

**(2009) 12 P&H CK 0140**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No. 7304 of 2009

Raj Kumar Duggal

APPELLANT

Vs

Sat Pal Kumra

RESPONDENT

**Date of Decision:** Dec. 16, 2009

**Acts Referred:**

- East Punjab Urban Rent Restriction Act, 1949 - Section 13B, 18A, 18A(5)

**Citation:** (2011) 3 RCR(Civil) 391

**Hon'ble Judges:** Surya Kant, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

Surya Kant, J.

This revision Petitioner has been preferred by the tenant against the order dated 9.9.2009 passed by the Rent Controller, Phagwara, whereby he has been ordered to be evicted from the demised premises comprising a shop situated at Main Bazar, Hadiabad, Tehsil Phagwara, District Kapurthala, pursuant to an application filed u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "The Act).

2. The Respondent filed an eviction petition u/s 13-B of the Act, inter alia, averring that he is a Non-Resident Indian of Indian origin who had gone to U.S.A. alongwith his family to earn livelihood and has been granted permanent emigration to U.S.A. The Respondent further averred that the demised premises was owned by his father late Sh. Malawa Ram who had purchased the same vide registered sale deed dated Samvat 13, Magh 1966. The said Sh. Malawa Ram passed away in the year 1944 and after his death, his wife, namely, Smt. Malan Devi, mother of the Respondent, became owner in possession of the demised premises. Smt. Malan Devi also passed away in the year 1981. After her death, the Respondent became the exclusive owner in possession of the demised premises being the sole legal heir of Smt. Malan Devi.

The Respondent also averred that he has decided to return to India with an intent to live in his native country and therefore, he requires the demised premises for his personal use and occupation as he wants to run a confection shop in the demised shop. The Respondent also averred that he is owner of the shop in dispute for a period of more than five years and there is no other such like commercial property is in his possession or got vacated by him within the municipal limits of Phagwara.

3. Upon receiving notice, the Petitioner-tenant moved an application u/s 18-A of the Act and sought leave to contest on the grounds, (i) that the Respondent is not a Non-Resident Indian; (ii) the Respondent is not the owner of the demised premises; (iii) the bona fide need of the Respondent was also disputed alleging that the Respondent wants to sell the demised shop on a higher premium; (iv) that the Respondent has sufficient accommodation for his personal use and occupation within the municipal area of Phagwara.

4. In order to prove his ownership qua the demised premises, the Respondent-landlord placed on record certified copy of the Assessment Register of the Municipal Council, Phagwara in which he is duly recorded as owner of the shop in question. He also placed on record a copy of the sale deed of Samvat 13, Magh 1966. Similarly, with a view to prove his status as NRI, the Respondent placed on record his passport bearing entries of U.S. Emigration granted to him. He has also placed on record a copy of the Permanent Resident Card and the Social Security Card issued by the U.S. Government to its citizens/emigrants.

5. On the other hand, the Petitioner-tenant did not place on record any document/material/proof to show that the sale deed, relied upon by the Respondent, which is more than 60 years old documents, does not pertain to the property in dispute or that the entries maintained in the municipal record regarding ownership of the Respondent are incorrect or those entries pertain to some other property. Similarly, the Petitioner did not disclose the particulars of any other property, residential or commercial, owned and possessed by the Respondent-landlord within the municipal limited of Phagwara City or anywhere else.

6. On consideration of the afore-stated material on record, the Rent Controller, Phagwara, did not find any triable issue arising out of the application moved by the Petitioner-tenant for grant of leave to contest and while dismissing the same, has passed the consequential eviction order, giving rise to this revision petition.

7. I have heard learned Counsel for the parties at some length and perused the records including of the Rent Controller, Phagwara which has been summoned.

