire property bearing No.B-XVII-243, has been sold away by the owner of the property to Jagtar Singh c/o Gobind Expeller Industrial Area-A, Ludhiana, having alternate address of 441-R, Model Town, Ludhiana. This Jagtar Singh, is son of elder brother of Niranjan Singh aforesaid and the ejectment petition had been got filed through respondent-landlord, only for taking undue advantage of Section 13B of the Rent Act. Purchaser Jagtar Singh had already received the possession of remaining vacant portion of the property bearing No.B-XVII-243, from the original owners and had already occupied six rooms, kitchen, store, verandah, toilets and open courtyard, which were lying vacant on the backside of the shop. Also, it was asserted that respondent-landlord had also filed the ejectment petitions against other

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tenants, on similar counts. In fact, there are total 5 shops in occupation of the tenants since 1961. The respondent-landlord want to uproot the tenant in illegal manner, by misusing the process of law.

Moreover, shop No.3 of the property in question was lying vacant since long and the possession of shop No.3 has already been delivered to above-said purchaser Jagtar Singh, about two months ago, along with remaining area of this property, which was already in their possession. If the respondent-landlord was actually interested in starting his business and was interested to keep his residence, in the property in question, he could have initiated the business in vacant shop No.3 and also in the vacant portion, lying on the backside of the shop in question because the entire building was lying vacant, since long. Furthermore, it was also pleaded that in fact, the respondent is a permanent citizen of U.K. He might have born in U.K. and had settled his business in U.K. He and his family have not returned to India nor they will return to India and therefore, he does not prove himself to be 'Non-Resident Indian' and thus, the ejectment petition under Section 13B of the ibid Act, on account of ingredients not been proved, is not maintainable.

Besides the same, also it was pleaded that petition under Section 13B could not be filed through attorney holder, on behalf of other co-owners. Moreover, the owners of the property failed to pay the house tax, as a result whereof, the tenant was constrained to deposit Rs.2148.40, on account of house tax and therefore, he is entitled to get the adjustment/refund of the aforesaid amount, from the rent regularly paid upto May 2002. After adjusting the above amount, the rent stands paid upto June 2005. It was further asserted that filing of the ejectment petition is sheer abuse of process

of law. The petition filed by the respondent does not fall within ambit of Section 13B of the East Punjab Urban Rent Restriction Act. Therefore, permission needs to be granted to the tenant to contest the ejectment petition, as the same had been filed with malafide intention.

Learned Rent Controller, vide impugned order dated 22.01.2009 rejected the leave application and in consequence thereof, order of eviction was passed against the tenant, thereby requiring him to vacate and handover the possession of the demised premises, within a period of one month.

Feeling aggrieved, the petitioners-tenant filed the revision petition, in hand.

Respondent-landlord made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, learned counsel for the petitioners-tenant contends that the order of eviction, through summary proceedings under Section 13B of the ibid Act, is wholly illegal and unsustainable, as no substantive ground is made out, to assert eviction by way of summary process. By a plain reading of Section 2(a) and 13B of the ibid Act, the eviction in the stated circumstances through summary procedure is not maintainable. He submits that the right under Section 13B is not absolute and the statutory power, viz....apply for eviction under Section 13B, is available, after five years from the date of becoming owner and b) only once during the lifetime of such owner, is applied mandatorily before ordering eviction through summary procedure.

Learned Rent Controller did not examine and applied incomplete safeguards in the scheme of summary eviction. In fact, learned counsel

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submits that apart from NRI status, return to India of the respondent-landlord, as such, does not stand established and also availability of vacant shop is there and besides the same, multiple ejectment petitions having filed, qua other shops also, is sufficient to avert summary process, so adopted to evict the petitioner.

In fact, while making reference to '*Ram Krishan Grover and others vs. Union of India and others*', 2019(2) RCR (Rent) 703', learned counsel for the petitioners submits that conditions of Section 13B are mandatory and carefully to be followed. Eviction of a tenant under Section 13B is not a matter of course.

Thus, summing up his submissions, learned counsel for the petitioners submits that triable issues are evident and therefore, leave to defend, ought to have been granted. However, learned Rent Controller had erroneously denied the same, vide impugned order.

