

**CR-4052-2022 (O&M)****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****(290)****CR-4052-2022 (O&M)****Date of decision: - 02.04.2025****Fakiria Mohammad****....Petitioner****Versus****Gurdial Singh Kailey and another****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Vaibhav Sehgal, Advocate, and
Ms. Vardhani Gupta, Advocate
for the petitioner.

Mr. Anmol Puri, Advocate
for the respondents.

**********VIKAS BAHL, J. (ORAL)**

1. Present civil revision has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 03.09.2022 (Annexure P-4) passed by the trial Court in RP No.152 of 2019 vide which application filed by the petitioner for dismissal of the ejectment petition has been declined.

2. Learned counsel for the petitioner has submitted that since the respondents are Non-Resident Indians, thus, as per the provisions of Section 75(2) of the Punjab Rent Act, 1995 (for short 'the Act of 1995'), the eviction petition could only be filed under the Act of 1995 and no petition was maintainable under the East Punjab Urban Rent Restriction



Act, 1949 (for short 'the Act of 1949'). It is further submitted that in the present case, the eviction petition has been filed under the Act of 1949 and thus, the same was not maintainable and the application filed by the petitioner for rejection of the same was meritorious and the same was required to be allowed and the same has been illegally dismissed vide the impugned order.

3. Learned counsel appearing for the respondents, on the other hand, has submitted that the respondents had filed a petition under Section 13 of the Act of 1949 on the ground of non-payment of rent and it was not filed for immediate possession on the plea that they were Non-Resident Indians. It is further submitted that the case is squarely covered in favour of the respondents as per the law down by the Co-ordinate Bench of this Court in ***CR-1296 of 2022*** titled as “***M/s P.S. Hosiery Factory and another Vs. Gulshan Rai Saini***, along with another connected matter. It is stated that the impugned order has been rightly passed and thus, deserves to be upheld.

4. This Court has heard learned counsel for the parties and has perused the paper-book and finds that the impugned order is in accordance with law, deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons detailed hereinafter.

5. It is not in dispute that the respondents had filed a petition under Section 13 of the Act of 1949 for seeking ejectment of the premises in question against the present petitioner on the ground of non-payment of



rent. The said petition has not been filed by the respondents for immediate eviction on the plea of they being Non-Resident Indians for which the special provisions have been enacted under the Act of 1949 as well as in the Act of 1995. The Rent Controller, vide order dated 03.09.2022 had dismissed the application filed by the petitioner/tenant for dismissal of the case by observing that the petition had been filed by the respondents under Section 13 of the Act of 1949 and not under Section 13-B of the Act of 1949 and since the tenancy was of the year 1998, thus, the petition filed by the respondents on the ground of non-payment of rent was maintainable under Section 13 of the Act of 1949.

6. The fact that the tenancy is of the year 1998 is not disputed before this Court. Thus, admittedly the tenancy is prior to 30.11.2013, when the 1995 Act came into force. The Co-ordinate Bench of this Court in the case of *M/s P.S. Hosiery Factory and another (supra)*, after taking into consideration the provisions of Sections 75 and 24 of the Act of 1995 as well as the provisions of Section 13-B and Section 2 of the Act of 1949, observed that under the Act of 1949, a landlord was entitled to file a petition for ejectment on different grounds and as per the said Act, in addition, an NRI, who was owner of the property, could also file a petition for ejectment for immediate possession from the tenant and similarly, under the Act of 1995, a landlord can file a petition for ejectment on different grounds but NRI landlord can also file a petition for immediate possession of the tenanted premises if the same is owned by him. It was further observed that as per the provisions of Section 75(2)



of the Act of 1995, the tenancy, which was created prior to coming of the Act of 1995, shall be governed and disposed of in accordance with the provisions of the Act of 1949 and since the ejectment petition has been filed with respect to tenancy created prior to the coming into force of the Act of 1995 and was not for immediate possession on the plea that the respondent was an NRI landlord, thus, the petition under the Act of 1949 was maintainable. The position of law, which was crystalized in para 17 of the said judgment, is reproduced as under: -

“17. In the light of the above discussion, it is held as under :-

A. If the tenancy is created prior to 30.11.2013 and ejectment petition is filed by the NRI landlord for possession, on different grounds, but not for immediate possession as owner of the property, as per Section 13-B of the Act of 1949, then the provisions of the Act of 1949 are applicable.

B. If ejectment is sought by the NRI landlord, being owner of the property, for immediate possession, then the provisions of the Act of 1995 shall be applicable and petition under Section 13-B of the Act of 1949 is not maintainable.”

7. No contrary judgment has been cited by learned counsel for the petitioner. In the present case also, the eviction petition has been filed by the respondents on the ground of non-payment of rent which is a ground available under Section 13 of the Act of 1949. The tenancy is of the year 1998 and thus, prior to 30.11.2013, the date on which the Act of 1995 came into force.

8. Thus, keeping in view the above-said facts and circumstances and in view of the law laid down in the above-said judgment, the petition filed by the respondents-landlord is maintainable and the impugned order

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dismissing the application filed by the petitioner/tenant for dismissal of the said petition is in accordance with law and deserves to be upheld and is accordingly upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

April 02, 2025
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(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes