

(2009) 12 P&H CK 0139

High Court Of Punjab And Haryana At Chandigarh**Case No:** C.R. No. 435 of 2009 (O and M)

Smt. Kamla Devi

APPELLANT

Vs

Didar Singh

RESPONDENT

Date of Decision: Dec. 17, 2009**Acts Referred:**

- East Punjab Urban Rent Restriction Act, 1949 - Section 13B, 2

Hon'ble Judges: Surya Kant, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Surya Kant, J.

This revision petition is directed by the NRI/landlord against the order dated 01.11.2008 passed by the Rent Controller, Jalandhar, whereby her application u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act") for eviction of the Respondent-tenant from Shop No. 8-B, consisting of two rooms forming part of property No. 8, Mohalla No. 21, Jalandhar Cantt "shown in red colour in the site plan attached" has been dismissed.

2. The Petitioner-landlady filed the above-stated eviction petition seeking immediate possession of the demised premises, inter alia, averring that the shop in dispute was let out to the Respondent w.e.f. 01.04.1989 on a monthly rent of Rs. 200/- per month after it was purchased by the Petitioner vide Sale Deed dated 20.04.1987 registered on 21.04.1987. She further averred that she is a Non-Resident Indian (NRI) in terms of Section 2(dd) of the Act and is of Indian origin as she was born in Jalandhar in the year 1948 and got her initial education in Jalandhar Cantt. The Petitioner explained that she went along with her husband to England in the year 1967 and has been staying there as a permanent resident. The Petitioner also averred that now she has decided to return India and settle down permanently and that she wants to start her own business in the demised premises to earn livelihood. The Petitioner also averred that there is no other property in her possession in the Municipal area of

Jalandhar Cantt nor has she vacated any property after the commencement of the, 1949. On this premise, it was averred that the Petitioner fulfills all the ingredients of Section 13-B of the Act and is entitled to seek eviction of Respondent-tenant from the demised premises.

3. Upon notice, the Respondent applied for leave to contest which was granted. Thereafter, he filed the written statement dated 15.02.2006 in which the status of the Respondent as Non-Resident Indian (NRI) as well as her bona fide need for the demised premises were strenuously disputed. It was averred that the husband and children of the Petitioner-landlady are well-settled in England and there is no likelihood of her returning India all alone and start some business. It was also averred that the Petitioner, in fact, has been negotiating to sell the demised shop and there is one more vacant shop available with her which is presently occupied by Vijay Kumar - her alleged Attorney who is running the textile shop under the name and style of M/s. Vishal Textiles. The Respondent further averred that the Petitioner also owns another property bearing No. 51 situated in Mohalla No. 18, Jalandhar Cantt., besides other residential buildings.

4. The parties went on trial on the following issues:

i) Whether the Petitioner is non resident of India? OPP

5. In order to prove her case, the Petitioner herself stepped into the witness box as PW1 and examined one Draftsman Dalip Kumar (PW2). Similarly, the Respondent also appeared as his own witness (RW1) and examined Harvinder Singh; Balwinder Kumar; Baljinder Kumar; Sanjeev Kumar Sharma (RW2 to RW5) and one Sukhbir Singh Vohra, Clerk Cantt. Board, Jalandhar (RW6). In addition, both the parties have produced certain documents, briefly referred to hereinafter.

6. There is indeed no dispute and is evident from the copy of the Passport of the Petitioner (Ex.P3) coupled with the entries made therein regarding her permanent residentship in UK, that the Petitioner has successfully proved and it has been so held by the Rent Controller, Jalandhar also that she is a Non- Resident Indian (NRI) who was born at Bias Pind, Jalandhar. Similarly, the copy of the Sale Deed dated 20.04.1987 registered on 21.04.1987 (Ex.P1) has been placed on record to prove the ownership of the Petitioner qua the demised premises and that too for a period of more than five years before filing of the eviction petition u/s 13-B of the Act. The said issue has also been rightly decided in favour of the Petitioner.

