

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.S.A.No.16/2002**

% *Reserved On: 11.11.2010*
Decided On: 22.11.2010

HARI CHAND (DECEASED) THRU LRS Appellants
Through: Mr.Ajay Veer Singh and Mr.Nitin Jain,
Advocates

Versus

RAJENDER NATH & ORS Respondents
Through: Mr.Arun Kumar Varma and Ms.Mansi
Wadhera, Advocates

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No. |
| 2. | To be referred to the reporter or not? | No. |
| 3. | Whether the judgment should be reported in the Digest? | Yes. |

: MOOL CHAND GARG, J.

1. This second appeal filed under Section 39 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the DRC Act"), which provision now stands excluded from the Act after the amendment of the Act in 1988, hinges upon the plea that running of business by the deceased appellant in the tenanted shop on the ground floor of property bearing No.97, Main Bazar, Najafgarh, New Delhi (hereinafter referred to as "the suit property") through his son Surinder Kumar was not an act of subletting. It was pleaded that the suit property was let out to HUF of which the deceased appellant was the Karta and, therefore, the business being run by him along with his son Surinder Kumar would not constitute an act of parting with the possession. It was submitted

that the deceased appellant never divested himself of the legal possession of the suit property.

2. Both the courts below i.e. the court of the Additional Rent Controller (for short “the ARC”) as well as the first appellate court i.e. the Additional Rent Control Tribunal (for short “the ARCT”) have returned a concurrent finding that the suit property was let out individually to the deceased appellant and in view of his own admission that the suit property being now used exclusively by his son Surinder Kumar, it was a case of subletting/parting with the possession without their being any consent obtained by the deceased appellant in writing from the landlord and thus, attracts the mischief of the provisions contained under Section 14(1)(b) of the DRC Act. Consequently, the eviction order passed by the learned ARC against the appellant was justified. The aforesaid finding was further confirmed by the learned ARCT.

3. According to the appellant, the order passed by the learned ARC and the judgment rendered by the ARCT are not sustainable in law for the following amongst other reasons:-

- (i) The landlord had given the address of the tenant/appellant in the eviction petition of the shop in dispute.
- (ii) The landlord had also issued notice dated 22.12.1984 of demand of rent and termination of tenancy to the appellant/tenant at the address of the shop in dispute.
- (iii) The notice was also served on the appellant at the shop in dispute.
- (iv) The appellant and his son Surinder Kumar have been residing in house No. 1478, Najafgarh, Delhi.
- (v) It was stated in para 5 of the Eviction Petition that the shop in question was being used for “general merchandise business”, where two persons can work together.

(vi) The shop in question was duly registered under the Delhi Shop and Registration Act in which the name of the establishment is given as “M/s Harichand Surinder Kumar and name of the occupier/employer is given as “Hari Chand son of Kanshi Ram” exhibited as RW-1.

(vii) There is no evidence on record to show that besides Surinder Kumar any third person was working in the shop and in these circumstances, the courts below should have held that the only legal inference that can be drawn from the circumstances of the case is that the possession of the said shop was not parted with by the appellant to his son Surinder Kumar.

4. The appellant has relied upon the following judgments:-

- (i) Hazari Lal Vs. Gyani Ram & Ors., 1972 RCR 74;
- (ii) M/s Delhi Stationers Vs. Rajender Kumar, AIR 1990 SC 1208;
- (iii) Smt. Krishnawati Vs. Sh. Hans Raj, AIR 1974 SC 280;
- (iv) Chander Kishore Sharma & Anr. Vs. Kampawati, AIR 1984 Delhi 14;
- (v) Sumita Singh Vs. Nahar Singh, AIR 1984 Cal 145;
- (vi) Ballani Ranganayakulu & Ors. Vs. Mattupalli Nageshwara Rao, AIR 1992 AP 294; and,
- (vii) Gian Devi Anand Vs. Jeevan Kumar & Ors., (1985) 3 SCC 683.

