



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

CR-357-2025

Date of decision : 28.01.2025

Gurmeet Singh and another

... Petitioners

Versus

Pardeep Singh Bhangu and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr.K.S. Dadwal, Advocate
for the petitioners.

Mr.Divanshu Jain, Advocate,
Mr.Minkal Rawal, Advocate,
Mr.Abhinav Goel, Advocate and
Mr.Arjun Sangwan, Advocate
for the caveator-respondent no.1.

VIKAS BAHL, J.(ORAL)

INDEX

		<i>Paragraphs</i>	<i>Pages</i>
1	Challenge in the revision petition	1	1 to 2
2	Brief facts of the case	2	2
3	Grounds of challenge raised on behalf of the petitioners	3	2 to 3
4	Analysis and finding regarding Ist Ground- (i) The respondent no.1-landlord is not an NRI	4 to 9	3 to 8
5	Analysis and finding regarding IInd and IIIrd Grounds -(ii) The respondent no.1-landlord is not the owner of the entire property and is only owner upto the extent of 25% and thus, is not entitled to seek eviction. (iii) There is no relationship of landlord and tenant between the petitioners and the respondent no.1.	10 to 19	8 to 17
6	Analysis and finding regarding IVth Ground- (iv) The requirement projected by the respondent no.1 is not bonafide.	20 to 25	17 to 21

CHALLENGE IN THE REVISION PETITION

1. Challenge in the present revision petition is to the judgment



dated 20.11.2024 vide which the application filed by the present petitioners for leave to contest the petition under Section 13-B of the East Punjab Urban Rent Restriction (Amendment) Act, 2001 as extended to the Union Territory of Chandigarh vide notification dated 09.10.2009 (hereinafter referred to as the “Act”) has been dismissed and the eviction petition filed by the respondent no.1-landlord (hereinafter referred to as “the landlord”) under Section 13-B of the Act for the eviction of the petitioners from the premises in question has been allowed and the petitioners have been directed to vacate one room with common bathroom on the ground floor of House no.3638, Sector 23-D, Chandigarh, within a period of two months from the passing of the judgment dated 20.11.2024.

BRIEF FACTS OF THE CASE

2. Brief facts of the present case are that the landlord had filed an eviction petition under Section 13-B of the Act for the eviction of the petitioners (hereinafter referred to as “the tenants”) from the premises in question which comprised of one room with common bathroom on the ground floor of House No.3638, Sector 23-D, Chandigarh. In the said case, an application under Section 18-A (4 & 5) of the Act seeking leave to defend was filed by the tenants. A detailed reply dated 09.09.2024 was filed to the said application and as has been stated hereinabove, the Rent Controller after considering the arguments, had dismissed the application seeking leave to contest and had passed the order of eviction.

GROUND OF CHALLENGE RAISED ON BEHALF OF THE PETITIONERS

3. Learned counsel for the petitioners-tenants has raised four grounds to challenge the impugned order and each of the said ground has



been dealt with separately by this Court hereinafter. The grounds of challenge are enumerated hereinbelow:-

- i) The respondent no.1-landlord is not an NRI.
- ii) The respondent no.1-landlord is not the owner of the entire property and is only owner upto the extent of 25% and thus, is not entitled to seek eviction.
- iii) There is no relationship of landlord and tenant between the petitioners and the respondent no.1.
- iv) The requirement projected by the respondent no.1 is not bonafide.

ANALYSIS AND FINDING REGARDING 1st GROUND

i) The respondent no.1-landlord is not an NRI.

4. Learned counsel for the petitioners has referred to the passport (Annexure P-1) to highlight that in the said passport there is no stamp to prove that the respondent no.1 had gone abroad much less to Canada and thus, it is not prima-facie proved that the respondent no.1 has been residing in Canada. It is submitted that said passport had been issued on 02.11.2023 whereas the present petition has been filed on 18.05.2024. It is submitted that since the provisions of Section 13-B of the Act can be invoked only in case the petitioner is a Non-Resident Indian, thus, the application filed by the petitioners for leave to contest deserves to be allowed on the said ground alone and the eviction petition deserves to be dismissed and the impugned order also deserves to be set aside.

