

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

**CR-304-1995 (O&M)**

**Date of decision : 17.05.2016**

Firm M.K.Textile Mills and others

..... Petitioners

versus

Shri Gian Singh (deceased) through L.Rs.and others

..... Respondents

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI**

Present : Ms. Hemani Sarin, Advocate  
for the petitioners.

Mr. S.S.Mattewal, Advocate  
for the respondents.

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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**AJAY TEWARI, J.**

This revision has been filed against the concurrent orders of the Courts below allowing ejectment of the petitioner-tenants from the demised premises on the ground that the petitioners No.1 and 2 were the original tenants and the same had been sublet to the petitioners No.3 to 6 and the respondents No.2 to 8.

The brief facts of the case are that petitioner No.1 through petitioner No.2 orally took on rent a portion of the property bearing No.3095/14-21 situated in Gali No.2 Putlighar, Azad Nagar, Amritsar at a monthly rent of Rs.325/-. The petitioner No.2 at the time of taking the demised premises on rent was the sole proprietor of petitioner No.1. The rent note by petitioner No.1 through petitioner No.2 was also executed on 21.6.1976 in favour of the respondent No.1, wherein all the terms and conditions of the tenancy were embodied. The ejectment of the

petitioners-tenant from the demised premises was sought on various grounds. The first ground on which the ejectment of the petitioners-tenant was sought was to the effect that the petitioners No.1 and 2 are in arrears of rent and house Tax w.e.f. 01.12.1978. The second ground seeking ejectment of the petitioners-tenant from the demised premises was to the effect that petitioners No.1 and 2 after the commencement of the East Punjab Urban Rent Restriction Act, without the written consent of the respondent No.1 transferred their rights under the lease and sublet the entire building to petitioners No.3 to 6 and respondents No.2 to 8. The third ground on which the ejectment of the petitioners-tenant was sought is that they committed such acts which materially impaired the value and utility of the demised premises. The fourth ground on which the ejectment of the petitioners-tenant had been sought is that petitioners No.1 and 2 have ceased to occupy the demised premises for a continuous period of 4 months without reasonable and sufficient cause. On the final refusal of the petitioners-tenant to vacate the demised premises, the present application for ejectment was filed. Ultimately the only ground which prevailed in both the Courts was of sub-letting.

The case of the respondent No.1-landlord was that it had given premises in dispute to the petitioner No.2 as sole proprietor of petitioner No.1 but he had sublet the portions of the building to the other respondents mentioned above. The case of the petitioners No.1 and 2 on the other hand was that the petitioner No.3-Ruby Fancy Twisters was an HUF business of which the petitioner No.2 was the karta and far from being a sub-tenant the fact was that it was doing some work for petitioners No.1 and 2 on the machines of petitioners No.1 and 2 and was being paid for the same by petitioners No.1 and 2. As regards, respondents No.2 to 5 it was denied that they were doing any business in any part of the premises in dispute. Both the Courts below found that petitioner

No.2 was not able to prove that petitioner No.3 was an HUF concern and therefore came to the conclusion that there was subletting. As regards respondents No.2 to 5 also it was proved that respondent No.3 had filed a suit for permanent injunction against the petitioners No.2 and 4 alleging that they had let out premises to respondents No.2 to 5 and were trying to take possession illegally. The said suit was withdrawn and on the application for withdrawal petitioner No.2 and 4 had signed. Thus the Courts below held that petitioners No.2 and 4 had admitted the respondents No.2 to 5 to be tenants.

Learned counsel for the petitioners has raised two arguments. Firstly she has argued that petitioner No.3 was owned by the immediate family (sons and wife of petitioner No.2) and therefore, it was a case of family members doing the same/allied business and just merely taking a different name for tax purpose. Moreover as per her petitioner No.2 had stated that petitioner No.3- Ruby Fancy Twisters was working on its machines and this fact was not controverted by any credible evidence and therefore, it could not be held that the exclusive possession was handed over to the said respondent. With regard to the respondents No.2 to 5 she urges that the purported signatures of the petitioners No.2 and 4 on the application for withdrawal of the previous suit were not at all proved since only a copy was produced (Exhibit 4/4) and merely on a perusal thereof the Rent Controller and the Appellate Authority held that they were signed by petitioners No.2 and 4.

