

(2013) 08 P&H CK 0800

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 4314 of 2012 (O and M)

Usha Rani

APPELLANT

Vs

Jaswinder Singh

RESPONDENT

Date of Decision: Aug. 5, 2013

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13A, 13B, 18A, 18A(4), 19

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: Aman Dhir, for the Appellant; Paramjit Rajput, Advocate and Mr. Deepak Verma, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This is tenant's revision petition challenging the order dated 17.4.2012 whereby his prayer for leave to defend u/s 18-A(4) and (5) of the East Punjab Urban Rent Restriction Act, has been declined in a petition filed u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short the "Rent Act") by the Rent Controller, Jalandhar. The respondent-landlord filed the eviction application u/s 13-B of the Rent Act pleading that he is a Non-Resident Indian living in Australia for the last more than 30 years and was holding Australian passport issued by the Competent Authority. He is a person of Indian Origin and an NRI as defined under the Rent Act and thus, was entitled to take benefit of Section 13-B of the Rent Act as amended upto date.

2. It was further averred in the eviction application that the respondent is a landlord and the petitioner is a tenant in the demised portion of the property in dispute. The said property was purchased by Sh. Raghubir Singh, father of the respondent, from one Bimla Devi resident of Jalandhar City vide registered sale deed dated 25.9.1968. Said Raghubir Singh, who was exclusive owner of the demised premises died on

1.5.2000 and respondent being the only surviving child of late Sh. Raghbir Singh, inherited the said property after his death. The respondent-landlord also placed on record a copy of TSI Description Certificate issued by the Municipal Corporation, Jalandhar in his favour with regard to demised premises. Thus, on the basis of the aforesaid averments, it was claimed that the respondent was the exclusive owner of the property in dispute for the last more than 5 years.

3. It was further elaborated in the petition that the eviction was sought on the ground that the tenanted premises were required by the respondent-landlord for his own bona fide requirement and occupation of his wife, two sons and one daughter as he wanted to come back to India along with family.

4. Upon notice, the petitioner-tenant appeared in the eviction application and moved an application seeking leave to defend to contest the ejectment petition on the ground that the same was not maintainable on behalf of the respondent as he does not fulfill the requirement of Section 13-B of the Rent Act as he has got no right, title or interest in the above said property and further that the respondent-landlord does not fall within the definition of Non-Resident Indian as envisaged in Section 2(dd) of the amended Act. It was further averred in the application that the respondent is not the son of Sh. Raghbir Singh and thus, he was not entitled to file the present petition. However, it was admitted that the demised property was taken on rent from Smt. Bimla Devi and rent was paid to her during her lifetime. The respondent-landlord filed reply to the said application for leave to defend denying the averments made in the application and a prayer for dismissal of the application was made.

5. The Rent Controller, Jalandhar, vide impugned order dismissed the application of the petitioner and ordered his eviction from the demised premises.

6. While dismissing the application for grant of leave, the Rent Controller, Jalandhar held that it stands established on the file that respondent is a Non-Resident Indian who falls within the definition of NRI as provided under the provisions of Rent Act and the said landlord has further established that the premises are required by him for his personal use and necessity and all the ingredients of Section 13-B of the Rent Act are fulfilled by the respondent-landlord and therefore, the petitioner-tenant is liable to be evicted.

7. Challenging the impugned order, learned counsel for the petitioner has vehemently argued that the respondent is an Australian subject and is not a citizen of India and thus, does not fall within the meaning of Section 2(dd) of the Rent Act as amended upto date. Learned counsel for the petitioner has further argued that a foreign citizen holding a foreign passport cannot be called a Non-Resident Indian because an NRI is a person who is an Indian citizen and ordinarily resides outside India and holding an Indian passport. He has also argued that a similar question as to whether a foreign passport holder and a foreign citizen can be called a

Non-Resident Indian is also pending in the Hon"ble Supreme Court and in these circumstances, the impugned order declining the leave to defend to the petitioner-tenant is bad in law and is liable to be set aside.

8. Counsel for the petitioner has further argued that in any case, even if the respondent is a Non-Resident Indian, he does not fulfill the conditions as envisaged u/s 13-B of the Rent Act as he is not the son of Raghbir Singh, who was the original owner of the demised premises and thus, the petitioner, who is not the son of Raghbir Singh, cannot claim himself to be the owner of the demised premises. According to the learned counsel for the petitioner, the respondent-landlord has not placed on record any documentary evidence to prove himself to be the son of Raghbir Singh, the owner of the demised premises and thus, the impugned order is liable to be set aside.

9. I have heard learned counsel for the parties and perused the impugned orders.

10. At this stage, it may be useful to refer to a paragraph of a judgment of the Hon"ble Supreme Court in the case of [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 ejection.

11. While dealing with the definition of "NRI", as enumerated in the Act, the Hon'ble Supreme Court in the case of [Baldev Singh Bajwa Vs. Monish Saini](#), has observed as under:-

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.

