

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1057 OF 2016

[Smt. Nora Furtado],
Smt. Laura Furtado,
(since deceased through
Lrs) Widow of late
Mr. Andrew Furtado

1(a). Shri Brian Furtado,
s/o late Shri Andrew Furtado,
Major in age, And his wife;

1(b). Smt. Arlene Furtado,
Major in age,

1(c). [Kum. Yvone Furtado]
Yvonne Maria Furtado,
D/o late Andrew Furtado,
(correction carried out as
per order dated 20.03.15)
Major in age;
All residing at H. No.211,
Mangor Hill, Vasco-da-Gama;
Goa.

5. Shri Ratnakar R. Prabhu,
Proprietor, Hotel Pavitra,
Near railway Station,
Vasco-da-Gama.

.... Petitioners.

V e r s u s

1 . Shri Kenneth Pereira,
Major in age, s/o late
Cien Pereira, Bachelor,
businessman, Residing
at H. No., Mangor Hill,
Vasco-da-Gama, Goa.

.... Respondent.

Shri E. Dias, learned Advocate for the petitioners.

Shri C. A. Coutinho, Advocate for the respondent.

Coram :- F. M. REIS, J

Date : 14th December, 2016.

ORAL JUDGMENT

Heard Mr. E. Dias, learned counsel appearing for the petitioners and Mr. C. A. Coutinho, learned counsel appearing for the respondent.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. Mr. C. A. Coutinho, learned counsel appearing for the respondent waives service.

4. The above petition takes exception to the orders passed by the Authorities below whereby the petitioners have been directed to be evicted from the subject premises situated at Vasco.

5. Briefly, the facts of the case as stated by the petitioners are that there is a premises situated at Vasco da Gama, consisting of ground and mezzanine floor wherein the ground floor is having an area of 65.32 square metres and mezzanine floor is having 56.08 square metres and there is a kitchen area of about 123.5 square metres which has been built, repaired and maintained at the cost of the petitioners. It is further their case that on 15.01.1963 a lease was executed between the original landlady Mrs. Maria Alice Sodder Pereira and the late father of the petitioners Mr. Andrew Avelino Furtado which was for a period of six years. It is further contended that in view of the dispute between the parties, a fresh lease agreement was executed between the said landlady and Mr. Andrew Avelino Furtado which was for a period of six years. It is further their case that as

per clause no.4 of such agreement, it was provided that the owner shall not raise any objection to the said premises or any part thereof used by the tenant for the purpose of any business whatsoever or being given to any other person or persons to conduct and manage the said bar and restaurant. According to the petitioners, the lease period came to an end on 30.09.1972. It is further stated that same amount of rent per month was paid by the lessee to the lessor which was accepted by the landlady. It is further the case of the petitioners that in the year 1993, the said original tenant created an arrangement with the present petitioner no.4 wherein he was permitted to conduct the business on the ground floor (part) for running a vegetarian restaurant only and the bar was continued on the mezzanine floor by the petitioners. It is further pointed out that the earlier agreement also permitted the tenant to allow the third party to conduct the business in such premises. The original tenant expired somewhere in August, 1998 and the tenancy was continued by the petitioner nos. 1 to 3 and they continued as heirs of the original tenant. In the year 2000 or thereabout the respondent no.1 who is a successor of the original landlady filed an eviction proceedings on the ground provided under Section 22(2)(b)(I) of the Goa Rent Control Act which is mainly sub letting. It was further contended that in the said application, it was alleged that the premises were sub let and partly admitted that the rents were paid till December, 1980. The Petitioners filed their written statement wherein they had taken a stand that there is a person in the premises who is their conductor conducting the business on the ground floor. It is also stated that the petitioner no.4 prepares and serves only vegetarian food and factually paying some royalty to the original tenant in terms of the agreement

dated 29.09.1966 and thereafter to the petitioner nos. 1 to 3 which is permissible under the said agreement. The learned Trial Court found favour with the case put forward by the respondents and directed the eviction of the petitioners from the subject premises. It is further the case of the petitioners that being aggrieved by the said order of the learned Trial Court, the petitioners preferred an appeal before the learned District Judge. By the judgment and order dated 30.09.2016, the learned District Judge dismissed the appeal preferred by the petitioners.

