

Before Tejinder Singh Dhindsa, J.

M/S HOT MILLIONS AND OTHERS— *Petitioners*

versus

HARISH BATRA.— *Respondent*

CR No 5732 of 2016

August 06, 2018

East Punjab Rent Urban Rent Restriction Act, 1949— Ss.13B, 2(dd), 18 A—Landlord settled in USA—S.13 does not contemplate any distinction with regard to ownership with a NRI of the building in question whether the same came to vest prior to his proceeding abroad or thereafter—Period of five years under Section 13-B has its bearing on the property prior to filing of the eviction petition and not in relation to the point of time when such NRI had proceeded abroad. The need of landlord to be genuine and bonafide is open and subject to the tenant’s right to rebut but with strong and cogent evidence. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine.

Held, that Section 13-B of the Act does not contemplate any distinction with regard to ownership with a NRI of the building in question whether the same came to vest prior to his proceeding abroad or thereafter. The period of 05 years under Section 13-B has its bearing on the ownership of the property prior to filing of the eviction petition and not in relation to the point of time when such NRI had proceeded abroad.

(Para 17)

Further ,held that the need of landlord to be genuine and bonafide is open and subject to the tenant's right to rebut but with strong and cogent evidence. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine.

(Para 24)

Chetan Mittal, Senior Advocate with Kunal Mulwani,
Advocate, *for the petitioners-tenant.*

Aalok Jagga, Advocate, *for the respondent-landlord.*

TEJINER SINGH DHINDSA, J.

(1) The present revision is directed against order dated

28.04.2016 passed by the Rent Controller, Chandigarh whereby he has declined the application for leave to contest under Section 18- A and allowed the petition under Section 13-B of the East Punjab Urban Rent Restriction (Amendment) Act, 2001 (for brevity "Rent Act") of the Non-Resident Indian landlord.

(2) Facts in brief are that the landlord filed a petition under Section 13-B of the Rent Act as extended to Union Territory, Chandigarh vide Notification dated 09.10.2009 for eviction of the tenant from the premises described as ground floor, basement and backyard of SCO No.06, Sector 26, Chandigarh. The petition was filed through Sh. Vijay Pahwa, General Power of Attorney and it was asserted in the petition under Section 13-B of the Rent Act that 50% share of the demised premises had been purchased by the landlord from Sh. Vinod Malhotra vide sale deed No. 4226 registered on 20.12.2007 with Sub Registrar, Chandigarh. At that point of time, the landlord was not in India and the sale deed was executed in his favour through his brother Sh. Om Parkash Batra. Pursuant to the sale deed, 50% share in respect of the demised premises was transferred in favour of the landlord by Estate Office, Chandigarh vide transfer letter dated 17.01.2008. It was further averred that prior to purchasing 50% share, the premises in question had been rented out in favour of M/s Hot Millions through its Managing partner Sh. A.B.Singh vide rent deed dated 02.02.2005 which stood duly registered with Sub Registrar, Chandigarh vide Sr. No.4432 on 02.02.2005. The period of tenancy was fixed as 10 years commencing w.e.f. 02.02.2005 and up to 28.02.2015.

(3) Landlord filed the eviction petition invoking Section 13- B of the Rent Act claiming the status of Non-Resident Indian as per definition under Section 2(dd). Eviction was sought on the assertion that in the light of changed circumstances of the family of the landlord, he has decided to occupy the demised premises personally for doing business and to settle in Chandigarh. On notice of application for eviction, the tenant filed an affidavit seeking leave to contest as required under Section 18-A (5) of the Rent Act. The Rent Controller has declined the application for leave to contest and has passed the consequential order of eviction of the tenant vide impugned order dated 28.04.2016.

(4) It is against the afore-noticed brief factual backdrop that the instant revision has been filed by the tenant.

(5) It may be taken note of at the very threshold that even though it had been pleaded to the effect that respondent- landlord Harish Batra is holding a passport of United States of America and therefore is citizen of a foreign country and not an Indian citizen and the same would raise an issue as to whether he would fall within the expression “Non-Resident Indian” so as to avail remedy under Section 13-B of the Rent Act, but Mr. Chetan Mittal, learned Senior counsel had made a categorical submission that he would not be pressing such ground.