5. Learned counsel for the respondent no.1-landlord has opposed the said argument and has referred to the copy of the passport to highlight



that the same bears the stamp of Consul General, Consulate General of India, Toronto and even the place of issue in the said passport is stated to be “Toronto” and further the residential address of the respondent no.1 has been mentioned as “6 Bluenater Crescent Brampton Ontario L7A 2G9 Canada” and also states that the earlier passport had been issued at Vancouver in the year 2013. Reference has also been made to the document at running page 64 of the paper book which is stated to be the permanent resident card, which has been issued by the Government of Canada. Since the copy of the said document is not very clear, thus, a clear copy of the same has been handed over by the learned counsel for respondent no.1, which is taken on record as Mark A. The said document has also been verified to be true by the counsel for the petitioners. It is submitted that the said document shows that the same has been issued by the Government of Canada and is valid upto 30.11.2028 and the same had been issued on 10.12.2008. Learned counsel has further submitted that even a perusal of the application to leave to contest dated 01.07.2024 would show that it is specifically averred by the petitioners themselves that the respondent no.1 is an NRI and he has been residing in Canada since the last 16 years and his family is also settled there. It is submitted that thus, the said plea is completely meritless. In support of his arguments, learned counsel for the respondent no.1 has relied upon the judgment of the Coordinate Bench of this Court in the case of *Satnam Singh vs. Avtar Singh* reported as **2009(4) PLR 539**, the SLP against which has also been dismissed. Reliance has also been placed upon the judgment of the Coordinate Bench of this Court in the case of *Parminder Singh vs. Jatinder Singh Grewal and others* reported



as **2012(3) PLR 845** and also on the judgment of the Coordinate Bench of this Court in the case of **Ashok Goel vs. Wing Commander Harbhajan Singh Bhatia** reported as **2011(2) RCR (Rent) 404**. It is submitted that the provisions of Section 13-B were made applicable to Chandigarh vide notification dated 09.10.2009 and the said notification was upheld by the Division Bench of this Court in the case of **Asha Chawla and others vs. Union of India and others** reported as **2012(1) RCR (Civil) 277**.

6. This Court has heard learned counsel for the petitioners and the learned counsel for respondent no.1 on the said ground and finds that the said ground raised for setting aside the impugned order is meritless and deserves to be rejected for the reasons stated hereinbelow.

7. Before considering the facts of the present case, it would be relevant to refer to the provision of Section 2(dd) of the Act which defines as to who is a "Non-resident Indian". Section 2(dd) is reproduced hereinbelow:-

"2. Definitions. - *In this Act, unless there is anything repugnant in the subject or context:-*

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[(dd) *"Non-resident Indian" means a person of Indian origin, who is either permanently or temporarily settled outside India in either case -*

(a) for or on taking up employment outside India; or

(b) for carrying on a business or vocation outside India; or

(c) for any other purpose, in such circumstances, as would indicate his intention to stay outside India for a uncertain period;].

8. The Coordinate Bench of this Court in the case of **Satnam Singh (supra)** had observed that the fact that the landlord had obtained a



permanent resident status “issued by the Government of Canada” would assume great significance and the same would show the intention of the landlord to stay abroad. It was further observed that in order to come within the definition of Non-Resident Indian, the residence of the person living abroad could either be permanent or temporary and in case a landlord had secured permanent resident status at Canada, then it could not be stated that the said status was obtained without the intention to stay outside India. In the said case, although the landlord therein had stayed out of India for a period of less than 6 months yet the Court had come to the conclusion that he would be covered by the definition of Non-Resident Indian as given in Section 2(dd) of the Act. The SLP filed against the said judgment i.e., Special Leave to Appeal (Civil) no.19217 of 2009 was dismissed by the Hon'ble Supreme Court. Further in the case of *Parminder Singh (supra)*, the Coordinate Bench of this Court had observed that in a case where the landlord had initially gone to Canada on a study visa and later on had got permanent status in Canada, was found to be a Non-Resident Indian and the argument raised by the petitioner therein to challenge his status as Non-Resident Indian on the ground that he had only gone abroad on a study visa was rejected. Similarly in the case of *Ashok Goel (supra)*, the landlord therein who had permanent resident status in the USA was found to be covered under the definition of Non-Resident Indian.

9. In the present case, in paragraph 3 sub para (xii) as well as in paragraph 3 sub para (xiii) of the application to leave to contest dated 01.07.2024 (Annexure P-3) filed by the present petitioners, it has specifically been averred that the respondent no.1 is an NRI and that he is



residing in Canada since the last 16 years and his family is also settled there.

