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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 13.08.2025

1. CR-4050-2011
2. CR-2715-2017

Sarwan Singh (since deceased) through his LRs. ....Petitioner

Versus

Rajesh Vij (Vig) ....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Arun K. Bakshi, Advocate
for the petitioner.

Mr. A.S. Walia, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

Landlord is in revision aggrieved of order passed by Rent Controller whereby his application under Section 13-B the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to 'the Act of 1949') seeking eviction of the respondent/tenant from the premises owned by him, has been ordered to be dismissed. Along with revision, the landlord has filed application under Order XLI Rule 27 CPC, 1908 seeking permission to lead additional evidence to prove his status as Non-Resident Indian to enure benefit under Section 13-B of the Act of 1949.

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2. Counsel for the petitioner submits that the document i.e. passport of the petitioner sought to be proved by leading additional evidence, is necessary for the adjudication of the matter in hand but the same could not be produced before the Trial Court in original. The petitioner has been non-suited only on the ground that the original passport was not produced. He thus prays for proving the passport by leading additional evidence before this Court. Mr. Bakshi submits that he is in possession of the original passport of the revision petitioner. The attested copy thereof has already been placed on record.

2.1. In the main revision, Mr. Bakshi submits that the landlord along with his affidavit before the Rent Controller, tendered attested copy of passport, he proved his status of Non Resident Indian. Mr. Bakshi further submits that the Rent Controller erred in holding that the *bona fide* need of the landlord is not proved merely by referring to his testimony that he was sowing and reaping potato crop in England. Mr. Bakshi submits that the petitioner/landlord is 60 years of age. He wishes to come back to India for which the present petition was filed seeking eviction of the tenant from the shop. During the time the petition remained pending before Rent Controller, landlord was not expected to sit idle. He thus submits that both the findings recorded by the Rent Controller regarding the petitioner having failed to prove his status as NRI and his need being not proved, cannot be sustained and need to be reversed.

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3. Per contra, Mr. Walia submits that apart from a bald plea pleaded in the application that despite due diligence the passport could not be produced before the Rent Controller in original, no reason has been assigned. Thus, allowing the application for additional evidence at this stage would amount to filling up of lacuna which is beyond the scope of revisional jurisdiction of this Court and Order XLI Rule 27 CPC, 1908.

3.1. In the main revision, Mr. Walia has supported the findings recorded by the Rent Controller. It has been contended by him that the need projected by landlord has ceased to exist as he died during the pendency of eviction proceedings. Landlord failed to prove that he is an NRI which is primary requirement to invoke Section 13-B of the 1949 Act.

4. I have heard counsel for the parties and have carefully gone through records of the case.

5. Present eviction petition has been filed under Section 13-B of the 1949 Act by the petitioner asserting his status as Non-Resident Indian. The procedure for disposal of the petitions filed under Section 13-B has been provided under Section 18-A. Section 18-A(9) provides that the procedure for the disposal of an application for eviction under Section 13-A or Section 13-B shall be the same as the procedure for the disposal of applications by the Controller. Section 18-A(7) which is a *non-obstante* clause provides that notwithstanding anything contained in the Act, the Controller while holding an inquiry in a proceeding to which this section applies including the

recording of evidence, shall follow the practice and procedure of a Court of Small Causes. Section 18-B mandates that Section 18-A shall have overriding effect over anything inconsistent contained in 1949 Act or any other law.

6. A conjoint reading of the aforesaid provisions makes it amply clear that the inquiry provided to be conducted by the Rent Controller in petitions filed under Section 13-B, is summary in nature. The strict principles of evidence are not applicable.

7. Perusal of the affidavit filed by the petitioner before the Rent Controller in his examination-in-chief demonstrates that attested copy of passport was tendered in evidence. The same was admitted in evidence without any objection. Petitioner was subjected to lengthy cross-examination wherein no suggestion w.r.t. passport exhibited and tendered in evidence, was raised. No suggestion was put to the petitioner that he is not holding a valid passport of United Kingdom.

