

(2016) 05 P&H CK 0130
In the Punjab And Haryana At Chandigarh
Case No : C.R No. 2114 of 2015 (O & M)

Haryana Financial Corporation & Another	APPELLANT
Vs	
Ajit Singh Sagoo	RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

East Punjab Urban Rent Restriction Act, 1949 — Section 13

Citation : (2016) 3 LawHerald 2030 : (2016) 4 RCRCivil 84 : (2016) 2 RCRRent 285

Hon'ble Judges : Ajay Tewari, J.

Bench : Single Bench

Advocate : Mr. Vikas Bahl, Sr. Advocate with Mr. Parminder Singh, Advocate, for the Appellant; Mr. Sanjeev Sharma, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Tewari, J.(Oral) - This petition has been filed against the order dated 25.2.2015 passed by the Rent Controller declining the application for leave to defend in a petition filed under Section 13-B of the East Punjab Rent Restriction Act, 1949 (for short "the Act").

2. The respondent had filed a petition for vacation of SCO No. 17-18-19, Sector 17A, Chandigarh on the ground that he was a co-owner and was an NRI. The instant application for leave to defend was filed. The same having been declined and the eviction order having been passed, the petitioners are before this Court.

3. The first argument raised by learned counsel for the petitioners is that the respondent is not an Indian citizen and is, thus, not covered under the definition of NRI under Section 2(dd) of the Act. This issue has already been decided by this Court against the tenant, vide detailed judgment dated 9.5.2015 passed in CR No. 3509 of 2014, Krishan Kumar v. Kamla Devi.

4. The second argument raised by the learned counsel for the petitioners is that the respondent has not placed on record any proof of ownership. In the first

place, it was no where the case of the respondent that he was not the landlord/ owner. Secondly, in this case the respondent had placed on record transfer certificate from the Chandigarh Administration. This point was also considered in CR No. 3509 of 2014 (supra) and was rejected.

5. The third argument raised is that the respondent no where alleged in the petition that the entire premises i.e SCO No. 17-18-19 was one building. In this context, the previous communications between the parties make it clear that the respondent had referred to the entire SCO as one building and the petitioners also accepted it to be so. In this connection, the document (Annexure P-4) which is a letter written by the petitioner itself, shows that the petitioner had considered the rented premises to be one building. Counsel for the respondent has also pointed out that this plea was never raised in the application for leave to defend.

6. The next argument raised by learned counsel for the petitioners is that there was contractual correspondence with the respondent claiming enhanced rent and in fact in the notice, pursuant to which the present petition was filed, also the final prayer made by the respondent was to increase the rent to Rs. 30 lacs per month. As per him, this clearly shows that the respondent did not have any personal requirement and this was a triable issue in terms of the decision of the Hon'ble Supreme Court in Baldev Singh Bajwa v. Monish Saini, 2005 (2) RCR (Rent) 470, wherein it was held as follows :-

"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 18-A(4) and (5) concede to the tenant's right to defend the proceedings initiated under Section 13-B 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 under Section 13-B is restricted by the condition that the affidavit filed by the tenant discloses such fact as would dis-entitle 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 13-B of the Act. He cannot widen the scope of his defence by relying on any other fact which does not fall within the parameters of Section 13-B. The tenant's defence is restricted and cannot go beyond the scope of the provisions of the Act applicable to the NRI landlord. Under Section 13-B the landlord is entitled for eviction if he requires the suit accommodation for his or her use or the use of the dependent, 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 under Section 13-B 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."

7. In my considered opinion, the matter can be looked at from a different angle. In the notice, the respondent had clearly mentioned to the petitioners that the amount of rent i.e Rs. 83,000/- was substantially lower than the market rent of Rs. 30 lacs and as such, the taxes and the charges applicable on the property were more than the rent. In my considered opinion, a landlord may reasonably come to a conclusion that the rent which he is getting for the building is so low that it would be better if he starts using it himself and on this ground the requirement of such a landlord cannot be held to be not bona fide merely by saying that he is interested in increasing the rent. Consequently, finding no merit in this petition, the same is dismissed. Needless to say, since the main case has been decided, no order is being passed on the application for mesne profits.