

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No.101 of 2008**

- Ashwin Sethi @ Titu, aged about 42 years, Son of Shri Tilakraj Sethi, R/o Prem Kunj, Civil Lines, Raipur

---- Appellant/Defendant**Versus**

- Indraveer Singh Batra S/o Late Gurubaksh Singh Batra, aged about 56 years, R/o Civil Lines, Raipur

---- Respondent/Plaintiff

For appellant : Shri B. P. Sharma with Shri Hari Agrawal, Advocates
 For Respondent : Shri G. D. Vaswani, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**C A V Order****13/04/2017**

This first appeal is directed against the impugned judgment and decree dated 31-03-2008 passed in Civil Suit No.2-A/2007 by the 1st Additional District Judge, Raipur, by which, the learned trial Court has granted decree of eviction in favour of the respondent-landlord and against the appellant-tenant.

2. The respondent-plaintiff filed a suit seeking decree of eviction, arrears of rent and damages against the appellant No.1 and deceased-appellant No.2 on the pleadings inter alia that the house comprising of three flats with a hall was granted on lease to one C. R. Virmani and Sons for residential purposes. In the accommodation, defendant No.2-Tilak Raj Sethi resided with his family. Later on, the liquor business of C. R. Virmani and Sons was closed, whereafter, the defendants continued to reside with their family. It was also pleaded that with the permission of the plaintiff, a part of the accommodation/residential house

was used for non-residential purposes. According to the plaintiff, the defendant No.1 was paying rent in his capacity as tenant. According to the plaintiff, rent of the premises was fixed at Rs.9,625/- payable on monthly basis, but the defendant No.1 defaulted in payment of rent, for which, a notice was given by the plaintiff to the defendant for payment of arrears of rent of Rs.7,31,500/-, but despite service of notice dated 21-10-2016, rent was not paid, therefore, the plaintiff is entitled to decree of eviction on the ground of non payment of rent under Section 12 (1)(a) of the Chhattisgarh Accommodation Control Act, 1961 (For short "the Act of 1961").

Further pleading of the plaintiff was that the defendants have sub let a part of the tenanted premises to one Vasudha Bataviya, who is carrying out educational activities by providing tuition to students and a part of the tenanted premises has been occupied by unknown persons, who refused to disclose their identity, which means that the defendants-tenants have sub let a part of the accommodation without prior permission of the plaintiff-landlord, therefore, the plaintiff-landlord sought decree of eviction under Section 12(1)(b) of the Act of 1961. The plaintiff also sought decree under Section 12(1)(d) of the Act of 1961 on the pleadings that without reasonable cause, the defendants were not residing in the tenanted premises continuously for a period of one year immediately preceding the date of institution of suit. The plaintiff also sought a decree under Section 12(1)(i) of the Act of 1961 on the pleadings that the defendants have purchased/constructed new house and started living in that house.

3. Both the defendants filed joint written statement and took plea that it is the defendant No.2-Tilak Raj Sethi and not defendant No.1-Ashwani Sethi, who is the tenant of the accommodation. No notice for alleged arrears of rent was

given to defendant No.2-Tilak Raj Sethi, but the notice was given to the defendant No.1, who is not the tenant, therefore, the notice is inconsequential and the plaintiff is not entitled to any decree under Section 12(1)(a) of the Act of 1961. In the written statement, the defendants further denied that the premises were either sub let to any one or that any other person was residing in the tenanted premises. It was stated in the plaint that the defendant No.2 is still residing in the tenanted accommodation with his wife, though the defendant No.1-Ashwani Sethi, son of defendant No.2-Tilak Raj Sethi has purchased his own house and residing separately and that at times, he resides with his father and mother in the tenanted premises to look after them. The defendants further denied that the defendant No.2 has vacated accommodation and not residing for a period of one year preceding the date of institution of suit. It was also denied that any other person, unknown to the plaintiff has been given a part of the tenanted premises.

4. On the basis of pleadings of the parties, learned trial Court framed as many as 12 issues.

Learned trial Court rejected the case that the defendant No.1-Ashwani Sethi was the tenant, but held that that it was the defendant No.2-Tilak Raj Sethi, who was the tenant of the disputed premises. Learned Trial Court also held that as the plaintiff had given a notice for payment of arrears of rent to defendant No.1-Ashwani Sethi and not to defendant No.2-Tilak Raj Sethi, therefore, for want of proper notice demanding arrears of rent and consequent failure of defendant No.2 to pay arrears of rent, the plaintiff is not entitled to decree under Section 12(1)(a) of the Act of 1961. Learned trial Court also held that the defendant No.2-Tilak Raj Sethi is not residing and using tenanted premises continuously for a period of one year preceding the date of institution