On the other hand, learned counsel for the respondent-landlord refuted the claim of the petitioner-tenant. He assiduously submits that the summary eviction of the tenant was fully compliant with the requirement of Section 13B of the Act. Section 18A of the ibid Act obligates the tenant to apply with the grounds for leave to defend the summary eviction petition. A reading of Sub-sections 4 and 5 of Section 18A, discloses that the Rent Controller should examine the ground raised against summary eviction, which would reveal such facts as dis-entitling the landlord from obtaining an order for recovery of possession through summary proceedings. It is submitted that in fact, Rent Controller is required to examine the grounds in Section 13B of the Act, in the background of objections/grounds raised by

the tenant and decide the case for leave to defend and decide as to whether, the case for leave to defend is made out by the tenant or not. In fact, it is submitted that entire exercise has been conducted by the Rent Controller in an appropriate manner, as a result whereof, leave to defend, as such, was denied and consequently, eviction order was rightly passed.

From the plain reading of the requisite provisions, it is evident that the once in lifetime, possession is given to the NRI to get one building vacated in a summary manner. A Non-Resident Indian landlord is required to prove that (i) he is an NRI, (ii) that he has returned to India permanently or for a temporary period, (iii) requirement of the accommodation by him or his dependent is genuine and (iv) he is owner of the property for the last five years, before institution of proceedings for ejectment before the Rent Controller. However, the tenant's plea for leave to contest the NRI landlord's application, ought to remain confined to the grounds, which NRI is required to prove to get the ejectment under Section 13B of the Act. Rent Controller's power to give leave to contest the application filed under Section 13B is circumscribed to the grounds and inquiry on the aspects specified in Section 13B. The tenant would be entitled for leave to contest only, if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13B and no other aspect shall be considered by the Rent Controller.

Requirement of '**strong case**' for obtaining leave to defend means a good case that brings to the fore reasonable and well-grounded basis, on which the tenant seeks leave to contest the eviction proceedings. It does not mean setting up and establishing at that stage, a case beyond any

scintilla of doubt and debate. The grounds and pleas raised should reflect clear and strong defence, relating to the provisions of Section 13B. However, leave to defend, should not be granted, on mere asking, but at the same time, when the pleas and contentions raise triable issues and the dispute on facts demands that the matter be properly adjudicated, after ascertaining the truth of pleas taken by the tenant and tested by way of cross-examination, it ought to be granted. Each case has to be decided on merits and not on the basis of any preconceived suppositions and presumptions. By providing for a simplified procedure of eviction by the Non-Resident Indians, Section 13B does not dilute the rights of tenants. It gives a chance to the tenants, on merits, to establish their case and when justified and necessary, to take the matter to trial.

In this backdrop, now adverting to the case in hand. At the very outset, learned counsel for the petitioners-tenant disputed the maintainability of the petition under Section 13B of the East Punjab Urban Rent Restriction Act, while asserting about the respondent-landlord Bhupinder Singh Bansal to be not an owner/landlord and also that the bonafide need is not established. However, in the light of the material coming forth, the aforesaid submission is bereft of merits.

Undisputedly, Chand Kaur was the owner of the property in question. Also, it is not disputed that she had died on 13.03.1996. She is widow of Bhag Singh. Respondent-landlord Bhupinder Singh Bansal also asserts himself to be son of Bhag Singh. Municipal record and the mutation reflects the name of the respondent-landlord together with his brothers, having succeeded to the property in question. In the light of the same, oral

submission to dispute the status of Bhupinder Singh Bansal, vis-a-vis, demised shop, does not hold any ground.

Furthermore, subsequent ground pleaded for seeking leave to defend is about one Jagtar Singh, having purchased the entire building, of which the shop in question is a part. It is submitted that the property has been sold to Jagtar Singh, who is son of brother of Niranjana Singh and in view of the same, solely to facilitate vacant possession, Bhupinder Singh Bansal had filed the ejectment petition. Besides the same, also it is claimed that shop No.3 was vacant and Bhupinder Singh Bansal never initiated any business in the same and now the possession has been handed over to Jagtar Singh. However, there is not an iota of material, coming forth, to substantiate the plea of possession of some part of the building in question handed over to Jagtar Singh. Though, it is submitted that the property having been sold to Jagtar Singh can only be established, when an opportunity is given to lead evidence, but however, the aforesaid submission is not tenable. Some document of any kind, ought to have been brought on record, by the tenant, to substantiate the plea of availability of the vacant shop and also about transfer having been effected in the name of Jagtar Singh and he having been put into possession. But anyhow, no such material is coming forth.