6. Shri E. Dias, learned Counsel appearing for the petitioners has assailed the impugned judgment dated 30.9.2016 on the ground that on bare perusal of the agreement between the petitioners and the respondent executed way back in the year 1966, clause (5) thereof would indicate that landlord had permitted the original tenants to take any person to run the business in the subject premises. The learned Counsel further points out that this itself would show that the petitioners had written consent of the original landlord to permit third person to run the business in the subject premises. The learned Counsel further submits that as such the Courts below have failed to take note of the clause while coming to the conclusion that the petitioners are liable to be evicted from the subject premises. The learned Counsel further points out that the alleged sub-letting has not been proved by the respondents and as such, the impugned Judgment passed by the Courts below deserves to be quashed and set aside. The learned Counsel further submits that on perusal of the agreement executed between the parties, besides the premises which were originally leased to the petitioners, there is a space wherein the petitioners have been permitted to

construct a kitchen. The learned Counsel further points out that the Courts below have failed to take note of this aspect while coming to the conclusion that the petitioners are liable to be evicted from the subject premises including the kitchen. The learned Counsel further submits that the lease of the land where the kitchen has been constructed has to be terminated in terms of the Transfer of Property Act before initiating any proceedings against the Petitioners. The learned Counsel has thereafter taken me through the impugned judgments passed by the both the Courts to point out that the learned Judges have failed to take note of this aspect which is clearly established from the Agreement between the parties and as such, the impugned Judgment as far as such premises are concerned stands vitiated and deserves to be quashed and set aside. The learned Counsel further points out that the petitioner no.4 was only allowed to conduct the business which belongs to the original tenants and as such, no exclusive possession was handed over to the Petitioner no.4 which would come within the mischief of sub-letting under the the Goa Daman and Diu Building (Lease Rent and Eviction Control Act, 1968("the Act" for short). The learned Counsel further points out that as the original tenants have not handed over the exclusion possession of the subject premises to the Petitioner no.4, the Courts below have erroneously granted the relief in favour of the respondent. The learned Counsel has thereafter taken me through the impugned Judgments passed by the Courts below to point out that the learned District Judge has misconstrued the agreement between the parties and material on record to come to the conclusion that the respondent has established that the Petitioner nos.1 to 3 have sub-let the subject premises to the Petitioner no.4. The learned Counsel has thereafter taken me

through the important Judgments to point out that the learned Judge totally misdirected itself while passing the impugned Judgment and directing eviction of the petitioners from the subject premises.

7. In support of his submission the learned Counsel has relied upon judgments reported in following cases:-

(i) (1991) 0 AIR (Karnataka) 249, G. Sridharamuthi Vs. Hindustan Petroleum Corporation Ltd.

(ii) 1999(2) Bom CR 588 Smt. Sushilabai Dantye others Vs Ganpat Kudtarkar.

(iii) AIR 1987 SC 117 Chandavarkar Sita Ratan Rao vs. Ashalata S. Guram.

(iv) 2001(2) Bom CR 616 Shri Vasant Mahadev Pandit and Anr. Vs. Zaibunnissa Abdul Sattr Dhuru.

(v) 2005(1) SCC 481 Mahendra Saree Emporium(II) vs G. V. Srinivasa Murthy.

(vi) 1984 (1) SCC 369, Satish Chand Makhan vs. Govardhan Das Byas & Ors.