(6) The impugned order dated 28.04.2016 passed by the Rent Controller, Chandigarh is assailed on the following grounds:-

i) It is sought to be contended that the respondent-landlord does not fall within the definition of NRI under Section 2(dd) of the Rent Act. It was submitted that to fall within the definition of NRI, a landlord himself or herself should have been proceeded from India with an intention to permanently or temporarily settle abroad but would not include those persons who are already settled abroad and thereafter have purchased the property with a sitting tenant as is the case in the present matter.

ii) It is submitted on behalf of the tenant/ petitioners that the landlord has not pleaded the necessary ingredients of Section 2(dd) read with Section 13-B of the Rent Act and particularly regarding ownership/occupation of other properties in the urban area of Chandigarh. It was urged on behalf of the tenant(s) that the landlord had not pleaded in his entire petition seeking eviction under Section 13-B of the Rent Act that he did not own any other commercial premises with the urban area of Chandigarh and has not got vacated any other premises by availing the remedy provided under Section 13-B of the Rent Act.

iii) It was argued that the eviction petition that had been filed by the landlord was not maintainable as the same had been filed against M/s Hot Millions through its Managing partner Colonel A.B.Singh on 21.03.2015 whereas Colonel A.B.Singh had already expired on 20.11.2005 i.e. prior to the institution of the eviction petition and, accordingly, a petition

against the dead person was not even maintainable.

iv) It was vehemently contended by learned Senior counsel that the Rent Controller has completely overlooked the issue with regard to the “bonafide necessity” and genuine need of the landlord while seeking eviction under summary proceedings envisaged under Section 13-B of the Rent Act. It was argued that numerous attendant factors and circumstances had been raised in the application filed by the tenant(s) seeking leave to contest under Section 18-A and which clearly demonstrated that the sole motive of the landlord was to get the rent enhanced and as such the eviction petition under Section 13-B was not bonafide. In furtherance of such argument learned counsel would submit that the landlord was a subsequent purchaser of 50% share in the property while he was based in New York (USA) and the tenant was in occupation of the premises since the year 2005 and the landlord as such was very much aware of the fact that he is purchasing a property with a sitting tenant. Reliance has also been placed upon a development that took place before the Rent Controller and whereby a CD containing a recorded conversation with the Power of Attorney holder and the tenant had been produced and it is asserted that the recorded conversation was a clear pointer towards the respondent-landlord actually wanting enhancement of rent. Further questioning the “bonafide necessity” of the landlord, it was submitted that at the time of purchase of 50% share in the property, such purchase had been facilitated through power of attorney which was in favour of the brother of the landlord. However, subsequently a General Power of Attorney had been executed in the name of Mr. Vijay Pahwa who was a complete stranger and it is on the strength of such power of attorney that the eviction petition had been filed. It is argued that such circumstances would in itself indicate that there was some indirect sale between the power of attorney holder and the landlord and it is in pursuance to such tacit understanding arrived at that the eviction petition had been filed and which would be construed as a gross misuse of Section 13-B of the Rent Act. Learned Senior

counsel contends that all these circumstances clearly set forth triable issues and the Rent Controller vide impugned order dated 28.04.2016 has erred in declining the application of the tenant(s) for leave to contest under Section 18-A of the Rent Act.

v) It is further argued that the tenancy in question had been created by the erstwhile owners of the building in question and the premises of which recovery of immediate possession has been sought under Section 13-B of the Rent Act had not been let out by the respondent-landlord. It is contended that under Section 13-B, the right to recover immediate possession of a residential building or scheduled building and or non-residential building would accrue to a Non-Resident Indian which had been let out by “**him or her**”. It is contended that against the admitted factual premise that the premises had been purchased by the respondent-landlord with a sitting tenant and the same having not been “**let out by him**”, the respondent was not entitled to invoke and seek remedy under Section 13-B of the Rent Act.

vi) Yet another submission raised is that the landlord in the petition filed under Section 13-B of the Rent Act claimed to be the owner of the ground floor, basement and backyard of the property in question. It has been contended that such kind of fragmentation is not permissible by the Chandigarh Administration under the Chandigarh (Sale of Sites and Buildings) Rules, 1960 and in view of the specific bar contained under Rule 14 as regards fragmentation, the petition itself was not maintainable.

