

ESA No.60 of 2014 (O&M)

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

**ESA No.60 of 2014 (O&M)
Date of decision:10.02.2015**

Subhash Chand and others

...Appellants

Versus

Ram Swarup and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Kanwardeep Singh, Advocate,
for the appellants.

Rakesh Kumar Jain, J.s

This second appeal is against the orders of the Courts below,
dismissing the objections filed by the appellants in the execution.

In short, Ram Swarup S/o Telu Ram filed the eviction petition
against M/s National Flour Mills through its Director Shri Harbans Lal and
others under Section 13 of the Haryana Urban (Control of Rent and
Eviction) Act, 1973 (here-in-after referred to as the “Act”). The said
eviction petition was dismissed by the Rent Controller on 23.07.1994 but
the order of the Rent Controller was reversed in appeal by the Appellate
Authority on 02.09.1999 while passing the following order:-

“The eviction petition filed by the petitioner against

respondent for the eviction from the demised premises is hereby accepted with costs. However, the respondents are given a period of two months to hand over the vacant possession of the premises in dispute to the petitioner after removing superstructure and malba etc. otherwise the latter shall be entitled to seek the assistance of the Court in this regard.”

The National Flour Mills/Judgment Debtor failed in its revision before this Court which was dismissed on 30.08.2012 and also before the Apex Court as the SLP was also dismissed. The order of the Appellate Authority, Karnal in respect of eviction of the judgment debtor thus attained finality. The decree-holder then filed the execution application to recover possession in which the present appellants filed objection on the ground that they have been inducted as sub-tenants by the judgment-debtor to whom they are paying the rent, therefore, the order of eviction cannot be executed against them as the Court cannot go beyond the decree in which they are not the party and at the most, the decree-holder can obtain symbolic possession in terms of Order 21 Rule 36 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”). The objection was dismissed by the Executing Court vide its order dated 20.05.2014 which was assailed in appeal before the first Appellate Court but the appeal was also dismissed on 09.09.2014 and hence, the present second appeal.

Counsel for the appellants has mainly relied upon a judgment of the Supreme Court in the case of **Rattan Lal Jain v. Uma Shanker**

Vyas, 2002(1) R.C.R. (Rent) 168 to contend that the sub-tenant, inducted by the original tenant, cannot be ordered to be evicted if he is not a party and the landlord can only claim symbolic possession.

I have heard learned counsel for the appellants and perused the record.

It is needless to mention that there is no agreement between the landlord and sub-tenants inasmuch as the appellants, alleging themselves to be sub-tenants over the suit property, have not been inducted by the landlord. Moreover, the appellants/sub-tenants are the real brothers of the original tenant.

The decision in the case of **Rattan Lal Jain's case (supra)** is also not applicable to the facts and circumstances of the present case. In the said case, there was a plot no.A-1-B, situated at Sawai Jaisingh Highway, Banipark, Jaipur, which was owned by Rattan Lal Jain and measuring 1545 sq. yards. He leased out an area of 6100 sq. ft. to the respondent Uma Shankar Vyas on 31.01.1986 and in the registered lease deed, it was agreed that the lessee would construct shops on the leased property and can sublet the shops to other persons on rent for the period less than the period of lease and will be entitled to receive the rent to which the lessors will not object. Thus, respondent Uma Shanker Vyas constructed a commercial complex consisting of 105 shops on the leased land and the shops were let out to different tenants and the sub-tenants further inducted their own tenants. In the eviction proceedings, a specific decree was passed by the Court that *“the suit of the plaintiffs is decreed with costs against the defendants. The*

plaintiffs will be entitled to possession from defendants of those shops and land which is in actual possession of the defendants and the remaining shops which are in possession of sub-tenants they will be entitled to only symbolic possession”. In this background, the Supreme Court has held that the Executing Court cannot go beyond the decree as the decree itself stipulates symbolic possession in case the defendant in the suit against whom the decree is passed is not found to be in possession. It was also observed that the objector/sub-tenants were not rank trespassers as they have been inducted as sub-tenants in terms of the provisions of the lease deed.

The judgment in **Rattan Lal Jain’s case (supra)** is altogether on different footings and is not applicable to the facts and circumstances of the present case as it is not the case of the appellants that they have been inducted as sub-tenants by the landlord-decree holder rather they are claiming that they have been inducted as tenants by the M/s National Flour Mills to whom they are paying the rent and thus they have been allegedly in possession without permission of the landlord/decree-holder and also there is no privity of contract with the landlord as no rent is even alleged to have been paid to them. In this regard, the Supreme Court has held that the sub-tenant, who is enjoying the possession with the connivance of the original tenant, has to sink and swim with the original tenant in case of his eviction. The reference in this regard could be had to the judgment of the Supreme Court in the case of **Biswanath Poddar v. Archana Poddar**, 2001(2) Rent Control Reporter 451.

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Thus, in view of the aforesaid discussion, there is hardly any reason to interfere in the well considered order passed by the Courts below and hence, the present appeal is hereby dismissed.

February 10, 2015
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(**Rakesh Kumar Jain**)
Judge