

Nelson Christopher Vs. Pritam Singh

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Court : Punjab and Haryana

Decided On : Nov-10-2009

Reported in : (2010)157PLR311

Judge : Gurdev Singh, J.

Appellant : Nelson Christopher

Respondent : Pritam Singh

Judgement :

Gurdev Singh, J.

1. Petitioner-tenant has preferred this revision petition against orders dated 17.2.2007 passed by Shri Tarsem Mangla, Rent Controller, Ludhiana, vide which he dismissed the application filed by the petitioner under Section 18-A of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as 'the Act') seeking leave to contest the petition filed by the respondent-landlord under Section 13-B of the Act for his ejectment from the premises in dispute and ordered his ejectment from that premises after refusing that application, on the ground that he is Non resident Indian and his ownership regarding the demised premises matured more than five years back and he wanted to occupy the same for personal use and occupation.

2. The facts are that the respondent-landlord filed an application under Section 13-B of the Act for the ejectment of the petitioner-tenant on the ground that he is Non-resident Indian as defined under Section 2(dd) of the Act. The petitioner is tenant under him though the rent is being collected on his behalf by his wife. He acquired ownership of this premises more than five years back and bona fide requires the same for his personal use and occupation. After service, the petitioner put in appearance before the learned Rent Controller and filed an application for leave to contest the ejectment application on various grounds. According to him the relation of landlord and tenant does not exist between him and the respondent and only Hardeep Kaur is his landlord/landlady. The respondent has suppressed the material fact regarding that relationship. The ejectment application is for partial ejectment and the same is not maintainable on that ground itself. He is not a Non-resident Indian and does not require the demised premises bone fide for his personal necessity. He owns and possesses another house bearing No. 317, situated in Bharat Nagar Chowk, Ludhiana. That application for leave to contest was contested by the respondent. In his reply, he denied all the contentions raised by the petitioner. He reiterated his averments as made in the ejectment application. The learned Rent Controller did not accept the contentions raised by the petitioner and resultantly dismissed his application and passed the ejectment order in favour of the respondent.

3. I have heard learned Counsel for the parties and have carefully gone through the case file, it was submitted by learned Counsel for the petitioner that learned Rent Controller failed to appreciate the fact that the respondent owns and possesses another house in the same urban area and as such cannot be said to be in bona fide need of the demised premises for his personal use and occupation. The petitioner in his affidavit specifically pleaded that the respondent and his wife own and possess House No. 317, situated in Bharat Nagar Chowk, Ludhiana and the respondent was not able to controvert that contention. The learned Rent Controller in his order incorporated the statement of the Advocate for the petitioner that he was not the owner and in possession of that house. That statement could not have been made the basis for concluding that no such house is owned and possessed by the respondent. From the affidavit of the petitioner it becomes clear that the respondent is not entitled to get the demised premises vacated on the

ground of personal necessity. In these circumstances, leave to contest should have been granted to the petitioner and the ejectment application should have been decided on merits. In support of his contentions he has placed reliance on *Inderjeet Kaur v. Nirpal Singh* 2001 (1) R.C.R. (Rent) 33, *M.R.F. Limited and Anr. v. S. Major Singh Purewal* 2009 (3) RCR (Civil) 196 and *Baldev Singh Bajwa v. Monish Saini* 2005 (2) RCR 470.

4. He prayed that the revision be accepted and the application filed by the petitioner for leave to contest the original ejectment application be allowed. The ejectment order be set aside and the ejectment application be decided on merits.

5. On the other hand, it was submitted by the learned Counsel for the respondent that all the contentions raised by the petitioner in his application/affidavit for leave to contest were duly considered by the learned rent Controller and he negatived all those contentions. The respondent was able to prove that he required the building for his own use. Therefore, it cannot be said that the order passed by the learned Rent Controller suffers from any such illegality. In support, he has placed reliance on *Prem Kumar Patel v. Inderjit Singh Grewal* (2002) 131 PLR 829. He prayed for dismissal of the revision petition.

