

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

**CR No.2449 of 2015 (O&M)
Date of decision : May 13, 2015**

Shivdev Singh and another

..... Petitioners

Versus

Gau Rakshak Mandal, Sangrur through its Manager Prem Chand

..... Respondent

CORAM : HON'BLE MR.JUSTICE GURMIT RAM

1. To be referred to the Reporters or not? No / Yes
2. Whether the judgment should be reported in the Digest? No / Yes

Present : Mr. Gurinder Singh Dhillon, Advocate,
for the petitioners.

GURMIT RAM, J.

1. This revision petition is preferred by both the petitioners Shivdev Singh and Shamsheer Singh, who were tenant and sub-tenant respectively before the learned Rent Controller against the judgment dated 08.01.2014 passed by the learned Rent Controller, Sangrur vide which the application filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short “the Act”) for the eviction of the tenant and sub-tenant from the demised premises was accepted and judgment dated 08.01.2015 passed by the learned Appellate Authority, Sangrur vide which the appeal preferred against the said judgment of the learned Rent Controller was dismissed.

2. The case of the respondent herein who was applicant (landlord) before the learned Rent Controller in brief was that petitioner No.1 herein (tenant) took the demised premises on rent at the rate of ₹150/- per month excluding house tax for running engineering work in the year 1980. The petition for ejectment of the tenant as well as sub-tenant from the demised premises was filed on the ground of subletting and material alteration without the consent of the landlord. It was the case of the landlord that respondent No.1 who took the demised premises on rent had sub-let the same to respondent No.2 at the rate of ₹4,000/- per month without his knowledge and consent. Further respondent No.2 had also altered the nature of the construction by raising additional construction whereby materially impairing the value and utility of the demised premises without his consent and hence was the petition.

3. On notice, both the respondents filed their reply jointly by taking legal objections that the landlord has no cause of action to file this petition; that the petition is not maintainable and that the landlord is estopped to file this petition by his own act and conduct.

On merits, it was admitted that petitioner No.1 herein (tenant) took the demised premises on rent as alleged in the petition. It was denied that he had sub-let the demised premises to petitioner No.2 herein. In this regard it was their case that they were the owners of workshop in equal shares and a partnership deed dated 11.09.1980 had been executed between them. Both of them are running a business in the demised premises under the name and style of M/s Punjab Engineering Works since the date of inception of tenancy. It was denied that respondent No.2 had raised any

construction of permanent nature in the demised premises or that he had impaired the value and utility of demised premises materially by raising the said construction.

4. Learned Rent Controller after hearing learned counsel for both the parties and going through the record as well accepted this application filed for eviction of the petitioner herein from the demised premises vide the impugned judgment dated 08.01.2014 on the ground of sub-letting and material impairment. The appeal preferred against this judgment by the petitioner herein was also dismissed by the learned Appellate Authority, Sangrur, vide impugned judgment dated 08.01.2015 whereby affirming the findings of the learned Rent Controller.

5. Being aggrieved from the judgments passed by both the Courts below the petitioners herein (tenant/sub-tenant) have come up before this Court by way of instant revision petition.

6. Counsel for the petitioner was heard, record as available on the file was also perused.

7. The learned counsel for the petitioners herein has contended that settlement deed Ex.R1 dated 11.09.1980 was executed between both of them to run their business in demised premises. It is further his contention that both of them are operating their business from demised premises under the name and style of M/s Punjab Engineering Works on the basis of a partnership constituted on the basis of said settlement deed Ex.R1. Herein he has contended that both the Courts below have mis-interpreted this settlement deed while recording finding on the issue of subletting. Then it is also his contention that petitioner No.1 herein (tenant) has never parted

with the possession of demised premises nor he had sublet the same to petitioner No.2 herein to run the abovesaid business in the demised premises exclusively. Further he has prayed that findings recorded by both the Courts below on the issue of subletting are liable to be set aside and this issue is to be decided in favour of the petitioners herein (tenants). In support of his contention he has cited the case law as laid down by this Court in ***Smt. Maina Devi and another vs. Subhash Kohli and others, 1992 (2) R.C.R. (Rent) 386***. In this case, the original tenant who took the premises on rent entered into a partnership with respondent No.4 on 1st May, 1977 by giving reasons to form this partnership. It was recited therein that original tenant was finding it difficult to carry on the business on account of his ill-health and also due to paucity of funds. Both of them also agreed to share the profits and losses to the extent of 35:65. Original tenant died on 26.06.1977. Thereafter respondent No.1 who was one of the heirs / sons of original tenant executed a partnership deed with respondent No.4 on 29.12.1977. It was mentioned in this partnership deed that earlier father of respondent No.1 was carrying on the business in partnership with respondent No.4 and on his death, the business of erstwhile partnership was continued by respondent Nos.1 and 4 on the same terms and conditions. Then it was also agreed that entire business will be looked after by respondent No.4 as respondent No.1 had no experience about the work of business. Respondent No.1 at the time of execution of subsequent partnership was resident of Rohtak, whereas respondent No.4 was resident of Ambala Cantt. where the tenanted premises was situated. Respondents No.1 and 4 proved on record trading account for the year 1977-78 along

with balance sheet of this year Ex.R3 and trading account for the year 1978-79 along with balance sheet of this year Ex.R4. It was held that the fact that respondent No.1 had entered into a partnership and agreed to share profit and loss to the extent of 35:65, he shifted to Rohtak and the account books were to be maintained by respondent No.4 did not make the partnership in question to be a bogus one.

Revision was dismissed.

