

Punjab and Sind Bank Vs Mahn Singh

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 5, 2013

Acts Referred: East Punjab Urban Rent Restriction Act, 1949 "Section 13B, 18A(4), 2(dd)

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: I.P. Singh, for the Appellant;

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This is tenant's revision petition challenging the order dated 4.4.2013 of the Rent Controller, Chandigarh whereby

the application for leave to defend in a petition u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short the "Act") as amended

filed on behalf of the petitioner-tenant, has been dismissed. The respondent filed a petition u/s 13-B of the Act for ejectment of the petitioner-Bank

from the demised premises i.e. House No. 8, Sector 8-A, Chandigarh alleging that he is an NRI within the definition of NRI provided under the

Act as applicable to the Chandigarh. He is settled in Singapore and wants to return to India and needs the demised premises for his own use and

occupation. It is his further case that the property in question was purchased by him more than 30 years back. The demised premises were rented

out upto 30.9.2007 to the petitioner in September, 1992 by executing a rent deed between the parties. The said rent deed has expired and no

fresh deed for demised premises has been executed between the parties. The respondent has come to India in February, 2010 after his retirement

in January, 2010 to shift permanently. He had requested the officials of the petitioner-Bank to vacate the premises. However, they have refused to

do so. It has been further stated that the petitioner is aged about 81 years. He is not engaged in any business/profession/work at present and he

has not filed any similar proceedings u/s 13-B of the Act with regard to any property whatsoever. Thus, he was entitled for immediate possession

by way of ejectment of the petitioner from the demised premises.

2. On receipt of notice, the petitioner-Bank filed an application for leave to defend raising various objections. The said application was supported

by an affidavit of Harpal Singh, Principal & Chief HRD, Punjab & Sind Bank, PSB Centre for Banking Research & Training, Bank Square,

Sector 17-B, Chandigarh.

3. In the application for leave to defend, the petitioner-Bank denied the requirement of the demised premises for personal necessity of the

respondent-landlord further submitting that the respondent does not fulfill the conditions as laid down u/s 13-B of the Act for entitling him to get

eviction of the petitioner being an NRI. It was further averred that the lease deed was executed on behalf of the Punjab and Sind Bank through

Principal Staff Training College, Chandigarh as lessee who has not been impleaded as a party in the present petition and thus, the instant petition is

bad for non-joinder of necessary parties and is liable to be dismissed. It was further pleaded in the application for leave to defend that the affidavit

in support of the eviction application filed on behalf of the respondent-landlord was defective and thus, there were triable issues and therefore, the

petitioner-Bank was entitled to the grant of leave to defend the eviction petition filed on behalf of the respondent-landlord.

4. The respondent-landlord filed reply to the aforesaid application for leave to defend denying the grounds as raised.

5. The Rent Controller, Chandigarh vide impugned order dated 4.4.2013 has rejected the application for leave to defend filed on behalf of the

petitioner-Bank observing that the respondent is an NRI and the petitioner-Bank has placed on record no evidence/document to assail the status

of the respondent as an NRI. The Rent Controller further found that the respondent was owner of the property in dispute for more than 5 years

and prima facie, there was no such evidence/document on record to suggest that the conditions for filing of the petition u/s 13-B of the Act was not

fulfilled by the respondent.

6. Challenging the aforesaid order, learned counsel for the petitioner has vehemently argued that the question whether a foreign passport holder

and a foreign citizen can be called a Non-Resident Indian is pending in the Hon"ble Supreme Court of India and since the respondent is holding a

Singapore passport, he cannot be held to be an NRI under the definition of NRI and a similar question is already pending before the Hon"ble

Supreme Court in SLP No. 189 of 2011. Thus, the Rent Controller while declining the grant to leave to contest the petition has acted with material

irregularity and illegality in exercise of its jurisdiction. It has been further argued that the lease deed was executed with Punjab & Sind Bank a body

Corporate constituted under the banking companies having its Head Office at New Delhi and Regional Staff Training College in House No. 8,

Sector 8, Chandigarh through Principal Staff Training College and Regional Manager, Chandigarh whereas the petition was filed by impleading the

Punjab and Sind Bank, House No. 8, Sector-8, Chandigarh, which is not maintainable as the same is not a legal entity and there was no lease

deed/rent deed executed by the Punjab & Sind Bank, House No. 8, Sector 8, Chandigarh and thus, the petition is bad for non-joinder of

necessary parties and the same being the triable issues leave to contest was required to be granted. It is the further case of the petitioner that it had

raised the several triable issues such as filing of defective affidavit with the petition, however, the trial Court has erred at law while declining the

prayer of the petitioner and thus, the impugned order is liable to be set aside and the petitioner-Bank is entitled to the grant of leave to defend as

triable issues are raised in the case in hand.

7. I have heard learned counsel for the petitioner and have perused the impugned order as well as the judgments produced before this Court.

8. In a petition filed u/s 13-B of the Act, in order to succeed, the respondent-landlord is bound to prove the following ingredients:-

(1) That the petitioners are NRIs and have returned to India and the premises in dispute are required for their personal use and requirement.

(2) That the petitioners are owner of the property in dispute for more than five years.

(3) That the petitioners have not got vacated any premises by filing petition u/s. 13-B of the Act earlier.

