



CR-8171-2014 (O&M) [1]

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

**CR-8171-2014 (O&M)
Date of Decision: 26.05.2025**

Harjit Kaur and anr.

...Petitioners

VERSUS

Barjinder Pal Singh Gill and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Chetan Mittal, Senior Advocate, assisted by
Mr. Kunal Mulwani, Advocate,
for the petitioner(s)

Mr. Surinder Gandhi, Advocate
for the respondents.

HARKESH MANUJA, J.

By way of present revision petition challenge has been laid to an order dated 29.09.2014 passed by learned Rent Controller, Chandigarh, in an eviction petition filed at the instance of respondents/co-owners involving Section 13 B of the East Punjab Urban Rent Restriction Act, 1949, for short '1949 Act', whereby an application moved under Section 18 A (4) of the 1949 Act filed on behalf of the petitioners/tenants for seeking leave to contest, came to be declined thereby resulting into passing of an eviction order against them.

2. The present dispute relates to the demised premises consisting of 800 sq. feet area (front portion-ground floor) of SCO



CR-8171-2014 (O&M) [2]

No.83-84, Sector 17-D, Chandigarh. As per the eviction petition, the respondents happen to be co-owners of the building in question i.e. SCO No. 83-84, Sector 17-D, Chandigarh (hereinafter referred to as the 'building').

Respondents No.1 to 5 let out the demised premises forming part of SCO No. 83-84, Sector 17-D, Chandigarh, (hereinafter referred to as 'demised premises') to Harbhajan Singh whereas after his death it was occupied by petitioners being the widow and son, respectively. Besides it, the following other tenancies were also created by the respondent about different portions of the building in question:-

- (i) Area measuring 17' x 28' on the ground floor (front portion) rented out to Harjit Singh @ Rs.26215/- per month;
- (ii) Portion on the ground floor and basement (back side) rented out to Iqbal Singh;
- (iii) Portion of 1st and 2nd floor rented out to Canam Consultants Limited;
- (iv) Paramjit Sidhu and Saroj Bala were separately rented out some portion of 3rd floor.

3. Claiming themselves to be Non Resident Indians been permanently settled in England and running successful business there, the respondents invoked Section 13-B of the 1949 Act, seeking ejectment of petitioners from the demises premises on the ground that the same was now required for their personal use and



CR-8171-2014 (O&M) [3]

occupation for setting up of Readymade Garments business in the northern region of the country and also for setting up of an office therein. It was also pleaded that the previous eviction petitions filed by the respondents while invoking Section 13 of the 1949 Act against the petitioners regarding the demised premises were dismissed by the authorities below and different revision petitions arising therefrom were pending before this Court. It was further pleaded that the possession of respondent No.6 over the demised premises under franchise agreement dated 26.03.2009 with petitioner No.1 was unauthorized.

4. Upon notice, the petitioners appeared before the Rent Controller, Chandigarh and filed application under Section 18A (4) & (5) of the 1949 Act for seeking leave to contest the eviction petition, *inter-alia* on the following grounds:-

- (a) At least four eviction petitions filed under Section 13 of the 1949 Act by the respondents against petitioners qua the demised premises were dismissed by the Rent Controller, Chandigarh followed by dismissal of appeals arising therefrom and civil revisions were pending, therefore, the case for leave to contest was made out in favour of petitioners-tenants.
- (b) Neither the other co-owners of the building in question were impleaded in the eviction petition; nor their consent was ever obtained for the purpose of filing the same;



CR-8171-2014 (O&M) [4]

- (c) Petitioners having purchased 1/9th share in the building in question; tenancy came to an end and as such no eviction petition could have been filed against them especially when final decree of partition qua the said building was passed in favour of all concerned including petitioner No.1;
- (d) Respondents, after withdrawal of petition under Section 13-B of the 1949 Act created fresh tenancy regarding some portion of ground floor of the building in favour of Harjit Singh, besides having renting out some portion of top floor to Paramjit Singh and Saroj Bala which reflected that their need qua the premises in question was not genuine as no eviction petition was ever filed against them. Besides it, the respondents were well settled in England and running their business successfully and thus never intended to settle in India.