The relevant portions of said two paragraphs are reproduced hereinbelow:-

*“xii) That the bonafide of the petitioner is contradicted from the facts that petitioner fails to give any cogent reasoning and probable reason for their ingredients. **However they are NRI and his intention is only to get evicted the premises and to further let out at higher rate of rent or to sold the same.***

xiii) That the petitioner is residing at Canada since last 16 years and his family is well settled there from every corners of life.....”

From the above it is apparent that the plea raised on behalf of the petitioners to the extent that it has not come on record that the respondent no.1 is residing abroad is contrary to their own admission made in the application to leave to contest. Further, even a perusal of the document at running page 64 of the paper book, a clear copy of which has been taken on record as Mark A, would show that a permanent resident card has been issued in favour of the respondent no.1 by the Government of Canada and the same is valid till 30.11.2028 and the said document as well as the pleadings in the leave to contest reproduced hereinabove clearly show that the respondent no.1 has been residing abroad for a sufficient long time so as to indicate his intention to stay outside for an uncertain period, so as to fall within the definition of Non-Resident Indian as defined in Section 2(dd) of the Act. Additionally, reference can also be made to the copy of the passport, which has been annexed as Annexure P-1 along with the present petition, to show that the same is duly stamped by the Consul General, Consulate General of India, Toronto and also to show that the place of issue is “Toronto” and even the residential address of the respondent no.1 in



the same has been mentioned as “6 Bluenater Crescent Brampton Ontario L7A 2G9 Canada”. Moreover, reference in the said passport is also made to the fact that an earlier passport was issued on 05.12.2013 and the place of issue of the same was “Vancouver”. The above facts clearly show that respondent no.1 is a Non-Resident Indian. Thus, the finding of the Rent Controller on the aspect that the respondent no.1 was a Non-Resident Indian is in accordance with law and is upheld.

ANALYSIS AND FINDING REGARDING IInd and IIIrd GROUNDS

ii) The respondent no.1-landlord is not the owner of the entire property and is only owner upto the extent of 25% and thus, is not entitled to seek eviction.

&

iii) There is no relationship of landlord and tenant between the petitioners and the respondent no.1.

10. Learned counsel for the petitioners has submitted that in the present case the respondent no.1 is at best co-owner to the extent of 25% share in the house in question and he is occupying the house to the extent of 25% and is thus, not entitled to the possession of the entire house. It is further submitted that there is no relationship of landlord and tenant between the petitioners and the respondent no.1 and thus, the eviction petition filed by the respondent no.1 under Section 13-B of the Act deserves to be dismissed on the said ground alone. In regard to the same, learned counsel for the petitioners has referred to the averments made in the application for leave to contest dated 01.07.2024. In paragraph 3 sub para (v) as well as (vi) of the application, it has been stated that the petitioners had been inducted by Smt.Kushal Kaur, and thus, it is the said Kushal Kaur, who is the landlord of the petitioners and not the respondent no.1. Learned counsel for the petitioners has relied upon the judgment of the Hon’ble



Supreme Court in the case of *Rachpal Singh & Ors. vs. Gurmit Kaur & Ors.* reported as *2009(15) SCC 88*.

11. Learned counsel for the respondent no.1, on the other hand, has opposed the said two pleas and has submitted that admittedly, the respondent no.1 is co-owner to the extent of 25% share in the house in question and the other co-owners have been made proforma respondents no.3 and 4 in the eviction petition and they have also given their consent for eviction of the petitioners. It is submitted that at any rate, the consent of the other co-owners is presumed unless there is some document to show that any of the co-owner is not consenting and there is no such document produced by the petitioners much less annexed along with the application dated 01.07.2024. Learned counsel for the respondent no.1 has further submitted that respondents no.3 and 4-Tejvinder Singh and Deepinder Singh before the Rent Controller, had appeared and had filed their affidavits regarding the fact that they were co-owners of the premises in question and that they had given their consent for filing of the eviction petition by the present respondent no.1 and had no objection in case the respondent no.1 wanted to occupy the entire building for his bonafide requirement. Paragraph 3 of the judgment of the Rent Controller dated 20.11.2024 recorded the abovesaid fact which has been highlighted by the learned counsel for the respondent no.1. It is submitted that in paragraph 16 of the said judgment of the Rent Controller, the said aspect has been duly considered by the Rent Controller.

