

(2010) 02 P&H CK 0344

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5956 of 2008

Charanjit Singh

APPELLANT

Vs

Baldev Singh and others

RESPONDENT

Date of Decision: Feb. 22, 2010

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13B 18A

Citation: (2011) 3 RCR(Civil) 721

Hon'ble Judges: S.D. Anand, J

Bench: Single Bench

Judgement

S.D. Anand, J.

The respondent-landlord filed a plea, for the ejectment of the tenant (petitioner herein) from the tenanted premises by resort to the provisions of Section 13-B of the East Punjab Urban Rent Restriction Act (hereinafter referred to as "the Act").

2. The petitioner-tenant applied for leave to defend the proceedings aforementioned. Leave was declined by the learned Rent Controller, vide impugned order, by noticing that all the statutory requirements conceived in terms of provisions of the Section 13-B of the Act have been fulfilled by the respondent. It was also noticed that the presumption arising in favour of the bona fide character of the ejectment demand raised by the respondent-landlord had not been rebutted by the petitioner-tenant by production of any cogent material and documentation. While noticing a plea that the adjacent shops owned by the respondent have been demolished with an intention to force the petitioner-tenant to vacate the tenanted premises, the learned Rent Controller observed that "it cannot be believed that the petitioner is demolishing the shop with an intention to cause damage to the shop in dispute and to get it vacated from the respondent."

3. Learned counsel appearing on behalf of the petitioner-tenant argues that negating of the plea raised in terms of the provisions of Section 18-A of the Act

was inappropriate inasmuch as there were indeed no grounds for the Rent Controller to hold that there were no pleas worth being contested at the trial. In support of the averment, it was argued that there are photographs available on record to prove that adjacent shops owned by the respondent- landlord had been demolished. It is apparent therefrom, the argument proceeded, that the only purpose of respondent-landlord is to cause damage to the tenanted premises in order to force the petitioner-tenant to vacate it.

4. I have not been able to persuade myself to accept the plea. There is a specific averment on behalf of the respondent-landlord, in the course of the pleadings and also evidence, that he wants "to run the business of sale of sanitary fittings and sale of material of interior decoration, in the shop in dispute. For which he requires the shop in dispute. The petitioner was doing the same work in U.K. The shop in dispute".

5. It is also the averment in the pleadings that he has been doing the same assignment in U.K. where he is presently residing. Infact, the respondent- landlord has no concern with the shop which belongs to his father. The presumption, in terms of law, is in favour of bona fide character of the need pleaded by the respondent-landlord and presumption is not rebutted by the petitioner-tenant.

6. It was, then, argued by the learned counsel for the petitioner-tenant that the petition did not deserve to be allowed in view of the fact that the petitioner has no intention to return to India because his children are studying and his wife is in employment in U.K. The plea deserves to be negated in view of the law laid down by the Apex Court in [Baldev Singh Bajwa Vs. Monish Saini](#), . In that case, it was categorically held by the Apex Court that it is not necessary for an NRI landlord to permanently return to India before being eligible for seeking eviction of a tenant from the tenanted premises. It is also held in that case that the landlord has only to establish his need to obtain possession of the tenanted premises is genuine. There is also a finding in that case that the Court shall presume that the need of the landlord is genuine. Though the tenant is entitled to prove that, in fact and law, the requirement of the landlord is not genuine. The heavy onus in that respect is upon the tenant and that mere assertion on the part of the tenant would not be sufficient. The Apex Court otherwise noticed that the averment by the landlord need not be taken as gospel's truth and that interest of the tenant is also required to be protected if the landlord obtains the tenanted premises and does not use the same for the purpose conceptualized by the provisions of Section 13-B of the Act. The Apex Court noticed that in case Ram Dass v. Ishwar Chander, 1988 (1) R.C.R. (Rent) 625 (SC) it was held that the "bonafide need should be genuine and honest, conceived in good faith. It was also indicated that the landlord's desire for possession, however honest it might otherwise be, has inevitably, a subjective element in it, and that desire, to become a "requirement" in law must have the objective element of a "need" which can be decided only by taking all the relevant

circumstances into consideration so that the protection afforded to a tenant is not rendered illusory or whittled down". In that very case, the Apex Court observed as under :-

The legislative intent of expeditious disposal of the application for ejectment of the tenant filed by the NRI landlord is reflected from the summary procedure prescribed u/s 18-A of the Act of 1949 which requires the Controller to take up the matter on day-today basis till the conclusion of the hearing of an application. The Legislature wants the decision of the Controller to be final and does not provide any appeal or second appeal against the order of eviction, it is only the High Court which can exercise the power of consideration of the case, whether the decision of the Controller is in accordance with law. Section 13-B gives right of ejectment to special category of landlord who is NRI (Non-Resident Indian); and owner of the premises for five years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his life time. Sub-section (3) of Section 13-B imposes a restriction that he shall not transfer through sale or any other means or lease out the ejected premises before the expiry of the period of five years from the date of taking possession of the said building. Not only that, if there is a breach of any of the conditions of sub-section (3) of Section 13-B, the tenant is given a right of restoration of possession of the said building. Under sub-section (2-B) of Section 19 the landlord has to take possession and keep it for a continuous period of three months and he is prohibited from letting out the whole or any part of such building to any other person except the evicted tenant and any contravention thereof, he shall be liable for punishment of imprisonment to the term which can be extended up to six months. These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine. Landlord, after the decree for possession, is bound to possess the accommodation. Landlord is prohibited from transferring it or letting it out for a period of five years. Virtually conditions and restrictions imposed on the NRI landlord makes it improbable for any NRI landlord to approach the Court for ejectment of a tenant unless his need is bonafide. No unscrupulous landlord probably, under this Section, would approach the Court for ejectment of the tenant considering the onerous conditions imposed on him by which practically he is deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. The restriction imposed on the landlord by all probability points to the genuine requirement of the landlord. In our view there are inbuilt protections in the relevant provisions, for the tenants that whenever the landlord would approach the Court he would approach when his need is genuine and bonafide. It is, of course, subject to tenants' right to rebut it but with strong and cogent evidence. In our view, (in) the proceeding taken up u/s 13-B by the NRI landlords for the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bona fide. But this would not dis-entitle the tenant from proving that in fact and in law the requirement of the

landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.

7. No other point was argued by the learned counsel for the parties.

8. It is, thus, apparent from the discussion noted above that the tenant has not been able to disprove the presumption arising in law in favour of the landlord qua the bonafide character of the personal bonafide necessity of the tenanted premises. The landlord has been able to prove that the plea for ejection is within the right of the provisions of Section 13-B of the Act.

9. In the light of foregoing discussion, it is apparent that the petition deserves to be negatived and it is so-ordered accordingly. The petitioner- tenant shall have two months from today to vacate the premises aforementioned.