

In This Revision Petition Preferred Under Section 15(5) of the Vs. Rajinder Kaur and Otherspetitioners.

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Court : Punjab and Haryana

Decided On : Jul-16-2014

Appellant : In This Revision Petition Preferred Under Section 15(5) of the

Respondent : Rajinder Kaur and Otherspetitioners.

Judgement :

CR No.3446 of 2013 -1- IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH CR No.3446 of 2013 (O&M) Decided on:-July 16th, 2014. Rajinder Kaur and others Petitioners. Versus Charanjit Shehan and another. Respondents. CORAM: HONBLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON. ***** Argued by:- Mr. N.K. Vadehra, Advocate for the petitioners. Mr. Amit Dhawan, Advocate for the respondents. Dr. Bharat Bhushan Parsoon, J.

In this revision petition preferred under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949 (for short, the Act), challenge has been made to order dated 16.2.2013 of the Rent Controller, Ludhiana passed in a petition under Section 13-B of the Act whereby application of the petitioner-tenant filed by him under Section 18-A of the Act for seeking leave to contest the petition was declined and the petition of the respondents- landlords under Section 13-B of the Act was accepted giving two months time to the petitioners-tenants to vacate the demised premises.

2. In a petition filed under Section 13-B of the Act, the eviction of the tenant was sought from the demised premises, inter alia, on the averments that: (i) They were Non-Resident-Indians (NRIs) specified landlords and though had gone to Canada in 1992 and worked there till 2011 but wanted to work and do business in India in the demised premises by establishing a small scale unit on the ground floor and setting up their residence on the first floor thereof and Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -2- thus, were in bonafides requirement of the property in dispute for their personal need and occupation; (ii) The landlords had neither vacated nor rented out such building ever, right from the commencement of the Act. It was further disclosed that they are not in possession of any other building within the Municipal limits of Ludhiana; and, (iii) Petitioner No.2 is owner of the property of the plot for the last more than 5 years and the remaining three shares of the property which were earlier in the name of brothers of petitioner No.2 have been purchased by petitioner No.1, wife of petitioner No.2 from his brothers and both the petitioners have become complete owners of the property.

3. An application under Section 18-A of the Act was moved by the tenant seeking leave to contest the petition. It was claimed that neither the summons to the tenant were sent on the specified proforma nor the summons were accompanying copy of the ejectment petition. It is averred that in these circumstances, the tenant could know the nature of the proceedings only after inspection of the judicial file which was done by a counsel engaged by him. When he came to know that the petition under Section 13-B of the Act had been filed, only then an application was moved for seeking leave to defend.

4. This application seeking leave to defend was strongly contested by the landlords. It was asserted that summons were received by Mandeep Singh son of tenant Kuldeep Singh on 29.2.2012 and as per report of the Process Server, even copy of the petition was accompanying the summons at the time of his service. Since the tenant was to file an application seeking leave to defend within 15 days, such application could be filed upto 15.3.2012. It was claimed that such application having been filed on 16.3.2012 was beyond limitation and other pleas taken in the application for Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of

this document CR No.3446 of 2013 -3- leave to defend were also assertively denied praying for dismissal of the application.

5. After considering the facts and attending circumstances, learned Rent Controller found no merit in the pleas raised by the tenant and even otherwise, finding the leave to defend to be barred by limitation, rejected the same holding that there was no triable issue which required evidence.

6. Considering the petition for ejectment on merits, it was found that petitioner No.2 was an NRI and was landlord as also owner of the premises under tenancy for more than 5 years and required the premises for his personal bonafide necessity. Dismissing the application for leave to defend, granting petition under Section 13-B of the Act of the landlord, the same was allowed. This adjudication is of 16.2.2013.

7. In this revision petition, following grounds have been taken against the order dated 16.2.2013: (i) The premises in dispute are in the nature of a vacant plot and do not come within the parameters of residential building or scheduled building or non- residential building; (ii) In absence of any rent note or rent receipt, no document has been produced by the landlords to establish existence of relationship of landlord and tenant between the parties; (iii) Landlords are not the NRIs as they are living in Canada and their passports have been issued from Toronto (Canada); and, (iv) The landlords have failed to plead and prove that they did not own any vacant plot or residential building in the urban area concerned nor had vacated any of such building. Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -4- 8. Counsel for the respondents-landlords, on the other hand, has urged that not only service of summons of the petition under Section 13-B of the Act on son of the tenant was valid and legal but filing of application seeking leave to defend by the tenant is indicative of admission of relation of landlord and tenant and also the fact that intimation with regard to filing of the petition under Section 13-B of the Act by the landlords, had become available to the tenant on 29.2.2012.

