

(2022-3)207 PLR 506
PUNJAB AND HARYANA HIGH COURT
Before: Mr. Justice Fateh Deep Singh.
SATISH GARG - Petitioner,
Versus
INDERJIT SINGH BHATHAL - Respondent.
CR No.381 of 2022 (O&M)

East Punjab Urban Rent Restriction Act, 1949 (III of 1949) Section 13-B - Punjab Rent Act, 1995 (13 of 2012) - A plain reading of the 1949 Act and the new Rent Act reflects that the only difference is that under the old Act the NRI need not claim and prove that he has returned to India but under the new Rent Act he must establish that his permanent residence is in India and has returned back to the country permanently and which holds out that requirement of the new Rent Act needs to be fulfilled and for which this plea of amendment has come about - Claim that he has permanently left US and settled in India is a question based on evidence and can be put to test only during the course of trial and which precisely is a reason why the Court below - Application for allowed - Order upheld - Civil Procedure Code, 1908 (V of 1908) Order 6 Rule 17.

Cases referred to:-

1. 2016(1) RCR (Rent) 525, *Krishan Kumar v. Kamla Devi*.
2. 2013(2) RCR (Civil) 965, *Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka*.
3. 1995 (Sup3) SCC 709, *Prakash Wati (Smt) v. R.L. Kapur*.
Mr. Tanvir S. Attariwala, for the petitioner.
Ms. Harveen Kaur, for the respondent.

Fateh Deep Singh, J. - (7th April, 2022) - A petition under Section 13B of the East Punjab Urban Rent Restriction Act, 1949 (in short, 'the 1949 Act') was preferred by then petitioner Inderjit Singh Bhathal (now respondent) against the present petitioner Satish Garg (then respondent) for ejection of tenant from the shop duly described and depicted in the head note of the plaint.

2. During the course of proceedings, an application under Order VI Rule 17 [CPC](#) was moved by the landlord seeking amendment of the petition on the grounds that with the efflux of time it has become imperative that in future any petition for ejection to be filed by a NonResident Indian would be subject to the provisions of the Punjab Rent Act, 1995 (in short, 'the new Rent Act') and therefore sought deletion of the provisions "under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949" and to replace it with the words "under Section 24(3) of the Punjab Rent Act, 1995" wherever it was so mentioned and further to add the words that the petitioner has since then returned to India permanently. The Court of learned Rent Controller, Ludhiana through impugned order dated 16.11.2021 (Annexure P7) allowed the amendment against which the instant revision has been preferred by the tenant petitioner Satish Garg.

3. Heard Mr. Tanvir Singh Attariwala, Advocate for the tenant petitioner; Ms. Harveen Kaur, Advocate for the landlord respondent and perused the records of the case.

4. It is not in any manner displaced that the 1949 Act was in place with effect from 30.11.2013 when the instant petition for ejection was filed on 14.01.2015 and it is there that by virtue of a decision of this Court passed in CR No.3509 of 2014 (O&M) titled '*Krishan Kumar v. Kamla Devi*'¹ 2016(1) RCR (Rent) 525, it was laid down that any future petition to be filed by the NRI would be under the new Rent Act in spite of the fact that the premises were let out prior to the commencement of the new Rent Act and therefore, enjoined upon the landlord that he would be at liberty after the present Act has come into effect to move

appropriate application for amendment and it is precisely how the present controversy has come about. The Court below considering that the plea of tenant whether the landlord has come permanently and settled in India or not, is subject to the decision of the Court on merits after evidence.

5. A plain reading of the 1949 Act and the new Rent Act reflects that the only difference is that under the old Act the NRI need not claim and prove that he has returned to India but under the new Rent Act he must establish that his permanent residence is in India and has returned back to the country permanently and which holds out that requirement of the new Rent Act needs to be fulfilled and for which this plea of amendment has come about and this Court in '*Krishan Kumar & others v. Kamla Devi & others*'¹ 2016(1) RCR (Rent) 525, has held the landlords who fail to make necessary averments as required under Section 24 of the new Rent Act and would have a right to file amendment conforming to the provisions of the new Rent Act of 1995 and therefore, the landlord is at liberty to get the petition amended.

6. Learned counsel representing both the sides have relied upon *Krishan Kumar's case* (ibid) to reiterate their stand. It is since the inception of the ejectment petition the landlord has claimed that he was a resident of California and was presently resident of District Ludhiana (Punjab). His claim that he has permanently left US and settled in India is a question based on evidence and can be put to test only during the course of trial and which precisely is a reason why the Court below holding that since the evidence is yet to be adduced, such a question cannot be decided at this juncture and has thus allowed the application under Order VI Rule 17 CPC. Moreover, as is reflected from the records of the Rent Controller, proceedings are still at initial stage and not much prejudice is caused to the tenant by such an order.

7. Learned counsel for the petitioner Mr. Tanvir Singh Attariwala, Advocate besides *Krishan Kumar's case* (ibid) has cited '*Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka & others*'² 2013(2) RCR (Civil) 965; '*Prakash Wati (Smt) and others v. R.L. Kapur*'³ 1995 (Sup3) SCC 709; and '*J. Samuel and others v. Gattu Mahesh and others*' Civil Appeal No.561 of 2012.

8. However, none of these ratios has come to the aid of the petitioner at this juncture because of the factual disparity.

9. In the light of forgoing reasons, this Court does not feel inclined to show any indulgence in the present petition. The order under assail needs to be upheld. The petition being without any merit stands dismissed.

R.M.S. - Petition dismissed.