

(2009) 12 P&H CK 0141

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No"s. 4029 and 4092 of 2007 (O and M)

Surinder Pal

APPELLANT

Vs

Nachhattar Singh and Another

 Hardev Singh Vs

RESPONDENT

Nachhattar Singh

Date of Decision: Dec. 15, 2009

Acts Referred:

- East Punjab Urban Rent Restriction Act, 1949 - Section 13B, 13B(3), 19

Citation: (2011) 3 RCR(Civil) 772

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Judgement

Surya Kant, J.

This order shall dispose of Civil Revision No. 4029 and 4092 of 2007 as common questions of law and facts and are involved in both the cases. For brevity, the facts are being extracted from Civil Revision No. 4029 of 2007.

2. This revision petition is directed by the tenant against the eviction order dated 20.07.2007 passed by the Rent Controller, Ludhiana in an eviction petition u/s 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Act"). The respondent filed the above- stated eviction petition in respect of a shop comprising part of the property bearing Municipal Corporation No. B-XX-4011, Plot No. 5-G, Opposite Punjab Agricultural University Gate No. 2, Ferozepur Road, Sarabha Nagar, Ludhiana, against the petitioner-tenant, inter alia, alleging that he is Non-Resident Indian settled in Canada and is owner of the demised premises for a period of over five years. The respondent further averred that he requires the demised premises for his own use and occupation as he intends to return and settle down in India permanently.

3. The petitioner-tenant sought leave to contest but the same has been declined by the Rent Controller, Ludhiana vide and impugned order dated 20.7.2007 and the consequential eviction order has also been passed.
4. At the outset, it may be mentioned here that the respondent-landlord had filed more than one eviction petitions against different tenants occupying different parts of the same building and those other tenants were also ordered to be evicted. All of them have now taken a common plea before this Court that the expression "building" means every individual unit and therefore, only one eviction petition u/s 13-B of the Act was maintainable at the instance of the respondent - NRI landlords. Since the same issue was pending consideration in a batch of Civil Appeals also, these matters were adjourned to await the decision of the Hon"ble Supreme Court.
5. It is the conceded position that vide order dated 12.11.2009 passed in Civil Appeal No. 785 of 2008 (Ved Parkash Gupta through LRs. v. Ranbir Singh Sahota and Another), the Civil Appeal have been dismissed by the Hon"ble Supreme Court. Otherwise also, the expression "building" used in Section 13-B of the Act makes it explicitly clear that a NRI - landlord has been given right to seek eviction from "one building" whether occupied by one or more tenants. The plea raised on behalf of the petitioner -tenant is, thus, legally misconceived and can not sustain.
6. Nevertheless, learned counsel for the parties have been heard at some length and the impugned order has also been perused.
7. It is urged on behalf of the petitioner-tenant that (i) in his eviction petition, the respondent himself has averred that the petitioner has "forcibly occupied" the shop and the same was never "let out" to him, and as such, there is no relationship of landlord and tenant between the parties and no eviction petition under the Act is maintainable (ii) as per the medical certificate, the respondent is unwell and unfit to travel, so there is no likelihood of his returning and settling down in India permanently; (iii) the eviction petition has been filed through an Attorney and is not maintainable.
8. After giving my thoughtful consideration, I find that none of the contentions give rise to any triable issue for which leave to contest can be granted. What the respondent has averred is that he did not induct the petitioner as a tenant voluntarily. The fact that the petitioner has been paying rent and the respondent himself has acknowledged the petitioner as his tenant, is sufficient to establish the relationship of landlord and tenant between the parties. The ownership of the respondent qua the demised premises for a period of over five years before filing of the eviction petition is also not in dispute.
9. Similarly, the status of the respondent as a Non-Resident Indian, who was born in India has also not been controverted.

10. So far as filing of the eviction petition through an Attorney is concerned, suffice it to observe that the respondent is settled at a far away place like Canada and there is nothing unusual in appointing an Attorney to manage and look after the properties in India as obviates the respondent from the pains of repeated visits to India. The appointment of Attorney by itself does not create any doubt on the bona fide need of the respondent.

11. The Legislature by enacting the Section 13-B(3) read with Section 19. of the Act has taken care of the eventualities like misuse of the provisions of Section 13-B of the Act by a NRI-landlord. The aforesaid provisions entail penal consequences for an NRI/landlord if he does not occupy the vacated building within three months or lets out it again or sells or transfers it in any manner etc.

12. For the reasons afore-stated, I do not find any ground to interfere with the impugned order dated 20.7.2007 passed by the Rent Controller, Ludhiana.

13. Dismissed.

14. However, taking into consideration all the attending circumstances and the fact that the petitioner has to make alternative arrangements to shift himself from the demised premises, he is permitted to retain the demised premises upto 28th February, 2010 subject to his depositing the entire arrears of rent, if any, and future rent before the 10th day of every calendar month.