



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5226-2015(O&M)

Date of Decision: August 05, 2024

Harish Chander Talwar

...Petitioner

Versus

Amarjit Singh

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Dharam Vir Sharma, Senior Advocate with
Ms.Pooja Yadav, Advocate
for the petitioner.

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

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 24.07.2015 passed by learned Rent Controller, whereby, an application for leave to contest under Section 18A was dismissed and petition under Section 13B of the East Punjab Rent Restriction Act was allowed.

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

That, initially, landlord Amarjit Singh (respondent herein) had filed a petition under Section 13B of the East Punjab Urban Rent Restriction Act, thereby, seeking ejectment of the tenant-Dr.Harish Chander Talwar (petitioner herein) from the shop, as detailed in the head note of the petition



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in question. Therein, it was asserted that Amarjit Singh was born in India and originally is resident of Goraya. He shifted to Canada in the year 1982, for the purpose of taking employment there and now, he is staying there. Being NRI, as defined in Section 2(dd) of the ibid Act, he asserted his entitlement to immediate possession of the suit property for his personal necessity. Further, it was averred in the petition that he had come to India and want to shift here permanently as climate of Canada does not suit him because of his old age and his health is deteriorating day-by-day and he is also patient of Asthma. He has permanently decided to come back to India to reside here and to start his business of confectionery.

He further asserted that he is owner of the property in dispute for the last more than 5 years. He purchased the suit property vide registered sale deed dated 20.10.2003. Initially, the tenant was under tenancy with Gurbachan Kaur (mother of Amarjit Singh). After purchasing the same, the rent was increased from Rs.2000/- per month from January 2005. Now, circumstances have changed and he wants to come back to India. Although, he is co-sharer but under the law, even a co-sharer can file eviction petition. Moreover, his brothers are also NRI. He had come to India and had filed the petition under his own signatures.

The tenant made appearance and filed an application for granting permission/leave to contest/allowing him to contest the case on merits. In the application, he disputed the maintainability of the petition filed by Amarjit Singh and also about the same to have been filed only to harass the tenant. He also challenged the right and locus standi of Amarjit



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Singh to file the petition under Section 13B of the Act and that the same has been filed under false and frivolous grounds and furthermore, that Amarjit Singh is not covered under the definition of 'Non-Resident Indian', as per the provisions of the East Punjab Urban Rent Restriction Act.

Also, it was disputed that Amarjit Singh s/o Bakhshish Singh is not owner/landlord of the suit property. No valid and genuine sale deed had ever been executed by Gurbachan Kaur in favour of Amarjit Singh. Even, Gurbachan Kaur wife of Bakhshish Singh had earlier filed ejectment petitions, which was dismissed. Further, it was submitted that as the property was taken on rent by tenant-Dr.Harish Chander Talwar from Gurbachan Kaur, widow of Bakhshish Singh and thereafter, he started paying rent to Nirmal Singh Dhillon son of Lt.Bakhshish Singh. So, there is relationship of landlord and tenant, between Nirmal Singh Dhillon and Dr.Harish Chander Talwar.

The tenant also disputed the plea of bonafide requirement of the shop by Amarjit Singh. Furthermore, it was asserted that Amarjit Singh has many other commercial premises at Goraya, which are in his possession i.e. on the Post-Office road. As such, a prayer was made for seeking permission to contest the petition on merits.

In reply, landlord Amarjit Singh had denied all the assertions and asserted that there are no sufficient grounds for allowing the application for leave to contest. As such, a prayer was made for dismissal of the application filed by the tenant.

After hearing learned counsel for the parties, vide impugned



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order dated 24.07.2015, an application for leave to contest was dismissed, with consequential eviction order.

