

**(2013) 07 P&H CK 0081**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Revision No. 4135 of 2013 (O&M)**

M/s Stic Travels and Another

APPELLANT

Vs

Dr. Viranmool Singh Toor and Others

RESPONDENT

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**Date of Decision : 12-07-2013**

**Acts Referred:**

**Citation : (2013) 07 P&H CK 0081**

**Hon'ble Judges : Rakesh Garg, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## **Judgement**

Rakesh Kumar Garg, J.—The respondents-landlords filed a petition u/s 13B of the East Punjab Urban Rent Restriction Act, 1949

(hereinafter referred to as, "the Act") seeking ejectment of the petitioners from the demised premises being Non Resident Indians, who required

the demised premises for their own personal use and occupation. It has been specifically stated in the eviction petition that the respondents are

Indians by birth and fall within the definition of Non Resident Indian as contained u/s 2(dd) of the Act and have decided to come back to India to

reside and settle in Chandigarh and start a Joint Venture in the demised premises. It has also been submitted by them specifically that they are the

owners of the building in question for more than five years and do not occupy any other commercial premises in the urban area of Chandigarh, nor

they have vacated any such premises after commencement of the Act.

2. Upon notice, the petitioners filed an application for leave to defend u/s 18A(4) of the Act submitting that the eviction petition was not

maintainable as the respondents were not the owners of the premises in

question; further submitting that the respondents were well settled in the foreign country and they have not placed on record any document to show entering into a Joint Venture for running of hospital in the demised premises as alleged. The respondents were in occupation of ample space for the purposes of running a hospital as they were in possession of basement and one complete portion of the SCO No. 44. Moreover, hospital cannot be allowed to run from the demised premises (basement) because it was not permissible.

3. The application for leave to defend has been contested by the respondents-landlords submitting that they will get the necessary permission from the concerned departments after getting the demised premises vacated from the tenants. The submissions made in the eviction petition were reiterated and prayer was made to reject the prayer.

4. Vide impugned order dated 16.05.2013, the Rent Controller, Chandigarh has rejected the prayer of the petitioners and in view of the Full Bench judgment of this Court in "Anwar Ali v. Gian Kaur" 2001 (2) RCR (Rent) 604 has ordered eviction of the petitioners being consequential.

The relevant part of the impugned order be noticed, which reads thus:

5. Learned counsel for the parties have restricted their arguments to their respective pleadings which are not reproduced here for the sake of brevity. It has also been argued by learned counsel for the petitioner that in fact shop in possession of respondent forms part of integrated building consisting of SCO No. 42-43-44, Sector 17-A, Chandigarh. There are other tenants in the entire building and ejection petitions have also been filed against them and it is permissible to the NRI landlord to evict all the tenants u/s 13B of the Act from the integrated building. He has also placed reliance upon judgment of Hon'ble Punjab and Haryana High Court titled as Mukesh Kumar v. Santosh Kumari & Ors. 2007 (1) RCR (Rent) 422 in this regard. On the other hand, it has also been argued by learned counsel for the respondent apart from arguments arising from the pleadings that present petition is not maintainable because petitioners cannot file more than one eviction petition u/s 13B of the Act.

6. After hearing the rival contentions of both sides and after going through the case file properly, I have come to the considered conclusion that the petitioners have prima facie established that they are co-owners of the property

in dispute for the last more than five years by virtue of copy of allotment letter placed on the file. The contention of the respondent that petitioners do not fall under the definition of Non Resident Indian is also not tenable because copy of passports of the petitioners reveal that petitioner No. 1 & 2 are residents of Canada whereas petitioner No. 3 is resident of United Kingdom and their place of birth is India. Therefore, they all fall within the definition of NRI under the East Punjab Urban Rent Restriction Act. Moreover, now it is well settled law that to be NRI, it is sufficient that a person of Indian origin establishes that he has permanently or temporarily settled outside India. He should be of Indian origin, the person whose parents, grand parents, or great parents were born in India and permanently residing in India would be an NRI for the purposes of Rent Act as held by Hon''ble Supreme Court in Baldev Singh Bajwa Vs. Monish Saini, . It is the case of the petitioners that they have returned back to India and they want to start the Multi Specialty Hospital in the building in question. Therefore, if they have returned back to India, it is not fatal to their case if they have got their ration cards and voter cards in India, Therefore, such contention raised by learned counsel for the respondent is also misconceived.

7. The other contention of the respondent that petitioners have also filed similar ejectment applications against other tenants also and thus, the present petition is not maintainable is also misconceived in view of the law laid down by Hon''ble Punjab and Haryana High Court. In Mukesh Kumar (Supra) case Hon''ble Punjab and Haryana High Court has held that if different portions of one integrated building are let out to different tenants, NRI landlord is entitled to evict all tenants from the building on ground of bona fide requirement. Similarly, in another judgment titled as Harbhajan Singh Vs. Gurdial Singh, Hon''ble Punjab and Haryana High Court has also held that in a case of integrated large building, portion of which were let out to different tenants, NRI landlord is entitled to evict all the tenants u/s 13B of the Act on the ground of bona fide requirement.

