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PUNJAB AND HARYANA HIGH COURT
 JUSTICE RAKESH KUMAR GARG

Braham Kumar v. Sukhdev Singh

Civil Revision No.7420 of 2011 (O&M)

08.12.2011

East Punjab Urban Rent Restriction Act, 1949, Section 13-B - as on fulfilling all the ingredients of Section 13- B of the Act, an NRI landlord is entitled to get one tenanted premises vacated as per his choice and the fact that he was residing in another accommodation is of no significance, as it is well settled that a landlord is the best judge of his requirements and the tenant cannot dictate his terms with regard to the suitability of the accommodation in his possession.

East Punjab Urban Rent Restriction Act, 1949, Section Section 18- A(2) - Non compliance of - Leave to contest sought on the ground summons were not sent him as per the prescribed provisions of Section 18-A(2) - Petitioner has not been non-suited on the ground that his application for leave to defend was filed beyond the prescribed period - In fact, his application for leave to defend has been declined on merits of the grounds raised in the said application - No prejudice is shown to have been caused to the petitioner for non-compliance of the provisions of Section 18- A(2) of the Act.

Mr. G.S. Sandhu, for the petitioner.

RAKESH KUMAR GARG, J. . This is tenant's revision petition challenging the order dated 23.9.2011 of the Rent Controller, Ludhiana, whereby application for leave to defend filed by the petitioner in a petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (for short, "the Act") has been rejected and consequently, his eviction has been ordered from the demised premises.

2. The respondent - Sukhdev Singh filed petition seeking ejection of the petitioner from the demises property, submitting that he was a Non Resident Indian (NRI) and owner/landlord of the tenanted premises which was purchased by him in open auction vide deed of conveyance dated 3.4.1967. The petitioner was tenant in a portion of the said property at a monthly rent of `400/- exclusive of house tax @ 15%. Hence, there was a relationship of landlord and tenant between the parties. It was further averred that the respondent/landlord has returned to India and at present residing at 507, Raikot Road, Mandi Mullanpur, Tehsil and District Ludhiana. Earlier he was residing in Canada and had returned to India in the year 2009. Respondent is having Canadian passport. He requires the tenanted premises bonafidely for his personal use and occupation as well as of his family. The premises in dispute was most suitable accommodation required by him and his family members in order to set up his residence and thus, the petitioner was liable to be evicted.

3. Upon notice, the petitioner appeared and filed application for leave to contest stating that he was lodged in Central Jail, Tajpur Road in FIR No.195 dated 2.11.2009 P.S. Sarabha Nagar, Ludhiana and the demised premises was lying locked. There was no one to contest the ejection petition in his absence. After getting information regarding the eviction petition, his wife informed him about the same and then his power of attorney was got attested from the jail authorities. Upon inspection of the file, it was revealed that ejection application was filed under Section 13-B of the Act. Thus, the application for leave to defend was filed within the stipulated period after getting knowledge of the pendency of the present ejection petition. It was stated that Section 13-B of the Act was not applicable.

However, the petitioner sought permission to contest the petition on the ground summons were not sent him as per the prescribed provisions of Section 18-A(2) of the Act and that title of the respondent was also disputed. It was further submitted that the respondent is a permanent resident of Canada and was residing there with his family members and had no intention to return to India. It was also submitted that the respondent was already occupying property No.507, Raikot Road, Mandi Mullanpur, Tehsil and District Ludhiana. He was also having another commercial property at Village Mullanpur, Ludhiana and immovable property at Muzafar Nagar, U.P. Thus, requirement of respondent was not bona fide. The respondent had asked the petitioner to purchase the demised property for Rs. 50 lacs or to vacate the same by taking Rs. 10 lacs. He had received rent @ Rs. 400/- per month from him upto 31.7.2009 but thereafter, refused to accept the same. It was reiterated that the respondent does not require the property in dispute bonafidely and was not covered under the definition of 'NRI' as envisaged under Section 2(dd) of the Act. It was further submitted that there were various triable issues in the present petition and thus, permission be granted to contest the same. Respondent filed reply to the aforesaid application for leave to contest denying the averments.

4. After hearing learned counsel for the parties, the Rent Controller held that since the petitioner had appeared on the date fixed and had filed application under Section 18-A of the Act along with his affidavit, it does not affect whether summons could not be sent in the prescribed proforma and heard applicant on the issue of leave to contest on merits.

5. Further, the Rent Controller held that the respondent is an NRI and owner of the property in dispute for the last more than 5 years and his requirement was bona fide and there was no dispute with regard to the relationship of landlord and tenant between the parties. Resultantly, the application for leave to contest was declined and eviction of the petitioner was ordered from the demised premises.

6. Challenging the aforesaid order, learned counsel for the petitioner vehemently argued that summons were not sent to him as per prescribed proforma under Section 18-A(2) of the Act and thus, the impugned order was liable to be set aside for non-compliance of the aforesaid provision of the Act. It was further contended that need of the respondent was not bona fide.

7. The contention as raised is without any merit for the reason that admittedly, the petitioner has not been non-suited on the ground that his application for leave to defend was filed beyond the prescribed period. In fact, his application for leave to defend has been declined on merits of the grounds raised in the said application. No prejudice is shown to have been caused to the petitioner for non-compliance of the provisions of Section 18-A(2) of the Act. Learned counsel for the petitioner further could not dispute the fact that there was relationship of landlord and tenant between the parties and that the respondent is an NRI and owner of the demised premises for the last more than five years prior to the filing of the instant petition. Thus, the respondent fulfilled all the necessary ingredients for seeking relief under Section 13-B of the Act. It is well settled that once the aforesaid ingredients have been fulfilled, a presumption with regard to bona fide requirement of the landlord for use and occupation of the demised premises is drawn in his favour and such a presumption can be rebutted only by making out a very strong case by the tenant. Thus, it was for the tenant to rebut the said presumption of bona fide necessity drawn in his favour. Except the bald assertion on the part of the petitioner that requirement of the respondent was not bona fide, there is no material available on record to rebut the presumption drawn in favour of the respondent-landlord. In fact, nothing was pointed out as to how the requirement of the respondent was not bona fide with regard to use and occupation of the demised premises.

8. Learned counsel for the petitioner has further argued that admittedly, the respondent was residing in an accommodation nearby which was sufficient for his use and occupation and thus, there was no bona fide need for the demised premises. However, the aforesaid argument raised is without any merit, as on fulfilling all the ingredients of Section 13-B of the Act, an NRI landlord is entitled to get one tenanted premises vacated as per his choice and the fact that he was residing in another accommodation is of no significance, as it is well settled that a landlord is the best judge of his requirements and the tenant cannot dictate his terms with regard to the suitability of the accommodation in his possession.

9. In this view of the matter, I find no merit in this petition.
10. Dismissed.