



CR-3440-2010 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.3440 of 2010 (O&M)
Date of Decision: 15.07.2024

UMARJEET SINGH**.....Petitioner(s)****Vs****DEV RAJ****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Rupinder Khosla, Senior Advocate with
Mr. Yogender Verma, Advocate
for the petitioner.

Mr. Vishal Garg, Advocate
for the respondent.

HARKESH MANUJA, J. (Oral)

[1]. By way of present petition, challenge has been laid to an order dated 28.01.2010 passed by the Rent Controller, Gurdaspur while dismissing an application/petition under Section 13-B of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred as 'the Act') moved at the instance of the petitioner/landlord.

[2]. Briefly stating, in the present case claiming himself to be the owner of tenanted premises-one shop situated at G.T. Road, Dhariwal, Tehsil Gurdaspur, being Non-Resident Indian (for short 'NRI'), having returned to India, the petitioner/landlord filed an application under Section 13-B of the Act for eviction of respondent/tenant on the ground of the same being required for his own use and occupation.

[3]. Having been granted leave to defend, the aforesaid petition was contested by the respondent while disputing the ownership of the



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petitioner/landlord besides even disputing his status as that of NRI and also challenging the requirement set up by him and also submitting that the petitioner was already in possession of sufficient and suitable non-residential building got vacated from Agyawati after enactment of Section 13-B of the Act.

[4]. The Rent Controller vide its decision dated 28.01.2010 rejected the ejectment petition filed on behalf of the petitioner/landlord while holding that he was not able to prove his ownership over the demised premises besides even failed to establish his *bona fide* necessity qua the same. The plea of petitioner-landlord being NRI was recorded in his favour.

[5]. Impugning the aforesaid order, the present petition came to be filed. Along with the same, petitioner-landlord also moved an application bearing CM No.13731-CII of 2010 invoking Order 41 Rule 27 read with Section 151 CPC seeking permission to lead additional evidence in the form of sale deed dated 27.10.1937 showing his father-Jeewan Singh to be the owner of the demised premises.

[6]. Learned Senior counsel appearing on behalf of the petitioner/landlord submits that the document i.e. sale deed dated 27.10.1937 was very much essential for complete and effective adjudication of the eviction petition and, thus, the same be allowed to be produced and proved on record by way of additional evidence as it would enable the petitioner-landlord to establish his ownership over the demised premises through his deceased father. In addition, it has been submitted that the Rent Controller went wrong while recording that the petitioner-landlord was not able to prove his *bona fide* necessity for the demised premises. While referring to the statutory provisions of Section 13-B of the Act, learned Senior counsel submits



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that the language used therein, nowhere enjoins upon the petitioner/landlord to establish *bona fide* necessity, rather only requirement needs to be proved and, thus, the entire approach of the Rent Controller while rejecting the prayer for ejection was uncalled for.

[7]. On the other hand, the prayer made on behalf of the petitioner is opposed at the instance of learned counsel for the respondent while submitting that the prayer made in the application under Order 41 Rule 27 read with Section 151 CPC was nowhere to seek permission for production and proof of the sale deed dated 27.10.1937 as a piece of additional evidence and, thus, the same could not be permitted to be brought on record for its consideration, thereby affecting merits of the claim.

[7.1]. Learned counsel for the respondent further submits that there was no illegality or perversity with the findings recorded by the Rent Controller as regards the petitioner/landlord having failed to establish his plea of *bona fide* necessity qua the demised premises and as such the impugned order warrants no interference.

[8]. I have heard learned counsel for the parties and gone through the paper book.

[9]. In the given facts the circumstances, the petitioner-landlord having been non-suited on the ground that he was not able to establish his ownership over the demised premises, the production and proving of sale deed dated 27.10.1937 wherein his father-Jeewan Singh was recorded as owner of the demised premises becomes essential for the complete and effective adjudication of the case in hand. Moreover, the sale deed dated 27.10.1937 is a registered document and has been produced from proper custody and being more than 30 years old document carries



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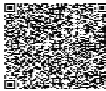
presumption in terms of Section 90 of Indian Evidence Act, 1872 and its veracity even cannot be impeached at the hands of respondent/tenant. The sale deed dated 27.10.1937 would even enable the Court to adjudicate upon the case in hand in a complete and effective manner.

Furthermore, in the humble opinion of this Court, no merit can be found in the contention raised on behalf of respondent-tenant that prayer made in the application filed under Order 41 Rule 27 read with Section 151 CPC filed on behalf of the petitioner/landlord for leading additional evidence was merely for placing on record the sale deed dated 27.10.1937 rather than seeking permission to prove the same by way of additional evidence; in this regard, perusal of the application shows that in the headnote a specific prayer has been made for grant of permission to lead additional evidence in the shape of sale deed dated 27.10.1937. Be that as it may, a positive case about it has been set up in paragraph No.2 of the application. In such circumstances, rather than adopting a hyper-technical approach, taking a pragmatic view the submissions made on behalf of the respondent regarding opposition to the application is, thus, rejected and the petitioner-landlord is permitted to lead additional evidence in the shape of sale deed dated 27.10.1937.

[10]. Besides it, perusal of the impugned judgment shows that no detailed discussion at all has been made on the point of necessity of the petitioner-landlord qua the demised premises. The evidence led by the parties in this regard has not been dealt with and considered in its proper perspective, especially in the form of explanation rendered on behalf of the petitioner-landlord that the demised shop was bigger in size as compared to the shop already in his possession which was got



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vacated by his son only, that too not under Section 13-B of the Act and in such circumstances, the findings recorded by the Rent Controller in the impugned order on the issue of requirement of demised premises by the petitioner-landlord also needs to be set aside.

[11]. In view of the aforesaid discussion, the matter is remanded back to the Rent Controller for its fresh adjudication on merits after affording an opportunity to the landlord-petitioner to lead additional evidence in the shape of sale deed dated 27.10.1937 with grant of an opportunity to the respondent-tenant for rebuttal, if any.

Considering the fact that the petitioner happens to be 84 years of age and the petition under Section 13-B of the Act was filed at his instance way back in the year 2004, the Rent Controller is requested to conclude the proceedings within a period of 02 (two) months from the date of receipt of certified copy of this order. It is made clear that nothing observed hereinabove shall be treated as an expression of opinion on the merits of the ejectment petition.

[12]. In view of aforesaid terms, the present petition is disposed of. All the pending applications are also disposed of accordingly.

July 15, 2024
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No