



2023INSC873

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 8641 OF 2009

MUKESH KUMAR

... APPELLANT(S)

VERSUS

S. KULDEEP SINGH

... RESPONDENT (S)

J U D G M E N T

S.V.N. BHATTI, J.

1. The appellant-Mukesh Kumar is the tenant of Shop No. 5 at Guru Amardas Chowk, Model Town, Jalandhar. In the instant Civil Appeal, he challenges the Order of Eviction from Shop No.5 under Section 13-B of the Act¹.

2. S. Kuldeep Singh, son of S. Harbhajan Singh-owner, filed Eviction Application No.6 of 2003 against the appellant-tenant for the subject premises before the Rent Controller, Jalandhar. Parties are referred to as Mukesh Kumar and S. Kuldeep Singh for the appellant and the respondent, respectively. The eviction case is that S. Kuldeep Singh's father, late S. Harbhajan Singh, owned the tenanted premises. S. Kuldeep Singh inherited the ownership of the tenanted premises along with other legal heirs of S. Harbhajan Singh. The monthly rent is

¹ East Punjab Urban Rent Restriction Act, 1949.

Rs. 225/-. Mukesh Kumar continued to be the tenant of S. Kuldeep Singh even after the demise of S. Harbhajan Singh. The averments in the Application under Section 13-B of the Act are that S. Kuldeep Singh, born in India, was raised and educated in England. He was working for gains in England and was rendered without work due to recession. Therefore, he had come to India to make a living. It is averred that Shop No. 3 in the same complex, belongs to S. Kuldeep Singh. An application filed for eviction of Shop No. 3 ended in dismissal. Now, he seeks eviction of tenanted premises in Shop No. 5 for doing business. The categorical averment is that the owner, his brothers and his mother intend to do business in the complex's shops by converting the shop into a proper showroom. The Eviction Application has an averment that S. Kuldeep Singh has no other premises in his possession or occupation. Hence, the Petition for Eviction under Section 13-B of the Act.

3. The case set out by Mukesh Kumar for leave to defend Eviction Application is stated as follows:

3.1. The tenanted premises are part of a big building, and Shop No.3 is in possession of M/s Arcade, represented by Kishan Lal Chaudhari. Nasib Kaur, mother of S. Kuldeep Singh, filed a Petition for Ejectment of Shop No. 3. The petition was dismissed. S. Kuldeep Singh is neither the owner nor the landlord of the tenanted premises, and the Eviction Petition at the instance of S. Kuldeep Singh is, therefore, not maintainable.

3.2. Section 2(dd) of the Act defines a non-resident Indian, and S. Kuldeep Singh is not a Non-Resident Indian. S. Kuldeep Singh cannot seek eviction of the subject premises under Section 13-B of the Act. Malafides vitiated the eviction proceeding, for S. Kuldeep Singh need not come to do business in India. Section 13-B, eviction at the instance of S. Kuldeep Singh, is not maintainable for this reason as well. Curiously, Mukesh Kumar states that S. Kuldeep Singh offered to sell the tenanted premises. Still, the transaction could not go forward, for S. Kuldeep Singh demanded twenty lakh rupees as sale consideration for the tenanted premises. This averment is inconsistent with the other averment *viz.*, that S. Kuldeep Singh is not the owner of the tenanted premises. For brevity, we refer to the limited grounds raised by the tenant for leave to defend the petition.

4. The Rent Controller, by Order dated 14.05.2004, rejected the Leave Petition and ordered the eviction of Mukesh Kumar. Tenant filed Civil Revision No. 3101 of 2004 before the High Court of Punjab and Haryana at Chandigarh. The High Court dismissed the Revision on 05.05.2008. Hence, the Civil Appeal.

5. Learned Counsel Kavita Wadia, appearing for Mukesh Kumar, contends that the Order of Eviction, through the summary procedure under Section 13-B of the Act, is wholly illegal and unsustainable. The tenanted premises are part of a big building—the family members of S. Kuldeep Singh own shops. The Rent Controller ordered the eviction of one of the shop rooms in favour of a family member of S. Kuldeep Singh. The consequence of such an Eviction Order in favour of a family member is that S. Kuldeep Singh cannot claim possession of

yet another shop room through summary procedure. By a plain reading of Sections 2(a) and 13-B of the Act, the eviction in the stated circumstances, through summary procedure, is not maintainable. The right under Section 13-B is not absolute, and the statutory bar, viz., apply for eviction under Section 13-B, is available: (a) after five years from the date of becoming owner and (b) only once during the lifetime of such owner is applied mandatory before ordering eviction through summary procedure.