(vii) AIR (SCW) 2947 Kala & anr. vs. Madho Parshad Vaidya,

8. On the other hand Shri C. A. Coutinho, learned Counsel appearing

for the respondent has supported the impugned judgment. The learned Counsel has pointed out that both the Courts below upon appreciation of the evidence on record have concurrently come to the conclusion that there was parting of possession by the original petitioners in favour of the Petitioner no.4. The learned Counsel further points out that these concurrent findings of fact are arrived upon appreciation of the evidence on record and the material produced by the parties. The learned Counsel further submits that these concurrent findings of fact cannot be re-appreciated by this Court under Article 227 of the Constitution of India. The learned Counsel further submits that once it is concurrently found that the father of the petitioner nos.1 to 3 has parted possession of the subject premises for a consideration, the respondent would be entitled to get the petitioners evicted from the subject premises. The learned Counsel further points out that the contention of the Petitioners to rely on the clause in the contract as found in the Agreement of the year 1966, is totally far-fetched. The learned Counsel further points out that the agreement itself was for a period of 6 years and in the year 1972 Rent Control Act was already in force and, as such according to him, contractual agreement had terminated by efflux of time and as such the continuation of the Petitioners in the subject premises was of a statutory tenants governed by the provisions of the Act. The learned Counsel further points out that undisputedly no written consent was given by the respondent to create such tenancy and as such the Courts below were justified to pass the impugned order. The learned Counsel further points out that the contention of the petitioners that the petitioner no.4 was only permitted to run the business is contrary to findings of the Courts below who have come to the conclusion that the business carried out by the Petitioner no.4 in the

subject premises, is in his exclusive possession and contrary and, as such, the said contention of the Petitioners deserves no merits. The learned Counsel further points out that based on the fact findings of the Courts, the contention of the petitioners even on the basis of clause (6) of the Contract has no substance, as according to him, there is nothing on record to show that the petitioner no.4 was employed as a conductor of business of the Petitioner nos.1 to 3. The learned Counsel has thereafter taken me through the judgment passed by the learned Trial Court as well as the learned Appellate Court to point out that based on the material on record, the Courts below have concurrently found that the father of the Petitioner nos.1 to 3 has sub-let the premises in favour of the Petitioner no.4. The learned Counsel, as such points out that there is no merit in the Writ Petition, which deserves to be rejected. The learned Counsel also points out that even on perusal of the case put forward by the petitioners, it clearly suggest that the petitioners are statutory tenant of the subject premises. The learned Counsel thereafter pointed out that the contention of the petitioner that part of the land was given on lease where the kitchen was constructed by the Petitioners is not averred in any of the pleadings nor raised before either learned Trial Court or before the learned Appellate Court. The learned Counsel, as such points out that it is not open to the petitioners to make out a new case which was not at all pleaded nor raised before the Courts below and as such points out that the Petition be accordingly rejected.

9. In support of his submissions the learned Counsel has relied upon the judgments of the Apex Court in the case reported in **2010(1) SCC 217** in the

case of ***Ms. Celina Ceolho Pereira and ors. Vs. Ulhas Mahabaleshwar Kholkar and ors.*** and ***1999(2) ALL Mh. R 576*** in the case of ***Delta International Ltd. Vs. Shyam Sundar Ganeriwalla.*** The learned Counsel as such points out that the petition be rejected.

10. I have duly considered the submissions of the learned Counsel and I have also gone through the records.

11. The learned Trial Judge while disposing of the proceedings initiated by the respondent by judgment dated 8.5.2015 has framed three points for determination. While examining the first point for determination, the learned Judge upon appreciation of the evidence on record has come to the conclusion that the respondent has established that there was landlord tenant relationship between the respondent and the petitioner nos.1 to 3. The findings therein have not even been assailed by the learned Counsel appearing for the Petitioners. While examining whether the Petitioners are in arrears in the payment of rent, the learned Judge has decided the issue in the negative and found that there was no arrears of rent. The said issue was also not pressed before the learned Trial Court.

12. While deciding the third point for determination upon examining the over all documentary evidence on record, the learned Judge has examined the agreement dated 1.3.1992 which is at Exh. 45 executed between the original tenants and the petitioner no.4 and the documents produced at Exh.46 to 62 in

the cross examination of Rw.1 to come to the conclusion that the respondent has proved that the original tenants had parted with possession of the premises in question on the ground floor to the Petitioner no.4. While examining whether the petitioners were the conductor of the business of the vegetarian section on the ground floor as contended by the petitioner nos.1 to 4, the learned Judge found that the documents produced in cross examination of RW1 from Sr. No. 46 onwards makes it amply clear that the Petitioner no. 4 has signed the said documents as proprietor of hotel "Pavitra" and the remaining exhibits at 46, 47, 49, 50 colly and 51 reveal that the name of the establishment is shown as hotel "Pavitra". The learned Judge has also noted that document at Exh. 52 shows the complete postal business address as "M/s Pavitra", Pure Vegetarian, Vasco-da-Gama. The learned Judge also noted that the Petitioners have failed to produce anything on record to establish that the Petitioner no.4 had any other premises near the taxi stand, railway station, Vasco-da-Gama, for conducting his independent proprietary business. The learned Judge upon appreciation of the material on record and examining the deposition as well as the documents produced has come to the conclusion that the Petitioners are liable for eviction on the ground provided in Section 22(1) (2) of the Rent Act. The learned Judge has found that the respondents have produced at Exh. AW1/D colly a license in the name of the petitioner no.4 for manufacturing for sale cook foods besides letters sent both dated 19.7.2000 issued by the Labour Inspector which refers to the subject premises as hotel "Pavitra" registered in the name of the Petitioner no.4.