The right to seek eviction is related to building and not to tenants. Therefore, in view of the law laid down by Hon''ble High Court in this regard as discussed above and in view of the facts and circumstances of the present case, the petitioners have satisfied this Court that Bay SCO Nos. 42-

43-44, Sector 17-A, Chandigarh forms one integrated building as apparent from the copy of allotment letter placed on the file. Therefore, the

petitioners are entitled to evict the respondent as well as other tenants in the different portions of the building in question on the ground of bona fide requirement.

8. The petitioners have also satisfied this Court that they intend to settle back in India and want to run hospital in whole of the SCO. It is immaterial

if they have not filed the project report, financial potential, site plan etc. for establishment of hospital in the building in question because as per law it

is not required on the part of the petitioner and it is not the headache of the tenant to see such a hospital cannot run from the demised premises or

the petitioner has to seek permission for the change of user. Therefore, if the petitioners who are NRIs and landlords of the demised premises want

the demised premises vacated to run hospital from there, their bona fide cannot be doubted. As such, all the contentions raised by respondent are

misconceived and respondent has failed to show any triable issue to grant him leave to contest the petition.

9. Resultantly, as in the cumulative effect of the discussion and findings given above, it is established that petitioners are non Resident Indian who

intend to settle back in India and require the demised premises for their bona fide requirement to run and establish hospital in the entire building in

question. They are owners of the building in question for last more than five years. Therefore, once these things are established on the file, there is

no scope for the tenant to contest the present application because he has failed to make out triable case and thus, application for leave to contest is

hereby dismissed.

At this stage, the grounds on which the impugned order has been challenged, as raised in this revision petition, be also noticed, which reads as

under:

i) That the Ld. Rent Controller UT Chandigarh has not taken into consideration the fact that the determination of the question of personal necessity

is a question which needs to be decided after appreciating the evidence led in the trial but the said question of personal necessity has been de novo

decided merely on assumptions & not based on concrete material evidence which actually is a grave injustice amounting to miscarriage of justice.

ii) That the Ld. Rent Controller UT Chandigarh has gravely erred in accepting the averments of the respondent regarding establishment of a

hospital in the premises, which actually is in violation of certain laws and bye-laws applicable on the City of Chandigarh but the Ld. Rent Controller

UT Chandigarh has again accepted the averments of the respondents merely on assumption & speculation that the respondents would obtain the

necessary permissions to construct the hospital at the demised premises.

iii) That Ld. Rent Controller UT Chandigarh has gravely erred in rejecting the arguments of the petitioner & in accepting the averments of the

respondents that they have come back to India but have no documentation supporting the essentials of residents of India viz. Ration Card, Voter I-

Card, adhaar card etc. which in fact has granted a recognition for holidaying Non Resident Indians to have their building vacated & further rented

out on higher profit rentals, which is in violation of the law.

iv) That the Ld. Rent Controller UT Chandigarh has gravely erred in denying the leave to defend to the petitioner & thus has caused the

miscarriage of justice as vital material evidence which was & is essential for the just determination of the civil rights of the petitioner.

5. However, it may further be noticed that the grounds of revision in favour of the petitioners-tenants are not fulfilled as provided u/s 13B of the

Act except that the personal need of the landlord is not bona fide.

6. Learned counsel for the petitioners has vehemently argued that establishment of a hospital in the demised premises is actually in violation of the

laws and bye-laws applicable to the city of Chandigarh and in the absence of any document placed on record to show that respondents entered

into a Joint Venture to run a hospital in the demised premises, their need cannot be said to be bona fide and therefore, it was imperative upon the

Rent Controller to grant an opportunity to the petitioners-tenants to establish the same by leading evidence.

7. The argument raised on behalf of the petitioners before this Court is misconceived and is liable to be rejected. It is immaterial if the respondents-

landlords have not filed the project report, financial potential, site plan etc. for establishment of the hospital in question, because as per the law it is

not required by the respondents landlords and it is none of the tenant's business to show whether such a hospital could be run from the demised

premises or not, or that the landlord has to seek permission for the change of user. In fact, once it is established that the respondents are NRI and

have fulfilled all other conditions as envisaged u/s 13B of the Act, a presumption has to be drawn u/s 18A(4) of the Act in favour of the

respondents-landlords that their need is bona fide. In the application for leave to defend, the petitioners-tenants have failed to make out a case to

raise a triable issue on the basis of which they could be granted leave to defend and in view thereof, this Court finds no merit in this petition.

Dismissed.