12. Further in the judgment in the case of Sohan Lal v. Swaran Kaur 2003(2) Rent Control Reporter 407, it has been observed as under:-

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. Thus, the argument raised on behalf of the petitioner to contend that the respondent is not an NRI as defined u/s 2(dd) of the Rent Act is liable to be declined.

14. It may further be noticed that once the respondent-landlord proves himself to be an NRI and owner of the premises in question for the last more than 5 years and wants to come back to India and occupy the property, a presumption is to be drawn in favour of the respondent-landlord that his need pleaded in the petition is genuine and bona fide and therefore, a very heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine and thus, a mere assertion on his part in the application for leave to defend would not be sufficient to rebut the strong presumption in favour of the landlord that his requirement was real and genuine.

15. The following paragraph from the judgment of Baldev Singh Bajwa's case (supra) may also be noticed:

19. From the aforesaid decisions the requirement of the landlord of the suit accommodation is to be established as genuine need and not a pretext to get the accommodation vacated. The provisions of Sections 18-A(4) and (5) concede to the tenant's right to defend the proceedings initiated u/s 13-B showing that the requirement of the landlord is not genuine or bona fide. The legislative intent for setting up of a special procedure for NRI landlords is obvious from the legislative intent which has been deliberately designed making distinction between the ordinary landlords and special category of landlords. The Controller's power to give leave to contest the application filed u/s 13-B is restricted by the condition that the affidavit filed by the tenant discloses such fact as would disentitle the landlord from obtaining an order for recovery of possession. It is needless to say that in the summary proceedings the tenant's right to contest the application would be restricted to the parameters of Section 13-B of the Act. He cannot widen the scope of his defence by relying on any other fact which do not fall within the parameters of Section 13-B. The tenant's defence is restricted and cannot go beyond the scope of the provisions of the Act applicable to the NRI landlord. u/s 13-B the landlord is entitled for eviction if he requires the suit accommodation for his or her use or the use of the dependant, ordinarily lives with him or her. The requirement would necessarily to be genuine or bona fide requirement and it cannot be said that although the requirement is not genuine or bona fide, he would be entitled to the ejectment of the tenant nor it can be said that in no circumstances the tenant will not be allowed to prove that the requirement of the landlord is not genuine or bona fide. A tenant's right to defend the claim of the landlord u/s 13-B for ejectment would arise if the tenant could be able to show that the landlord in the proceedings is not NRI landlord; that he is not the owner thereof or that his ownership is not for the required period of five years before the institution of proceedings and that the landlord's requirement is not bona fide. 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-to-day 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-s. (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 upto 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 bona fide. 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 bona fide. It is, of-course, subject to tenant's right to rebut it but with strong and cogent evidence. In our view, 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 disentitle 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 landlords' favour that his requirement of occupation of the premises is real and genuine.

16. According to the aforesaid principles, as culled out by the Hon'ble Apex Court, it is made out that Non Resident Indian landlord should be owner of the demised premises for five years before he applied the Controller for possession, he should require the same for his own use or for use of any one ordinarily living with him and is dependent upon him and such right could be availed of only once during the life time of such an owner/NRI landlord and the tenant will be entitled to leave to defend only if he makes out a strong case to challenge those grounds.

17. Thus, onus lies upon the tenant to prove in the negative that landlord's need was not genuine.

18. At this stage, it is relevant to refer to the provisions of section 18-A(4) of the Act, which reads as follows:-

18-A. Special procedure for disposal of applications u/s 13-A or section 13-B,-

(1) to (3) xxx xxx xxx

(4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the residential building or scheduled building and/or non residential building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord or the owner, who is a non-resident Indian in the application for eviction shall, be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

19. A perusal of the aforesaid provision would show that once leave to defend is refused to the tenant the averments made in the ejectment application by the respondent-landlord are deemed to be admitted by the tenant and the landlord is entitled to immediate possession of the demised premises. Thus, once the other ingredients of section 13-B of the Act, are proved presumption has to be drawn in favour of the landlord that his need for the demised premises is bona fide and it is for the tenant petitioner to prove otherwise. There is no such evidence on record on the basis of which it can be held that need of the landlord is not bona fide.

20. In the instant case, the petitioner has failed to make out a strong case against the respondent-landlord by placing on record any documentary evidence to support his plea that the respondent-landlord does not fulfill the ingredients of Section 13-B

of the Rent Act.

21. The other argument raised on behalf of the petitioner that the respondent is not the son of Raghbir Singh is not sustainable as except making a bald assertion that the respondent is not the son of Raghbir Singh, the original owner, the petitioner has placed nothing on record to support his said assertion. Even before this Court, counsel for the petitioner could not refer to any evidence on the basis of which his such assertion would be supported.

22. No other argument is raised. Thus, in view of this Court, this petition does not have any merit and is dismissed.