



2023INSC874

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7328 OF 2010

SMT. SHANTA RANI
WIDOW OF AMRIT LAL

... APPELLANT(S)

VERSUS

NASIB KAUR
WIDOW OF HARBHAJAN SINGH

... RESPONDENT (S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Smt. Shanta Rani-tenant of Shop Room No. 2 at Guru Amardas Chowk, Model Town, Jalandhar, is the Appellant. Smt. Nasib Kaur-Respondent is the landlady.

2. The Appellant in the Civil Appeal assails the Order of Eviction ordered by the Rent Controller vide Order dated 19.02.2009 in Ejectment Application No. 334 of 2004 on the file of Rent Controller, Jalandhar and the Judgment dated 24.04.2002 in Civil Revision No. 2121 of 2009 before the High Court of Punjab and Haryana at Chandigarh. The Respondent initiated the eviction proceedings under Section 13, read with Section 13-B of the Act¹ against the Appellant. The controversy between parties is stated thus.

¹ The East Punjab Urban Rent Restriction Act, 1949.

3. The Respondent owns Shop Room No. 2 in Guru Amardas Chowk, Model Town, Jalandhar (from now on referred to as ‘the tenanted premises’). The Respondent is claiming the status of a Non-Resident Indian (NRI) and has been residing in England for several years. The Respondent claims to have been pursuing avocation for earnings or gains in England. Due to the recession intervening in the regular activity of the Respondent, she has become without work in England. Therefore, the Respondent decided to relocate and settle in India and, in furtherance of that idea, decided to seek eviction of the Appellant from the tenanted premises for doing business in readymade garments. The Respondent placed on record and relied on the passport standing in her name to establish her status as a Non-Resident Indian. Though the prayer of eviction under Section 13-B of the Act is accepted, we deem it proper to refer to yet another circumstance, *viz.*, that at the first instance, the Respondent filed the Eviction Application under Section 13 of the Act against the Appellant complaining default in payment of rent. The Respondent claims not to be in possession of a building in Punjab and that the request of the Respondent to the Appellant to vacate the premises did not yield a positive result. The Respondent also urges that the need is bonafide, and that she desires to do business in the tenanted premises. Hence, the Application for eviction.

3.1 The Appellant, on Notice of summary eviction proceeding under Section 13-B sought leave of the Court in terms of Section 18-A Sub-Sections (4) and (5) of the Act, to defend the eviction through summary procedure. The application seeking leave to defend is numbered as E.A. No. 334 of 2004. The case of the

Appellant is that the instant eviction proceedings simultaneously initiated against Shop Room No. 1 and tenanted premises (i.e., Shop Room No.2) are unavailable because Shop Room No.1 was let out to a partnership firm, M/s Amrit Lal and Sons, by Rent Note dated 02.05.1994 and the tenanted premises to Amrit Lal s/o Chaman Lal vide Rent Note dated 07.02.1989. The Respondent, on a previous occasion, had filed two separate Applications seeking eviction of these individual tenants from these two shops. Further, the Appellant's case on the maintainability of a joint Application for eviction is not adverted to, for the sole reason that the Respondent herself has clarified that the present ejectment is maintained for tenanted premises alone. Hence, the averments on this area of controversy are not adverted.

3.2 The Appellant averred that: (a) since the Respondent is a permanent resident of the United Kingdom and has not shifted to India, the petition for eviction through Section 13-B is not maintainable; (b) the relationship of the landlady and the tenant between the Appellant and the tenant is denied; (c) the Ejectment Application under Section 13-B (2) of the Act is not maintainable because an Ejectment Petition was filed concerning Shop Room No. 3 under Section 13-B of the Act. The Respondent is one of the owners of Shop Room No. 3 and, therefore, Section 13-B is unavailable for summary eviction of the rent from the tenanted premises. Considering the Respondent's age, she is neither doing any business in the United Kingdom, nor intends to run a business in India. It is stated by the Respondent that Section 13-B of the Act is a plea in complete convenience to summarily evict the Appellant. S. Kuldeep Singh s/o Harbhajan Singh filed an

Eviction Petition under Section 13-B against one Mukesh Kumar concerning Shop Room No. 5. S. Kuldeep Singh is stated as one of the owners and the Respondent, i.e., Nasib Kaur, is also a co-owner of Shop No. 5. The eviction order in favour of S. Kuldeep Singh inures to the benefit of the Respondent and yet another application for summary eviction under Section 13-B of the Act is not maintainable. Therefore, the Respondent seeks possession of more than one premises. With the above grounds, the Appellant sought leave of the Rent Controller to defend the Eviction Petition.