9. It is further claimed that earlier petitioner No.1 was owner of 1/4th share in the demised premises but later 3/4th share hitherto owned by his brothers was also

purchased by his wife on 5.4.2011 and she became owner of 3/4th share in the premises and thus, they both then became absolute owners. It is urged that the premises in dispute are also not in the nature of vacant land but construction thereon is already existing. It is claimed that premises are required by the petitioners for their own bonafide use and there are no triable issues. In short, it is claimed that the Rent Controller had passed the impugned order validly and legally.

10. The counsel for the parties have been heard at length while going through grounds of revision, impugned order and the attending facts and circumstances.

11. At the outset, it may be mentioned that though the order regarding dismissal of application for leave to defend preferred by the petitioner-tenant Kuldeep Singh (now deceased and represented by his LRs) under Section 18-A of the Act on 16.2.2013 has been challenged by them in this revision petition, the petitioners preferred not to file copy of the application for leave to defend as annexure with this petition, depriving this Court from perusal of its contents. There is nothing to show that the petition lacked averments of bonafide necessity and other concomitant requisite averments and then proof to sustain those. Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -5- 12. Learned counsel for tenant Kuldeep Singh (now represented by his LRs) has urged that since the ground taken in the said application under Section 18-A of the Act had been set out in the impugned order itself, no prejudice has been caused to the landlord because of non-filing of copy of the application as part of this petition.

13. Summons regarding filing of petition under Section 13-B of the Act by the landlords to the tenant were served on tenant Kuldeep Singh through his son Mandeep Singh on 29.2.2012. There is clear stand of the landlords that report of the service of summons on Mandeep Singh son of Kuldeep Singh by process server mentions about handing over of a copy of the petition to Mandeep Singh son of tenant Kuldeep Singh alongwith copy of summons. There is no repudiation of this fact and thus the same is to be taken as correct.

14. Service on adult member of a party, on whom summons are to be served, is legal and valid and even the same, in view of provisions of Rule 15 of Order V CPC, is not a matter of dispute. Service was effected on 29.2.2012. The tenant had a right to file an application for leave to defend within 15 days thereafter i.e. on or before 14.3.2012, but such application was made by the tenant only on 16.3.2012. Referring to a ruling of this Court reported as Vinod Kumar Mittal and another Vs. Jagandeep Singh Rana 2011(2) RCR (Civil) 27 cited by counsel for the landlords, the Rent Controller had rightly held that it had no power to condone the delay in filing of application for leave to defend in the petition under Section 13-B of the Act. Even otherwise, the Rent Controller had found that there was no reasonable explanation by the tenant regarding delay in filing of such application. Accepting plea of the landlords, the application for leave to defend was dismissed.

15. Even in this petition, when learned counsel for the petitioners Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -6- was called upon to react to such observations made by the Rent Controller, no plausible and sound ground was put forth qua the aspect of application for leave to defend being barred by limitation or even with regard to its merits.

16. To make the discussion complete and wholesome, grounds taken by the tenant in this revision petition are being discussed in detail.

17. Plea of the tenant is that the premises in dispute are in the nature of vacant land and hence cannot be termed as residential, non- residential or scheduled building and thus the petition under Section 13-B of the Act was not even maintainable. Countering this plea of the tenants, counsel for the landlords has pointedly mentioned that earlier to this eviction petition by the landlords, the tenant himself had filed a suit. In the said suit instituted by the tenant, premises under tenancy have been elaborately depicted. In the copy of the plaint as also in the site plan attached therewith, the property has been described as the residential one with construction and open site appurtenant thereto.

18. It is claimed by counsel for the landlords further that legal heirs of tenant Kuldeep Singh in the said suit, have also admitted that petitioner No.2 Rakesh

Kumar is the landlord/co-owner of the property in dispute.

