

*Before Rameshwar Singh Malik, J.*

**CHARANJIT SINGH—Petitioner**

*versus*

**HARBAX SINGH KALSI—Respondent**

**CR No. 3680 of 2012**

June 7, 2012

*East Punjab Urban Rent Restriction Act, 1949 - S.2(dd), 13-B - Meaning of "Non Resident Indian" - Landlord residing in Canada since 1971-72 - Decided to return to India - Application under S.13-B of the Act filed - Tenant raised objection disputing status of landlord as 'NRI' - Leave to contest declined by Rent Controller - Eviction ordered - Tenant filed revision petition against*

*order of eviction - Held, it is not obligatory for landlord to come to India first before seeking eviction - Further held, landlord was a Canadian citizen but was 'NRI' as per S.2(dd) of the Act - Further held, that revisional jurisdiction of court is limited and can be exercised only when there is patent illegality and perversity.*

*Held*, that in this view of the matter, I unhesitatingly conclude that it was not obligatory on the respondent-landlord to come to India first before seeking eviction of the petitioner-tenant, invoking the provisions under Section 13-B of the Rent Act.

(Para 11)

*Further held*, that so far as the second contention raised by the learned counsel for the petitioner disputing the NRI status of the landlord-respondent is concerned, the same is without any force for the reason that landlord-respondent duly proved his status as NRI on the record by producing a copy of his passport. The learned Rent Controller has rightly recorded that perusal of the passport reveals that Harbax Singh Kalsi-landlord was a Canadian citizen, whose birth place is mentioned as Talwandi Bhai, India. In the assessment register for the year 1998-99, the landlord-respondent has been - rightly held to be the NRI within a scope of Section 2 (dd) of the Rent Act. Further, there is nothing on record to show that the landlord was not NRI and the learned counsel for the petitioner was not able to substantiate his argument. Thus, I have no hesitation to conclude that the landlord-respondent was NRI and he was entitled to invoke the provisions of Section 13-B of the Rent Act.

(Para 12)

*Further held*, that it is also the settled proposition of law that the revisional jurisdiction of this Court is a limited one. It can be exercised only when there is a patent illegality or perversity pointed out in the impugned order. Learned counsel for the petitioner was not able to point out any patent illegality or perversity in the impugned order, passed by the learned Rent Controller.

(Para 15)

Raj Kumar Gupta, Advocate, for the petitioner.

**RAMESHWAR SINGH v. MALIK. (ORAL)**

(1) The instant civil revision is directed against the order dated 4.1.2011 passed by the learned Rent Controller, Ferozepur, whereby the application moved by the respondent-landlord under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 ('Rent Act' for short) has been allowed directing the petitioner-tenant to hand over the vacant possession of the demised premises forming part of building No. 26/6, Old Bus Adda, Talwandi Bhai, Tehsil and District Ferozepur, to the respondent-landlord, within a period of one month from the date of the order, failing which the landlord shall be entitled to get the possession through the agency of the Court.

(2) Necessary factual background of the case, when put in a narrow compass, is that the respondent-landlord is a Non Resident Indian ('NRI' for short). He appointed Surinder Pal Singh son of Dr. Balwant Singh as his attorney by way of special power of attorney dated 7.4.2005 for the purpose of filing the application under Section 13-B of the Rent Act against the tenant, petitioner herein, seeking vacant possession of the shop forming part of building No. 26/6, Old Bus Adda, Talwandi Bhai, Tehsil and District Ferozepur. Accordingly, the application under Section 13-B of the Rent Act was instituted as case No. 23 on 15.6.2005 in the court of learned Rent Controller, Ferozepur. It was stated in the application that there were three shops adjoining each other forming part of No. 26/6, Old Bus Adda, Talwandi Bhai, Tehsil and District Ferozepur, and the same were jointly owned by Lal Singh, Gurbax Singh and Harbox Singh, sons of Kirpal Singh, resident of Talwandi Bhai. They have 1/3rd share each. The petitioner was in occupation of the demised shop as tenant under Harbox Singh-landlord on a monthly rent of Rs. 75/- and has been running a STD-PCO in it. The tenancy was on monthly basis. All the three co-owners namely Harbox Singh, Gurbax Singh and Lal Singh have since effected oral partition on 31.5.2004, the shop on the northern side fell to the share of Lal Singh, middle shop, which was occupied by Charanjit Singh-petitioner, fell to the share of Harbox Singh-respondent, whereas the shop on the southern side, in occupation of one Radhe Sham, fell to the share of Gurbax Singh. Consequent upon partition and by operation of law, Charanjit Singh-petitioner became tenant of respondent-Harbox Singh Kalsi, on the previous terms and conditions.

