

Deepak Kumar Vs Charanjit Rai

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 10, 2013

Hon'ble Judges: Rakesh Kumar Garg, J

Bench: Single Bench

Advocate: Kailash Chander, for the Appellant; Sumeet Mahajan, Mr. Amit Kohar, Advocate and Mr. Vishal Sharma, for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Kumar Garg, J.

This judgment shall dispose of two petitions i.e. (1) CR No. 3441 of 2008 titled as "Deepak Kumar v. Charanjit

Rai" and (2) CR No. 3442 of 2008 titled as "Kanta Devi v. Charanjit Rai" as similar questions of law on the basis of similar facts have been raised

in both these revision petitions. Moreover, the landlord in both these petitions is the same and the petitioners in both petitions are occupying

different units of the same property. However, for brevity, the facts are being taken from CR No. 3441 of 2008. The revision petition was

admitted vide order dated 18.01.2010. Thereafter, respondent-landlord moved an application for vacation of stay, submitting before this Court

that the petitioner-tenant was in arrears of rent. The matter was referred to the Mediation and Conciliation Centre of this Court for amicable

settlement between the parties; however the same was returned back. Thereafter, the main petition was also ordered to be listed along with the

application for vacation of interim stay granted.

2. This is tenant's revision petition challenging the impugned order dated 15.03.2008 whereby the Rent Controller, Ludhiana, has declined the

prayer for leave to defend and has ordered his eviction from the demised premises on an application filed u/s 13B of the East Punjab Urban Rent

Restriction Act, 1949 (hereinafter referred to as, "the Act") by the respondent-landlord.

3. The facts arising out of the instant revision petition are that eviction petition was filed by the respondent on the averments that he along with his

brother Dilbagh Rai was the owner of the demised premises which comprises of eight shops forming part of Building No. XXXIV-2224/1, Bassi

Market, Joshi Nagar, Haibowal Kalan, Ludhiana, and the petitioner was in occupation of Shop No. 5, as shown red in the site plan, which is a

part of the aforesaid building. There exists the relationship of landlord and tenant between the parties. Respondent is an NRI and has returned to

India and requires the entire property, of which the shop in dispute forms a part, for his own use and occupation. It was further stated that the

climate of UK did not suit the respondent-landlord. It was further averred that out of the eight shops in the building, two shops have already been

got vacated and the same have been demolished and there are six tenants in six different shops being part of the same property and against all of

them the eviction petitions have been filed on the ground of personal necessity. It was further averred that the respondent-landlord has no other

residential property except the property mentioned above and that he has not vacated any such property in the urban area concerned and thus the

petitioner was liable to be evicted.

4. Upon notice, the petitioner-tenant appeared and contested the eviction petition. He filed an application u/s 18A(4) of the Act for granting him

leave to defend the eviction petition on various grounds, however, the said application was rejected vide impugned order dated 15.03.2008

passed by the Rent Controller, Ludhiana and the petitioner was ordered to hand over the vacant possession of the shop in dispute to the

respondent-landlord. While dismissing the application for leave to defend the ejectment petition, the Rent Controller found that the respondent-

landlord fulfills all the necessary ingredients of Section 13B of the Act and is an NRI and is also entitled to evict the petitioner-tenant.

5. Aggrieved from the aforesaid order, the petitioner is before this Court in the instant revision petition.

6. Learned counsel for the petitioner-tenant has vehemently argued that the respondent-landlord does not require the shop in dispute for his

personal use and occupation, as alleged, as he has no intention to settle in India. He has come to India just for one or two months to collect money

as he is permanently settled abroad. It was further stated that on earlier occasions, respondent-landlord was asking the tenants to increase the rent

five to ten times of the existing rent or in the alternative suggested that they may purchase the shops at the market rate or to vacate the same to

which they had refused. On the basis of the aforesaid arguments, learned counsel for the petitioner has submitted that the impugned order is liable

to be set aside.

7. On the other hand, learned Senior Advocate appearing on behalf of the respondent has supported the impugned order of eviction and has cited

Pritam Singh Vs. Dilbagh Rai, to contend that on similar pleas, Pritam Singh who was a tenant in another part of the main building has been

ordered to be evicted and his eviction has been upheld by this Court.

8. I have heard learned counsel for the parties and have also perused the impugned order.

9. It is useful to note at this stage that the present petition has been filed u/s 13B of the Rent Act. The Hon"ble Apex Court in the case of Baldev

Singh Bajwa Vs. Monish Saini, has held as under:

In Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta, this Court while dealing with the aspect of bona fide requirement has said that in the sense of

felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant refers to a state of

mind prevailing with the landlord. The only way of peeping into the mind of the landlord is an exercise undertaken by the judge of facts by placing

himself in the armchair of the landlord and then posing a question to himself-whether in the given facts, substantiated by the landlord, the need to

occupy the premises can be said to be natural, real, sincere, honest.

10. Hon"ble Apex Court in Baldev Singh Bajwa's case (Supra), has further held as under:

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 18A(4) and (5) concede to the tenant's right to defend the proceedings initiated u/s

13B 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 13B 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 13B 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 13B. 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 13B 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 13B 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.

11. Thus, right of the NRI can be defeated by a tenant by showing that the bona fide requirement was a pretext to get the accommodation vacated

and the landlord was not owner of the premises. In the present case, the respondent-landlord has clearly stated about his need which has not been

disputed. The landlord has also established that all the eight shops which are part of the one main building are required by him. The argument of the

learned counsel for the petitioner that respondent has already got evicted the tenants from another part of the building and therefore he is not

entitled to ask for eviction of the petitioner as such right can be exercised by the respondent-landlord only once in life time, is liable to be rejected

in view of the judgment of this Court in " Bhandari General Store and Others Vs. Makhan Singh Grewal, , wherein it has been held that all the

shops which form part of one integral building can be got vacated by a NRI owner/landlord. Moreover, it is well settled that the landlord is the best

judge of his needs and the tenant cannot dictate his terms regarding the suitability of the premises.

12. Not only this, the argument of the learned counsel for the petitioner that in the present case Charanjit Rai, NRI who is the owner of the

demised premises was not landlord of the petitioner as admittedly building was let out to him by Dilbagh Rai, is liable to be rejected in view of the

judgment dated 26.04.2011 of this Court in Civil Revision No. 4025 of 2006 titled as Smt. Bachan Kaur and others versus Kabal Singh and

another, wherein it has been held that an NRI owner has a right to seek eviction after a period of 5 years from the date of becoming owner of such

building irrespective of the fact that the building is let out by him or not. It could not be disputed by the learned counsel for the petitioner that

respondent Charanjit Rai is the owner of the property in dispute on the basis of the sale deed dated 08.12.1972. There is no evidence to

controvert the aforesaid factum of the title of the respondent-landlord. It may also be mentioned at this stage that as per the provisions of Section

13B of the Act, suit for eviction can be filed by owner of the suit property and it is not necessary that the person who induces the tenant can only

file the petition. In the present case, the rent note was executed between Dilbagh Rai and the petitioner, but, respondent-Charanjit Rai is the real

owner of the property in dispute.

13. Not only this, all the points as raised in this petition were also raised in Pritam Singh's case (supra) but the same were answered against the

tenant and in favour of respondent-landlord. The said case pertains to the adjoining portion of the demised premises belonging to the respondent-

landlord in the present revision petition.

14. In view of the aforesaid discussion having taken place, the arguments raised by learned counsel for the petitioners are without any merit and are

rejected. Thus, the impugned orders do not warrant any interference and both the present revision petitions are dismissed.