8. Now I feel it necessary to discuss the facts of the case in hand in order to see as to whether the case law cited supra is applicable to this case or not. In the case in hand the petitioners herein did not bring on the record any documentary evidence to show as to whether they are sharing the profits and losses of the work being carried out in the demised premises. Then no account books of the alleged firm i.e. M/s Punjab Engineering Works were produced in evidence by the respondents (petitioners herein) before the learned Rent Controller. Then respondent No.1 (petitioner No.1 herein) who as per the respondent herein (landlord) took the demised premises on rent did not step into the witness box as a witness to deny the factum of subletting on his part in favour of respondent No.2 (petitioner No.2 herein) as alleged in the ejectment application. Then it had also come on the record in the cross-examination of respondent No.2-Shamsher Singh (petitioner No.2 herein) as RW-1 that respondent No.1 (petitioner No.1 herein) is settled in Canada permanently. He visited the country only for 4 / 5 times since the year 1995. Plea taken by this respondent that he has been sending the share of profit to respondent No.1 i.e. Shivdev Singh is not substantiated on the record since no documentary evidence was brought on

the file by him at the relevant time. So the case law titled as Smt. Maina Devi and another (supra) is not applicable to the case in hand.

9. Then the learned counsel for the petitioner in support of his above contention has also relied upon another authority of this Court as delivered in ***Mohan Lal and Gopal Mittal (dead) through L.Rs. vs. Raja Ram and another, 2011(1) R.C.R. (Civil) 110***. In this case the respondents were the heirs of original tenant who took the demised premises on rent. On the death of original tenant they inherited the tenancy rights in question being his sons. After the death of their father both the brothers entered into a partnership deed. It was the plea of the landlord that respondent No.2 was carrying on the business of selling colours in the shop in dispute, whereas respondent No.1 was carrying on his own independent business at Ghalori Gate, Patiala. The demised premises were also situated in Adalat Bazar, Patiala. In the light of these facts it was held that merely because respondent No.1 was doing independent business along with his partnership business, it could not be said that there was any subletting. The facts of this case law are also found to be entirely different from the facts of the case in hand and as such, it also has no bearing on the facts of the case in hand.

10. Then there are certain case laws which are relevant to decide the above said controversy which are detailed as under:-

(i) ***Joginder Singh Sodhi vs. Amar Kaur, 2004 (2) R.C.R. (Rent) 493 (SC)***. In this case law it has been laid down in brief that for deciding the question whether the tenant had created sub-tenancy, the relationship between tenant and sub-tenant is not material. The premises in question was let out by the land-lady to respondent No.1, who further sub-

let the same to his son, i.e. respondent No.2. It was held that there is no privity of contract between the land-lady and respondent No.2 since he was a stranger to land-lady. Respondent No.1 was bound to occupy the property as per rent note executed by him wherein he undertook not to part with possession or allow any other person to occupy the property. It was held to be case of subletting.

ii. ***Suresh Chander Khurana son of Giani Jugal Dass vs. Prem son of Shri Ganesh Dass and another, 2013 (12) R.C.R. (Rent) 234.***

In this case the demised premises was taken on rent by the tenant, i.e. first respondent for the purpose of cloth business which was closed thereafter. The business of watch repair was being run by respondent No.2. It was held that if the business of a person other than the original tenant is an admitted fact, then onus will be on the tenant to explain as to how another person come in possession of the demised property along with him. If the tenant was merely associating himself with another member of his family and allowed his younger brother to carry on the business, then nothing would have stopped him from apprising the landlord about the change in the business and the character of yet another person as a joint family member before filing the ejectment petition.

It was held to be a case of subletting.

11. Then in the case in hand the alleged settlement deed Ex.R1 is in between both the petitioners herein. The present respondent (landlord) was not a party to this settlement at any stage, so as such there was no privity of contract between the respondent herein (landlord) and present petitioner No.2 (the alleged sub-tenant). So far the passing of any consideration in

between tenant and sub-tenant is concerned, it is always a secret affair and hence it is difficult to collect any evidence to prove the same.

12. Then as per the rent note Ex.C8 the demised premises in question was taken on rent by petitioner No.1 herein as a tenant in his individual capacity and not in the capacity of any partnership firm. Then the alleged partnership deed Ex.R1 is dated 11.09.1980 which is prior to this rent deed dated 17.09.1980. Had this settlement deed been prior to this rent deed, then there would have been no hitch in disclosing the fact that demised premises was taken on rent in the capacity of the alleged firm i.e. M/s Punjab Engineering Works at the time of inception of tenancy and not in individual capacity. Then as per Clause VII of this rent deed the tenant had undertaken not to sublet the demised premises to any person further without the consent of his landlord.

13. So in the light of the above discussion it is held that both the Courts below were right in holding that original tenant (petitioner No.1 herein) had sublet the demised premises to the alleged sub-tenant (petitioner No.2 herein).

14. Then it is also contended by the learned counsel for the petitioners herein that the alleged construction made by petitioner No.2 herein was of temporary in nature and there is nothing on record to hold that same had impaired the value and utility of the demised premises materially. In support of his above contention, he has referred to few lines of the cross-examination of AW-3 Er. Madan Lal Singla, Civil Engineer (retired), but for the proper appreciation of the statement of any witness that is to be read as a whole and not by picking up few lines from his statement by ignoring

its remaining part. The said AW-3 has brought on record in his statement site-plan Ex.X1, memo of presence Ex.X2, report Ex.X3, and photographs Ex.X4 to Ex.X7.

I have carefully gone through the findings recorded by both the Courts below on this issue and same are also found to be correct. Then the tenant/sub-tenant did not examine any building expert as witness in their evidence to contradict the statement of AW-3 Er. Madan Lal Singla and his report Ex.X3 as submitted by him after spot inspection.

15. In the light of above discussion, this revision petition being devoid of any merit stands dismissed and disposed of accordingly.

May 13, 2015
Gaurav Sorot

(GURMIT RAM)
JUDGE