5. In the nutshell, it is the case of the appellant that:-

- (i) The suit property was taken on rent by HUF.
- (ii) Merely because the son of the appellant is working in the establishment “M/s Harichand, Surinder Kumar” it cannot be said that it is the case of sub-letting or parting with possession. The occupation by the appellant and his son for doing the business jointly would not attract the mischief of Section 14(1)(b) of the DRC Act.
- (iii) The evidence on record does not show that the appellant had divested himself of the possession of the property in question.

6. On the other hand, the respondents have justified both the judgments passed by the learned ARC and ARCT. They have also

stated that in the present case no substantial question of law has been raised by the appellant justifying any interference by this Court in exercise of powers under Section 39 of the DRC Act.

7. I have heard the arguments on behalf of the appellant as also on behalf of the respondent. I have also gone through the judgments cited at bar and have also perused the record. The appellant has also filed written submissions.

8. In its judgment, the learned ARC has given specific findings to the effect :-

(i) That the shop in question was let out to the appellant in his personal capacity. It was not let out to HUF;

(ii) It is established by way of the evidence led on record that the business in the suit property is being run exclusively by Surinder Kumar, son of the appellant, after 1993; and,

(iii) The evidence on record also goes to show that Surinder Kumar himself is running a shop in question in the tenanted property and the appellant has nothing to do with the said business and consequently, it also goes to show that he has divested himself of the legal possession of the suit property.

9. To appreciate the reasoning of the learned ARC, it would be appropriate to take note of paragraphs 13 to 16 of the judgment delivered by the ARC, which reads as under:-

“13. The evidence of the petitioner on the point that the respondent has parted with the possession can be divided into oral and documentary evidence. AW-2 is Sh.Radhey Shyam who stated that he is running a ration shop and the ration card of Surinder Kumar son of Hari Chand is registered with his shop from house No.1478, Najafgarh, New Delhi since March 1982 and the members mentioned in the ration card were two adults and two minors and now a third minor has been added. He also stated that Surinder Kumar has signed the register maintained by him. The original ration card was brought by the respondent bearing No.50862. AW-3 Sh.Mohan Lal who is running ration shop in the name of Mohna Chand Sri Chand for the last about 13 years. According to him Ration Card of Hari Chand is registered with his shop at

Srl.No. 434 from house NO. 1478 Najafgarh, New Dehli. The number of the old ration card is stated to be 66474 and that of now as 26061. In this ration card the home of Hari Chand, his wife, mother, his son Virender Kumar, his daughter Kamlesh, daughter in law Saroj Rani, grandson Karna and Udai Shankar have been mentioned.

14. AW-4 Sh.Munshi Ram deposed that the respondent is not doing any business in the disputed shop for the last about three years and now has been running a shop in his own property. According to him one Surinder Kumar is now in possession of the shop in dispute, who open and closes the same, conducts the business therein, who has been inducted in the shop by the respondent. He also stated that the respondent neither comes nor sits at the disputed shop. He has also stated that the respondent and Surinder Kumar are not joint in residence and they are separate.

15. AW-5 is Sh.Sube Singh. He stated that for the last about 3 or 4 years Surinder Kumar is running a shop in the disputed premises and that Hari Chand respondent is running a shop at Delhi Gate, Najafgarh in his own property. According to him both have separate messes. He is a conductor by profession. According to him he has seen the business being run by Surinder Kumar. AW-6 is Sh.Shankar Lal attorney of the petitioner. According to him the respondent had been doing business in the disputed shop upto 1983 but thereafter inducted Surinder Kumar in the said shop who is now running business in the above-said shop. According to him the respondent is running a separate shop.

16. On the other hand in his testimony respondent Hari Chand has stated that earlier he used to run the business in the name of Hari Chand Surinder Kumar since the year 1969. He has also stated that Om Prakash and Surinder Kumar both are his sons and that he started the business after obtaining no objection certificate issued by Gopi Ram and thereafter, he obtained licence from MCD. He further stated that Surinder Kumar is assisting him since the year 1970. In his cross-examination he admitted that he is the owner of the property No. 1478, Najafgarh, New Delhi. He has also stated that he and his son Om Prakash were having share in the business being carried on in the name of Hari Chand Om Prakash but neither any document was executed nor any accounts were maintained. However, he stated that the income tax was paid by the said firm in which both he himself and his son were shown to be the owners in the income tax records in the premises in