5. A detailed reply to the application seeking leave to contest was filed on behalf of the respondents, with the prayer for rejection of the same.

6. Learned Rent Controller, Chandigarh, vide order dated 29.09.2014 rejected the prayer made by the petitioners for grant of leave to contest followed by passing of an eviction order of even date in terms of Section 13-B of the 1949 Act while directing them to



CR-8171-2014 (O&M) [5]

vacate the demised premises within 02 months, hence the present revision petition.

7. Impugning the order dated 29.09.2014 passed by the learned Rent Controller, learned Senior Counsel Sh.Chetan Mittal representing the petitioner(s) made the following arguments:-

- (i) Earlier eviction petitions filed at the instance of respondents against the petitioners while invoking Section 13 of the 1949 Act were declined by the Rent Controller, Chandigarh which was affirmed by the Appellate Authority and revision petitions arising therefrom were pending adjudication before this Court, which thus, *prima facie*, made a valid ground for grant of leave to contest in favour of petitioners. In this regard, reliance was placed upon the decision rendered by this Court in case "**R.D. Singh, Principal, New Public School and another Versus Kirpal Singh Sethi**", reported as 2018 (1) RCR (Rent) 616 and in case "**Hans Raj Versus Malkiat Kaur**", reported as 2009 (2) RCR (Rent) 667. Learned Senior counsel also submitted that another eviction petition against tenant Harjit Singh was earlier filed under Section 13-B of the 1949 Act, yet the same was withdrawn vide order dated 19.07.2012 passed by the learned Rent Controller, Chandigarh which clearly reflects that the need of respondents was not genuine.
- (ii) leave to contest was granted to similarly situated tenant – Iqbal Singh qua another portion of the building in question by the Rent Controller, Chandigarh vide its order dated 19.09.2016 and the proceedings in the said eviction petition were at the final stage; thus, in such circumstances, the case of petitioners being identically



CR-8171-2014 (O&M) [6]

placed, leave to contest was to be granted to them. Reliance in this regard was placed upon the decisions passed by this Court in case (i) "**Mukand Lal Bawa Versus Satwant Singh**", reported as 2009 (3) RCR (Civil) 208; (ii) Civil Revision No. 6003 of 2014, titled "**Jaswinder Singh Versus Bakhshish Singh**" decided on 20.04.2017 and (iii) Civil Revision No. 6047 of 2013, titled "**Smt. Kaushalya Rani Versus Gurminder Singh Kahlon**" decided on dated 05.04.2017.

- (iii) Respondents rented out some other portions of ground floor and top floor to Harjit Singh, Paramjit Singh and Saroj Bala, as such their *bona fide* need not established particularly when they had not returned back to India so far and were running their successful business in England.
- (iv) Around 1/9th share of the two SCOs i.e. the building in question was purchased by the petitioners from other co-owners vide sale deed of the year 2000 and therefore, petitioners having become co-sharers/co-owner therein could not be evicted from the demised premises. It was also submitted that neither all the other co-owners of the building in question were impleaded as parties; nor their consent was obtained before filing the eviction petition and as such the same was liable to be dismissed.
- (v) Preliminary decree dated 19.05.2016 followed by the final decree dated 10.10.2018 was passed by the Civil Court with regard to the building in question in a suit for partition filed at the instance of one of the co-owner Harjeet Kaur and as such eviction petition filed at the instance of respondents was liable to be dismissed.



CR-8171-2014 (O&M) [7]

(vi) Another eviction petition under Section 13-B of the 1949 Act was filed at the instance of two of the respondents being co-sharers of another premises / SCO Nos. 317, 318, Sector-35B, Chandigarh, thus eviction petition under the same provision i.e. Section 13-B of the 1949 Act for the *bona fide* necessity qua the demised premises at their instance was not maintainable as under the statutory provisions of Section 13-B of 1949 Act an owner could apply only once for seeking eviction of one such building during his life time. Accordingly, it was submitted that the present eviction petition qua the demised premises of the building in question was not maintainable.