7.1. Apart from that, this Court finds that passport is not the only mode to prove that the landlord is Non-Resident Indian. In the present case, Special Power of Attorney, in original, has come on record which is Exhibit P-2. The same shows that Sarwan Singh landlord was residing at London at the time of execution of Power of Attorney. The Power of Attorney was attested by Notary Public at Erith Kent in England. The same was also embossed by High Commission of India, London. All these documents have

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been ignored by the Rent Controller which prove that the petitioner-landlord was resident of England at the time of filing the eviction petition. His origin as Indian is not in dispute.

8. In view of above, this Court finds that the Rent Controller erred in non-suiting the petitioner holding that he is not a Non-Resident Indian merely for the reason that the original passport was not tendered even though attested copy thereof was tendered. Overwhelming evidence in form of Power of Attorney has been ignored. Rent Controller ought to have approached the issue in a more holistic manner.

9. The procedure and the mode of inquiry to be conducted by the Rent Controller and the ingredients of Section 13-B that need to be satisfied by the landlord to succeed in proceedings under Section 13-B, have been elaborately explained by Supreme Court in the case of **'Baldev Singh Bajwa vs. Monish Saini', (2005) 12 SCC 778**, observing as under:

> "**18.** From the aforesaid decisions the requirement of the landlord of the suit accommodation is to be established as a 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 text 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

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discloses such fact as would disentitle 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 to eviction if he requires the suit accommodation for his or her use or the use of the dependant, who ordinarily lives with him or her. The requirement would necessarily have 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 can it be said that in no circumstances will the tenant 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 an 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.

19. The legislative intent of expeditious disposal of the application for ejectment of the tenant filed by the NRI landlord is reflected from the summary procedure prescribed under Section 18-A of the Act of 1949 which requires the Controller to take up the matter on a day-to-day basis till the conclusion of the hearing of an application. The legislature wants the decision of the Controller to be final and does not provide any appeal or second appeal against the order of eviction; it is only the High Court which can exercise the power of consideration of the case, whether the decision of the Controller is in accordance with law. Section 13-B gives right of ejectment to a special category of landlord who is NRI (non-resident Indian); and owner of the premises for five

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years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his lifetime. Sub-section (3) of Section 13-B imposes a restriction that he shall not transfer through sale or any other means or lease out the ejected premises before the expiry of the period of five years from the date of taking possession of the said building. Not only that, if there is a breach of any of the conditions of sub-section (3) of Section 13-B, the tenant is given a right of restoration of possession of the said building. Under sub-section (2-B) of Section 19 the landlord has to take possession and keep it for a continuous period of three months and he is prohibited from letting out the whole or any part of such building to any other person except the evicted tenant and on any contravention thereof, he shall be liable for punishment of imprisonment for a term which can be extended up to six months. These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine. The landlord, after the decree for possession, is bound to possess the accommodation. The landlord is prohibited from transferring it or letting it out for a period of five years. The conditions and restrictions imposed on the NRI landlord make it virtually improbable for any NRI landlord to approach the court for ejectment of a tenant unless his need is bona fide. No unscrupulous landlord probably, under this section, would approach the court for ejectment of the tenant considering the onerous conditions imposed on him by which he is practically deprived of his right in the property not only as a lessor but also as the owner of the property. There is a restriction imposed even on the transfer of the property by sale or any other manner. The restriction imposed on the landlord in all probability points to the genuine requirement of the landlord. In our view there are inbuilt protections in the relevant provisions for the tenants that whenever the landlord would approach the court he would approach when his need is genuine and bona fide. It is, of course, subject to the tenant's right to rebut it but with strong and cogent evidence. In our view, in the

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proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the court shall presume that the landlord's need pleaded in the petition is genuine and bona fide. But this would not disentitle the tenant from proving that in fact and in law the requirement of the landlord is not genuine. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove this fact the tenant will be called upon to give all the necessary facts and particulars supported by documentary evidence, if available, to support his plea in the affidavit itself so that the Controller will be in a position to adjudicate and decide the question of genuine or bona fide requirement of the landlord. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour that his requirement of occupation of the premises is real and genuine.