question and that the firm came to an end in the year 1970. He does not state that the firm was assessed as HUF. He also did not produce the copy of the assessment order/return showing as to in what capacity the return was filed. On the other hand he has admitted that he and his son were shown as owner of the firm in the income tax records. According to him he stated the second firm in the year 1970 i.e. M/s Hari Chand Surinder Kumar. However, this deposition of the respondent is contrary to the stand taken by him. According to him in the year 1970 he formed a firm M/s Hari Chand Surinder Kumar and both become owners thereof. The registration certificate of the firm has been proved as Ex.RW-1. IN this document it has not been mentioned that the firm is HUF. On the other hand, the name of the occupier has been mentioned as Hari Chand. There is nothing in the certificate that this firm was got registered in the name of HUF entity. So far as the evidence that the respondent and his son are having separate ration cards he has admitted that in his ration card apart from his name, the name of his wife, son, daughter, and daughter in law Saruj, grandson Karan have been mentioned. He has also admitted that the ration card of Surender shows the name of himself, his wife and three children as his family members. It is, therefore, clear that both these persons are having separate ration cards but he has denied that they are having separate messes. He has also denied that he has been doing the business in the shop in house No. 1478 though admits that he is the owner thereof. He also does not explain as to who is then running the shop at the ground floor of the said property. In the cross-examination he has denied that he does not open or closes the shop.”

10. Much reliance has been placed by the appellant on the statement of Gopi Ram, who appeared as RW-3, to justify running of business by Surinder Kumar, his son. In this regard, it would be appropriate to take note of the observations made by the learned ARC, wherein he has discussed the statement of Gopi Ram, including the documents placed on record by the appellant. The relevant observations in this regard are as follows:-

“Learned counsel for the respondent has further argued that there are no objection certificates given by RW-3 Gopi Ram are Ex.RW-2 and RW-3 which clearly show that firm Hari Chand Om Prakash was being run and therefore, it cannot be said that the HUF was not the tenant. I am not convinced with the contention of the counsel for the

respondent because if a witness is examined by a party who deposes certain facts which are against the interest of the party summoning him or factually incorrect, it is the duty of that party to declare the witness as hostile and with the permission of the Court put such question as can be put in the cross-examination to impeach the credit of the witness. Secondly, if any contradictory statement has been made by the witness with the previous statement oral or written in accordance with Section 145 of the Evidence Act so as to give opportunity to the witness to explain the contradiction. It is true that what is contained in RW-2 and RW-3 are contradictory to what he has deposed in the Court yet such contradiction cannot be read unless the witness is confronted with such statement under Section 145 of the Evidence Act and got a chance to explain his contradiction. Moreover the respondent has not impeached the credit of this witness. Therefore his statement will have to be believed that the tenancy was created in favour of the respondent individually. In his testimony RW-3 has specifically stated that he was not the attorney of the petitioner and that he issued the originals of RW-2 and RW-3 without asking the petitioner and issued the same on the request of the respondent. When this person was not having any authority nor the respondent has led any evidence that he issued these documents in the capacity of landlord or authorized agent, they are not sufficient to come to the conclusion that the tenancy was in favour of the respondent as Karta of HUF. It may be that after the tenancy was created the respondent started doing the business in the name of M/s Hari Chand Om Prakash and thereafter in the name of Hari Chand Surinder Kumar but in the face of statutory prescription that the tenant will obtain the consent in writing of the landlord prior to permitting any person to use the premises along with him cannot be said that there was a waiver of his right on the part of the landlord.”

11. Thus, even the statement of RW-3 is of no help to the case of the appellant. In any event, RW-3 was not the landlord.

12. The learned ARC for arriving at to the aforesaid conclusion that it was a case of sub-letting and/or parting with the possession of the tenanted shop in favour of Surinder Kumar has already taken note of various judgments cited at the bar. He has referred to a judgment delivered in the case of Gauri Shankar Vs. Gopal Kishan Sood, 1986 RCR 667, wherein it has been held that if the son of the tenant is doing the business in the shop in the absence of any evidence it was a family

business, it will be held to be sub-letting. Since in this case neither the receipt of payment of rent nor the income tax return nor the accounts books were produced in the court, the presumption of existence of family business cannot be raised and therefore, the ratio of judgment in Gauri Shankar's case (*supra*) squarely applies to the present case where also no document was produced to show that the business being run by Surinder Kumar was admittedly a family business.