19. Fact of filing of the suit of permanent injunction against petitioner No.2 and his three brothers, wherein there is clear admission that present respondent No.2 is landlord as also co-owner of the premises clears the mist. Even otherwise, copy of plaint regarding suit for permanent injunction is Annexure R-2. There is clear admission of the tenants therein that the premises are in the nature of constructed property with vacant site appurtenant thereto, and further that the same is on tenancy with Kuldeep Singh (now deceased and represented by his LRs), is no more in dispute. Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -7- 20. In the plaint of the suit for permanent injunction filed by tenant Kuldeep Singh against the present respondents No.2 and 3 and their three brothers as landlords and owners of the building, status of present respondent No.2 as landlord-cum-co-owner is not disputed. Counsel for the revisionist-petitioner has urged that respondent No.1 having purchased 3/4th share in the building (hitherto owned by brothers of respondent No.2) on 5.4.2011 does not become entitled to vacation of the premises as she has yet not completed 5 years of ownership statutorily required for the purpose.

21. Counsel for the respondents-landlords citing Smt. Bachan Kaur and others Versus Kabal Singh and another 2011(2) RCR(Civil) 886 (P&H) has urged that a co-owner who is NRI, even when other co-owners are not, can maintain petition for ejectment for benefit of all the other co-owners. It was further elaborated in this judgment that a co-owner NRI can seek eviction of the tenant in building even though the tenant was not inducted by such NRI.

22. From the aforementioned Division Bench judgment of this Court, it is apparently clear that even some of the co-owners are neither NRIs nor are the landlords who had inducted the tenant in possession even then the petition for ejectment would be maintainable under Section 13-B of the Act.

23. Even though respondent No.1 who became co-owner of the property on 5.4.2011 and thus, having not completed 5 years as yet, is not covered under the definition of eligible NRI qua petition under Section 13-B of the Act and is not the co-landlord who had inducted Kuldeep Singh in tenancy of the premises, does not

make the situation any brighter for the tenants.

24. Respondent No.2 concedingly has completed more than 5 years Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -8- being a landlord-cum-co-owner of the premises. Even in plaint (Annexure R-2) to suffer repetition, his status as co-landlord-cum-owner is admitted. He can very well maintain the petition for ejectment for benefit of all co-owners even though they do not come within the ambit and scope of an NRI qua the petition under Section 13-B of the Act, as is indicated in Section 2(dd) of the Act, which provision for ready reference is appended as below: (dd) "Non-resident Indian" means a person of Indian origin, who is either permanently or temporarily settled outside India in either case - (a) for or on taking up employment outside India; or (b) for carrying on a business or vocation outside India; or (c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for an uncertain period.. 25. Counsel for the petitioners-tenants has urged that being Canadian citizens, the respondents-landlords cannot maintain their petition under Section 13-B of the Act. Pointed reference has been made to copy of passport (Annexure P-5) of respondent No.2 Rakesh Kumar Verma and copy of passport (Annexure P-4) of Smt. Charanjit Shehan. Respondent-landlord No.1 has not completed 5 years as co-owner of the premises in litigation, thus, this plea qua her requires no discussion in detail. However, it may be mentioned that she continues to be an Indian citizen and yet has not become a Canadian citizen. Annexure P-5 reveals that respondent-landlord No.2 who is co-owner of the premises in dispute to the extent of 1/4th share despite his long stay in Canada (as is evident from his petition) has yet not attained Canadian citizenship and continues to be an Indian national. Merely because Indian Government instead of issuing passport from India, had issued his passport from Consulate General of India located at Toronto ipso facto would not make him a Canadian citizen. Issuance of passport by the Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -9- Canadian Government to its citizen as Canadian citizen only will be taken to be relevant. It may be mentioned that long stay of an Indian citizen in any foreign land without he having taken citizenship of that foreign country would not deprive him of his Indian citizenship and there can be no denial to his status of an NRI, if he otherwise

comes within the ambit and scope of the provision of Section 2(dd) of the Act.

26. At this stage, it would be relevant to mention that even the petitioners-tenants have clearly conceded that the respondents-landlords by now were settled in Canada for a sufficiently long time. But that would not mean that they have become Canadian citizens.