21. The golden rule of construction is that when the words of the legislation are plain and unambiguous, effect must be given to them. The basic principle on which this rule is based is that since the words must have spoken as clearly to legislatures, as to judges, it may be safely presumed that the legislature intended what the words plainly say. The legislative intent of the enactment may be gathered from several sources which are, from the statute itself, from the preamble to the statute, from the Statement of Objects and Reasons, from the legislative debates, reports of committees and commissions which preceded the legislation and finally from all legitimate and admissible sources from where they may be allowed. Reference may be had to legislative history and latest legislation also. But the primary rule of construction would be to ascertain the plain language used in the enactment which advances the purpose and object of the legislation. No doubt the legislative intent in enacting Section 13-B is to provide for immediate possession of the accommodation owned by the NRI, but it cannot be assumed that the legislature wants the NRI landlord/owner to get the possession of the accommodation from the tenant even if he

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does not require it, and the need pleaded is proved to be a mere pretext to get the accommodation vacated. Had that not been the intention of the legislatures, the word “required” by the NRI landlord would not have been used in Section 13-B. The classified landlords are given the benefit of summary trial under Section 18-A of the Act. The summary trial is in two parts. Sub-section (4) provides that after the service of summons the tenant has no right to contest the prayer for eviction from the residential building, or scheduled building and/or non-residential building, as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as provided in sub-section (5) of Section 13-B to contest the matter. If the tenant defaults to appear in pursuance of summons or when he does not get leave to contest, the Controller shall presume that the statements made by the NRI in his petition have been admitted by the tenant and pass an order of eviction. This eventuality is contemplated when a tenant does not appear in pursuance of the summons issued and served or where the leave to contest has not been granted by the Controller. The second facet of the section comes into operation when the leave to contest is granted by the Controller. Sub-section (6) of Section 18-A provides that the Controller has to commence the hearing of the petition not later than one month from the date on which the leave was granted to the tenant to contest and he has to hear the application from day to day till the hearing is concluded and the application is decided. It is further provided that the procedure which shall be followed in deciding the application would be as is being practised by the Court of Small Causes. No appeal or second appeal is provided. From the aforesaid, it is absolutely apparent that even when leave would be given to the tenant to contest, the legislature has taken care of expeditious disposal of the petition for ejectment filed by the NRI landlord. Trial of the issue of bona fide requirement of the landlord in the procedure prescribed would not take much time and thus we cannot accept the argument that the

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word "required" used by the legislature in Section 13-B would not mean bona fide or genuine requirement and the section has to be construed as and when the allegation is made by the landlord of his need, it is to be taken as the gospel truth and the tenant's right to defend on that count is completely extinguished and given a go-by. We do not think the High Court is right in holding that mere prayer of the NRI landlord that tenanted premises are required by him or his dependant living with him entails decree of eviction on the mere allegation of requirement and no leave to contest can be given in respect of cases which are covered by various provisions restricting the right of the landlord to deal with the premises taken possession of by him in pursuance of the decree for eviction passed by the Controller under Section 13-B of the Act of 1949. We hold that allegations made by the NRI landlord of his requirement shall be presumed to be genuine and bona fide unless rebutted by the tenant by placement of cogent and material facts and evidence in support thereof at the stage of "leave to contest" before the Controller. We feel that any other interpretation would completely whittle down and deny the tenant's right to show and prove that the landlord does not in fact, or in law require the suit premises.

22. It is further contended that for according relief under Section 13-B of the Act of 1949, it must be proved by the NRI landlord that he has permanently returned to India or that his intentions are to permanently return to India. That the intention to permanently settle down in India should be read into the word "return" used in Section 13-B. That the specific category of NRI landlord has been created by the legislature with the intention to provide relief to them who are intending to settle down in India or take up business in India only. Learned counsel appearing for the landlords have submitted that from the very definition of NRI in Section 2(*dd*) of the Act, it is not necessary for the NRI landlord to permanently return to India either for the purpose of his residence or for non-residential purpose.