8. On the other hand, learned counsel for the respondents submits that the premises in question was required for the personal *bona fide* need of the respondents as they were running successful business in England and now wanted to set up their Readymade Garments trade in the northern region of the country. With regard to the filing and withdrawal of eviction petition against Harjit Singh i.e. a tenant over an area measuring 17' x 28 ' of the ground floor (front portion), it was submitted that as per the requirements and suitability of respondents, eviction was sought for against the petitioners qua first floor and the second floor and also separate eviction petitions were filed against other tenants, namely, Iqbal Singh from ground floor and basement (back portion) as well as Harjit Kaur from ground floor (front portion). Further, it was specifically denied that any



CR-8171-2014 (O&M) [8]

portion of building in question was ever sold by the respondents being its co-owners.

8.1 With regard to maintainability of the eviction petition on the ground that no objection from other co-owners was obtained by the respondents, it was submitted that the demised premises was rented out in favour of petitioners by the respondents being its co-owners and thus, they were entitled to seek eviction of the same for their personal use and occupation while invoking Section 13 B of the 1949 Act without even obtaining the consent of other co-owners and mere fact that the petitioners had purchased some share of the building in question from another co-owner was not going to change their status of being tenants under respondents.

8.2. With respect to the other eviction petitions filed at the instance of two of the respondents against their tenants while invoking Section 13 or Section 13-B of the 1949 Act, it was submitted that the same were based on different cause of action.

9. I have heard learned counsel for the parties and gone through the paper-book(s), but unable to find substance in the submissions made on behalf of the petitioners.

10. Mere fact that the previous eviction petitions preferred at the instance of respondents against the petitioners on various grounds while invoking Section 13 of the 1949 Act were dismissed by the Rent Controller besides even dismissal of first appeals were not going to create any cause in favour of petitioners in the present



CR-8171-2014 (O&M) [9]

proceedings which were arising out of an eviction petition filed under Section 13-B of the 1949 Act; the same being special right conferred upon the respondents being the co-owners of the building in question to seek its immediate possession on the ground of personal need. Reference in this regard can be made to the judgment passed by a Coordinate Bench of this Court in **Lakhwinder Kumar Vs. Pavitter Kaur (Dead) through LRs**, reported as 2010 (2) Rent LR 74 and para 48 thereof being relevant, is extracted hereunder:-

“48. The dismissal of the above mentioned eviction petition filed by the respondent-landlady in default, in my view, has no material bearing at all on the merits of the eviction petitions filed by her under Section 13B of the Act which confers a special right on the Non-Resident Indian-owner to seek eviction of his tenant summarily and statutorily with presumes that the need expressed by such NRI-landlord is genuine and bonafide. In the eviction petition under Section 13 of the Act, neither any issue as to whether or not the demised premises was required by the respondent for her personal use and occupation was framed nor any finding returned. Even the dismissal of an eviction petition on merits, filed under Section 13 of the Act, can have no bearing on the merits of the subsequent petition filed under Section 138 of the Act. The non-disclosure of an irrelevant fact, therefore, can cause no prejudice to the respondent-landlady.”

11. With respect to the plea on behalf of petitioners – tenants about grant of leave to contest in favour of one of the other tenants, namely, Iqbal Singh, it may be pointed out here that the said order



CR-8171-2014 (O&M) [10]

dated 19.09.2016 passed by the Rent Controller, Chandigarh was assailed at the instance of respondents–landlords by way of Civil Revision No. 2956 of 2018 and the same has been allowed in favour of respondents vide order of even date, thereby declining the grant of leave to contest to Iqbal Singh followed by an order of eviction passed against him in terms of Section 13–B of the 1949 Act. Accordingly, the petitioners –tenants cannot be permitted to draw any benefit out of the same. Moreover, reference at this stage would be relevant to the observations made by this Court in the case of “**Blue Sky Worldwide Travels and another Vs. Harvinder Singh**”, 2015 (2) RCR (Rent) 49, and para 8 thereof being relevant is extracted hereunder:-