(3) It was further averred that respondent was NRI and was residing in Canada since year 1971-72. He has decided to return to India and settle at Talwandi Bhai, which is his parental town. He wanted to return to India in the advanced stage of his life and it was his desire to spend his last days of life at his own mother land. Thus, the demised shop was required for his own use and he was entitled for immediate possession of the demised shop. The landlord was not in occupation of any other non residential building for the purpose of his use in the urban area of Talwandi Bhai.

(4) Notice of the application was issued by the learned Rent Controller and pursuant thereto, the petitioner-tenant appeared. He moved an application under Section 18-A of the Rent Act, seeking leave of the court to contest the application under Section 13-B filed by the landlord-respondent. Petitioner took objection disputing the status of the landlord-respondent as NRI. He further objected that the landlord does not fall within the scope of Section 2 (dd) of the Rent Act. He also pointed out that the landlord does not require the demised premises for his personal use and occupation. If he puts the requirement, that was not bona fide because he was not likely to shift to such a small place. It was not excepted from a man of the NRI status to live in such a small town like Talwandi Bhai. Petitioner further objected that the fact that landlord has appointed Surinder Pal Singh as his attorney, with a view to file the application under Section 13-B of the Rent Act, clearly shows that the landlord had not returned to India. The petitioner concluded by submitting that he was a poor man and it was difficult for him to start his business from a new place. He prayed for granting the permission to contest the application under Section 13-B of the Rent Act. The respondent-landlord filed his reply to the application filed by the petitioner, seeking leave of the court to contest the application under Section 13-B of the Rent Act.

(5) The landlord-respondent controverted all the material allegations levelled by the petitioner and reiterated his stand, taken in his application under Section 13-B, praying for dismissal of the application moved by the petitioner-tenant under Section 18-A of the Rent Act, seeking leave of the court to contest the application.

(6) After hearing learned counsel for the parties, the learned Rent Controller, Ferozepur, vide his order dated 4.1.2011 (Annexure P-7), declined to grant leave to the petitioner to contest the application under

Section 13-B of the Rent Act. The application of the landlord-respondent, moved under Section 13-B of the Rent Act, was allowed directing the present petitioner-tenant to hand over the vacant possession of the demised premises to the landlord-respondent within a period of one month from the date of the order, failing which the landlord-respondent was held entitled to get the possession through the agency of the Court.

(7) Feeling aggrieved against the above said impugned order dated 4.1.2011, the petitioner has approached this Court by way of present petition.

(8) I have heard the learned counsel for the petitioner and with his able assistance, have gone through the record of the case. After giving thoughtful consideration to the contentions raised and view of the peculiar facts and circumstances of the present case this Court is of the considered opinion that the present one is a misconceived petition. It is bereft of any merit and without any substance. I say so because except addressing the Court on technicalities, learned counsel for the petitioner could not press into service any argument on the merits of the case.

(9) Learned counsel for the petitioner submitted that the respondent-landlord never returned to India which was *sine qua non* for him to invoke the provisions under Section 13-B of the Rent Act. The second submission made by the learned counsel for the petitioner is regarding NRI status of the landlord-respondent. Learned counsel for the petitioner submits that the respondent-landlord was not NRI because he was not falling within the scope of the definition of NRI, provided under Section 2 (dd) of the Rent Act.

(10) Viewed from any angle, both the contentions raised by the learned counsel for the petitioner are found to be without any force. Taking first argument first, it is not the requirement of law that the NRI should come to India first and only then he would be entitled for seeking eviction of his tenant under Section 13-B of the Rent Act. It has been specifically stated by the landlord-respondent that he has decided to return to India because he wants to spend last days of his life in his own motherland, therefore, he requires the demised shop for his own use.