13. On perusal of the Judgments passed by the Appellate Court, I find

that the learned Judge has noted whilst deciding point no. 3 the Agreement dated 01.02.1993 executed between the original tenant and the Petitioner no. 4 at exhibit 45 and the documents at exhibit 46 to 62 produced in the cross examination which include the licence issued to the Petitioner no. 4 at exhibit 51, the application for renewal at exhibit 52, the Certificate of Registration for a dealer of having only one place at exhibit 53 and an affidavit at exhibit 56. The learned Judge also noted the evidence of the Petitioners being Rw. 1 and thereafter proceeded to examine as to whether the Petitioner no. 4 is an independent proprietary of the business being carried out in the subject premises. Whilst dealing with such aspect, the learned judge took note of the aforesaid documents at exhibit 46 onwards produced in the cross examination of Rw.1 and found that such documents were signed by the Petitioner no. 4 as the proprietor of hotel 'Pavitra'. The learned Judge also took note of the complete postal address of such hotel as mentioned at exhibit 52 and found that the Petitioner had not even examined Petitioner no. 4 in support of their alleged stand that he was merely a conductor. The learned Judge also noted the notices issued by the Food and Drug Administration to the Petitioner no. 4 wherein it clearly shows that there is only one kitchen and two independent firms are operating which is stated to be objectionable. The learned Judge thereafter examined the Agreement at exhibit 45 dated 01.02.1993 and dealt with the clauses therein including the clause wherein it is stated that the Petitioner no. 4 shall pay the full amount of electricity and water consumed as per the electricity and water bills and the Petitioner nos. 1 to 4 would not be responsible to such payments. The Petitioner no. 4 has also been given a free hand as per clause 7 to carry out the repairs at his own cost

and he has to maintain sanitary cards of his employees as per the rules. It is also stated therein that the Petitioner no. 4 would not directly or indirectly deal with the landlord and has been given powers to renovate or decorate the said portion by increasing the amount from Rs.6,000/- to Rs.7500/- per month. The learned Judge upon examining the clauses therein, has come to the conclusion that the document at exhibit 45 is nothing less than an agreement creating sub-tenancy and if at all he was only a Manager, the learned Judge questioned why was he required to pay compensation of Rs.6,000/- per month to the Petitioner nos. 1, 2 and 3. The learned Judge as such found that the Respondents have established that the Petitioner nos, 1 to 3 have sub-let and/or parted with the possession of the part of the leased premises without the written consent of the landlord and hence in terms of Section 22 (2) (b) (I), the Petitioners are liable to be evicted from the leased premises for sub-letting to the Petitioner no. 4. The said findings of the Courts below based on the material on record, cannot be re-appreciated by this Court as no perversity has been pointed out in such findings.

14. On perusal of the Agreement produced on record executed between the Landlord and the original tenant, the period of such Agreement was from 01.10.1966 for a period six years. It is not disputed that upon expiry of such period, such Agreement gets determined by efflux of time. But, however, the original tenant continued to occupy the premises in question as a statutory tenant. On going through the pleadings and the evidence on record, it is the case of the Petitioners that they are statutory tenants and not contractual tenants. In such circumstances, when admittedly the contractual relationship has not been