4. The Respondent filed a written reply to the objections raised by the Appellant, and for the view the Rent Controller has taken in the matter, we think that detailed reference to the reply of the Respondent to the grounds raised against the summary eviction petition, is not undertaken.

5. The Rent Controller, by Order dated 19.02.2009, dismissed the Application, *among other things*, by holding that the ejectment is not filed seeking eviction of two distinct premises, because the Respondent has withdrawn the relief made against Shop Room No.1. After perusing the passport filed as Annexure-A, the Learned Rent Controller recorded that the Respondent was of Indian origin and is presently holding the passport of the United Kingdom. Therefore, the Respondent satisfies the definition of a Non-Resident Indian. The Appellant's contention on the ownership of Shop Room No. 2 is met by accepting Annexure-B i.e., sale deed, that Nasib Kaur - Respondent owns the tenanted premises. Therefore, the denial of the relationship of the landlady and tenant is untenable.

The Rent Controller relied on the reported Judgments in *Sat Pal v. Om Prakash*² to apply the interpretation of the words ‘Non-Resident Indian’ and held a finding in favour of the Respondent. The Rent Controller answers the maintainability of the petition by the Respondent from the United Kingdom by holding that even before eviction, an NRI is not required to be physically present in India. On examination of the definition of ‘NRI’ and the requirement of Section 13-B, we hasten to add at this juncture of our consideration that the Rent Controller rightly records the said finding. Adverting to other grounds raised in the defence, that the Respondent filed several Eviction Applications, it is concluded that the filing of a Petition by S. Kuldeep Singh against Mukesh Kumar does not debar Nasib Kaur-Respondent from maintaining a petition under Section 13-B of the Act, against Shanta Rani/tenant. The last objection of the Appellant is that the Eviction Application is filed against a dead person. The Rent Controller, by referring to the cause title, held that the Application is not filed against the dead person, but the Legal Representatives of the deceased are arrayed as parties. Having filed the reply to the summary eviction with the standing shown in the cause title, the Appellant herein ought not to be heard that the petition was filed against a dead person. The filing of an Eviction Petition against M/s. Arcade under an erroneous view does not make the Respondent an owner of such shop. The Learned Rent Controller dismissed the Application.

² (2007) 2 Civil Court Cases 309

6. After rejecting the application filed for leave to defend, the Rent Controller independently examined the case of the Respondent and, by Order dated 19.02.2009, ordered eviction. The Appellant filed Civil Revision No. 2121 of 2009 before the High Court of Punjab and Haryana at Chandigarh. The High Court dismissed the Civil Revision. Hence, the Appeal.

7. We have narrated in required detail the Rent Controller's conclusions in dismissing the petition filed to defend the Eviction Petition because the grounds of challenge are introduced with new facts from stage to stage.

8. The Appellant in the High Court, challenged the Order of Eviction on three grounds: *firstly*, the Application filed in respect of Shop Room No. 3 stood dismissed, and S. Kuldeep Singh maintained another Petition for Shop Room No.

3. The High Court noted that the dismissal of an earlier Application against one of the tenants is not a ground for dismissal of another Ejectment Petition filed by the landlord. *Secondly*, the Application for Eviction was filed for default in payment of rent and continuing even after the amendment of Petition under Section 13-B, is wholly erroneous. After examining the record, the High Court held that the Rent Controller rightly did not proceed with the inquiry on the alleged default in payment of rent. No bar to amend the application is brought to our notice to examine this ground in detail. *Lastly*, the argument against the Order of Ejectment is that for Shop Room No. 5, an Order of Ejectment dated 14.05.2004 was made in favour of S. Kuldeep Singh. The Respondent, being a co-owner, is barred from maintaining the present Application. The High Court

recorded a finding that each one of the owners claimed possession on separate grounds and the owner of Shop Room No. 2 is not disentitled to file the present application. The requirement pleaded by them cannot be held as malafides, and by noting that no other argument is advanced, the High Court dismissed Civil Revision No. 2121 of 2009.