(7) I have heard Mr. Chetan Mittal, Senior counsel assisted by Mr. Kunal Mulwani, Advocate for the petitioners/tenant and Mr. Aalok Jaggar, Advocate for the respondent-landlord.

(8) Vide the East Punjab Urban Rent Restriction (Amendment) Act No.09 of 2001, the State of Punjab amended the East Punjab Urban Rent Restriction Act, 1949. The statement of “Objects and Reasons” of the Amendment Act No.09 of 2001 acknowledges the representations received by the State Government from various NRI highlighting their plight of return to

India after the long stay abroad. It was noticed that Non-Resident Indians having spent long years of their lives abroad, do not find the conditions congenial in their own country on their return either to settle down or to take up any business due to the rigid legal provisions of the existing Rent Act and they were unable to recover possession of their residential, scheduled or non-residential building for their own use and occupation. It was towards mitigating the hardship faced by the NRI landlords that the State Government brought out ordinance No.10 of 2000 promulgated on 27.12.2000, followed by the Amendment Act No.09 of 2001 whereby the provisions like Section 2(dd), 13-B and some modifications in the existing Section 18-A of the Rent Act were carried out. These provisions have been added/amended with a view to provide summary proceedings for eviction of the tenant by his NRI landlord subject to fulfillment of certain conditions.

(9) Section 2 (dd), Section 13-B and Section 19(2) B would be relevant to the issue at hand and the same are extracted hereunder:

Section 2 (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 auncertain period;

(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."

19 (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."

(10) Section 18-A(2) of the Rent Act provides that once an eviction application under Section 13-B is received, the Rent

Controller shall issue summons for service on the tenants in the Form specified in Schedule-II, which in turn, requires the tenant to apply for leave to contest the eviction application within 15 days of the service. Sub Section 3(a) of Section 18-A prescribes more than one mode to effect service on the tenant(s) simultaneously, whereas, sub Section (4) explicitly provides that the tenant, on whom the service by summons has been effected, shall have no right to contest the prayer for eviction unless he seeks to contest the application for eviction along with an affidavit stating the grounds and obtains leave from the Rent Controller to contest the eviction application. Sub-Section (5) states that leave to contest can be granted to a tenant if the facts disclosed by the tenant in his affidavit “*would disentitle the 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 maybe...*” Sub-Section (6) and Section 18-A of the Act further provides where the leave is granted to the tenant to contest the eviction application, the Rent Controller shall hear the eviction application on day to day basis.

(11) The above stated newly added provisions have been considered by the Hon’ble Supreme Court threadbare in ***Baldev Singh Bajwa versus Monish Saini***¹, the conclusion whereof may be summarized as follows:-

(i) Any person, who himself is of Indian Origin and/or whose parents/grand-parents are/were of Indian Origin and who is settled outside India either permanently or temporarily for taking up employment or for carrying on business/vocation would be a Non-Resident Indian;

(ii) a Non-Resident Indian-landlord has a special right to seek immediate possession of the let-out premises if he is its owner for at least a period of 5 years before his applying to the Rent Controller for possession and that he requires the premises for his own use and occupation and/or for anyone ordinarily living with him and is dependent on him;

(iii) the right under Section 13-B of the Act for immediate possession can be availed of only once during the life-time of such an owner/NRI landlord;

¹ (2005) 12 SCC 778

(iv) the NRI-landlord has the choice to select one amongst several other residential/non-residential buildings;

(v) it is not necessary for a NRI-landlord to permanently return to India for seeking eviction of the tenant;

(vi) the Courts shall presume that the need of the NRI landlord is genuine and bonafide, though the tenant is entitled to prove that in fact and in law, the requirement of the NRI landlord is not genuine;

(vii) a heavy burden would lie on the tenant to prove that the requirement of the NRI-landlord is not genuine and mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour;

(viii) if the NRI-landlord gets possession under Section 13-B of the Act, he can neither transfer it either by sale or by any other modenor can he let it out for a period of 5 years and in case of any breach, the tenant is entitled to seek restoration of possession;

(ix) after getting the possession, the NRI-landlord should occupy the premises continuously for a period of 3 months.