“8. *The contention that in respect of yet another tenement within the same complex of building, a tenant has obtained an order of stay before this court could hardly be a ground for me to deny consideration of the bonafides of the landlord. A landlord which seeks for eviction of several tenements may come by several obstructions and if he must wait for a period that all orders of eviction must be passed simultaneously, we must be living in Utopia out of sync with no knowledge of how our courts function. Each court takes its own time and there is no particular strategy that we have evolved to put all cases on fast track and decided within any stipulated period. Section 13-B of the Act itself sets a different procedure and imposes a duty on a court to consider whether there is any case made by the respondent before*



CR-8171-2014 (O&M) [11]

he is allowed to defend. This is to take note of an existing reality that no litigation in India comes to close immediately and a defence under whatever grounds and however fragile will assure to litigants a long period in the corridors of the court. If Section 13-B must be given a meaning, that meaning, ought to be to enter a judicial finding on whether there exists any tenable ground to fetter the landlord from claiming eviction. If the landlord's fate of maintaining a petition is only to depend on a successful claim of eviction of all the tenements simultaneously, it will last a life time and beyond. I will not, therefore, allow for such unusual contingency to prevail over my own judgment.”

12. Further, no merits can be found in the submissions made on behalf of the petitioners to the effect that eviction petition invoking Section 13-B of 1949 Act was filed at the instance of two of the contesting respondents being co-owners along with others qua their joint property forming part of SCO No. 317–18, sector 35, Chandigarh as the same was never got adjudicated upon on merits and rather, it was withdrawn on 20.03.2012, resultantly no eviction order was passed therein. Further, mere filing of the said eviction petition under Section 13-B of the 1949 Act by two of the respondents along with their other co-shares in the building bearing SCO No. 317–318, Sector 35 Chandigarh was not to be treated as bar for filing of present eviction petition by the respondents qua the building in question as two of the respondents herein, namely, Jasmeet Kaur



CR-8171-2014 (O&M) [12]

and Dalbir Singh Gill, being co-owners with others did not even achieve the actual benefit of been handed over immediate possession of the said property in terms of section 13 B of the 1949 act and as such the special right available to the two respondents, namely Jasmeet Kaur and Dalbir Singh Gill was never substantially attained by them; available to them once in their lifetime qua one building; accordingly, the present eviction petition filed at their instance, along with other respondents, being co-owners qua the demise premises forming part of building in question was fully maintainable as per law.

13. Also, the respondents having preferred eviction petition under Section 13-B of the 1949 Act against their other tenant, namely, Harjit Singh; the same been withdrawn and the non-filing of eviction petitions against Paramjit Singh or Saroj Bala who were in occupation of some portion of third floor, respectively, of the building in question was not to be treated as fatal to their cause as the respondents were free to seek eviction from a part of building in question as per their suitability/ requirement and need. The aforesaid reasoning is even derived from the definition of building as envisaged under Section 2(a) of the 1949 Act which clearly stipulates that the term building also includes a part of it and therefore, the respondents were well within their right to seek eviction of even a part thereof while invoking Section 13-B of the 1949 Act; as per their requirement and necessity with respect to the start of new business.



CR-8171-2014 (O&M) [13]

14. From the facts and circumstances of the case in hand, it has also been established on record that the respondents / landlords have been residing in England for the last many decades; running their business and thus being NRI were having cause of action to invoke their special right of seeking immediate possession of the demised premises as provided under Section 13-B of the 1949 Act. The respondents being successful businessmen and intending to expand the same in the demised premises; their *bonafide* need was also established especially when there was no substantial rebuttal to it by the petitioners/ tenants for which burden was always upon them. Moreover, for the purposes of setting up of their business in India, it was not at all essential for the respondents – landowners to shift themselves in advance as the same was going to cost them, in terms of their already well established business in England; causing serious prejudice to them and thereby defeating the intent and purpose of the special right provided under Section 13-B of 1949 Act. In this regard, reliance can be placed upon the law laid down by this Court in case of **Rakesh Sharma versus Harmesh Singh**, 2015 (1) RCR (Rent) 589. Relevant paragraph 10 of the this judgment is reproduced hereunder:-

“10. The factum of the ownership is not denied and in the present case, the sale deed was executed wayback on 13.12.1991 and on the basis of the rent note, the petitioner was put in possession. The fact that the respondent is an NRI and was residing in Abu Dhabi



CR-8171-2014 (O&M) [14]

had never been denied, as such and the only ground taken is that he had not returned to India permanently. It has also been held that the return to India, as such, is not to be permanent and the NRI can extend the business by staying in a foreign country and he can do that with a temporary stay also. It is settled principle of law that the leave to contest is only to be granted on the grounds raised in the application filed under Section 18-A of the Act, which would show that triable issues had been made out.”