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23. Definition of "non-resident Indian" (NRI) under the Act contemplates that any person who is of an Indian origin, and who has settled either permanently or temporarily outside India for taking up employment; or for carrying on a business or vocation outside India; or for any other purpose in such circumstances as would indicate to stay outside India for an uncertain period, would be a non-resident Indian. Thus to be an NRI, it is sufficient that a person of Indian origin establishes that he has permanently or temporarily settled outside India for his business or on account of his employment, or for any other purpose which would indicate his intention to stay outside India for an uncertain period. Therefore, any person who has gone out of India and temporarily settled there for the purposes of undertaking certain course or degree of a university would not be an NRI because his stay could not be said to be for an uncertain period. A person to be an NRI, first should be of an Indian origin. The phrase "Indian origin" has not been defined in the Act of 1949. In the dictionary and in ordinary parlance the word "origin" refers to a person's parentage or ancestry. A person whose parents, grandparents, or great-grandparents were born in India and permanently resided in India would be an NRI for the purposes of the Act of 1949. It is not necessary that the person should be a citizen of India and should have shifted to a foreign country or that because he holds foreign passport he would not be NRI. In the appeals before us, there is no challenge that the landlords are not NRIs within the meaning of the Act because they do not have Indian origin. Submissions of the learned counsel for the appellants is that to bring the case within the four corners of Sections 2(*dd*) and 13-B of the Act of 1949, it is necessary that NRI has to return to India permanently. We are unable to agree with the interpretation of Sections 2(*dd*) and 13-B sought to be placed thereon by the learned counsel. Return to India could not be read as return to India permanently with an intention to settle in India permanently. If we read the phrase "return to India" along with the definition of "NRI" under Section 2(*dd*) of

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the Act, it is clear that in the special category of landlords "NRI" could also be a person who has settled permanently outside India. Thus a permanent resident outside India being an NRI can claim ejectment.

24. When we read Section 13-B along with the definition of NRI it is apparent that a person who is permanently residing outside India can also claim possession under Section 13-B of the Act. All that is required under Section 13-B is that an NRI should return to India and claim the premises for his/her use or for the use of any dependant ordinarily living with him. There is no requirement that he has permanently settled in India on his return or he has returned to India with an intention to permanently settle in India. An NRI may require the accommodation for expansion of his business which he is carrying on in another country or requires the accommodation for his temporary stay. Under Section 13-B, an NRI can also claim ejectment of the tenant from the premises for the purposes of any other person who is dependant on him and is ordinarily living with him, which makes it clear that although an NRI resides permanently in another country, he could get the accommodation vacated for the need of his dependant who ordinarily lives with him and he intends to come to India, choosing it to be his permanent abode. We do not find any substance in the submissions made by the learned counsel that the words "return to India" under Section 13-B of the Act denotes return to India permanently.

25. On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to an NRI to get one building vacated in a summary manner. A non-resident Indian landlord is required to prove that: (*i*) he is an NRI; (*ii*) that he has returned to India permanently or for a temporary period; (*iii*) requirement of the accommodation by him or his dependant is genuine; and (*iv*) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the

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> NRI landlord's application should confine itself to the grounds which NRI landlord is required to prove, to get ejectment under Section 13-B of the Act. The Controller's power to give leave to contest the application filed under Section 13-B is circumscribed to the grounds and inquiry on the aspects specified in Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall be considered by the Controller."