Learned counsel for the petitioners has relied upon a judgment passed by the Hon'ble Supreme Court in *Jagan Nath (Deceased) through his Legal Representatives Vs. Chandar Bhan and ors, 1988(1) RCR 629*, wherein it was held as follows :-

“6. The question for consideration is whether the mischief contemplated under [section 14\(1\)\(b\)](#) of the Act has been committed as

*the tenant had sublet, assigned, or otherwise parted with the possession of the whole or part of the premises without obtaining the consent in writing of the landlord. There is no dispute that there was no consent in writing of the landlord in this case. There is also no evidence that there has been any subletting or assignment. The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well-settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of [section 14\(1\)](#) of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession. This Court in [Smt. Krishnawati v. Shri Hans Raj](#), [1974] 1 SCC 289 had occasion to discuss the same aspect of the matter. There two persons lived in a house as husband and wife and one of them who rented the premises, allowed the other to carry on business in a part of it. The question was whether it amounted to sub-letting and attracted the provisions of sub-section (4) of [section 14](#) of the Delhi Rent Control Act. This Court held that if two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence, a rash inference to draw that the owner has let out that part of the premises. In this case if the father was carrying on the business with his sons and the family was a joint Hindu family, it is difficult to presume that the father had parted with possession legally to attract the mischief of [section 14\(1\)\(b\)](#) of the Act.”*

She has further relied upon a judgment passed by this Court in ***Madan Lal and another Vs. Bhupinder Kaur and others, 2003 (1) RCR, 609*** wherein it

was held as follows :-

*“15. These observations are of no assistance to the respondents. In the present case, the exclusive possession of the shop remains with petitioner No. 1 as he controls ingress and egress to the back portion of the demised premises occupied by petitioner No. 2. There is no independent entry to the back portion of the shop. He can only enter through the front portion, which can be locked by petitioner No. 1, by pulling down the shutter on the main bazar. In Kaushalya Devi's case (supra), it was observed that Devi Dayal was running his own shop separately and was no more in occupation of the shop in dispute. His son Chander Bhan carried on the business in the demised premises. It was a clear case of subletting.*

*17. In the present case, petitioner No. 1 has not handed over the exclusive possession to petitioner No. 2. At best, it can be said that petitioner No. 1 and petitioner No. 2 are running their respective business from the same premises. This at best would amount to permissive user of the premises by petitioner No. 2.”*

She has further relied upon a judgment passed by this Court in **Anil Kumar Vs. Sita Devi and another, 2006 (2) RCR, 417** and judgment passed by Hon'ble Supreme Court in **M/s Shalimar Tar Products Ltd. Vs. H.C. Sharma and others**, Civil Appeal No.1425 of 1973, decided on 12.11.1987.

Learned counsel for the respondent No.1-landlord has argued that once petitioners No.1 and 2 were not able to prove that petitioner No.3-M/s Ruby Fancy Twisters was an HUF concern no fault can be found with the conclusion of the Courts below with regard to the finding of sub-letting. As regards, respondents No.2 to 5 he has argued that even though there was no expert examined and only copy of the application was produced yet once the conscience of the Courts was satisfied that that had been signed by petitioners No.2 and 4 it had to be held that the tenancy of the respondents No.2 to 5 had been admitted.

Having considered the rival claims the argument of the learend counsel for the petitioners hold more weight. Even if petitioners No.1 and 2 were not able to prove that the petitioner No.3 was an HUF concern yet it can not be lost sight of that there was a business owned by the immediate family members of the petitioner No.2. It is not un-known for different members of a family to have different firms for purposes of tax and in such a case the onus is heavier on the landlord to not only prove the parting of possession but also that it was for rent. In the facts of the present case, I am not able to find myself that such onus was discharged by respondent No.1. Even as regards respondents No.2 to 5 in my opinion, it would be foolhardy to give an opinion about somebody's signatures from a photocopy, even for an expert. For the Court to arrive at this finding is completely unjustified.

In the circumstances, the petition is allowed and the judgments and orders of the Courts below evicting the petitioners No.1 and 2 on the ground of sub-letting is set aside.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

**May 17, 2016***Pooja sharma-I***( AJAY TEWARI )  
JUDGE**