

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No. 1517 of 2006

Date of Decision : May 18, 2012

Oriental Insurance Company Ltd. Petitioner

Vs.

Karam Singh Sidhu (NRI) Respondent

CORAM : HON'BLE MR. JUSTICE L. N. MITTAL

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Present : Mr. C. S. Pasricha, Advocate
for the petitioner.

Mr. H. S. Ghuman, Advocate
for the respondent.

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L. N. MITTAL, J. (Oral) :

Tenant Oriental Insurance Co. Ltd. has approached this Court by way of instant revision petition under Section 18-A (8) of the East Punjab Urban Rent Restriction Act, 1949 (in short – the Act) assailing order dated 21.02.2006 passed by learned Rent Controller, Ludhiana.

Respondent Karam Singh Sidhu filed ejectment petition under Section 13-B of the Act against petitioner-tenant seeking his ejectment from the demised premises. Respondent-landlord alleged that he is Non Resident

Indian (NRI). He was having business in Liberia (Africa) since 1959, but left that country in 1990 due to civil war. After retirement, he shifted to America and is Green Card holder there. Now, he has settled in India. He needs the demised property for his business. Basement in the same building is in his possession, but the same is not suitable for the business.

The tenant, on appearance, moved application for leave to contest the ejectment petition alleging that the landlord is not NRI having come to India in the year 1990 i.e. before insertion of Section 13-B of the Act in the year 2001. There are also co-owners in the property i.e. son and daughter of the landlord, who are American citizens. It is also pleaded that ejectment petition has also been filed for ejectment of the tenant on ground floor of the same building, but landlord can seek ejectment of tenant from one property only under Section 13-B of the Act. It was also alleged that landlord is already in possession of basement of the same building.

The landlord, by filing reply, opposed the tenant's application and controverted the averments made therein.

Learned Rent Controller, vide impugned order dated 21.02.2006, dismissed the tenant's application for leave to contest the ejectment petition and consequently, allowed the ejectment petition and directed the tenant to hand over the vacant possession of the demised property to the landlord. Feeling aggrieved, tenant has filed this revision

petition to challenge the aforesaid order of the Rent Controller.

I have heard learned counsel for the parties at considerable length and perused the case file.

Counsel for the petitioner contended that the respondent-landlord is not NRI having shifted to India in the year 1990 long before the insertion of Section 13-B in the Act in the year 2001 and is, therefore, not entitled to invoke Section 13-B of the Act. It was also argued that in another ejectment petition filed by the same landlord under Section 13-B of the Act against tenant of the ground floor, leave to contest the said ejectment petition was granted by the Rent Controller and revision petition against said order of Rent Controller filed by the landlord was dismissed as withdrawn. Therefore, on parity, the present petitioner-tenant is also entitled to leave to contest the ejectment petition. It was also argued that in another ejectment petition filed by the same landlord under Section 13 of the Act against tenant of ground floor, the landlord alleged that he needed the ground floor for his business, whereas first floor is not suitable for his business, and therefore, instant ejectment petition regarding first floor in possession of the petitioner-tenant is not bona fide. Relying on various judgments i.e. two judgments of Hon'ble Supreme Court in the case of **Inderjeet Kaur vs. Nirpal Singh** reported as **2001 (1) Rent Control Reporter 33** and in the case of **Liaq Ahmad and others vs. Habeeb-Ur-**

Rehman reported as 2000 (1) Rent Control Reporter 484, two judgments of Delhi High Court in the case of B. R. Anand vs. Prem Sagar reported as 2002 (1) Rent Control Reporter 235 and in the case of Lt. Col. S. S. Puri vs. S. P. Malhotra reported as 2002 (1) Rent Control Reporter 85 and one judgment of this Court namely R. K. Sukhuja vs. Chander Parkash reported as 1991 (1) Rent Law Reporter 398, counsel for the petitioner contended that if prima facie case is made out, then leave to contest the ejectment petition should be granted to the tenant and therefore, should be granted in the instant case to the petitioner.