12. Learned counsel for the respondent no.1 has relied upon the letter dated 17.12.2008 which shows that the respondent no.1 is a co-owner



in the property in question and also the consent letters filed by way of affidavit of Tejvinder Singh and Deepinder Singh Bhangu, the co-owners, which were produced during the course of hearing and which have also been stated to be produced before the Rent Controller. It is submitted that since admittedly the respondent no.1 is the co-owner of the property, thus, he is entitled to file an eviction petition under Section 13-B of the Act. In support of his arguments, learned counsel for the respondent no.1 has relied upon the judgment of the Division Bench of this Court in the case of *Smt. Bachan Kaur and others vs. Kabal Singh and another* reported as **2011(2) R.C.R. (Civil) 886**, judgment of the Coordinate Bench of this Court in the case of *M/s Hot Millions and others vs. Harish Batra* reported as **2018(4) PLR 621** as well as the judgment of the Coordinate Bench of this Court in the case of *Kewal Krishan vs. Mohan Singh* reported as **2006(2) RCR (Civil) 442**. Learned counsel for the respondent no.1 has further pointed out that the said Kushal Kaur has died on 06.10.2005, thus, the question of her being the landlord on the date of filing of the petition i.e., 18.05.2024 does not arise.

13. This Court has heard learned counsel for the petitioners and the respondent no.1 and has perused the paper book on the said issues and finds that the pleas raised on behalf of the petitioners are meritless and deserve to be rejected for the reasons stated hereinbelow.

14. Before considering the facts of the present case, it would be relevant to consider the provisions of Section 13-B of the Act, which is reproduced hereinbelow:-

“13-B. Right to recover immediate possession of residential



building or scheduled building and/or non-residential building to accrue to Non-resident Indian.-- (1)Where an owner is a Non-Resident Indian and returns to India and the residential building or scheduled building and/or non-residential building, as the case may be, let out by him or her, is required for his or her use, or for the use of any one ordinarily living with and dependent on him or her, he or she, may apply to the Controller for immediate possession of such building or buildings, as the case may be:

Provided that a right to apply in respect of such a building under this Section, shall be available only after a period of five years from the date of becoming the owner of such a building and shall be available only once during the life time of such an owner.

(2)Where the owner referred to in sub-section (1), has let out more than one residential building or scheduled building and/or non-residential building, it shall be open to him or her to make an application under that sub-section in respect of only one residential building or one scheduled building and/or one non-residential building, each chosen by him or her.

(3)Where an owner recovers possession of a building under this Section, he or she shall not transfer it through sale or any other means or let it out before the expiry of a period of five years from the date of taking possession of the said building, failing which, the evicted tenant may apply to the Controller for an order directing that he shall be restored the possession of the said building and the Controller shall make an order accordingly.]

15. In the case of ***Smt.Bachan Kaur (supra)***, a reference was made to the Larger Bench by the learned Single Judge on the following two issues:-

“1. Whether NRI/landlord who is a co-owner with the other



landlords, who do not have the same status, as that of NRI can maintain a petition for eviction of the tenant from the property jointly owned by all of them?

2. Whether the premises from which eviction is sought under Section 13-B of the Act is to be let out by NRI/landlord or his duly authorized person acting on his behalf, or it can also include the letting by some other co-owner or predecessor-in-interest in their own right and not under the authority of NRI/landlord?”

16. Under issue no.2, the question as to whether the NRI would be entitled to file a petition under Section 13-B with respect to the premises which had been let out by the other co-owner, than the one filing the petition or by the predecessor-in-interest of the said NRI and not by the NRI, was the moot point which had to be adjudicated. The Division Bench after considering all the aspects and the provisions of the Act had observed that it is the ownership of the building which is the necessary condition for maintaining the eviction petition under Section 13-B of the Act and letting out by the NRI was not a sine-qua-non to maintain the eviction petition and one could acquire ownership rights by virtue of a purchase or by inheritance. It was further observed that an owner has a right to seek eviction after a period of 5 years from the date of becoming the owner of such building, irrespective of the fact that the building has been let out by him or her and once a person has become the owner of the property, the tenancy rights being attached to the building stand transferred to him in the same manner as all the other rights to the building, which has been purchased by him or her. It was observed that in case the argument raised on behalf of the tenants therein to the effect that the intention was to restrict the



right of eviction to only those NRIs who had let out the premises, was accepted, then such interpretation would negative the very purpose of the insertion of the mechanism of summary eviction contemplated under Section 13-B of the Act. Accordingly the said question was answered in favour of the landlord and it was observed that a co-owner NRI could seek eviction of the tenant from a building, though the tenant was not inducted by such NRI and that it was not necessary that all other co-owners should be Non-Resident Indians. The relevant portion of the said judgment is reproduced hereinbelow:-

