

**CR-3807-2002 (O&M)**  
**Date of decision : 18.02.2016**

versus

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- Though there were many grounds taken the two grounds which were ultimately pressed were that of subletting and of material impairment. The premises were let out to two brothers who were conducting the business of their partnership firm in the said premises. After sometime one of the

brothers retired from the partnership and the remaining brother inducted his son into that partnership. After some more time, the father and son constituted another partnership and the business of both the firms was being run from the premises in dispute. Both the Courts below have held that since one of the brothers continued to retain the possession the issue of subletting had to be decided against the petitioners.

Learned senior counsel for the petitioners has argued that Section 13 (2) (ii) of the East Punjab Urban Rent Restriction Act, 1949 (for short 'the Act') envisages two situations, one, transfer of right under lease, and second, subletting. As per him the present is a case where one of the brothers has transferred his rights in the lease to the second brother and, therefore, it would come within the mischief of the act.

Learned senior counsel for the respondents, however, argued that these two expressions appearing in the same sub Clause (a) of Section 13 (2) (ii) indicate that the expressions have been used interchangeably because had the legislature intended that they covered different fact/situations they would have been put in different sub clauses.

Clause (a) of Section 13 (2) (ii) of the Act is as under :-

*“13 (2) (ii) (a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or.”*

At this stage, it would also be apposite to mention here that both the learned counsel have conceded that there is no judgment either way on the issue whether these expressions denote different acts or they are

intended to be used interchangeably.

A perusal of the arrangement of Section 13 of the Act reveals that it encompasses two types of situations. The different factors mentioned in sub-section (2) deal with acts and omissions of the tenant while the factor in sub-section (3) talks only of the requirement of the landlord and has no reference to any act or omission of the tenant. The different acts and omissions of the tenant mentioned in sub section 2 of Section 13 are enumerated in Clauses (i), (ii), (iii), (iv) and (v) and Clause (ii) further deals with two distinct situations where the tenant requires previous consent of the landlord and one of these is where a tenant transfers his rights under the lease or sublets. Had the legislature intended to give separate meanings to the two expressions, the same would have been enumerated in different clauses. There are numerous authorities which lay down that if one co-tenant relinquishes possession to the other co-tenant it can not be taken to be a case of subletting. Resultantly it has to be held that the two expressions have been used interchangeably and thus the first ground urged by learned senior counsel appearing for the petitioners has to be rejected.

The second argument made by learned senior counsel is that the respondents-tenant have constructed an intermediary floor in the shop by putting girders where people are sitting and working and by this have materially impaired the value of the building and the finding of the Courts below in this regard have to be set aside.

Learned senior counsel for the respondents has countered by arguing that even the expert of the petitioners has described the addition made by the respondents as '*miani/parchatti*' and has admitted that the access to that is by a wooden staircase which can be very easily dismantled. As per him a tenant can always be allowed to make temporary arrangements and changes which would help his business to run better and if such temporary changes are taken to be material impairment it would be impossible for a tenant to run his business the way he wants.

Learned senior counsel for the petitioners has argued that by fixation of girders in the wall the structure has been weakened which fact has been disputed by the learned senior counsel for the respondents by arguing that there is no such evidence and this is mere *ipse-dixit* of the counsel and can not be taken to be a valid substitute for evidence to this effect.

In my opinion, this argument of the learned senior counsel for the respondents also has to be accepted. The mere addition of the *miani* would by itself not constitute material impairment unless there is evidence to show that in constructing the same either unauthorized load has been put on the walls or strength of the structure has been impaired. No such evidence being there the concurrent finding on this ground also can not be interfered.

In the circumstances, the revision is dismissed.

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

**February 18, 2016**  
*Pooja sharma-I*

**( AJAY TEWARI )**  
**JUDGE**