renewed and the Petitioners themselves contend that they are occupying the said premises as statutory tenants, it is not open for the Petitioners to rely upon the clauses governing the contractual relationship to claim that it would govern their relationship as statutory tenants of the premises in question. Besides, on perusal of such Agreement, there was no consent given to the original tenant to sub-let the subject premises. Sub-letting or sub-tenancy comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge and written consent of the landlord. In all such cases, arrangement whereby possession is parted away by the tenant are always clandestine as actions take place behind the back of the landlord. In the present case, merely highlighting the Agreement between the original tenant and the Petitioner no. 4, as an agreement to conduct business would not deprive the landlord from seeking eviction of the tenant on the ground of an illegal creation of sub-tenancy when the actual physical and exclusive possession of the Petitioner no. 4 is established instead of the original tenant. By an unilateral act committed by the original tenant in surrendering the possession of the tenancy thereof in favour of a third party, no new tenancy is created which would legally bind the landlord. By merely accepting the rent for a tenanted premises tendered by the tenant, in the name of the landlord, would neither create a new tenancy in favour of such other person. The Rent Act is a special statute governed in regulating tenancies and sub-tenancies. Such provisions in the special statute supersede the general law of tenancy if the provisions of the special statute are incompatible with the general law of tenancy.

15. Apart from that, even on perusal of the clauses of the said Agreement, the original tenants could permit a person to conduct the business but, however, in the present case, the fact finding Courts below have concurrently come to the conclusion that the Petitioner no. 4 has been granted exclusive rights to carry out the proprietary business on the ground floor of the subject premises as the original tenants had parted with its possession. On perusal of the Agreement executed between the original tenant and the Petitioner no. 4, it clearly provides that such Agreement has been executed on payment of a monthly amount of Rs.6,000/- which clearly is a consideration for parting with the possession of the premises in question. The fact finding Courts below have concurrently found that the original tenants represented by the Petitioner nos. 1, 2 and 3 have parted with the possession of the premises in question in favour of the Petitioner no. 4. To constitute sub-letting the two main ingredients are that the tenant has parted with the possession for a consideration. In the present case, the Agreement itself discloses the consideration and though such amount is styled as royalty for conducting the business, nevertheless, the Courts below on the basis of the oral evidence and the documents produced by the parties have concurrently found that based on such Agreement, the Petitioner no. 4 is in occupation of the premises in question and exclusively conducting business therein on payment of a monthly amount to the Petitioner nos. 1 to 4. The Petitioner nos. 1 to 3 have no hold in the business conducted by the Petitioner no. 4 as can be clearly revealed from the said Agreement and the evidence produced on record.

16. It is contended by Mr. Dias, learned Counsel appearing for the Petitioners, that the Respondent had knowledge of such Agreement and the occupation by the Petitioner no. 4 and, as such, it is not open to the Respondents to now claim the eviction of the tenancy. However, mere knowledge of the landlord about the occupation of the tenanted premises by a third party and by accepting of the rent for the tenanted premises will not create a valid sub-tenancy unless induction of the sub-tenancy is made with the written consent of the landlord.

17. As pointed out herein above, the Courts below have concurrently found that the original tenant had parted with possession of the subject premises for a consideration to the Respondent no. 4 who was carrying out his independent proprietary business to the exclusion of the Petitioner nos. 1, 2 and 3. In such circumstances, the findings of the Courts below based on the material on record cannot be said to be perverse which would call for interference of this Court in a Writ Petition under Article 226 of the Constitution of India.

18. The Apex Court in the Judgment in the case of ***Celina Coelho Pereira and others*** (supra) while dealing with the same ground for eviction in terms of the Act has observed at Para 28 thus:-

28. The legal position that emerges from the aforesaid decisions can be summarised thus :-

(i) In order to prove mischief of subletting as a ground for eviction under rent control laws, two

ingredients have to be established, (one) parting with possession of tenancy or part of it by tenant in favour of a third party with exclusive right of possession and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to subletting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(iii) The existence of deed of partnership between tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(iv) If tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

(v) Initial burden of proving subletting is on landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

(vi) In other words, initial burden lying on landlord would stand discharged by adducing prima facie proof of the fact that a party other than tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted."

19. Taking note of the said observation and as already pointed out herein above, the fact finding Courts have found that the two ingredients to constitute subletting have been duly established whereby the Petitioner no. 4 was a third party who is in exclusive possession carrying out his independent business. Such parting of possession without the written consent of the landlord for consideration or rent would result in the tenant being liable to be affected in terms of the Goa Daman and Diu Building (Lease Rent and Eviction) Control Act, 1968. It is not the contention of the original tenants that there was any partnership between the original tenant with the Petitioner no. 4. The document at exhibit 42 clearly show that the business being carried out in the part of the premises allotted on the ground floor are exclusively being carried out by the Petitioner no. 4 herein. It is not the case of the Petitioner nos. 1, 2 and 3 that they are in any way involved in

such business nor any material produced by such Petitioners who are the legal representatives of the original tenant, to that effect.