Considering the 'Non-Resident Indians' having long years of their lives abroad, not finding conditions congenial in their own country, on their return, either to settle down or to take up any business, due to the rigid legal provisions of the existing Rent Act and that they were unable to recover possession of their residential, scheduled or non-residential buildings, for their own use and occupation and also, while mitigating the hardship faced by the NRI landlords, an amendment was brought, vide Amendment Act No.09 of 2001. The provisions have been added/amended, with a view to provide summary proceedings for eviction of the tenant by his NRI landlord, subject to fulfillment of certain conditions.

It shall be appropriate to take note of Section 2(dd), Section 13B and Section 19(2)B, for the issue in hand and they are reproduced, as herein given:-

"Section 2 (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 an uncertain period;

(13-B). Right to recover immediate possession of residential building or scheduled building and/or non- residential building to accrue to Non-resident Indian.--

(1) Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one



ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:

Provided that a right to apply in respect of such a building under this section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2) Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3) Where an owner recovers possession of a building under this section, 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 the said building and the Controller shall make an order accordingly."

19 (2-B) The owner, who is a Non-resident Indian and who having evicted a tenant from a residential building or a scheduled building and/or non-residential building in pursuance of an order made under Section 13-B, does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person, other than the tenant in contravention of the provisions of sub-section (3) of Section 13-B, shall be punishable with imprisonment for a term, which may extend to six months or with fine which may be extended to one thousand rupees or both."

The aforesaid provisions have been considered by the Hon'ble Supreme Court threadbare in ***Baldev Singh Bajwa vs. Monish Saini, 2005 12 SCC 778*** and the conclusions drawn were as herein given:-

“(i) Any person, who himself is of Indian Origin and/or whose parents/grand-parents are/were of Indian Origin and who is settled outside India either permanently or temporarily for taking up employment or for carrying on business/vocation



would be a Non-Resident Indian;

(ii) a Non-Resident Indian-landlord has a special right to seek immediate possession of the let-out premises if he is its owner for atleast a period of 5 years before his applying to the Rent Controller for possession and that he requires the premises for his own use and occupation and/or for anyone ordinarily living with him and is dependent on him;

(iii) the right under Section 13-B of the Act for immediate possession can be availed of only once during the life-time of such an owner/NRI landlord;

(iv) the NRI-landlord has the choice to select one amongst several other residential/non-residential buildings;

(v) it is not necessary for a NRI-landlord to permanently return to India for seeking eviction of the tenant;

(vi) the Courts shall presume that the need of the NRI landlord is genuine and bonafide, though the tenant is entitled to prove that in fact and in law, the requirement of the NRI landlord is not genuine;

(vii) a heavy burden would lie on the tenant to prove that the requirement of the NRI-landlord is not genuine and mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour;

(viii) if the NRI-landlord gets possession under Section 13-B of the Act, he can neither transfer it either by sale or by any other mode nor can he let it out for a period of 5 years and in case of any breach, the tenant is entitled to seek restoration of possession;

(ix) after getting the possession, the NRI-landlord should occupy the premises continuously for a period of 3 months.”

Considering the statutory provisions aforesaid and the conclusions drawn in **Baldev Singh Bajwa's case (supra)**, the grounds of challenge, as set up on behalf of the tenant, would require examination.

The first submission raised, on behalf of the tenant is that the landlord herein, would not fall within the definition of 'Non-Resident



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Indian' under Section 2(dd), as he is a Canadian citizen and is permanently residing there. However, the submission so made, is misconceived. Section 2(dd) defines 'Non-Resident Indian' to mean 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, as would indicate his intention to stay outside India for an uncertain period.

Perusal of the record reveals that the landlord Amarjit Singh had filed eviction petition under Section 13B, while categorically asserting that he was born in India and is originally resident of Goraya and he shifted to Canada in the year 1982, for the purpose of taking employment and earning livelihood for better future. Furthermore, he had also placed on record, the photocopy of the passport, which reveals about his nationality to be Canadian. Considering the same, the NRI status of the landlord, as such, is apparent. Suffice to make mention that the learned Rent Controller has appropriately placed reliance upon ***Baldev Singh Bajwa's case (supra), as well as Sohan Lal vs. Swaran Kaur, 2003(2) RCR (Civil) 407 (P&H)***, to conclude about the intention, on the part of the landlord to stay outside India, for an uncertain period and precisely on this account, as he was settled abroad and having foreign passport, he does fall within the ambit of definition of 'Non-Resident Indian' under Section 2(dd) of the *ibid* Act.