*“17.....The argument that an NRI is entitled to seek eviction after five years of becoming owner **only if the tenant has been inducted by him does not serve the purport of the Act. If such meaning is assigned, the right of eviction given to NRI becomes otiose. Therefore, restricting the right of eviction to an owner who has let out the building alone cannot be reconciled with the proviso. The harmonious construction of proviso and the substantive provision is possible by accepting the argument that the tenant need not be necessarily inducted by the petitioner-owner more so when a tenancy is interest in the immovable property transferred with the property itself.***

*18. The ownership of the building is the necessary condition for maintaining the eviction petition under Section 13-B of the Punjab Act. **The letting out by the petitioner is not a sine-qua-non to maintain eviction petition in terms of the Punjab Act. One can acquire ownership right by virtue of a purchase or by inheritance.** Though in our opinion, the title derived by inheritance is legal consequence and should exclude limit of five years, but since the said question has not been debated before us, we so no more in the present case. We leave such question to be decided in an appropriate case later. **Therefore, an owner has a right to seek eviction after the period of five***



years from the date of becoming owner of such building, irrespective of the fact that the building has been let out by him or her. Once a person has become owner of the property, the tenancy rights being attached to the building stand transferred to him in the same manner as all other rights to a building, which has been purchased by him or her. The object of granting summary right of eviction to a Non Resident Indian is to provide mechanism for possession of their own residential building, as an exception to rigid legal provisions of the existing provisions of the law. Such right is manifested when right of eviction is conferred on an owner. If the argument of the learned counsel for the tenants is to be accepted that the intention was to restrict the right of eviction to only those NRIs who have let out the premises, such interpretation would negative the very purpose of the insertion of the mechanism of summary eviction contemplated under of the Act.

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20. *In view of the rights of the co-owner as explained by the Larger Bench Judgment of this Court as well as by the Hon'ble Supreme Court in M/s India Umbrella Manufacturing Co., Dhannalais cases (supra) and Mahavir Prasad Jain v. Manohar Lal Jain 2006(2) R.C.R.(Civil) 36: 2006(1) R.C.R. (Rent) 250: 2006(2) SCC 724 a co-owner NRI can seek eviction of the tenant in a building though the tenant was not inducted by such NRI and that it is not necessary that all other co-owners should be Non Resident Indians.*

21. *The reference is answered accordingly.*

22. *Let the petition be placed before the learned Single Judge, for decision, as per Roster."*

17. By applying the law laid down in the above said judgment, the Coordinate Bench of this Court in the case of *M/s Hot Millions and others (supra)* had observed that a co-owner NRI can seek eviction of the tenant in



a building though the tenant was not inducted by such NRI and it was not necessary that all the other co-owners should be Non-Residents Indian.

18. In the present case, the fact that the respondent no.1 is owner upto the extent of 25% is not disputed. Moreover, the transfer letter dated 17.12.2008 also clearly establishes that the respondent no.1 was owner to the extent of 25% of the said property. The observations of the Rent Controller in paragraph 3 as well as paragraph 16 to the effect that the other co-owners i.e., proforma respondents no.3 and 4 before the Rent Controller had filed their affidavits stating that they had given their consent to the present respondent no.1 to file the eviction petition and they had no objection in case the present respondent no.1 occupied the entire building for his personal requirement, have not been disputed before this Court. Moreover, there is nothing on record, much less, from the leave to contest to show that any co-owner was objecting to the eviction from the premises in question filed by the respondent no.1. Thus, the finding of the Rent Controller, moreso, on both the abovesaid aspects as detailed in paragraphs 14 to 16 of the impugned judgment holding that the respondent no.1 was an owner to the extent of 25% in the property in question since 2008 and was thus an owner for more than 5 years prior to the filing of the petition under Section 13-B of the Act and was also entitled to file the petition under Section 13-B of the Act being a co-owner and had even taken the consent of the other co-owners, is in accordance with law and deserves to be upheld. Moreover, it is relevant to note that the argument raised on behalf of the respondent no.1 to the effect that Kushal Kaur, had died on 06.10.2005, much prior to the filing of the present eviction petition i.e., 18.05.2024, has



not been disputed before this Court.