5.1. The Rent Controller and the High Court did not examine and apply the in-built safeguards in the scheme of summary eviction. The flow of title to the shops owned by the owner's family members would clinchingly establish that each shop is a building by itself. Once the possession of a shop is secured by a family member, leave to defend ought to have been granted to Mukesh Kumar. The learned Counsel invited our attention to *Baldev Singh Bajwa v. Monish Saini*² and *Ram Krishan Grover and others v. Union of India and others*³ for the proposition that the conditions of Section 13-B are mandatory and carefully followed by the primary and Revisionary Court. Hence, eviction of a tenant under Section 13-B is not a matter of course.

6. Learned Counsel for S. Kuldeep Singh contends that the summary eviction of the tenant was fully compliant with the requirements of Section 13-B of the Act. The findings of fact recorded in the impugned judgments do take away any

² (2005) 12 SCC 778

³ (2020) 12 SCC 506

view by this Court as beyond the scope of Appeal under Article 136 of the Constitution of India. Further, Section 18-A obligates the tenant, to avoid eviction to apply with grounds for leave to defend the summary eviction petition. A reading of Sub-Sections (4) and (5) of Section 18-A discloses that the Rent Controller examines the grounds raised against summary eviction and the affidavit filed by the tenant, which would reveal such facts as disentitling the landlord from obtaining an Order for Recovery of Possession through summary proceeding. In other words, it is argued that the Rent Controller examines the grounds in Section 13-B of the Act in the background of objections/grounds raised by the tenant and decides a case for leave to defend is made out by the tenant. The Counsel invited our attention to the Leave Application and argued that the legal contention now introduced by referring to Section 2(a) “building”, read with Section 13-B first *proviso*, was not an issue before the Rent Controller and the High Court. He further contends that a new ground introduced before the High Court was examined and rejected, and the Supreme Court ought not to entertain a new or recent plea altogether. The plea now raised is not entirely a plea in law. By commending to us the concurrent findings of facts recorded by the High Court and the Rent Controller, he prays for dismissing the Appeal.

7. We have taken note of the contentions of both the Counsel appearing for the parties and perused the record.

8. Let us preface Section 13-B and Sub-Sections (4) and (5) of Section 18-A of the Act:

“13B. Right to recover immediate possession of residential building or scheduled building and/or non-residential building to accruing 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.

18A. Special procedure for disposal of applications under Section 13-A or Section 13-B.-

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) xxx xxx xxx

(4) The tenant on whom the service of summons has been declared to have been validly made under sub-section (3), shall have no right to contest the prayer for eviction from the [residential building or scheduled building and/or non residential building], as the case may be, unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller as hereinafter provided, and in default of his

appearance in pursuance of the summons or his obtaining such leave, the statement made by the specified landlord or, as the case may be, the widow, widower, child, grandchild or the widowed daughter-in-law of such specified landlord [or the owner, who is non resident Indian] in the application for eviction shall be deemed to be admitted by the tenant and the applicant shall be entitled to an order for eviction of the tenant.

(5) The Controller may give to the tenant leave to contest the application if the affidavit filed by the tenant discloses such facts as would desentitle the specified landlord or, as the case may be, the widow, widower, child, grand- child or widowed daughter-in-law [or the owner, who is non resident Indian] of such specified landlord from obtaining an order for the recovery of possession of the [residential building or scheduled building and/or non residential building], as the case may be, under [section 13-A or section 13-B].”

9. In **Baldev Singh Bajwa** (supra), the scope of Section 13-B is laid down as a *ratio decidendi*, and the true ratio of **Baldev Singh Bajwa** is considered and explained in **Ram Krishan Grover** (supra). The excerpt from **Ram Krishan Grover’s case** explains the dicta of both the citations.

10. In **Ram Krishan Grover** (supra), this Court examined the constitutional validity of Section 13-B of the Act and extension of Section 13-B vide Notification dated 09.10.2009 to the Union Territory of Chandigarh. The Court framed the following questions:

“A. Whether Notification dated 9-10-2009 issued under Section 87 of the Reorganisation Act extending Section 13-B of the Rent Act to Chandigarh by executive action is invalid?

