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

**C.M. No.3654-CII-2015 in/and
C.R. No.3830-2002
Date of Decision : 01.04.2016**

Ashok Kumar and another

..... Petitioners

Versus

Punjab State Co-operative Supply and Marketing Federation (MARKFED)

..... Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Amit Jain, Advocate
for the petitioners.

Mr. Vikas Singh, Advocate and
Ms. Sukhmani Tiwana, Advocate
for the respondent.

Mr. Sunil Chadha, Sr. Advocate
with Mr. Kirpal Singh Thakur, Advocate
for the applicants.

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?

AJAY TEWARI, J. (Oral)

C.M. No.3654-CII-2015

This is an application for impleading Lakshmi Devi @ Surekha
Jalota and Radha Rani @ Sunita as respondents No.2 and 3 being necessary
and proper parties for an effective adjudication of the case.

Learned counsel for the respondent has pointed out that earlier

a similar application bearing CM No.2581-CII-2015 between the same parties was rejected and thereafter the present application was filed.

Learned senior counsel for the applicants has stated that at the time when CM No.2581-CII-2015 was dismissed certain important evidence were not mentioned.

In my opinion, this would be no ground to review the order. Consequently, this application is dismissed.

C.R. No.3830-2002

This petition has been filed against the concurrent judgments of the Courts below evicting the petitioners-tenants on the ground of sub-letting.

The petitioner No.1 had admittedly taken the premises in dispute from the District Wholesale Society Limited, Ropar to run a small scale dry cleaning business. Thereafter, the District Wholesale Society was merged into the respondent-Markfed and consequently the respondent-Markfed became the owner on 27.01.1995. The present eviction petition was filed on the ground that the petitioner No.1 had sub-let the premises to petitioner No.2-Tarlochan who was running the business of Readymade Garments Store therein. The case of the petitioner No.1 on the other hand was that he had entered into a partnership with Tarlochan and one Ravi Ahuja son of Tarlochan on 14.03.1994 and the firm had started the business of readymade garments and consequently being a partner it could not be held that he had sub-let the premises in dispute. It is also not disputed that the petitioners and one Ravi Ahuja filed an injunction suit against the

respondent-Markfed claiming that they should not be dispossessed except in due course of law. Both the Courts below have relied upon the statement made by the petitioner No.1 in the suit which was to the effect that since 14.03.1994 he had been doing his work in his own house and though Tarlochan was managing the business it was run by the partnership firm. The petitioners also placed on record various documents like insurance policy of the merchandise wherein the merchandise of the shop had been insured by the firm. During his testimony in the present case, the petitioner No.1 stated that his share of the profit was Rs.50/- per day. On the consideration of these evidence, both the Courts below came to the conclusion that the petitioner No.1 had sub-let the premises to Tarlochan-petitioner No.2 and the partnership agreement was a fabricated document just to protect the handing over of possession by the petitioner No.1 to petitioner No.2.

The issue before this Court sitting in revisional jurisdiction is whether the Courts below have correctly appreciated the evidence or have misread the evidence or have drawn a conclusion from the same which no reasonable person could draw.

Learned counsel for the petitioners has argued that the Courts below have erred in being influenced by the fact that the share of the petitioner No.1 was only 10% and as per him even in case where the share of the profits was 0.03% , the Hon'ble Apex Court had held that the fact of partnership could be held to have been proved.

In my opinion, each case has to be decided on its own facts.

Looked at from this angle, it has to be held that the judgments of the Courts below are valid and fair. No doubt in an appropriate case where the person has 0.03% of share in the partnership, it may not be held that the partnership is sham but such is not the case here; since in the present case the petitioner No.1 is doing business in more than one places. The statement of the petitioner No.1 that he was getting profits of Rs.50/- per day is an indication that he sub-let the premises for valuable consideration because otherwise in a partnership there could never be a fixed profit. Similarly, his statement that he was doing the work of ironing in his house and could not tell as to what was the stock in the demised premises and what was its sale or any other aspect of the business of the partnership deed give rise to the conclusion that he had parted the possession of the premises in favour of Tarlochan-petitioner No.2.

In the circumstances, the revision petition is dismissed and it is held that the petitioners would be liable to be evicted on the ground of sub-letting.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

April 01, 2016

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**(AJAY TEWARI)
JUDGE**