19. To be fair to the learned counsel for the petitioners it would be relevant to consider the judgment referred by the learned counsel for the petitioners in the case of *Rachpal Singh & Ors (supra)*. The said case was based on completely different facts. The High Court in the said case had remanded the revision petition to the Rent Controller to reconsider all the issues raised in the application filed under Section 18-A of the Act, in accordance with law and it was not a case wherein the application to leave to contest had been allowed. One of the primary grounds which was taken into consideration by the Hon'ble Supreme Court while upholding the order of remand was that out of 4 petitions, which were filed by the landlord therein, in 3 petitions the Rent Controller had granted the leave to defend whereas the same Rent Controller had rejected the leave to contest in the 4th case which was subsequently remanded by the High Court for fresh consideration as the same would have lead to conflicting orders being passed by the same Court on the status of the respondent therein. The issue with respect to the respondent therein not being an NRI at the time of letting out of the premises and not having acquired the status, was argued before the Hon'ble Supreme Court on behalf of the tenant therein and it was in the said background, the Hon'ble Supreme Court had observed that when triable issues are raised, then leave to contest should be allowed. In the present case, this Court is of the opinion that the issues raised before this Court on behalf of the learned counsel for the petitioner as well as before the Rent Controller do not raise any triable issue and all the said aspects have been settled by authoritative pronouncements in favour of the



respondent no.1– landlord and on the basis of the pleadings / documents on record, the same are required to be affirmatively held in favour of the landlord.

ANALYSIS AND FINDING REGARDING IVth GROUND

iv) Requirement projected by the respondent no.1 is not bonafide.

20. Learned counsel for the petitioners has submitted that a perusal of the petition under Section 13-B of the Act would show that there is no bonafide requirement of the respondent no.1 -landlord to seek eviction. It is submitted that no details of the family members have been given by the respondent no.1-landlord nor it has been mentioned as to what is their age and educational qualification. It is submitted that in the said circumstances, even if the averments made in the petition are taken on their face value, then also, it cannot be stated that the requirement of respondent no.1 is bonafide.

21. Learned counsel for the respondent no.1, on the other hand, has opposed the said argument and has referred to paragraph 5(i) of the eviction petition and has submitted that the averments in the same clearly show that the requirement of the respondent no.1-landlord is bonafide. It is further submitted that as per the law laid down by the Hon'ble Supreme Court of India in the case of *Baldev Singh Bajwa vs. Monish Saini* reported as *2005(12) SCC 778*, the need of the landlord is to be presumed to be genuine and bonafide unless the same is rebutted by the tenant by placing cogent and material facts and evidence at the stage of leave to contest. It is submitted that there is no such material placed on record by the tenants to even remotely show that the requirement of the landlord is not bonafide. Further reliance has been placed upon the judgment of the Coordinate



Bench of this Court in the case of ***Sohan Lal vs. Swaran Kaur*** reported as ***2003(2) Rent LR 619*** in support of the said argument. It is submitted that there are several provisions which have been incorporated in the Act so as to ensure that the landlord does not misuse the said provision of Section 13-B. Specific reference has been made to Section 13-B (3) as well as Section 19 (2-B) of the Act. It is submitted that the said provisions are similar in the State of Punjab as well as in the Union Territory, Chandigarh.

22. This Court has heard learned counsel for the petitioners and the respondent no.1 and has perused the paper book on the said issue and finds that the plea raised on behalf of the petitioners is meritless and deserves to be rejected for the reasons stated hereinbelow.

23. Before considering the facts of the present case as well as the law on point, it would be relevant to refer to Section 19(1) and (2-B) of the Act, which are reproduced hereinbelow:-

“19. Penalties.-

(1)If any person contravenes any of the provisions of sub-section (2) of Section 9, sub-section (1) of Section 10, Section 11 or Section 18, he shall be punishable with fine which may extend to one thousand rupees.

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[(2-B) The owner, who is a Non-resident Indian and who having evicted a tenant from a residential building or a scheduled building and/or non-residential building in pursuance of an order made under Section 13-B, does not occupy it for a continuous period of three months from the date of such eviction, or lets out the whole or any part of such building from which the tenant was evicted to any person, other than the tenant in contravention of the provisions of sub-section (3) of Section 13-B, shall be punishable with



imprisonment for a term, which may extend to six months or with fine which may be extended to one thousand rupees or both.]”