15. Further, the language of Section 13-B of the 1949 Act nowhere talks about the term landlord and thus, the respondents being co-owners were undoubtedly having right to seek eviction/ immediate possession of the demised portion on account of their bona fide need. Reference in this regard can be made to the judgment passed by a Coordinate Bench of this Court in **Lakhwinder Kumar’s case** (supra). For convenience, Para 26 thereof, being relevant is extracted hereunder:-

“26. The petitioners’ objections that the respondent is not the sole owner cannot sustain for the reason that a NRI co-owner/ joint owner can also file eviction petition under Section 13B of the Act.”

Similar observations have been made by this Court in case of **Paramjit Singh Vs. Satnam Singh**, reported as 2024 (1) RCR (Rent) 264 and relevant portion from para 9 thereof is extracted here under:-

“9.In the instant case, the petitioner has



CR-8171-2014 (O&M) [15]

*claimed to have purchased the land over which the demised shop has been built along with his brother Gurnam Singh. He asserted that a partition had been effected between himself and his brother and the land over which the demised shop is constructed had fallen to his share which had been rented out to the respondent i.e. present revision petitioner. Though the petitioner has not produced any document on record to show that the partition of the land over which the demised shop has been constructed has been effected between himself and his brother, however, even in the absence of any material coming on record to this effect, this Court is inclined to hold that even on assuming the petitioner to be co-owner of the demised shop, still there was no bar for him to file the petition seeking ejectment of the respondent as there is no such requirement of law and even if a landlord is not proved to be the sole owner of the property in dispute, he can take up the proceedings under Section 13-B of the Act, 1949. In this regard, this Court draws reliance upon **Baldev Singh Bajwa v. Monish Saini**, 2005 (2) R.C.R. (Rent) 470, wherein the Hon'ble Apex Court had observed so. Reliance can also be placed upon **Kundan Singh v. Lal Singh**, 2005 (1) RCR (Rent) 194, wherein a Bench of this Court had also observed so. As such, it is held that the argument as raised by the revision petitioner-respondent that since the petitioner was not proved to be the exclusive owner of the demised shop, therefore, he could not seek ejectment of the respondent, is liable to be*



CR-8171-2014 (O&M) [16]

rejected.”

16. Just because that the petitioners purchased 1/9th share of the building in question vide sale deed of the year 2000 from one of the co-owners, is not going to change their status of being tenant qua the demised premises having been occupied by them under the respondents. Reference be placed on the decision rendered by Hon'ble Supreme Court in case of "***Parmod Kumar Jaiswal and others Vs. Bibi Husan Bano***, 2005 (1) RCR (Rent) 570 and para 21 thereof being relevant is reproduced hereunder:-

*“21. In **T. Lakshmipathi and ors. v. P. Nithyananda Reddy and others** (supra) this Court considered the question in detail in the context of Sections 105 and 111 of the Transfer of Property Act and came to the conclusion that there is no determination of the lease in terms of Section 111(d) of the Transfer of Property Act where a tenant acquires only partial ownership interest. After referring to the decision of the Privy Council, the decision of this Court and other relevant materials, this Court held that the lease cannot be said to have been determined by merger so long as the interests of the lessee, the lesser estate and that of the owner, the larger estate, do not come to coalesce in full. This Court also noticed that merger was largely a question of intention dependant on certain circumstances and the courts will presume against it when it operates to the disadvantage of a party. With respect we find that the position has been correctly stated in **T. Lakshmipathi***



CR-8171-2014 (O&M) [17]

and ors. v. P. Nithyananda Reddy and others (supra). The subsequent decision in India Umbrella Manufacturing Co. and Others v. Shagabandei Agarwalla (dead) by Lrs. Savitri Agarwalla (Smt.) and Others (supra) also proceeds on the same lines and supports the above position. We approve the principle of law stated in T. Lakshmipathi and ors. v. P. Nithyananda Reddy and others (supra)."

