

Ram Lal Vs Rashpal Lal

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 17, 2009

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

Citation: (2011) 3 RCR(Civil) 756

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Judgement

Surya Kant, J.

CM No. 26701-02-CII of 2009

Allowed as prayed for subject all just exceptions.

Documents, Annexure P1, P2 & P3 comprising Jamabandies for the year 1975-76, 1990-91 and 2005-06, respectively are taken on record.

CM stands disposed of.

CR No. 6290 of 2009

1. This revision petition is directed by the tenant against the eviction order dated 07.08.2009 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 (hereinafter referred to

as "the Act").

2. The respondent sought eviction of the petitioner from a shop situated at Mohalla Satnampur, Phagwara, District Kapurthala on the ground that

he is a Non-Resident Indian; he is owner-cum-landlord of the premises for more than 5 years; has decided to settle in India and start some

business and thus, needs the demised premises for his personal use and occupation.

3. Upon notice, the petitioner-tenant moved an application u/s 18-A of the Act, seeking leave to contest, inter alia, pleading that :-

i. that the respondent is not a Non-Resident Indian in terms of Section 2(dd) of the Act;

ii. that the respondent is not the owner-cumlandlord of the property in dispute;

iii. that there is no relations (sic) of landlord and tenant between the parties as the premises was let out by one Narayan Dass.

4. The Rent Controller, Phagwara did not find any triable issue out of the objections raised by the petitioner-tenant and after declining leave to

contest, has passed the consequential eviction order, giving rise to this revision petition.

5. This Court in 2010 (3) R.C.R. (Civil) 279 : 2010 (1) R.C.R. (Rent) 588 : Civil Revision No. 1385 of 2004 Lakhwinder Kumar v. Pavitter

Kaur (dead) through LR's and Other connected matters decided on 07.09.2009, has attempted to summarize the conclusion based upon the

interpretation of the provisions inserted by the Punjab Amendment Act No. IX of 2001 and observed as follows :-

[9] With a view to ascertain that there is a triable issue raised by the tenant, the Rent Controller shall be obligated to consider such contention in

the light of judicially settled main and ancillary issues, like: (i) a NRI-landlord even if only a coowner/ joint owner in the demises premises, can seek

eviction of his tenant u/s 13-B of the Act; (ii) ordinarily, the fate of an eviction petition filed earlier u/s 13 of the Act, before Section 13-B came into

existence, is no ground for not entertaining the eviction application u/s 13-B of the Act; (iii) nothing precludes the NRI-landlord to institute parallel

proceedings for recovery of the arrears of rent, while also seeking eviction of the tenant u/s 13-B of the Act, for the reason that every landlord is

entitled to be paid the rent till the premises is required by the tenant; (iv) the general principle that the landlord is the best judge of his own

requirement and the tenant has no authority to dictate or advise his landlord as to how the latter should adjust within the available accommodation

or in a particular manner applies to an eviction application u/s 13-B of the Act also; (v) the ownership with possession of another accommodation

is no bar against a NRI-landlord to invoke his once in a life time right and get one building of his choice vacated u/s 13-B of the Act; (vi) contrary

to Section-13, the requirement of the NRI-landlord for the demised premises for his own use and occupation, shall be presumed to be genuine and

bonafide unless rebutted by the tenant; (vii) even if there are more than one tenants in a single "building", the NRI-landlord is entitled to evict;

(viii) the tenant shall have to apply for leave to contest within 15 days of effecting service on him. No application shall thereafter be entertained and

the Rent Controller has no power to condone the delay in filing such an application; (ix) even if the premises was let out by the "co-owner" or an

authorized person by the NRI landowner, it shall amount to "letting out of the premises" for and on behalf of such owner only.

6. Two-fold contentions have been raised on behalf of the petitioner-tenant. Firstly, it is urged that the respondent is neither the owner of the

premises and nor did he let out the same; and secondly, even after declining his leave to contest, the Rent Controller, Phagwara was obligated to

record evidence of the parties and then only the eviction petition could be decided.

7. Having heard counsel for the petitioner at some length and on perusal of the material placed on record, I do not find any merit in both the

contentions, noticed above.

8. The Rent Controller, Phagwara vide its impugned order dated 07.08.2009 has categorically observed that as per the revenue record comprising

Jamabandies for the year 1975-76, 1990-91 and 2005-06 (Mutation No. 12113), it stands established that the respondent is one of the coowners

of the demised premises. In order to ascertain the correctness of the above-said finding, vide order dated 30.10.2009, counsel for the petitioner

was directed to place on record copies of the above-mentioned jamabandies, which he has complied with. On perusal of the entries made in

Column No. 12 of the Jamabandi for the year 1975-76, it is apparent that the name of the respondent has been entered as a co-owner pursuant to

a Civil Court decree. As regards Jamabandies for the year 1990-91, 2005-06, the name of the respondent is duly recorded as one of the owners

in Column No. 4.

9. In this view of the matter, it stands established beyond any doubt that the respondent is one of the co-owners in the land whereupon the

demised premises is constructed and the respondent is thus, a co-owner of the demised premises and is entitled to maintain the eviction petition u/s

13-B of the Act.

10. It also stands established that the respondent acquired the ownership more than 10 years back and thus also fulfills the second ingredient of

being the owner of the demised premises for a period of over 5 years before filing the eviction petition.

11. As regards his status as a Non-Resident Indian, the respondent has placed on record copies of his Passport and the Permanent Resident Card

issued by the United State of America. There is no challenge to the correctness of these documents. The Rent Controller, Phagwara, has further

referred to the entries made in the Passport wherein, the respondent is shown to have born at Phagwara (India) which brings him within the

meaning of Non-Resident-Indian landlord as defined by their Lordships of the Supreme Court in Baldev Singh Bajwa Vs. Monish Saini,

12. So far as the bona fide personal necessity is concerned, the respondent has categorically averred that he intends to settle down in India and

wants to start some business in the demised premises. There is a statutory presumption of genuineness of need in favour of the NRI-landlord unless

rebutted by the tenant by way of some strong and cogent evidence. It is not the case of the tenant that there is any other commercial premises

owned or in possession of the respondent-landlord from where he can start his business.

13. In these circumstances and having regard to the legislative intent of a summary and speedy disposal of the NRI related cases as contained in

Section 18-A of the Act, I am of the considered view that no interference with the impugned order is called for by this Court.

14. Dismissed.