(11) In this view of the matter, I unhesitatingly conclude that it was not obligatory on the respondent-landlord to come to India first before seeking eviction of the petitioner-tenant, invoking the provisions under

Section 13-B of the Rent Act. Further, the view taken by this Court finds support from the judgment of this Court in the case of *Kamlesh Devi @ Keshi versus Chanan Singh*. The relevant observations made by this Court in *Kamlesh Devils case (supra)*, which can be gainfully followed in the present case, read as under:-

*“Application by NRI for ejectment of tenant contention of tenant that NRI has no intention to return to India contention repelled. It is not unknown that in the evening of their lives home sickness and loneliness over takes the NRI and there is every desire to come back to the roots which are provided by their own country as nothing survives for them to do in the foreign land after their retirement. Application by NRI for ejectment of tenant. There is no requirement that NRI should first return to India and then apply for eviction of tenant”*

(12) So far as the second contention raised by the learned counsel for the petitioner disputing the NRI status of the landlord respondent is concerned, the same is without any force for the reason that landlord respondent duly proved his status as NRI on the record by producing a copy of his passport. The learned Rent Controller has rightly recorded that perusal of the passport reveals that Harbax Singh Kalsi-landlord was a Canadian citizen, whose birth place is mentioned as Talwandi Bhai, India. In the assessment register for the year 1998-99, the landlord respondent has been rightly held to be the NRI within a scope of Section 2 (dd) of the Rent Act. Further, there is nothing on record to show that the landlord was not NRI and the learned counsel for the petitioner was not able to substantiate his argument. Thus, I have no hesitation to conclude that the landlord respondent was NRI and he was entitled to invoke the provisions of Section 13-B of the Rent Act.

(13) The aforesaid view taken by this Court finds support from three judgments of this Court in *Baghel Singh versus Kotu Kumar Phull (2)*, *Sohan Lal versus Swaran Kaur (3)*, and *Surinder Kumar Shori versus Shakuntala Devi (4)*. The relevant observations made in

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- (1) 2003 (1) RCR (Rent) 725
  - (2) 2009 (2) PLR 442
  - (3) 2003 (2) RCR 407
  - (4) 2007 (1) Law Herald (P&H) 160

*Sohan Lal's case (supra)*, which can be aptly followed in the present case, read as under:-

*"The expression "NRI" used in Section 2 (dd) of the Act has been clearly defined and there is no ambiguity necessitating any external aid for interpreting the same. The ordinary meaning of the expression NRI given in section 2 (dd) of the Act is that person of Indian Origin living abroad whether settle permanently or temporarily The purpose of his living abroad has been amplified either for taking up employment outside India or for carrying on business or vacation outside India or for any other purpose as would indicate his intention to stay outside India for uncertain period. Therefore, the definition of expression NRI cannot be confined to only those who are holding Indian Passport and continue to be the Indian citizens. The definition in fact embraces all those categories of Indian living abroad whether citizens or non citizens, whether born in India or abroad, whether carrying Indian or foreign passport. It appears that as long as he is owner of a property in the State of Punjab Legislature has intentionally used wider expression to include large number of categories of NRIs."*

(14) Learned counsel for the petitioner advanced another argument but halfheartedly. He submitted on merits of the case that it was a joint tenancy. The landlord-respondent did not implead both the tenants as party-respondents because of which his application under Section 13-B of the Rent Act was not maintainable. However, learned counsel for the petitioner very fairly states that this argument was not raised before the learned Rent Controller. Once it is the admitted position, the argument needs hardly any further discussion. However in all fairness to learned counsel for the petitioner, while considering this argument, the Court could not find anything worth consideration, available on the record of this case. Further, the petitioner cannot be permitted to make out an entirely new case, at this stage.

(15) It is also the settled proposition of law that the revisional jurisdiction of this Court is a limited one. It can be exercised only when

there is a patent illegality or perversity pointed out in the impugned order. Learned counsel for the petitioner was not able to passed by the learned Rent Controller.

(16) No other argument has been raised.

(17) In view of the totality of the facts and circumstances of the present case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petition is devoid of any merit and it must fail.

(18) Accordingly, the instant petition is ordered to be dismissed, however, with no order as to costs.