On the other hand, learned counsel for respondent-landlord contended that respondent is NRI because after coming back from Liberia, he went to America (USA) and is also Green Card holder there and is also senior citizen of NRI Sabha, Punjab. It was also argued that Civil Revision arising out of another petition under Section 13-B of the Act relating to ground floor, wherein leave to contest the ejectment petition was granted, was withdrawn because regarding the same ground floor, ejectment order had been passed against the tenant under Section 13 of the Act by the Rent Controller and upheld by the Appellate Authority. It was also argued that need of the landlord is bona fide because he cannot carry on business in basement and he could seek ejectment of different tenants from the same building. Reliance in support of this contention has been placed on various

judgments of this Court namely **Lakhwinder Kumar vs. Pavitter Kaur (dead) through LRs** reported as **2010 (3) RCR (Civil) 279**, **Mohinder Singh vs. Sohan Singh Sethi** reported as **2009 (3) RCR (Civil) 23**, **Sohan Lal vs. Swaran Kaur** reported as **2003 (2) RCR (Rent) 407** and **Prem Kumar Patel vs. Inderjit Singh Grewal** reported as **2002 (2) RCR (Rent) 203**. It was also contended that even one of the co-owners of the demised building can seek ejection under Section 13-B of the Act, as held by this Court in the case of **Assa Singh vs. Charanjiv Singh Gulati** reported as **2005 (1) PLR 608**.

I have carefully considered the rival contentions. As regards landlord being NRI, it is duly established that he is NRI. Merely because he returned from Liberia in the year 1990, it cannot be said that he ceased to be NRI or is no longer NRI. It has been observed in the impugned order of the Rent Controller that according to the Passport entries of respondent-landlord, he went to USA even in the years 2001, 2002 and 2003. He is also Green Card holder of USA. He also holds Permanent Residency Card of USA valid till the year 2013. He is also having Social Security Card. It is thus manifest that respondent is still NRI and has not ceased to be NRI merely because he returned from Liberia in the year 1990, because he has been residing in other countries thereafter.

As regards grant of leave to contest the ejection petition filed

by the same landlord against tenant of ground floor, it has been duly explained by counsel for the landlord that in that case, revision petition to challenge the order of the Rent Controller was withdrawn because ejection of the tenant from ground floor had been ordered under Section 13 of the Act by the Rent Controller and upheld by the Appellate Authority. Consequently, on the basis of order of the Rent Controller in the said other ejection petition, petitioner in the instant case cannot be granted leave to contest the ejection petition without making out a sufficient ground.

As regards plea of landlord in ejection petition under Section 13 of the Act against tenant of ground floor that first floor is not suitable, the said ejection petition was filed in the year 1996, whereas the instant ejection petition was filed on 23.12.2001 i.e. more than five years after the filing of the said other ejection petition. Consequently, on the basis of any averment made in the said ejection petition in the year 1996, claim of the landlord in the instant ejection petition filed in December 2001 cannot be negated. It may also be added here that no such plea was even raised by the tenant in application for leave to contest the ejection petition so as to afford opportunity to the landlord to respond to the same. This contention, therefore, also cannot be allowed to be raised in the revision petition for the first time.

There is no dispute with the legal proposition that if the tenant

makes out a prima facie case, then leave to contest the ejectment petition should be granted. In the instant case, however, the tenant has failed to make out a prima facie case for grant of leave to contest the ejectment petition. It may be mentioned that Section 13-B of the Act was enacted to provide speedy remedy to NRI landlord to seek ejectment of tenant, but in the instant case, already more than ten years have elapsed since the ejectment petition was filed. The very purpose of speedy remedy has been defeated.

It is also well settled, as borne out from the judgments cited by the counsel for the respondent-landlord, as mentioned herein before that NRI landlord can seek ejectment of more than one tenant from parts of the same building. Consequently, in the instant case, respondent could seek ejectment of the petitioner-tenant from first floor notwithstanding that the respondent also is seeking ejectment of tenant on ground floor separately. Moreover, ejectment of ground floor tenant is being sought under Section 13 of the Act and not under Section 13-B of the Act.

Respondent is being paid rent by the petitioner-tenant qua his own share as well as qua the share of his deceased wife. Consequently, respondent has right to file this ejectment petition notwithstanding that his son and daughter are also co-owners in the demised property.

For the reasons aforesaid, I find that leave to contest the

ejection petition has been rightly declined to the tenant by the Rent Controller. Impugned order of the Rent Controller does not suffer from any perversity, illegality, impropriety or jurisdictional error so as to call for interference by this Court in exercise of revisional jurisdiction. The revision petition is thus sans any merit and is, therefore, dismissed.

May 18, 2012

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(L. N. MITTAL)
JUDGE



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