9. The Appellant in the present Civil Appeal referred to the pendency of Civil Appeal No. 5256 of 2006 titled *M/s. Sachdeva Watch and Electronic Store and another v. Makhan Singh Grewal* and SLP (C) No(s). 20744 of 2007 and Civil Appeal No(s). 5257 of 2006, 5258 of 2006, 5259 of 2006, 5260 of 2006, 5262 of 2006, 1894 of 2007, 1896 of 2007, 1897 of 2007, 1899 of 2007, 1901 of 2007, 2120 of 2007, 2760 of 2007. The Civil Appeals are dismissed with observations.

10. Adv. Kavita Wadia contends that the findings recorded by the Rent Controller and the High Court had ignored the limitation prescribed in Section 13-B of the Act, and the possession order in favour of S. Kuldeep Singh disentitles Nasib Kaur-Respondent from maintaining an Application under Section 13-B of the Act. The Learned Counsel, with considerable force, argued by referring to the definition clause of “building” in Section 2(a), which defines “building” read with Section 13-B of the Act. The subject Civil Appeal has since been tagged and heard together with Civil Appeal No. 8641 of 2009. Learned Counsel invited our attention to the additional documents filed in the accompanying Appeal. The bottom line of the argument is that the owners of both shop premises are not entitled to eviction of tenants through the summary procedure.

11. The Advocate for the Respondent relies on the findings recorded by the Rent Controller and the new grounds raised before the High Court and argues that the challenge to the conclusions now recorded by the High Court and the Rent Controller must not introduce a new case. The Appellant cannot argue a point which is not argued before the High Court.

12. We have perused the record and taken note of the rival contentions.

13. At the outset, it may be noticed that the Civil Appeal has been admitted by referring to a few similar petitions/appeals pending in this Court. The similarity of an issue with a pending matter has been raised as one of the grounds for granting Special Leave, and the Civil Appeal is numbered. With the dismissal of the connected matters, the natural result is that the instant Appeal must follow. Since a distinguishing feature is raised by the Learned Counsel for the Appellant, we would consider the maintainability of the Civil Appeal. We notice that the Appellant confined the challenge to the Order of Eviction only to three grounds before the High Court. Either by choice or for any reason, the Appellant before the High Court did not press any other ground available against the Order of Eviction or the Order refusing to grant leave to the Appellant. Having done so, in the Civil Appeal, contentions do not expand more than the scope of consideration either by the High Court or the Rent Controller.

14. The argument now advanced on the maintainability by referring to additional documents filed in Civil Appeal No. 8641 of 2009 will not further the case of the Appellant. By a separate Judgment, we have refused the new pleas

introduced by the tenant in Civil Appeal No. 8641 of 2009, and the Appeal herein does not have a better case on new pleas.

15. In Civil Appeal No. 8641 of 2009, we have, after setting out the statutory claim under Section 13-B and Section 18-A of the Act, explained the procedure for availing relief of leave to defend the eviction proceeding and the same reasoning is applicable to the case in hand as well.

16. The Eviction Order is passed on the principles laid down by this Court in *Baldev Singh Bajwa v. Monish Saini*³ and *Ram Krishan Grover and others v. Union of India and others*⁴.

17. The Appellant failed to make out a case that the appraisal of available material is either perverse or the Rent Controller informed a reason for granting leave to defend. In our jurisdiction under Article 136 of the Constitution of India, we do not ordinarily go into the credibility of the findings of fact, reappraise the averments, and record results. In the case on hand the circumstances stated are very normal and have been examined from the perspective in which they are required to be reviewed by the Rent Controller while exercising the jurisdiction under Section 13-B read with Section 18-A Sub-Sections (4) and (5) of the Act. No ground for any interference is made out whichever way the contentions are considered by this Court.

³ (2005) 12 SCC 778

⁴ (2020) 12 SCC 506

18. After perusing the findings of fact recorded by the Rent Controller and the High Court, we believe that the grounds urged are without merit, and the Appeal is liable to be dismissed.

19. Accordingly, the Civil Appeal fails and is dismissed — no order as to costs.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SANJAY KUMAR]

.....J.
[S.V.N. BHATTI]

**NEW DELHI;
OCTOBER 05, 2023.**