(12) Against the backdrop of such relevant statutory provisions and the grounds of challenge set up on behalf of the tenant(s) and as culled out hereinabove that the validity of the impugned order dated 28.04.2016 passed by the Rent Controller, Chandigarh would require examination.

(13) The first submission raised on behalf of the tenant(s) that the landlord herein would not fall within the definition of Non-resident Indian under Section 2(dd) as he had already proceeded abroad and had thereafter purchased the property with a sitting tenant is wholly misconceived. Section 2(dd) defines Non-Resident Indian to mean 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, as would indicate his intention to stayoutside India for an uncertain period.

(14) The landlord in the eviction petition filed under Section 13-B of the Rent Act had placed reliance upon US passport issued to him in the year 2006. Copy of such passport stood appended along with the eviction petition as Annexure P-4. Documents were even appended along with eviction petition pertaining to incometax assessment orders reflecting his status as a Non-Resident Indian. Even the relevant pages of the passport pertaining to NRO account in the name of the landlord with Union Bank of India, Mumbai had been appended along with the eviction petition. The NRI status of the landlord as such would be apparent. The attempt made by Senior counsel to exclude such class of NRIs from the definition under Section 2(dd) who were already settled abroad and thereafter purchased the property in question would clearly amount to reading something alien in the language of Section 2(dd) and runs in the teeth of Section 13-B which contemplates the right to recover immediate possession by a NRI of a residential building or scheduled building and/or non-residential building but subject to the proviso that such right would accrue only in respect of such a building after a period of 05 years from the date of becoming the owner of such building. Section 13-B of the Act does not contemplate any distinction with regard to ownership with a NRI of the building in question whether the same came to vest prior to his proceeding abroad or thereafter. The period of 05 years under Section 13-B has its bearing on the ownership of the property prior to filing of the eviction petition and not in relation to the point of time when such NRI had proceeded abroad. Accordingly, it is held that the landlord/respondent herein who otherwise had brought forth and adduced on record documents to show his NRI status cannot be precluded to avail of such status as contemplated under Section 2(dd) and to avail of the remedy under Section 13-B of the Rent Act merely for the reason that he had acquired ownership of the property in question after having proceeded abroad.

(15) The next contention as regards the landlord having not pleaded the necessary ingredients as per definition of Section 2 (dd) as also Section 13-B of the Rent Act as regards ownership/occupation of other properties is contrary to record and is perverse.

(16) This Court has perused the petition that had been filed by

the landlord/respondent- NRI under Section 13-B of the Rent Act, the same having been placed on record and appended as Annexure P-1 along with instant revision petition. In para 3 of the petition, it was clearly averred that the landlord is a Non-Resident Indian and thus competent to invoke the remedy under Section 13-B of the Rent Act. Towards demonstrating his status as NRI, the landlord had appended along with eviction petition his US passport issued in the month of December, 2006. Also appended along with eviction petition were income tax assessment orders reflecting his NRI status and the relevant extracts of the passbook pertaining to his NRO account maintained with Union Bank of India, Mumbai. In para 3 of the eviction petition, it was specifically averred that the landlord had been owner of the demised premises for the last more than 05 years. In para 4 of the eviction petition, it was averred that on account of change of family circumstances, the landlord has decided to occupy the demised premises personally for doing business and to settle in Chandigarh. It was also averred that landlord has not having any other similar accommodation in Chandigarh where he can start any independent business. Pertinently, it was also averred in para 4 of the eviction petition that he can seek eviction under Section 13-B as a NRI on account of the fact that he has “not got any other building vacated” as NRI and more than 05 years have passed since he purchased the said building.