8. Hon"ble the Supreme Court has considered at threadbare the newly added provisions of the Act in Baldev Singh Bajwa Vs. Monish Saini, , considering as follows:

- (i) Any person, who himself is of Indian Origin and/or whose parents/grand-parents are/were of Indian Origin and who is settled outside India either permanently or temporarily for taking up employment or for carrying on business/vocation would be a Non-Resident Indian;
- (ii) a Non-Resident Indian-landlord has a special right to seek immediate possession of the let-out premises if he is its owner for atleast a period of 5 years before his applying to the Rent Controller for possession and that he requires the premises for his own use and occupation and/or for anyone ordinarily living with him and is dependent on him;
- (iii) the right u/s 13-B of the Act for immediate possession can be availed of only once during the life-time of such an owner/NRI landlord;
- (iv) the NRI-landlord has the choice to select one amongst several other residential/non-residential buildings;
- (v) it is not necessary for a NRI-landlord to permanently return to India for seeking eviction of the tenant;
- (vi) the Courts shall presume that the need of the NRI-landlord is genuine and bona fide, though the tenant is entitled to prove that in fact and in law, the requirement of the NRI-landlord is not genuine;
- (vii) a heavy burden would lie on the tenant to prove that the requirement of the NRI-landlord is not genuine and mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour;
- (viii) if the NRI-landlord gets possession u/s 13-B of the Act, he can neither transfer it either by sale or by any other mode nor can he let it out for a period of 5 years and in case of any breach, the tenant is entitled to seek restoration of possession;
- (ix) after getting the possession, the NRI-landlord should occupy the premises continuously for a period of 3 months.

9. Keeping the plain and unambiguous language of the statute in view and following the interpretation given by the Apex Court in Baldev Singh Bajwa's case (supra), to the provisions inserted vide Amendment Act No. 9 of 2001, every Rent Controller, while deciding an eviction application u/s 13-B of the Act, is obviously required to ascertain that (i) the applicant is a Non-Resident Indian; (ii) he is owner of the subject premises; (iii) his ownership is more than 5 years old as on the date when he applies for eviction; (iv) the applicant-NRI-landlord has pleaded and explained that he needs the subject premises for his own and/or for the use and occupation of anyone ordinarily living with and dependent upon him; (v) such NRI-landlord has not earlier availed the benefit of Section 13-B of the Act in respect of any other premises.

10. Similarly, wherever a tenant seeks leave to contest, the Rent Controller would ascertain as to: (i) whether or not such an application accompanying by an affidavit

has been moved within 15 days from the date of effecting service upon the tenant as per the Schedule-II; (ii) whether or not the tenant has raised a triable issue duly supported with some cogent material, which if proved, would disentitle the NRI-landlord to seek eviction of the tenant; (iii) the leave to con-test cannot be granted on mere asking and the tenant would be under a heavy onus to establish that the landlord's eviction application lacks in material particulars and does not fall within the four corners of Section 13-B of the Act.

11. Adverting to the case in hand, the solitary contention raised on behalf of the Petitioner is that even if a tenant does not disclose the material particulars in his affidavit/application for leave to contest, onus is still on the Non-Resident-Indian-landlord to prove his bona fide requirement, status as N.R.I., as well as relationship of landlord and tenant between the parties. It is urged that the Respondent-landlord is obligated to lead evidence in order to prove these ingredients and no such exercise having been done in the present case, the impugned eviction order cannot sustain. Reliance is placed on a decision of the Hon'ble Supreme Court in Rachpal Singh and Ors. v. Gurmit Kaur and Ors., 2009 (3) R.C.R. (Civil) 786: 2009 (2) R.C.R. (Rent) 112: 2009 (2) R.A.J. 308.

12. In my considered view, the contention raised on behalf of the Petitioner- tenant is de-void of any merit and is founded upon a misconceived notion. The very legislative object behind adding Section 13-B read with Section 18-A of the Act is to enable an N.R.I.-landlord to seek summary eviction of his tenant from a residential; scheduled or nonresidential building subject to fulfillment of the prescribed conditions. It is so explicit from the plain reading of Section 18-A (5) of the Act that leave to contest can be granted to a tenant only "if he discloses such facts as would disentitle.....the owner who is a NRI, from obtaining an Order for the recovery of possession of the residential building or scheduled building and/or non-residential building, as the case may be..."

13. In Rachpal Singh and others" case (supra), their Lordships have categorically observed that "if some triable issues are raised, then the controversy can be properly adjudicated upon after ascertaining of truth through cross-examination of witnesses who have filed their affidavits and other material documents.

14. Suffice it to observe here that except the bald statement of the Petitioner not supported by any material whatsoever, there is nothing on record to raise a triable issue.

15. No error of jurisdiction has, thus, been committed by the Rent Controller, Phagwara, while passing the impugned eviction order which does not warrant any interference by this Court in exercise of its revisional jurisdiction.