13. The learned ARC has also relied upon a judgment delivered in the case of Kishan Chand Vs. Banarasi Dass & Ors., 1987(2) RCR 676, wherein it has been held that if brother of the tenant is doing business in the shop who are living separately, there is a possibility that the business was not joint and it was the case of sub-letting. Reference was also made to a judgment delivered in the case of Associated Hotels India Ltd., Delhi Vs. S.B.Sardar Ranjit Singh, 1968(2) SCR 548, wherein it has been held that where the landlord discharges the onus of leading evidence that the occupants were in exclusive possession of the premises for a valuable consideration it would then be for the tenant to lead evidence that there was no parting with possession with the occupant.

14. The learned ARC further observed that in this case while admitting that Surinder Kumar was running a business in his own name, no evidence was led by the appellant that the business was either that of HUF or that it was a family business or that the tenancy was created in the name of HUF or that the possession of Surinder Kumar was not to the exclusion of the appellant and consequently, the passed the order holding that it was a case of sub-letting.

15. It would also be relevant to take note of the pleadings of the parties in the eviction petition. In paragraph 16, the respondent/landlord has alleged that,

“Yes. The petitioner (it should be respondent) has wholly or partly sublet, assigned or otherwise parted with the possession of the shop in dispute to Sh.Surinder kumar without the consent in writing of the petitioner about one year back. The rent charged from him could not be found out.”

16. While in paragraph 16 of the written statement, the appellant had stated as follows:-

“Para No.16 of the petition is emphatically denied as being wrong and incorrect. The respondent has not sublet or parted with his possession in favour of any one. The tenancy was created in the name of J.H.U.F. Hari Chand through its Karta Shri Hari Chand and he is being assisted in the business by his son Shri Surinder Kumar. Previously the respondent was being assigned in the business by his son Om Prakash and later on Shri Surinder Kumar started assisting the respondent. There is no question of sub-letting, assigning or parting with possession of the shop by the respondent in the circumstances. All the sons of the respondent have a right to assist him in the business being carried on at the disputed premises.”

17. In paragraph 5 of the written statement while replying to the aforesaid averments, the appellant has stated that,

“Para no.5 of the petition is substantially correct. It is submitted for perusal of this Hon’ble Court that that the respondent is carrying on a shop at the disputed premises under the name and style of M/s Hari Chand Surinder Kumar and the respnodent is being assisted by his son Shri Surinder Kumar. Previously the respondent was being assisted by his Son Shri Om Prakash in the business at the disputed premises.”

18. In the replication, the respondent reiterated the assertions that it was a case of sub-letting and/or parting with the possession by making the following submissions:-

“Para no.5 of the written statement insofar as it admits para no.5 of the petition needs no reply. The rest of the para is wrong and denied. It is denied that the respondent is carrying on business in the alleged name or that he is being assisted by Shri Surinder Kumar. It is denied that previously he was being assisted therein by Om Prakash. Para no.5 of the petition is correct and is re-affirmed.

Para no.16 of the written statement is wrong and is denied. The respondent has sublet or parted with the possession of the premises as stated in the petition. It is denied that the tenancy was treated in the name of J.H.U.F. Hari Chand. It is denied that Hari Chand was or is its Karta. It is denid that Surinder Kumar is assisting

him in the business. It is denied that previously he was assisted therein by Om Parkash. The respondent has sublet etc. the premises as stated in the petition. It is denied that all the sons of the respondent as alleged have a right to assist the respondent in the business in the disputed premises. Para no.16 of the petition is correct and is reaffirmed.”