(17) The afore-noticed averments clearly demonstrate that the ingredients of Section 13-B had been specifically pleaded. Supporting documents reflecting his NRI status so as to fall within the definition of NRI under Section 2(dd) had been adduced on record and appended along with the eviction petition. Even otherwise the plea of non-disclosure of other properties owned by the landlord and which as per Senior counsel would entail dismissal of the eviction application is without merit. The requirement of mandatory disclosure of other properties has been incorporated only under Section 13(3) of the Rent Act which deals with the personal requirement of a resident Indian. Such requirement is not there while seeking eviction under Section 13-B which is a special right conferred upon an NRI. There is no requirement for the landlord for filing an eviction application under Section 13-B of the Rent Act to disclose that he is in possession of other properties within the Municipal city limits where the demised premises is situated. Had that been the intention of the legislature, it would have been so

mentioned in Section 13-B as well, as has been mentioned in Section 13(3) of the Rent Act. The only requirement is that the landlord should be a NRI, owner of the demised premises for the last 05 years and averment in the petition that he requires the premises for his own use and occupation.

(18) The ground raised by the tenant(s) as regards the eviction petition having been filed on 21.03.2015 against a dead person and being not maintainable is not well founded. Admittedly, rent deed had been entered into on 02.02.2005 between the erstwhile owners and M/s Hot Millions through Managing partner Sh. A.B. Singh i.e. prior to the NRI landlord having acquired 50% ownership of the demised premises.

(19) It is under such circumstances that the eviction petition under Section 13-B had been filed by the landlord/respondent against M/s Hot Millions through Mr. A.B. Singh. Being a NRI and based in America, the landlord was not aware of the unfortunate demise of Mr. A.B. Singh on 20.11.2005. Upon gaining knowledge, application was moved and the LRs of Mr. A.B. Singh were duly impleaded. The copy of leave to defend application (Annexure P- 2) discloses that the same had been filed for M/s Hot Millions through the LRs of Mr. A.B. Singh. In the application seeking leave to defend, the details of other partners of M/s Hot Millions is not forthcoming. The tenant/petitioners herein are not demonstrating any prejudice that may have been caused. In any case, no application had been filed during the proceedings before the Rent Controller at the hands of any other person claiming himself/herself to be a partner and as such to participate in the lis. This Court as such does not find any substance in the submission raised on behalf of the petitioners in this regard.

(20) A lot of emphasis was led by learned Senior counsel questioning the bonafides of the eviction petition at the hands of the respondent-landlord. It was argued that the actual and sole motive was only towards getting rent enhanced. Attendant circumstances/factors in the nature of the landlord being a subsequent purchaser with a sitting tenant, alleged conversation of the tenant with the power of attorney holder and the attorney itself being in the name of stranger to draw an inference of some indirect sale between the power of attorney holder and the landlord were cited.

(21) In the case of *B.S.Bajwa (supra)*, the Apex Court had

observed that the Rent Controller's power to give leave to contest in a petition filed under Section 13-B is restricted by the condition that the affidavit filed by the tenant(s) seeking leave to contest, discloses such fact as would disentitle the landlord from obtaining an order for recovery of possession. In the summary proceedings, the tenant's right to contest the application would be restricted to the parameters of Section 13-B of the Rent Act. The tenant cannot widen the scope of his defence by relying on any other fact which does not fall within the parameters of Section 13-B. The tenant's right to defend the claim of the landlord under Section 13-B fore eviction would arise if the tenant is in a position to show that the landlord in the proceedings is not NRI landlord; that he is not the owner thereof or his ownership is not for the required period of 05 years before the institution of proceedings and that a landlord's requirement is not bona-fide. It was further held that the assertions made by the NRI landlord of his requirement shall be presumed to be genuine and bonafide unless rebutted by the *“tenant by placement of cogent and material facts and evidence in support thereof at the stage of leave to contest before the Controller”*.

(22) It would be apposite to reproduce the following extract from the judgment of the Supreme Court in *Baldev Singh Bajwa's case (supra)*.

“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-

section (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 subsection (3) of Section 13-B, the tenant is given a right of restoration of possession of the said building. Under subsection (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 in built 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 tenants' 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 ejection of the tenant, the Court shall presume that landlord's need pleaded in the petition is genuine and bonafide. 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.”

(23) Adverting back to the facts of the present case, perusal of the leave to defend application dated 03.10.2015 filed by the tenant/petitioners herein reveals that mere assertions have been made as regards landlord being in ownership of other commercial premises and that the landlord having already availed remedy of the summary proceedings of Section 13-B of the Rent Act. Such assertion did not find any corroboration by any cogent material placed along with the leave to defend application/affidavit.