9. In fact, counsel for the petitioner could not dispute the existence of aforesaid ingredients in the case in hand, except to state that the respondent

who is having a passport of Singapore is not an Indian citizen and thus, cannot be termed as Non-Resident Indian and that a similar issue is

pending before the Hon'ble Supreme Court in SLP No. 189 of 2011, therefore, the Rent Controller should have allowed leave to contest as the

issue whether the respondent falls within the definition of NRI is debatable and triable issue. However, the argument raised is without any merit.

10. It is useful to refer to the judgment of the Hon'ble Supreme Court in Baldev Singh Bajwa Vs. Monish Saini,

24. Definition of Non-resident Indian"" (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either

permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other

purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a Non-resident Indian. Thus to be a NRI,

it is sufficient that a person of an Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account

of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person

who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of University would not be a NRI

because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase "Indian

Origin" has not been defined in the Act of 1949. The dictionary and in ordinary parlance phrase "origin" refers to persons parentage or ancestry.

The person whose parent, grand-parents, or great-grand parents were born in India and permanently resided in India would be an NRI for the

purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and shifted to the foreign country or that because he

holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not the NRIs within the meaning

of the Act because they do not have the Indian origin. Submissions of the learned counsel for the appellants is to bring the case within the four

corners of Section 2(dd) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the

interpretation of Section 2(dd) and 13-B sought to be placed by the learned counsel. Return to India could not be read as return to India

permanently with an intention to settle in India permanently. If we read the phrase "return to India" along with the definition of the "NRI" u/s 2(dd)

of the Act, it is clear that the special category of landlords NRI could also be a person who has settled permanently outside India. Thus permanent

resident outside India being NRI can claim ejectment.

11. Thus, definition of NRI as provided u/s 2(dd) of the Act has already been interpreted in Baldev Singh Bajwa's case (supra).

12. At this stage, the judgment in the case of Sohan Lal v. Swaran Kaur 2003 (2) RCR 407, be referred to which reads thus:

The expression "NRI" used in Section 2(dd) of the Act has been clearly defined and there is no ambiguity necessitating any external aid for

interpreting the same. The ordinary meaning of the expression "NRI" given in Section 2(dd) of the Act is that a person of Indian origin living

abroad whether settled permanently or temporarily. The purpose of his living abroad has been amplified either for taking up employment outside

India or for carrying on business or vocation outside India or for any other purpose as would indicate his intention to stay outside India for

uncertain period. Therefore, the definition of expression "NRI" cannot be confined to only those who are holding Indian Passport and continue to

be the Indian citizens. The definition in fact embraces all those categories of Indians living abroad whether citizens or non-citizens, whether born in

India or abroad, whether carrying Indian or foreign passport. It appears that as long as he is owner of a property in the State of Punjab legislature

has intentionally used a wider expression to include large number of NRIs.

13. It may further be noticed that though question with regard to the interpretation of the definition of NRI is pending before the Hon"ble Supreme

Court in the SLP No. 189 of 2011, however, neither operation of the definition of Section 2(dd) stayed nor that of the judgment of the Hon"ble

Supreme has been stayed and in view thereof, it cannot be said that the petitioner has raised the triable issue. Rather in view of the interpretation of

the definition of 2(dd) by the Hon"ble Supreme Court in Baldev Singh Bajwa"s case (supra), the matter has been decided against the petitioner-

tenant and thus, the ground, as raised, is without any merit and is rejected.

14. It may further be noticed that the validity of the notification dated 9.10.2009 as amended extending the provisions of East Punjab Urban Rent

Restriction Act to the Union Territory Chandigarh has already been upheld by a Division Bench of this Court in CWP No. 15378 of 2011 decided

on 23.8.2011.

15. At this stage, it may also be noticed that it is well settled that on fulfilling the requirement of Section 13-B of the Act, a presumption u/s 18-

A(4) of the Act is deemed to be drawn in favour of the landlord regarding his bona fide need of the demised premises. This view finds support

from the judgment in Ranjit Puri Vs. Dr. Mohinder Paul Singh,

16. Thus, the contention of the petitioner that respondent is not an NRI is without any merit.

17. So far as the contention of the counsel for the petitioner that the petitioner is bad for non-joinder of parties is again liable to be rejected as

admittedly, the Principal Staff Training College, House No. 8, Sector 8, Chandigarh has executed the lease deed on behalf of the Punjab and Sind

Bank a body corporate and the present petition has been filed against the said Bank which is housed in the demised premises.

18. Not only this, the argument raised is falsified from the fact that an affidavit in support of the application for grant of leave to defend has been

signed by the Principal of the Punjab and Sind Bank Center for banking research and training and thus, in view of the aforesaid facts, the issue

raised is frivolous and is liable to be rejected. Lastly an argument has been raised that eviction application filed u/s 13-B of the Act is to be

supported by an affidavit and since the affidavit is defective, the leave to defend should have been granted. Though counsel for the petitioner has

argued that an affidavit is necessary, however, he could not show any judgment to support his contention.

19. At this stage, it may be seen that there is no such requirement u/s 13-B of the Act to file an affidavit in support of the eviction application.

Further it may be noticed that the contents of the eviction application has been duly verified by the respondent-landlord.

20. Thus, there is no requirement of law that a petition filed u/s 13-B of the Act is to be supported by any affidavit as affidavit is not an essential

requirement to support application in petition filed u/s 13-B of the Act. This view finds support from the judgment of this Court in Mrs. Jatinder

Kaur Vs. Sh. Rohit Chopra,

21. Thus, the argument raised is without any merit and is rejected outrightly.

22. No other argument has been raised. In view thereof, the present petition has no merit and the same is hereby dismissed.