19. Taking note of the specific plea of the appellant that the tenancy in this case was that of HUF and was not in his individual name, the learned ARCT has discussed the concept of a HUF in paragraph 14 of the judgment, which reads as under:-

“14.....A Hindu Undivided Family as is understood under the law consist of at least a co-parcenery. A co-parcenary consist of decendant from a common ancestor upto the four degree and any property which is acquired by co-parceners through common ascendant is a HUF property or any property which is added to the property of HUF by a co-parcener and any business which is being carried on by such co-parceners together is a business of HUF. Can a property which is acquired by tenant in his individual capacity when his children were minor may be of age of 7-8 years or so and i.e. common male ascendant upto two degree be described as HUF property and any business done in such premises be said to be business of HUF? The answer which I get under the Shastric Hindu Law is in the negative. A tenant acquiring a property as a tenant in his individual name cannot say that when the property was acquired there was a Hindu Undivided Family business which was to be run in the shop in question unless the tenant establishes that there was a business of Hindu Undivided Family prior to taking of the property in question. Certainly, such a business can be held to be a HUF business and any tenancy acquired by such a Karta can be said to have the tenancy acquired by Karta in the present case provided such evidence is adduced. The evidence adduced is to the contrary. Even in the licence which is acquired by the appellant in form of Ex.RW1 appellant has described himself individually as an occupier and not occupier as Karta of any Hindu Undivided Family. The evidence of the appellant itself negatives the story set up by the appellant. In this view of the matter I find that the claim of the appellant that the tenancy was in the name of HUF cannot be accepted. The court below was right in holding that the tenancy was in the individual name.”

20. While re-affirming the reasons given by the learned ARC, the learned ARCT in having passed an eviction order also gave additional

reasons to support the conclusion. Those reasons take care of the submission of the appellant that the business was being run by the sub-tenant Surinder Kumar as a member of the joint HUF and that the tenancy was created in the name of HUF which argument has not been accepted by the learned ARCT, who in impugned order observed as under:-

“15. Next question as if a business run by a tenant with assistance of his son. Will it amount to sub-letting? The answer would be in the affirmative provided tenant establishes that business which is being run in his and control of the shop vest in him. It is, therefore, incumbent upon the appellant to establish that the business which was being run in the name of Hari Chand Surinder Kumar was his business and his son Surinder Kumar was assisted him. No evidence to that effect has been produced. The best evidence in this regard was the accounts if any maintained by the appellant, bank account depicting the transactions of business being run and in whose name bank account is evidence of the persons who dealt with the firm of the appellant or bills of the articles of general merchandise business, evidence that the appellant was having control of sale, purchase and cash of business in question. There is nothing to show that at any material time appellant was having control of sale, purchase and cash of the business in question which was being run in the name of Hari Chand Surinder Kumar. In absence of that particularly when it is admitted that Surinder Kumar is also there and particularly reading Section 14(4) of the DRC Act along with Section 14(1)(b) the law shall hold that the premises has been sublet or given in possession to Surinder Kumar. Even otherwise respondent has examined Shankar Lal who had deposed that it is Surinder Kumar who is closing and opening the premises in question and that the appellant is carrying on the business the in his own house no. 1478, near Delhi Gate, Najafgarh, Delhi. On the face of such a testimony it was further incumbent upon the appellant to adduce evidence that the appellant holds the control of the business in question which was being run from the tenanted premises. Mere acceptance of the notice or mere mentioning of the address in the petition and the notice will not lead the court to hold that the control of the business or the premises in question was held by the appellant. This aspect of the matter is further strengthened by the fact that it is admitted by the appellant in his deposition that so long as from the premises in question business was being run in the name of Hari Chand Om Prakash, income tax was being paid.

Earlier the business was to such an extent that income tax was being paid to the Government but after the business has been changed in the name of Hari Chand Surinder Kumar. One cannot believe that the business has gone so down that even the tax is not payable. In the trade unless the circumstances are adverse with respect to the industry that the same has gone to the lowest scale. One cannot believe that the business has gone down. Normally with the passage of time, business and profit rises. General Merchant is not such a trade which will go down in the scale of the business. Non-production of the documents relating to the business viz. account books or material evidence of sale, purchase, cash leads me to draw the adverse inference against the appellant. This aspect of the matter, therefore, further directs me to hold that such documents have not been produced knowingly by the appellant because the business was being done exclusively by Surinder Kumar as has been deposed by the respondent. Non-production of the relevant documents of the alleged control on the part of the appellant leads me to arrive an adverse finding against the appellant. The court below, therefore, was right in holding that the appellant has successfully made out a case of subletting or parting of possession of the shop in question and rightly passed an eviction order under Section 14(1)(b) of the DRC Act.”