(24) Likewise as regards the recorded conversation between the power of attorney holder and the tenant, Mr. Aalok Jagga, learned counsel representing the landlord has joined issue to point out that only piecemeal extracts of the conversation were being adverted to. In any case, the Rent Controller's power to give leave to contest the petition filed under Section 13-B has to subscribe to the grounds specified in Section 13-B of the Rent Act. The tenant would be entitled for leave to contest only if he makes a strong case to challenge those grounds. The inquiry would be confined to Section 13-B and no other aspect is to be considered by the Controller. The need of landlord to be genuine and bonafide is open and subject to the tenant's right to rebut but with strong and cogent evidence. A heavy burden would lie on the tenant to prove that the requirement of the landlord is not genuine. To prove such fact, the tenant would

be called upon to give all the necessary facts and circumstances supported by documentary evidence to support his plea in the affidavit itself seeking leave to contest. A mere assertion on the part of the tenant would not be sufficient to rebut the strong presumption in the landlord's favour i.e. requirement of occupation of the premises to be real and genuine.

(25) In the considered view of this Court, the vague and bald assertions made by the petitioners/tenant as regards the need of the landlord to be not bonafide lack material support and are also otherwise inconsistent with the object behind sub Section (3) of Section 13-B read with Section 19 of the Rent Act in terms whereof an evicted tenant can not only seek restoration of his possession if the landlord fails to occupy the demised premises but defaulted landlord can be prosecuted as well.

(26) The next argument raised by learned Senior counsel as regards the landlord/respondent herein not being eligible to avail of the summary proceedings under Section 13-B of the Rent Act as he had not let out the demised premises himself is without merit in view of the Division Bench judgment of this Court in *Smt. Bachan Kaur and others versus Kabal Singh and another*² and wherein it had been categorically held 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 is not necessary that all the other co-owners should be non-residents Indian. The dictum laid down in *Bachan Kaur's case (supra)* by the Division Bench still holds the field.

(27) Equally devoid of merit is the contention raised on behalf of the tenant/petitioners with regard to fragmentation of the premises in question. In the eviction petition under Section 13-B of the Rent Act, there is a clear averment in para 1 of the petition itself as regards the landlord being the owner to the extent of 50% share of the premises in question i.e. ground floor, basement and backyard of SCO No.6, Sector 26, Madhya Marg, Chandigarh. In *Bachan Kaur's case (supra)*, it had also been held that the co-owner who is an NRI can maintain a petition for ejectment for the benefit of all the co-owners.

(28) It would be unfair for this Court not to notice submission raised by Senior counsel with regard to the eviction petition

² 2011 (1) RCR (Rent)368

having been filed on the strength of a General Power of Attorney dated 30.09.1994 and which reflected ownership of the NRI landlord to the extent of 50% share in the ground floor and first floor of the demised premises. It was argued that eviction was rather being sought of not only ground floor and first floor but of the basement as well.

(29) In this regard, it may be observed that such contention and ground had not been raised in the application seeking leave to contest and has not even pleaded in the instant revision petition. Be that as it may, since such contention had emanated during the course of arguments, CM No.14428 of 2018 was filed on behalf of the landlord/respondent and in terms of which 3 power of attorneys were placed on record i.e. power of attorney dated 27.05.2014 reflecting 50% share of the landlord in ground floor and basement of the demised premises and another power of attorney dated 30.09.2014 also in the name of Mr. Vijay Pahwa reflecting 50% share of the NRI landlord in ground floor and first floor of the demised premises. These two power of attorneys clearly stood executed prior to 21.03.2015 i.e. date of filing of the eviction petition by the NRI landlord under Section 13-B of the Rent Act.

(30) Submission in this regard raised on behalf of the tenant/petitioners is rejected on the ground that the same had not been raised before the Rent Controller in the application seeking leave to contest.

(31) In view of the reasons recorded above, this Court does not find any infirmity in the impugned order dated 28.04.2016 passed by the Rent Controller declining the application for leave to contest and allowing the petition under Section 13-B directing the eviction of the tenant(s)/petitioners.

(32) Petition is dismissed.

Dr. Payel Mehta