B. Whether amendments made vide the Amendment Act with regard to the rights of Non-Resident Indians by the State Legislature of Punjab were beyond its competence?

C. Whether Section 13-B of the Rent Act is arbitrary and unreasonable inasmuch as it does not afford any legal remedy to the tenants?”

11. The answer to Question No. ‘C’ is relevant for our purpose and excerpted herein:

“37. In terms of Section 13-B of the Rent Act, the landlord should have been the owner of the premises for five years before the eviction petition is filed. Such landlord/owner is permitted to file an eviction petition only once during the lifetime and in respect of one building. Sub-section (3) to Section 13-B of the Rent Act imposes a restriction on sale or lease of the premises for a period of five years from the date of taking possession from the tenant. On breach of the conditions/restrictions mentioned in sub-section (3) to Section 13-B, the tenant has a right to seek restoration of possession. Sub-section (2-B) to Section 19 imposes a maximum punishment of six months' imprisonment or a fine of one thousand rupees or both in case the landlord does not occupy the premises for a continuous period of three months after getting an eviction order or lets out the whole or any part of the premises to a third person other than the tenant in contravention of the provisions of sub-section (3) to Section 13-B. The reasoning in *Baldev Singh Bajwa* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778] expositis that these restrictions and conditions are strong in-built checks to ensure that the need of the landlord should be genuine and bona fide and the tenant should not be subjected to frivolous and dubious eviction order by relying on false assertions.

38. The presumption raised with regard to the genuine need of the landlord as pleaded in the petition should not be read as an axiom or self-evident truth, which entitles the landlord and mandates the court to pass a decree of eviction. This is clear from subsequent elucidation by this Court in paras 20 and 21 in *Baldev Singh Bajwa* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778]. The true ratio, in our opinion, is reflected in para 25, which reads as under: (*Baldev Singh Bajwa* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778], SCC p. 796)

“25. On the interpretation given by us and on a plain reading of the provisions, once in a lifetime possession is given to an NRI to get one building vacated in a summary manner. A

Non-Resident Indian landlord is required to prove that: (i) he is an NRI; (ii) that he has returned to India permanently or for a temporary period; (iii) requirement of the accommodation by him or his dependant is genuine; and (iv) he is the owner of the property for the last five years before the institution of the proceedings for ejectment before the Controller. The tenant's affidavit asking for leave to contest the NRI landlord's application should confine itself to the grounds which NRI landlord is required to prove, to get ejectment under Section 13-B of the Act. The Controller's power to give leave to contest the application filed under Section 13-B is circumscribed to the grounds and inquiry on the aspects specified in Section 13-B. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. Inquiry would be confined to Section 13-B and no other aspect shall be considered by the Controller.”

39. The requirement of a “strong case” for obtaining leave to defend means a good case that brings to fore reasonable and well-grounded basis on which the tenant seeks leave to contest the eviction proceedings. It does not mean setting up and establishing at that stage a case beyond any scintilla of doubt and debate. The grounds and pleas raised should reflect clear and strong defence and relate to the grounds mentioned in para 25 in *Baldev Singh Bajwa* [*Baldev Singh Bajwa v. Monish Saini*, (2005) 12 SCC 778] . The standard applied is similar to parameters elucidated in *Inderjeet Kaur v. Nirpal Singh* [*Inderjeet Kaur v. Nirpal Singh*, (2001) 1 SCC 706] , in which this Court had held that the leave to defend should not be granted on mere asking but when the pleas and contentions raise triable issues and the dispute on facts demands that the matter be properly adjudicated after ascertaining the truth of affidavits filed by the witnesses in their cross-examination. Each case has to be decided on its merits and not on the basis of any preconceived suppositions and presumptions. By providing for a simplified procedure of eviction by the Non-Resident Indians, Section 13-B does not dilute the rights of tenants. It gives a chance to the tenants on merits to establish their case and when justified and necessary to take the matter to trial. By no means, therefore, Section 13-B can be held to be arbitrary and unreasonable.”

