

(2009) 12 P&amp;H CK 0132

**High Court Of Punjab And Haryana At Chandigarh****Case No:** CR No. 4937 of 2007 (O and M)

Inderjit

APPELLANT

Vs

Roop Lal

RESPONDENT

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**Date of Decision:** Dec. 14, 2009**Acts Referred:**

- East Punjab Urban Rent Restriction Act, 1949 - Section 13B

**Citation:** (2011) 3 RCR(Civil) 755**Hon'ble Judges:** Surya Kant, J**Bench:** Single Bench

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**Judgement**

Surya Kant, J.

This revision petition is directed by the tenant against the eviction order dated 31.07.2007 passed by the Rent Controller, Phagwara, in an eviction petition instituted by the respondent - NRI landlord u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949.

2. The respondent averred in his eviction petition that he is a Non-Resident- Indian who is owner of the demised premises comprising shop No. 2, was purchased by him vide registered sale deed dated 21.02.1990. It was further averred that the petitioner is a tenant in the shop in dispute inducted vide Rent Note dated 19th April, 1993 and this fact has been admitted by the respondent himself in a Civil Suit for injunction filed by him against Devi Dayal son of Harnek Dass, and Tarsem Lal - brother of the respondent. The respondent further averred that he has decided to return and settle down in India and to start the business of Restaurant in the shop in dispute for which he has sufficient funds to invest. He also averred that he has not taken the benefit of Section 13-B of the Act in respect of any other building.

3. In support of the averments made in the eviction petition, the respondent appended a copy of the registered sale deed dated 21st February, 1990, site plan of various shops including the one in dispute, certified copy of the mutation entered in

his favour, a copy of his Passport bearing No. F-0754100 issued in San Francisco, USA, a Photostat copy of his Permanent Resident Card issued by the US Government and a copy of the plaint in Civil Suit No. 20 dated 12th February, 2005 which the petitioner -tenant had filed against the respondent's brother and one Devi Dayal.

4. Upon notice, the petitioner - tenant moved an application dated 1st May, 2006, seeking leave to contest, inter-alia, on the grounds [i] the respondent is not a NRI and he does not fall in the definition of NRI given under the 1949 Act; [ii] the respondent has got no, locus-standi as there is no relationship of landlord and tenant between the parties; [iii] the petitioner in fact is a tenant under Tarsem Lal son of Ujagar Ram, who had inducted him as such vide rent note dated 19th April, 1993; [iv] the eviction petition has been filed with an ulterior motive and y misusing the process of law; [v] there are several other residential and commercial properties owned by the respondent - landlord within the Municipal limits of Phagwara and that [vi] the respondent has not come to the court with clean hands.

5. The Rent Controller vide his impugned dated 31st July, 2007 has found no triable issue arising out of the objections raised by the petitioner - tenant and while dismissing his application for leave to contest, has passed the consequential eviction order.

6. I have heard learned counsel for the parties at some length and perused the records including that of the Rent Controller which have been summoned.

7. In my considered view, the contentions raised on behalf of the petitioner are de-void of any merit and are liable to be turned down. The Indian Passport issued to the respondent from San Francisco, USA coupled with the copy of the Permanent Resident Card issued to him by the US Government conclusively prove his status as a "Non-Resident-Indian". Similarly, the registered sale deed dated 21st February, 1990 read with the certified copy of the mutation leave no scope to doubt his absolute title qua the land purchased by him vide the said registered sale deed. Likewise, the petitioner - tenant has nowhere disputed that the shop in dispute is not constructed on the land purchased by the respondent vide the aforesaid registered sale deed.

8. The main plank of argument on behalf of the petitioner - tenant is that there is no relationship of landlord and tenant between the parties as he was inducted as a tenant by Tarsem Lal - brother of the respondent - NRI landlord. The petitioner has also attempted to rake up another factual controversy before this Court by questioning the "description" and "identity" of the shop let out to him.

9. In order to appreciate both the contentions, it would be appropriate to reproduce the following stand taken by the petitioner - tenant in civil suit No. 20 dated 12th February, 2005 which he had admittedly filed against the brother of the respondent -NRI landlord and another person :-

1. That the plaintiff took the shop on rent from the defendant No. 2 at the rate of Rs. 300 P.M. in the year 1992 and a writing to this effect was made on 19.4.1993. Photocopy is attached, as fully detailed and described in the heading of this application, situated at Main Road, Mohalla Shivpuri, Phagwara. The plaintiff is carrying the business of tailoring in the suit shop peacefully.

2. That the plaintiff has been paying the agreed upon rent regularly to the defendant No. 2. But the defendant No. 2 did not issue any receipt due to cordial relations between the plaintiff and defendant No. 2. Electric meter is fitted in the house of defendant No. 2 and electric wires is fitted in the disputed shop. The electricity consumption bills are being paid to the P.S.E.B. by the plaintiff. Some PSEB bills are attached

10. Similar averments have been made by the petitioner in Para 3[iv] of his application for leave to contest dated 1st May, 2006.

11. It may be seen that the petitioner has not disputed his induction as a tenant in the shop in dispute situated at Main Road, Mohalla Shivpuri, Phagwara vide Rent Note dated 19th April, 1993 executed by Tarsem Lal - brother of the respondent. The respondent in his eviction petition has also sought eviction of the petitioner from that very shop situated at Mohalla Shivpuri, Phagwara in which he was inducted as a tenant vide rent note dated 19th April, 1993. In fact, the respondent has also averred in the eviction petition to the same effect that the petitioner has admitted his tenancy in the demised premises in the above reproduced paragraphs of the civil suit.

12. The respondent has further averred that the shop in dispute was purchased by him vide registered sale deed dated 21st February, 1990, a copy of which has also been placed on record. The petitioner - tenant has nowhere disputed in his application for leave to contest that the property including land measuring 1 kanal 10 marlas purchased by the respondent - NRI landlord vide sale deed dated 21st February, 1990, is other than the property which includes the shop in dispute. On the other hand, the brother of the respondent - landlord, namely, Tarsem Lal has sworn an affidavit, which is on record that the property which is subject matter of the sale deed dated 21st February, 1990 including the shop in dispute, is exclusively owned by the respondent and he had let out the same to the petitioner - tenant for and on behalf of his brother, who is settled in U.S.A. Suffice it to say that though the respondent, while living abroad, authorized his brother to let out the demised premises and collect the rent, nevertheless such authorisation does not affect his ownership rights acquired on the basis of a valid title deed. The respondent continues to be the owner-cum-landlord for the purposes of Section 13-B of the Act. There is hardly any material on record to doubt the bona-fide of the respondent who has categorically averred that he is now 55 years old and wants to start his Restaurant business for which he possesses sufficient means and, therefore, requires the shop in dispute for his personal use and occupation.

13. For the reasons afore-stated, I do not find any merit in this revision petition, which is accordingly dismissed.