17. Moreover, even as per the final decree of partition which is part of the records of bunch of these four revision petitions, the possession was not to be disturbed or parted with and the rights of the co-owners as per their entitlement were to be settled upon putting the shares of auction. Moreover, respondents No.2 to 5 were held entitled for 83.3328% share of the entire building in question, including the shares of deceased Sh.S.S.Gill and petitioners were held entitled for 1% share only.

18. Moreover, the judgments cited on behalf of the petitioners do not come to their rescue. With regard to the decisions passed in the cases of ***Kirpal Singh Sethi's*** case (supra) and ***Hans Raj's*** case (supra), it may be pointed out here that no decision passed by the competent Court of jurisdiction has been brought on record by the petitioners so as to establish that the plea of *bona fide* necessity of the property in question as set up by the respondents in any of their petitions filed under Section 13 of the 1949 Act was ever declined on merits. Besides it, the decisions made in ***Mukand Lal Bawa's*** case



CR-8171-2014 (O&M) [18]

(supra), **Smt. Kaushalya Rani's** case (supra) and **Jaswinder Singh's** case (supra) again would not help the petitioners in view of the latest exposition of law made by this Court in the case of **Ved Parkash and another Vs. Bupinder Singh Bansal**, 2024 (2) RCR (Rent) 191 and para 28 thereof, being relevant is extracted hereunder:-

“28. Close to the same, very true, as pointed out that there are 4-5 other shops, relating to which, undisputedly ejection petitions have been filed. It is submitted that as per Section 13B of the ibid Act, it is only qua one shop, the NRI can apply to seek eviction and therefore, filing of the petitions under Section 13B, qua all the shops in possession of tenants, is not maintainable. However, the aforesaid submission is not tenable. Suffice to make reference to the decision rendered by this Court in 'Krishan Lal Dua vs. Shander Singh, in CR-4286-2014, decided on 31.01.2020', wherein, it was held that 'building' included entire building, as also part of a building. The Hon'ble Court concluded that where the premises in possession of various tenants are part of same building, therefore, it is covered by definition of 'building' and the landowner is entitled to maintain various petitions filed against the various tenants of the same building.”

19. Even otherwise, the petitioners-tenants in the given facts has failed to rebut the genuineness of the need expressed by the



CR-8171-2014 (O&M) [19]

respondents – landlords in their application, for seeking leave to contest and thus the same needs to be rejected. In such circumstances, it may be relevant to place reliance upon the judgment of **Baldev Singh Bajwa Vs. Monish Saini**, 2005 (2) RCR (Rent) 470 and paras 20 & 21 thereof being relevant are extracted hereunder:-

“20. 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 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 special category of landlord who is NRI (Non Resident Indian); and owner of the premises for five years before action is commenced. Such a landlord is permitted to file an application for ejectment only once during his life time. Sub-s. (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 any contravention thereof, he shall be liable for punishment of imprisonment to the term which can be extended upto six months. These restrictions and conditions inculcate inbuilt strong presumption that the need of the landlord is genuine. Landlord, after the decree for possession, is bound to possess the accommodation. Landlord is prohibited from transferring it or letting it out for a period of five years. Virtually conditions and restrictions imposed on the NRI landlord makes it 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 practically he is 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 by 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 tenant's right to rebut it but with strong and cogent evidence. In our view, the proceeding taken up under Section 13-B by the NRI landlords for the ejectment of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bona fide.



CR-8171-2014 (O&M) [21]

But this would not dis-entitle 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 landlords' favour that his requirement of occupation of the premises is real and genuine.