12. We will revert to the applicability of the above excerpt to the case on hand, a little later.

13. We perused the Orders impugned, and we notice that after examining each one of the grounds raised by the tenant, the Rent Controller recorded that the ground raised by Mukesh Kumar that S. Kuldeep Singh is not the owner, is unsustainable and rejected the said ground. It is recorded that Mukesh Kumar, having referred to an offer of S. Kuldeep Singh to sell the property, cannot dispute the status of S. Kuldeep Singh as the owner of the tenanted premises. The finding of fact on maintainability of eviction at the instance of S. Kuldeep Singh is correctly recorded by the Rent Controller, and we agree with the said finding as available in the present background.

14. It is argued that S. Kuldeep Singh does not fit into the NRI status or satisfy the conditions precedent for availing the summary procedure for eviction. The Rent Controller held that the owner was born in India and presently has a passport issued by the United Kingdom of Britain and Northern Ireland and, therefore, satisfies the requirements of Section 2(dd) of the Act. No exception to this finding is pointed out in the Civil Appeal. The other ground is meeting the requirements of Section 13-B of the Act. In Paragraph-11 of the Order dated 14.05.2004, the Rent Controller had elaborately considered this objection of Mukesh Kumar and rejected the objection. It is held that the contention that S. Kuldeep Singh is not the owner is also contrary to the very case pleaded by Mukesh Kumar. To wit, Mukesh Kumar need not negotiate with S. Kuldeep Singh as owner if the tenant disputes the ownership of the property. On the grounds urged by the tenant, the

Rent Controller observed that a case to contest the summary eviction proceeding is not made out and leave need not be granted.

14.1. Before the Revisional Court, it was argued that S. Kuldeep Singh was not the owner for five years to avail remedy under Section 13-B of the Act. The High Court answered that this differs from the case pleaded before the Rent Controller and a new case cannot be entertained. What is applicable before the High Court on a new plea being raised is applied with the same reasoning while examining the new pleas raised by Mukesh Kumar in the instant Civil Appeal.

14.2. A plain reading of Section 18(4) and Section 18(5) makes it clear that the tenant files an affidavit stating the grounds on which the tenant desires to contest the Application for Eviction and obtains leave of the court. Sub-Section (5) conditions the discretion of the Rent Controller to examine the affidavit filed by the tenant, and the grounds in the affidavit would disentitle the landlord from obtaining possession through summary procedure. In other words, the initial case, i.e., the summary procedure set in motion by the landlord, is tested on the grounds raised by the tenant in the affidavit against the case averred by the landlord and a finding is returned whether leave to defend is granted or not. As evident from the record, the arguments before this Court are made in new terms. The maintainability of an Eviction Application under Section 13-B is not a stand-alone circumstance that this Court can consider and accept. At any rate, the disqualification for summary eviction proceeding is traced to the alleged serving of vacant possession of a shop in the same building. This argument cannot be

appreciated for more than one reason, viz., (i) there is no evidence on the alleged possession secured by S. Kuldeep Singh, (ii) the family members can settle among themselves with an understanding and allow one of the members in need to secure possession under Section 13-B of the Act and (iii) eviction order in favour of Nasib Kaur cannot be put against S. Kuldeep Singh. These grounds should have been stated with certainty while serving leave to defend the Eviction Petition. The consideration of these objections raised without basis or pleas is impermissible. These arguments, viz., possessing other shops, etc., are merely noted and need to be rejected.

15. We have, in the preceding paragraph, with sufficient detail, narrated the grounds urged by Mukesh Kumar for leave of the Court to contest the Eviction Application. Now, the argument of the Counsel for the appellant is not that the pleas raised by the tenant, a finding unavailable is recorded, and leave under Section 18-A ought to have been granted. The inquiry under Section 18-A of the Act limits the discretion of the Court, namely, to verify that the affidavit filed by the tenant shows the grounds to contest the Application for Eviction. The Rent Controller can grant the leave to defend if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an Order for the Recovery of Possession under Section 13-B of the Act. The orders of eviction are in line with the precedents referred in Para 11 (*supra*).

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.

17. We have considered the grounds raised before us and believe that the tenant is introducing a new case, which this Court is not persuaded to entertain new pleas, particularly in the facts and circumstances of the present Civil Appeal.

18. In our considered view, the Courts below on being satisfied that the requirements of Section 13-B are complied with, rightly rejected the leave to defend as Mukesh Kumar failed to make out a case under Sub-Sections (4) and (5) of Section 18-A of the Act.

19. For the above reasons, the Appeal fails and is dismissed accordingly. No order as to costs.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SANJAY KUMAR]

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

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