So far as, the requisite condition of the landlord to be owner of the suit property for 5 years, before the institution of the suit is concerned, it



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is pertinent to mention that Amarjit Singh has categorically stated in the eviction petition that the shop in dispute was purchased by him, vide sale deed dated 20.10.2003 from Gurbachan Kaur, his mother and now, on the basis of the said sale deed, he is owner of the property in question. Thus, there is relationship of landlord and tenant, between the parties to the lis.

Copy of the registered sale deed dated 20.10.2003 is coming on record, which reveals about the same to have been registered in the office of Sub-Registrar, Goraya, where, Gurbachan Kaur widow of Bakhshish Singh was residing. She had sold two houses as well as one shop, in favour of Amarjit Singh as well as his other two brothers, namely, Nirmal Singh Dhillon and Inderjit Singh in equal shares.

Though, it is denied, at the instance of the tenant that sale deed is bonafide, but nothing as such, is coming forth, relating to the same. It is a sweeping assertion, so made, which cannot be considered above than the registered document, having executed in favour of Amarjit Singh. Even though, now it is submitted that Gurbachan Kaur had earlier filed ejectment petitions, qua the same shop, but the same were dismissed. Annexure P-1 is the ejectment petition filed by the instance of Gurbachan Kaur on 14.10.1998 and the same was decided on 11.10.2002. Therein, she had stated about the requirement of the shop for the need of her son, who want to start the business. However, the same was dismissed vide order dated 11.10.2002 (Annexure P-2), which is reproduced, as herein given:-

“Ld. Counsel for the petitioner gave a statement that he will file the fresh petition under the new law for eviction framed for NRI’s and he do not want to proceed with the present petition.



In view of the statement, the present petition stands dismissed as withdrawn and petition is at liberty to file the fresh petition under the new eviction law framed for Non-Residential Indians. File be consigned to the record room.”

The next eviction petition was filed by Gurbachan Kaur on 14.03.2003 and the same dismissed under Order 17 Rule 3 CPC. The third was filed again on 14.06.2003 and the same dismissed in default vide order dated 29.09.2004, copy where of is Annexure P-5. May it be so. Solely, on account of ejectment petitions earlier filed by Gurbachan Kaur, having been so decided, do not debar from the sale of property by a mother to her sons and without any material coming on record, it cannot be held that it was not bonafide transaction. In the given circumstances, landlord-Amarjit Singh, in his own right has stated about the need of the shop. All the three brothers are co-owners of the said shop in question. It is well settled that any co-owner can file the ejectment petition. More particularly, it is to be considered in the present case that all the three brothers are NRI and none of other two brothers have questioned the factum of filing of the ejectment petition by Amarjit Singh.

Even though, it is asserted that tenant-Dr.Harish Chander Talwar had been giving rent to Nirmal Singh Dhillon, the other brother of Amarjit Singh, but however, collection of the rent, does not *ipso facto*, defeat the right of Amarjit Singh, who is also co-owner of the shop in dispute. Even, Nirmal Singh has not disputed the same. So far as, ownership of Amarjit Singh is concerned, as already mentioned aforesaid, by virtue of purchase of property in the year 2003, the sons had purchased

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the property from their mother, vide registered sale deed. That being so, the petition having filed in the year 2013 reveals that Amarjit Singh was owner of the demised premises for more than 5 years, which also fulfills the statutory requirement as per Section 13B of the ibid Act.

Besides the aforesaid, equally devoid of merits is the contention raised on behalf of the petitioner-tenant, with regard to landlord, being in possession of many other commercial premises at Goraya.