6. According to Section 18-B(5) of the Act, which contains the procedure for dealing with the application filed under Section 13-B of the Act, the Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would dis-entitle the Non-resident Indian landlord from obtaining an order for the recovery of possession of the residential building under Section 13-B of the Act. Therefore, in order to succeed in the application for leave to contest, the petitioner was required to prove that the respondent was not entitled to an order for the recovery of possession of the demised premises. As per sub Section 9 of that Section, the procedure for the disposal, after such leave is granted, is the same as for the disposal of the application by the Controller. Learned Rent Controller was to reach the conclusion, on the basis of the pleadings and affidavits of the parties, that the respondent bona fide requires the demised premises for his use and occupation and that he is not in possession of any such residential building in the urban area concerned and has not vacated any such

building without sufficient cause since the commencement of the Act. No doubt, he recorded a finding to that effect. The question to be decided for the decision of the present revision is whether that finding is perverse and has been recorded without sufficient material on the record.

7. It was held by the Apex Court in the case of Baldev Singh Bajwa's case (supra) that 'in the proceedings taken up under Section 13- B by the Non-resident Indian in the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bona fide. But this would not dis-entitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant and will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.'

8. It has been held by the this Court in M.R.F. Limited's case (supra) as under:

In this context, the need of the landlord is not merely to be presumed at all times but if the issue whether the requirement of the accommodation of the landlord or his dependent is genuine or not it shall be examined in the context of what is stated in the written statement. The need could be shown as such but not merely a desire or a mere wish to secure eviction if it was pointed out that the landlord did in fact own other premises and there was no justification for applying for eviction.

9. In order to succeed in the application, heavy burden was upon the petitioner to prove that the requirement of the respondent was not genuine. He specifically deposed in his affidavit that the respondent owns and possesses another house in the same urban area. Learned Rent Controller recorded a finding that the said house belongs to the wife of the respondent. It is pertinent to note that it was also recorded by him in his order that even the rent of the demised premises is being collected by the wife of the respondent.

10. Learned Counsel for the respondent has heavily relied on Prem Kumar Patel's case (supra) and on the basis thereof tried to contend that the ownership and possession of other suitable accommodation in the same urban area is no bar to Non-resident Indian to get one building of his choice vacated. Relevant portion of that judgment is reproduced below:

As against this, Section 13-B merely requires a claim that the property is required by the landlord for his own use or for the use of his dependents. The requirements of building can be for any purpose and not necessarily for his permanent residence. Unlike Section 13-A, the ownership or possession of other suitable accommodation in the same area is no bar on a Non resident Indian to get one building of his choice vacated under Section 13-B. It is also significant to note that Section 13-B provides for recovery of possession of one entire building. Once it is claimed by the Non-resident Indian that he requires it for his own use, the objection that a portion of the building is sufficient for his requirement is of no consequence. He would still be entitled to the possession of one whole building.

11. In the present case, the respondent has tried to suppress the fact that he owns and possesses another house in the urban area concerned. He has come out with a plea that the said house is owned and possessed by him and still he requires the demised premises for his use and occupation. In these circumstances, he is not entitled to the benefit of the observation made in the above said judgment.

12. In the case of Inderjeet Kaur's case (Supra), it was held by the Apex Court that 'assertions and counter assertions in the affidavits of the parties may not afford safe and acceptable evidence so as to arrive at an affirmative conclusion unless there is strong and acceptable evidence available to show that facts disclosed in the application filed by tenant seeking leave to defend were either frivolous, untenable or most unreasonable. At the stage of granting leave, real test should be whether facts disclosed in the application/affidavit seeking leave to defend prima facie show that land lord would be dis-entitled from obtaining an order of eviction and not whether at the end the defence may fail.'

13. Therefore, from the affidavit of the petitioner, it was to be seen whether the respondent was dis-entitled from getting the possession of the demised premises.

In order to succeed, he was to prove that he bona fide required that premises for his use and occupation. It stands proved from the facts that the respondent owns and possesses another house in the same urban area and nothing was said by the respondent as to what was the ground of preference for getting the demised premises vacated. From the affidavit of the tenant it prime facie stands proved that the respondent shall be dis-entitled to the recovery of the possession of the demised premises on the ground taken by him in the application under Section 13-B of the Act.

14. Therefore, the finding recorded by the Rent Controller cannot be sustained and is liable to be set aside.

15. Accordingly, the revision petition is hereby accepted. Orders dated 17.2.2007 passed by the learned Rent Controller are set aside. The application filed by the petitioner for leave to contest is allowed. Rent Controller, Ludhiana, shall proceed in accordance with the provisions contained in Section 18-A(6) of the Act.

16. Parties are directed to appear before the Rent Controller, Ludhiana on 14.12.2009.