27. Pleadings to this effect in this revision petition by the petitioners tenants amounting to their admission that the respondents- landlords continue to be Indian citizens, are as under:

4. Respondents are permanently settled in Canada, they therefore cannot be termed as an NRI for the purposes of filing the eviction petition under Section 13-B of the Act as respondents do not fall within the parameters of Section 2(dd) of the Act.. 28. Even the respondents-landlords do not deny that they have been living in Canada for a sufficiently long time but they have clearly depicted that they were only residents in Canada meaning thereby that they had not acquired citizenship there and thus continue to be citizens of India. In this backdrop, it cannot be said that they have lost Indian citizenship or their status as NRIs. Pleadings of the respondents-landlords, in their relevant portion, are as under:

1. That the petitioners went to Canada in 1992 and worked hard there upto 2011 and now want to work and do business in India in the property/plot as mentioned in the head-note of the petition by establishing a small scale Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 - 10- unit on the ground floor and residence on the 1st floor in the property/plot as shown red in the site plan which is in dispute and shown as red in the site plan attached with the petition.. 29. Even if it be taken that they are permanently settled in Canada without acquiring citizenship there, even then they continue to be Indian citizens and as such, their status as NRIs is not lost.

30. So far as ground of bonafide personal necessity is concerned, counsel for the respondents-landlords has referred to judgment of Hon'ble Supreme Court in Baldev Singh Bajwa Versus Monish Saini 2006 AIR (SC) 59 wherein Hon'ble Apex Court has held that if an NRI landlord seeks eviction of a tenant, the Rent

Controller would presume that need of the landlord is genuine and bonafide. Reliance in this regard has also been placed on the judgment of this Court in M/s Bhandari General Store and another Versus Makhan Singh Grewal 2006 (1) RCR (Rent) 306.

31. Discussing this aspect, the Rent Controller has observed that the tenant is entitled to prove that in fact and in law, the requirement of the landlord is not genuine but then heavy burden is cast upon the tenants to prove that the requirement of landlord is not genuine. Relevant discussion made by the Rent Controller is as under: In this case the petitioner has alleged that the tenancy premises is required by the petitioners for their personal need and occupation for the purpose of establishing a small scale unit on the ground floor and residence on the 1st, because the petitioners want to construct two storey building and on the ground floor they want to establish a small scale unit and on the 1st floor they want to construct their residence. The respondent has alleged that the petitioners have no intention to return to India. In this regard reliance can be placed upon the judgment of Hon'ble Supreme Court in case of Baldev Singh Bajwa vs Monish Saini reported in 2006 AIR (SC) 59 in which the Hon'ble Supreme Court has held that if NRI landlord Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -11- seeking eviction of tenant, the court shall presume that need of the landlord is genuine and bonafide. The contention of the landlord is however not a gospel truth. The tenant is entitled to prove that in fact and in law the requirement of landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. Mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in landlord's favour. This court is of the view that there is no force in the contention of the learned counsel for respondent that requirement of petitioner is not bonafide. x x x From the documents produced on record, it has been proved that petitioner is Non Resident Indian, he is owner of the property for the more than five years. This court is of the view that there is presumption that requirement of the landlord is bonafide. Moreover, under the law, proper safeguard has been provided to the tenant that the respondent is entitled to restore his possession in case the petitioner would not retain possession of the demised property for the period of five years from the date of taking of possession of the property. This

court is of the view that mere allegations of the respondent are not sufficient in this regard.. 32. When petitioner No.2 is proved to be an NRI, he is owner of the premises for the last more than 5 years and is coming up with a definite stand that he wants to start his own establishment on the ground floor of the premises and would develop the premises for his residence on the first floor in these summary proceedings, there is nothing to reject his claim. It is a different matter that petitioner No.2 has sufficiently proved bonafide personal necessity and the tenants have nothing with them to unsaddle the same.

33. In view of the totality of facts and circumstances, it is found that rejection of application, for leave to defend filed by the tenant under Section 18-A of the Act, had rightly been made. It is also found that Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document CR No.3446 of 2013 -12- acceptance of the rent petition for eviction vide the same order by the Rent Controller also is valid and legal. As such, affirming the impugned order and finding no substance in the revision petition, the same is dismissed. (Dr. Bharat Bhushan Parsoon) th July 16 , 2014 Judge Yag Dutt 1. Whether Reporters of local papers may be allowed to see the judgment?. Yes 2. Whether to be referred to the Reporters or not?. Yes 3. Whether the judgment should be reported in the Digest?. Yes Yag Dutt 2014.07.26 15:22 I attest to the accuracy and integrity of this document

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