7. The Rent Controller, Jalandhar, however, while deciding Issue No. 3 and 7 has held that the Petitioner has not approached the Court with clean hands nor has she proved the genuineness of her need for the demised premises. As a sequel thereto, the eviction petition has been dismissed, giving rise to this revision petition.

8. I have heard learned Counsel for the parties at some length and perused the impugned order as well as the record of the Rent Controller, Jalandhar.

9. It is pertinent to note that findings on Issues No. 3 and 7 has been returned by, the Rent Controller, Jalandhar, primarily on the strength of two site plans Ex. P6 and Ex. R1 produced by the Petitioner and the Respondent, respectively. Since the Petitioner, in her cross-examination has admitted the site plan Ex. R1 also to be correct, the Rent Controller, having held that the site plan Ex. P6 produced by the Petitioner does not tally with the site plan Ex. R1, has drawn an adverse inference against the Petitioner for producing a "wrong" and "incorrect" site plan and has accused her of not approaching the Court with clean hands. The Rent Controller, Jalandhar, has drawn a further inference that the Petitioner has not disclosed the availability of vacant shop as shown in the site plan Ex.R1 and therefore her personal need for the demised premises is not proved.

10. In my considered view the approach of the Rent Controller is wholly erroneous and is based upon a total misreading of the evidence produced on record. The Petitioner in her eviction petition has categorically mentioned that the portion shown in the "red colour" in the site plan attached with the eviction petition is occupied by the Respondent-tenant. The site plan Ex.P6, clearly depicts the "red colour" portion occupied by the Respondent-tenant as also one more shop adjoining thereto. It also depicts other rooms and open yard, namely, the other part of the building. Similarly, the site plan Ex.R1 produced by the Respondent depicts the portion occupied by him as well as the vacant shop adjoining thereto. The Rent Controller, Jalandhar, while arriving at a factually incorrect conclusion, has overlooked the pleadings which are to be read in conjunction with the site plan Ex.P6. There is no concealment of fact regarding existence of another shop by the Petitioner-landlady in the site plan Ex.P6. The findings on Issue No. 4 cannot sustain and are hereby set aside.

11. The question "as to whether or not the demised premises is required by the Petitioner-landlady for her personal necessity" has to be seen in the light of the legislative intent and object behind Section 13-B of the Act, which has been inserted by way of Act No. IX of 2001. The Non-Resident Indian (NRI)/ landlord, who is owner of the premises for a period of over five years before filing of the eviction petition is entitled to seek immediate possession of the let out premises through summary procedure and even if there are more than one residential, scheduled or nonscheduled building owned by him, the provision makes "it open to him or her to make an application" under the said provision "in respect of only one residential building or one scheduled building and/or one non-residential building each chosen by him or her". Suffice it to say that Section 13-B of the Act is a special provision which enables the NRI/landlord-cum-owner to select the premises of his/her choice and seek eviction of his/her tenant through summary procedure. This is what precisely has been done by the Petitioner-landlady. She has categorically mentioned in the eviction petition that she requires the demised premises to start her own business. She even deposed on oath to the same effect as PW1.

12. In [Baldev Singh Bajwa Vs. Monish Saini](#), the Supreme Court held that there is a statutory presumption of genuine need in favour of the NRI/landlord unless rebutted by the tenant by leading some cogent and strong evidence. The Respondent-tenant himself has stated in his written statement that the "adjoining shop" is occupied by the nephew of the Petitioner-landlady who is running some business activities. It necessarily means, that the said other shop is not readily available for the Petitioner-landlady to start her own business. The findings returned by the Rent Controller, Jalandhar on Issue No. 3 is, thus, based on misreading of the evidence.

13. For the reasons afore-stated, the revision petition is allowed; the impugned order dated 01.11.2008 passed by the Rent Controller, Jalandhar, is hereby set aside and the eviction petition filed by the Petitioner-landlady u/s 13-B of the Act, is allowed. However, the Respondent is permitted to retain possession of the demised premises/shop till 31.07.2010 subject to depositing the entire arrears of rent, if any, and payment of future monthly rent by 10th day of every calendar month.

14. Dasti.