In the eviction petition under Section 13B, there is categoric assertion made by the landlord that he has got no other residential building or shop to support his business, except the shop in disputed. Till today, he has not got vacated any shop. In the light of this assertion, it is appropriate to consider that vague and bald assertion has been made in the application for leave to contest that landlord Amarjit Singh has many commercial premises at Goraya, which are in his possession i.e. Post Office road. No material to so substantiate this assertion has been placed on record. Otherwise also, so far as this assertion is concerned, it is pertinent to mention that requirement of mandatory disclosure of other properties has been incorporated only under Section 13(3) of the Rent Act, which deals with personal requirement of resident Indian. Such requirement is not there, while seeking eviction under Section 13B, which is a special right conferred upon NRI. There is no requirement for the landlord for filing an eviction application under Section 13B of the Rent Act, to disclose that he is in possession of other properties within the Municipal city limits, where the demised premises is situated. In this regard, beneficial reference is made to M/s Hot Millions and others vs.



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Harish Batra, 2018(2) RCR (Rent) 359, wherein, while adjudicating on the question, with regard to the non-incorporation of the disclosure of other properties, it was held that had that been the intention of the legislature, it would have been so mentioned in Section 13B as well, as has been mentioned in Section 13(3) of the Rent Act. Thus, it was concluded that the only requirement is that the landlord should be a NRI, owner of the demised premises, for the last five years and the averments made in the petition that he requires the premises for his own use and occupation.

Furthermore, a lot of emphasis was laid on the submission that the bonafides of of eviction petition, at the hands of landlord Amarjit Singh is questionable. The actual motive was only to seek eviction of the tenant, which Gurbachan Kaur, as such, had failed to obtain the possession. However, the aforesaid submission is not tenable.

In pursuance of the purchase of the property by the brothers, one of the brother Amarjit Singh had filed a petition for seeking possession, for his own need. Solely, on account of Amarjit Singh, having filed the petition for returning back to India and starting his business of confectionery, it cannot be stated that there was any malafide intention, on the part of Amarjit Singh.

In the case of ***Baldev Singh Bajwa's (supra)***, the Hon'ble Apex Court had observed that Rent Controller's power to give leave in a petition filed under Section 13B, is restricted by the condition that the affidavit filed by the tenant, seeking leave to contest, discloses such fact, as would disentitle the landlord from obtaining an order for recovery of possession. In



the summary proceedings, the tenant's right to contest the application, would be restricted to the parameters of Section 13B of the Rent Act. However, the tenant cannot widen the scope of his defence, by relying on any other fact, which does not fall within the parameters of Section 13B. The tenant's right to defend the claim of the landlord under Section 13B, for eviction, would arise, if the tenant is in a position to show that the landlord in the proceedings is not NRI landlord; that he is not the owner thereof or his ownership is not for the requisite period of 5 years, before the institution of proceedings and that the landlord's requirement is not bonafide. Also, further it was held therein that the assertions made by the NRI landlord of his requirement, shall be presumed to be genuine and bonafide, unless rebutted by the "*tenant by placement of cogent and material facts and evidence, in support thereof, at the stage of leave to contest before the Controller*".

As such, it is evident that there is requirement of '**strong case**' for obtaining leave to defend. 'Strong case' means a 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 view of the same, as observed aforesaid, the requisite assertions, in fact, had been made by the landlord, in his affidavit under Section 13B of the ibid Act and on all the three aforesaid counts, the submission made by learned counsel for the tenant, are bereft of merits.

In view of the aforesaid discussion, learned Rent Controller has appropriately concluded about there being no triable issue and dismissed the application under Section 18A of the East Punjab Urban Rent Restriction Act, leading to consequential ejectment order having passed against the tenant.

As such, the impugned order warrants no interference by this Court and hence, the revision petition sans merit and is hereby dismissed.

August 05, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No