20. The Courts below have found that the Petitioners have been taking inconsistent stand with regard to the occupation of the Petitioner no. 4 in the subject premises which itself would show that the claim of the Respondent that the original tenant had parted with possession of the part of the subject premises, has to be accepted. In such circumstances, the Courts below were justified to come to a conclusion that the original tenant had sub-let the subject premises in favour of the Petitioner no. 4 and, as such, the Respondents were entitled to get the Petitioners evicted from the subject premises.

21. It is the contention of the learned Counsel appearing for the Petitioners that part of the premises were given for the construction of a kitchen and, as such, the Courts below were not justified to grant the eviction of the Petitioners from such premises, cannot be accepted. On plain reading on the material on record and the evidence produced on record would disclose that the Petitioners have not raised such stand before the Courts below. In such circumstances, it is not open to the Petitioners to now raise an inconsistent plea which has no foundation laid either in the pleadings nor in the deposition and evidence adduced before the Courts below. In such circumstances, such contention of the learned Counsel appearing for the Petitioner, cannot be accepted.

22. With regard to the Judgments relied upon by the learned Counsel appearing for the Petitioners, which I shall deal hereinafter, considering the view taken for the reasons stated herein above, that the Respondents have established that the original tenant had parted possession of the subject premises to the Petitioner no. 4, such Judgment would not be applicable to the facts of the present case. On going through the Judgments passed by the Courts below, I find that there is no infirmity therein which would call for interference of this Court in the present Writ Petition.

23. In the Judgment in the case of **G. Sridharamuthi Vs. Hindustan Petroleum Corporation Ltd.** (supra), the contract itself permitted creating a licence to third parties in the context of the agreement executed therein and the subject matter therein was open space for putting up a petrol pump which is not the situation in the present case, wherein the Petitioners themselves accepted that they are statutory tenants.

24. The Judgment of this Court in the case of **Smt. Sushilabai Dantye others Vs Ganpat Kudtarkar** (supra), is whether the tenancy rights are heritable or not which contention has not been raised in the present Petition.

25. The Judgment in the case of **Shri Vasant Mahadev Pandit and anr. Vs. Zaibunnissa Abdul Sattr Dhuru** (supra) of this Court, is not applicable to the facts of the present case. As pointed out herein above, the fact finding Courts have come to the conclusion that the exclusive possession of the subject

premises is with the Petitioner no. 4.

26. The Judgment in the case of ***Kala & anr. vs. Madho Parshad Vaidya*** (supra) the facts therein were that it was found that there were no averments in the pleadings that the premises were sub-let in favour of the Appellant no. 2 therein and, consequently, the Rent Controller therein had come to the conclusion that the Appellant no. 1 therein had not parted with the possession of the demised premises after the death of her husband. The facts in the present case are clearly distinguishable.

27. The Judgment in the case of ***Mahendra Saree Emporium(II) vs G. V. Srinivasa Murthy*** (supra) is also not applicable to the facts of the present case as it has been found by the fact finding Courts that parting with possession of the subject premises has created interest on Petitioner no. 4 to run a business exclusively.

28. The Judgment of the Apex Court in the case of ***Satish Chand Makhan vs. Govardhan Das Byas & Ors.*** (supra) is not applicable to the facts of the present case as it is not the case of the Petitioners that they are holding over after the tenancy is determined. The Petitioners are claiming protection as a statutory tenant and, as such, are bound by the provisions of the said Goa Rent Control Act.

29. In view of the above, I find that there is no reason for interference in the impugned Judgment passed by the Courts below. The Respondents have

established that the Petitioners are liable to be evicted from the subject premises on the ground of sub-letting without the written consent of the Respondents under Section 22(1)(2) of the Goa Rent Control Act.

30. Hence, I find no merit in the above Writ Petition which stands accordingly rejected.

F.M. REIS, J.

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