10. The landlord appeared as PW-1. Paras 3 & 4 of his Examination-in-Chief by way of affidavit, read as under:

> "3. That the deponent is a Non-Resident Indian now living in England at the address mentioned above. The deponent has retired from his job in England. The Deponent has decided to return to India with a view to finally & permanently settle in India in his native city where he finds his roots. Deponent wishes and has planned to set up his own reasonably good business for earning his livelihood. The deponent has working and in-depth knowledge of business of running a restaurant dealing in various specialities prepared of Fish and Potato chips. A nephew of the deponent runs a restaurant in England under the name and style of FISH 'N' CHIPS where the deponent is providing helping hand to him quite often. The deponent plans to open a reasonably good restaurant at the building in question comprising of three shops after its ejectment and run his business after employing trained staff. The location of the building in question is absolutely fit for the said business and I do not want to waste my hard earned money in purchasing land for setting up my business. The deponent has sufficient funds, appropriate links & contacts as well as working knowledge of this business and enough time for its management. For that purpose the deponent needs the whole building mentioned above the purposes of setting up his own business mentioned

> above. The shop No.5 let out to the predecessor in interest of the respondent and now in possession of the respondent forms a part and parcel of the building required by the deponent for the above said purpose. The deponent requires the same building for his own use mentioned above and will start his business immediately after getting possession of the same.
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> 4. That the deponent has no other property in the Jalandhar City that may be suitable and appropriate for the above said purpose and this is the single building owned by the deponent in Jalandhar City and is required by the deponent for his own use and occupation as mentioned above. The deponent made a request to deliver the possession of the shop No.5 to the deponent but he failed to do the needful hence the present ejectment petition."

11. Landlord was subjected to cross-examination at length. In whole of the examination, there is not even a whisper about his need projected in Examination-in-Chief. Merely for the reason that the tenant admitted that landlord is working as a farm labour in England and is sowing and reaping potato crop, his need projected in the eviction petition, cannot be held to be not genuine.

12. At this stage, counsel for the tenant relies upon ratio of law laid down by Supreme Court in the case of **'Hindustan Petroleum Corporation Ltd. vs. Dilbahar Singh', (2014) 9 SCC 78**, to submit that findings of fact recorded by the Courts below need not be interfered in the revision petition.

13. There can't be any quarrel with the proposition laid down by Constitution Bench in ***Hindustan Petroleum Corporation Ltd.'s*** case (supra). Revisional power as contemplated under 1949 Act, cannot be

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equated with appellate jurisdiction. However, wherever the Court finds that the impugned order suffered from perversity, the Court is well within its jurisdiction to exercise the revisional jurisdiction.

14. In the present case, this Court finds that merely for non-production of original passport, the Rent Controller wrongly non-suited the landlord and ignored other cogent evidence on record. In order to rebut presumption attached to the *bona fide* need pleaded by landlord under Section 13-B, tenant was required to make out much stronger case. He has failed to do so. The finding recorded by the Rent Controller regarding *bona fide* need projected by the landlord being absent merely for the reason that the landlord is sowing crops in England, also cannot be sustained.

14.1. Death of landlord also does not help the case of tenant. Rights of parties got crystallized on the day the eviction petition was filed. Landlord cannot be denied fruits of provision for the reason the matter remained pending before the courts.

15. In view thereof, this Court finds that the present revision petition merits acceptance.

16. The other issue involved in the other revision petition i.e., CR-2715-2017, is regarding ownership of Sarwan Singh over the suit property.

17. In the present proceedings, Rent Controller has rightly returned the finding that the landlord Sarwan Singh is owner of demised premises. In the subsequent eviction petition filed under Section 13 of the 1949 Act, the

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findings recorded are otherwise. This Court finds that once landlord has produced sale deed on record which is admittedly not subject matter of any challenge by the erstwhile owner/landlord, Sarwan Singh being owner of the premises cannot be denied his status of landlord *qua* the premises in view of 'doctrine of paramount title holder'.

18. In view of above, the present revision petition (**CR-4050-2011**) is **allowed**.

19. Since the revision petition bearing CR No.4050 of 2011 is allowed, **CR No.2715 of 2017** has been rendered **infructuous**. The same is ordered to be disposed off.

20. Ordered accordingly.

21. Pending application(s), if any, shall also stand disposed off.

22. A copy of this order be kept on the file of other connected case.

August 13, 2025 **(Pankaj Jain)**
Dpr **Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No