21. *We cannot subscribe to the submission of the learned counsel appearing for the respondents/landlords, that if the inquiry in the allegation of landlord's need regarding the bona fide and genuineness is permitted, the legislative intent of immediate delivery of possession of the accommodation owned by them would be defeated. Time and again this Court has laid down that legislative intent has to be ascertained according to plain language used in the enactment and basic rule of statutory construction should be preferred which advances the purpose and object of a legislation and not which leads to anomalies, injustice or absurdities. To refer some, they are K.P. Verghese v. Income Tax Officer, Ernakulam and Anr., [1981] 4 SCC 173; Babaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik and Ors., [1984] 2 SCC 50 and Ravulu Subba Rao and Ors. v. Commnr. of Income- Tax, Madras, AIR (1956) SC 604.”*



CR-8171-2014 (O&M) [22]

The Hon'ble Apex Court in a latest decision of **Mukesh Kumar versus S.Kuldeep Singh**, 2023 (2) RCR (Rent) 657, has again been pleased to reiterate that the onus to disclose such facts as would disentitle summary eviction is always upon tenant. Para No.16 of the aforementioned judgment being relevant, is reproduced hereunder:-

“16. From the scheme of things under Section 13-B read with Section 18-A, we are of the view that the owner invoking Section 13-B satisfies the ingredients of the said Section and the onus is on Mukesh Kumar to disclose such facts as would disentitle summary eviction under Section 13-B, which, in our considered view, Mukesh Kumar failed to do.”

20. In view of the discussion made hereinabove and especially the judgments relied upon by the petitioners/ tenants been not applicable to the facts of the present case; in terms of the legal precedents referred to in the detailed discussion, besides even finding no illegality or perversity in the order dated 29.09.2014 passed by the learned Rent Controller, Chandigarh, about declining the prayer made by petitioners for leave to contest, the present revision petition is hereby dismissed. Resultantly, the petitioners/ tenants are directed to handover the vacant possession of the demised premises in favour of the respondents/ landlords as directed by the learned Rent Controller, Chandigarh.

21. With respect to grant of *mesne* profits, learned counsel for



CR-8171-2014 (O&M) [23]

the respondents relied upon a lease deed dated 15.03.2013 pertaining to SCO No. 13, Sector 17-E, Chandigarh, measuring 2000 sq. ft. on ground floor and 380 sq. ft. on mezzanine floor which was leased out for a period of 09 years as per the following terms and conditions, with respect to the rate of rent:-

	PERIOD	RATE OF RENT(PER MONTH)
a)	23.04.2013 to 22.04.2016	1660000/- @ Rs.697.48 per sq. ft.
b)	23.04.2016 to 22.04.2019	1909000/- @ Rs.802.10 per sq. ft.
c)	23.04.2019 to 22.04.2022	2195350/- @ Rs.922.42 per sq. ft.

In the present case, the dispute relates to an area measuring 800 sq. ft. forming part of the ground floor of SCO No. 83-84, Sector 17-D, Chandigarh which is situated in close proximity to the premises forming part of aforementioned lease deed dated 15.03.2013, thereby having similar potential, locational and rental value, as such relying upon the said lease deed dated 15.03.2013, the *mesne* profits from the date of eviction of petitioner i.e. w.e.f. 29.09.2014 are hereby assessed at the rate of Rs.700/- per sq. ft. Though in the lease deed dated 15.03.2013, some appreciation after every 03 years has been agreed, however, considering the fact that while assessing *mesne* profits the Court has to be reasonable, as such a uniform rate of Rs.700/- per sq. ft. is being assessed towards *mesne* profits.

The lease deed commencing from 01.04.2010 relied upon



CR-8171-2014 (O&M) [24]

by the petitioners though pertains to SCO Nos.61-62-63, Sector 17-C, Chandigarh, however, the same being not in close proximity in terms of period of eviction in the present case which is September 2014, thus is not being relied upon.

Accordingly, the application bearing **CM-5350-CII-2015** filed on behalf of the respondents for grant of *mesne* profits is allowed by fixing the *mesne* profits at the rate of Rs.700 per sq. ft. from the date of eviction order passed by the Rent Controller, Chandigarh i.e. 29.09.2014 till the date of handing over of the vacant possession of the demised premises. The arrears of *mesne* profits be cleared within a period of 03 months from the date of receipt of certified copy of the order.

22. Pending misc. application(s), if any, shall also stand disposed of.

26.05.2025
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned ?	Yes/No
Whether Reportable ?	Yes/No