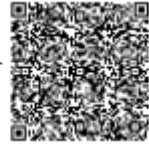
24. The Hon'ble Supreme Court in the case of ***Baldev Singh Bajwa (supra)*** had observed that the averments made by the NRI-landlord of his requirement shall be presumed to be genuine and bonafide unless the same are rebutted by the tenant by placement of cogent and material facts and evidence in support thereof at the stage of leave to contest. Similarly, the Coordinate Bench of this Court in the case of ***Sohan Lal (supra)*** had observed that the legislature had provided inbuilt safeguards in case the landlord does not occupy the premises after eviction. The provision of Section 19(2-B) of the Act provides that in case the NRI after having got the eviction under Section 13-B does not occupy it for a continuous period of three months from the date of such eviction, or lets out the property in contravention of the provisions of sub section (3) of Section 13-B, then he shall be liable for punishment with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both. Further the provision of Section 13-B(3) of the Act clearly provides that where an owner has recovered possession of a building under Section 13-B, then he shall not be entitled to transfer it through sale or any other means or even let it out before the expiry of a period of five years from the date of taking possession of the said building. It is apparent that the condition of non-sale for a period of 5 years and the possibility of being imprisoned are very onerous conditions on the landlord and the same would ensure that the landlord does not file any case in which the requirement is not bonafide.



25. In the present case, the requirement as specifically averred by the landlord and detailed in paragraph 5(i) the relevant portion of which is reproduced hereinbelow:-

“5. That the Respondent Nos 1 and 2 are liable to be evicted from the premises describable as One Room with Common Bathroom on the Ground Floor of House No.3638, Sector 23-D, Chandigarh, Shown as 'Red' in the Site Plan attached on the following grounds:-

*i) That the petitioner is a Non-Resident Indian and is residing in Canada for the last 16 years. The petitioner requires the premises in question describable as One Room with Common Bathroom on the Ground Floor of House No. 3638, Sector 23-D, Chandigarh, Shown as 'Red' in the Site Plan attached, for his personal requirement inasmuch as the **petitioner is residing in Canada with his family comprising of his wife, 2 children as well as his old mother.** The petitioner has now decided to shift his family to Chandigarh. The children of the petitioner are school going and are receiving their education in Canada. The petitioner has decided that his wife, children and old mother will settle down in Chandigarh in the house in question and children would pursue their education in Chandigarh. The petitioner will keep on visiting the family in Chandigarh as per requirements. For that purpose the petitioner requires the entire House No. 3638, Sector 23-D, Chandigarh consisting of 3 floors, including the premises in question, for the requirement of his family which consists of his wife, children and old mother. The house in question is a very small house. The petitioner is already in occupation of two rooms and kitchen on the Ground Floor and one room on the First Floor in the house in question. **The petitioner wants the entire***



House No.3638, Sector 23-D, Chandigarh, which is only a 5 Marla house measuring 128.4 Sq. Yds., to live in comfort and as per the requirements of the family. All the members of the family of the petitioner require separate rooms and a separate room is also required for the servant to be kept by the family of the petitioner.....”

A perusal of the above would show that it was specifically pleaded by the respondent no.1-landlord that he requires the premises in question being in need of the same and had also stated that his family, comprised of his wife, two children as well as old mother, had decided to shift to Chandigarh and that it had further been decided that they would settle down in Chandigarh in the house in question and the children would pursue their education in Chandigarh whereas the respondent no.1 would keep on visiting them. It is pointed out that the entire house is only 5 marla and that each one of the family member would require their own room. The requirement thus projected cannot remotely be stated to be not bonafide. As has been held in the judgments hereinabove, presumption is required to be attached to the averments made in the petition. Moreover, no material has been produced by the petitioners to remotely show that the requirement is not bonafide. In paragraph 3 sub para (xii) of the application to leave to contest, it has only been simply averred that the bonafide of the respondent no.1-landlord is contradicted from the fact that the respondent no.1 has failed to give any cogent reason showing fulfillment of the ingredients. Even the said averment does not raise any triable issue. Thus, the finding of the Rent Controller, moreso, in paragraphs 11,12 and 13 on the aspect of bonafide requirement is in accordance with law and deserves to be upheld.



26. Keeping in view the above said facts and circumstances, the present petition being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

January 28, 2025.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No