21. Having gone through the record of this case and the clinching evidence, which has come on record it is apparent that the suit property was let out to the appellant in his individual capacity for running a shop in which admittedly, the business was being run by the appellant till the year 1993 along with his son Om Prakash and was thereafter, taken over by his son Surinder Kumar, who started running his business exclusively in the said property and the appellant started running his business in a separate premises. It cannot be said that the concurrent findings returned by the two courts below require any interference by this Court. Even the judgments cited by the appellant are of no help to his case.

22. It may be observed here that the tenancy was created in the favour of appellant, Surinder Kumar was only a child. There is nothing on record to show that the tenancy was created in favour of the HUF or that the appellant was used to run a business as Karta of the HUF. Moreover, in this case RW-1 i.e. the appellant has himself deposed that

he had taken the shop on rent in the year 1962. Even though RW-1 in his testimony stated that he had taken the disputed shop on rent in the year 1962 as Karta of HUF. RW-3 Gopi Ram has specifically deposed that the shop in question was let out to the appellant in his individual capacity. Moreover, the appellant has not produced the registration certificate of earlier firm M/s Hari Chand Om Prakash and the second certificate produced by him is Ex.RW-1 showing the name of establishment as M/s Hari Chand Surinder Kumar, which does not show that this was HUF. It cannot be presumed that the appellant was the occupier of the shop in question as the Karta of HUF. Nothing has been brought on record by the appellant that No Objection Certificate has been given by the respondent/landlord permitting the appellant to hand over the possession of the suit property or allowing his son to run a business.

23. In the written submission filed on behalf of the appellant, it is submitted that the onus to prove subletting is upon the landlord.

24. In this regard, it would be sufficient to take note of judgment in the case of Bharat Sales Ltd. Vs. LIC Of India, (1998) 3 SCC 1, wherein it has been observed:-

“Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been

paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.”

25. In view of the evidence which has been discussed above, it is apparent that the deceased appellant himself admits that the business in the suit property is being run by his son. There is nothing to prove that the said business is a joint HUF business where the deceased appellant has any role to play. Once it is proved that a third person, which may be a relation or even a son, is in possession of the suit property not just to assist the father, it establishes parting with the possession of the suit property and unless and until there is a written permission of the landlord to act in that manner, the mischief of Section 14(1)(b) of the DRC Act is attracted. For similar reasons reliance placed by the appellant to the judgment of a three Judge Bench of the Supreme Court in Smt.Krishnawati Vs. Sh.Hans Raj, (1974) 1 SCC 289 also does not help the appellant in the facts of this case.

26. As far as the plea taken by the legal heirs of the appellant that they being the legal heirs were entitled to inherit the tenancy after the death of the appellant, is again of no consequence because in this case the allegation of subletting was made during the life time of the deceased appellant. Merely because his legal heirs have now been brought on record to represent the estate of the appellant, they cannot be considered as statutory tenant and in any case would not take away the mischief of subletting committed by the appellant in his life time.

27. Thus, there is nothing to show that the learned ARC has erred in passing the eviction order against the deceased appellant under Section 14(1)(b) of the DRC Act on the ground of sub-letting. The reiteration of that order by the ARCT for good reasons also cannot be interfered with by this Court in exercise of its power under Section 39 of the DRC Act

as even otherwise no substantial question of law arises in this case. Accordingly, the appeal is dismissed.

28. Since the legal heir of the appellant, namely, Surinder Kumar has been using the suit property illegally, the appellant Surinder Kumar is also directed to pay a costs of ₹ 1,00,000/- to the respondents. Trial court record, if any, be sent back forthwith along with a copy of this judgment.

CM No.64/2002

Interim orders are vacated.

Application stands disposed of.

MOOL CHAND GARG, J

NOVEMBER 22, 2010

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