So far as, shop No.3 is concerned, even though, assuming that it was in the possession of Bhupinder Singh Bansal, then also, non-initiation of business of furniture in the same, as pleaded by the petitioners-tenant, does not prove malafide on the part of Bhupinder Singh Bansal. In this regard, suffice to make mention that need for personal necessity, as such, asserted by Bhupinder Singh Bansal, is for the running of furniture showroom, on the

ground floor and also about putting up his residence, on the first floor. It is pertinent to mention that in the ejectment petition, it is categorical claim that the shop in question is situated on the front side and there is passage only of 5 feet width, which is not suitable for the initiation of furniture business and that too, in a singular shop. The suitability on the part of the landlord has to be respected and the tenant, as such, cannot enforce upon the landlord to initiate the business, in a small vacant place, available with him.

Close to the same, very true, as pointed out that there are 4-5 other shops, relating to which, undisputedly ejectment petitions have been filed. It is submitted that as per Section 13B of the ibid Act, it is only qua one shop, the NRI can apply to seek eviction and therefore, filing of the petitions under Section 13B, qua all the shops in possession of tenants, is not maintainable. However, the aforesaid submission is not tenable. Suffice to make reference to the decision rendered by this Court in '*Krishan Lal Dua vs. Shander Singh, in CR-4286-2014, decided on 31.01.2020*', wherein, it was held that '**building**' included entire building, as also part of a building. The Hon'ble Court concluded that where the premises in possession of various tenants are part of same building, therefore, it is covered by definition of 'building' and the landowner is entitled to maintain various petitions filed against the various tenants of the same building.

In the ejectment petition, it is categorical claim of the landlord Bhupinder Singh Bansal that there are five shops in the building bearing No.B-XVII-243, Taraf Karabara, Model Town Road, Bharat Nagar, Ludhiana. Further, he has clarified that the shops have been raised, under a single roof by raising walls. Meaning thereby, it is a single building, which

has been bifurcated into various shops and on this account, when the 'need', as such, is put forth, of having large furniture showroom, the tenant, as such, cannot restrict NRI-landlord for seeking vacation of the tenants of all the shops, which have been raised under a single roof and therefore, for all intents and purposes, these shops are to be considered as part of singular building.

So far as, NRI status of Bhupinder Singh Bansal is concerned, in the ejectment petition, he has categorically stated about himself to be NRI and that he intend to return to India and settle down in Ludhiana City. However, it should also be noted that the ejectment petition has been filed by the petitioner, while being in India. The claim of the landlord to facilitate ejectment of the tenant, while filing petition under Section 13B, is fully justified. As per Section 2(d)(d), "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 an uncertain period.

Thus, Bhupinder Singh Bansal is established to be NRI and therefore, he is within his right to invoke summary process for seeking eviction under Section 13B of the ibid Act.

Nothing, as such, is evident, as submitted by learned counsel for the petitioners-tenant about the 'need' to be not bonafide and ejectment petition to have been filed only to assist Jagtar Singh to take possession.

As already held aforesaid, no evidence, is coming forth, about Jagtar Singh

to have stepped into the shoes of Bhupinder Singh Bansal or any purchase made by him of the property in question. This assertion, so made, do not raise any triable issue to grant leave to defend.

So far as, payment of house tax by the petitioners-tenant is concerned, even if it has been done so, then, it in itself do not make out a case for leave to defend. At the maximum, it may build a case for adjustment of the rent, but not a ground for leave to defend.

In view of the observations foregoing, learned Rent Controller had apprised the material, coming forth, on the touchstone of the provisions of Section 13B of the ibid Act and rightly denied leave to defend to the petitioners-tenant, as a result whereof, consequential eviction order was passed. Thus, the impugned order brooks no interference.

Hence, the present revision petition is hereby dismissed.

May 02, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No