of suit and further that the defendant No.2-Tilak Raj Sethi, due to his old age and illness, is now residing with his son-Ashwani Sethi in a separate house, therefore, though the plaintiff is entitled to decree under Section 12(1)(b) of the Act of 1961, but he is not entitled to decree under Section 12(1)(d) of the Act of 1961. Learned Trial Court held that the plaintiff has failed to prove that the defendant No.2 was the owner of house situated at Country Club, Gokulpuram, Khamhardih, whereas he is said to be residing with his son-Ashwani Sethi, at his own house, therefore, the plaintiff is not entitled to decree under Section 12(1)(i) of the Act of 1961. Thus, only on the ground of Section 12(1)(b) of the Act of 1961, the plaintiff was granted decree of eviction against the defendant. Learned Trial Court further held that the plaintiff is entitled to rent @ Rs.9,625/- per month with effect from January, 2007 till the date of decree. Learned Trial Court also granted damages @ Rs.500/- per day, if the possession is not handed over within three months.

5. Assailing correctness and validity of the impugned judgment and decree, learned counsel for appellant argued that the trial Court committed gross illegality in granting decree under Section 12(1)(b) of the Act of 1961, in as much as essential ingredients of sub letting have not been proved, yet the trial Court proceeded to grant decree only on finding of parting with the part of the possession of the tenanted premises. Learned counsel for the appellant argued that the decree on the ground of sub letting, as provided under Section 12(1)(b) of the Act of 1961, could be granted in favour of the landlord, but the landlord was required to prove that the defendants have sub let a part of the tenanted premises wholly or in part without prior permission in writing of the landlord. He submits that the essential ingredients of Section 12(1)(b) could not be proved by leading cogent and reliable evidence, therefore, no decree could be granted in

favour of the plaintiff, when all other grounds for decree under Section 12(1)(a), 12(1)(d) and 12(1)(i) were not found proved by the trial Court. Reliance has been placed on a decision in the case of ***Delhi Stationers and Printers vs. Rajendra Kumar*, (1990) 2 SCC 331, Nirmal Kanta (Dead) through L.R.s vs. Ashok Kumar and another, (2008) 7 SCC 722 and S. F. Engineer vs. Metal Box India Limited and another, (2014) 6 SCC 780.**

6. Per Contra, learned counsel for the respondent-plaintiff submits that the learned trial Court on the basis of pleadings and evidence, oral as well as documentary available on record including admission of the defendant No.1, held that the tenanted premises was sub let without prior permission of the landlord and the defendant No.2 has left the premises and not residing there continuously for a period of one year preceding the date of institution of suit. The tenanted premises, even if accepted to be given on rent to defendant No.2-Tilak Raj Sethi and Tilak Raj Sethi held as tenant, in view of the overwhelming evidence on record that the defendant No.1-Ashwani Sethi constructed a separate house and defendant No.2-Tilak Raj Sethi, because of his illness and old age, has now started residing with his son and thereby evicted premises and not residing there any more, the plaintiff was rightly granted decree of eviction. It is also argued that the learned trial Court has recorded a specific finding based on clinching evidence on record that the defendants are no longer residing in the tenanted premises, but a part of the premises was sub let to one lady namely Vasudha Bataviya, which proves illegal subletting without prior permission of the landlord and only on that ground, the plaintiff was rightly granted decree. It was argued that the defendant No.2-Tilak Raj Sethi, even did not enter into the witness box and evidence led by Umed Ram Gajendra, who is the Power of Attorney Holder, in support of the facts, which could be stated only

with the personal knowledge of the tenant, is not admissible in evidence and therefore, the plaintiff's evidence that the defendant No.2-Tilak Raj Sethi has already vacated the premises and not residing therein and now residing with his son, is reliable, hence, the learned trial Court rightly granted decree in favour of the plaintiff. According to learned counsel for the respondent-plaintiff, the decision relied upon by learned counsel for the appellant are not applicable, because in those cases, the provisions of law is not *pari materia*. The provisions contained in Section 12(1)(b) of the Act of 1961, in as much as the words "Considerations or Otherwise", is not there in other rent control Laws. Once, it has been proved that the landlord is not in possession, the burden shifts on the tenant to prove from its pleadings and evidence that the tenants have reasonable cause for not residing in the tenanted premises. Reliance has been placed on ***Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others, 2005 (1) MPLJ 421 (SC)*** to buttress his submission that power of attorney holder cannot be a witness of facts, which are within the specific personal knowledge, of the person, on whose behalf, power of attorney deposed.

7. Learned counsel for respondent-plaintiff pressed into service his cross-objection in so far as dismissal of his suit for grant of decree under Section 12(1)(a), 12(1)(d) & 12(1)(i) of the Act of 1961 is concerned, by submitting that the trial Court committed illegality in recording a finding that it was not the defendant No.1, but the defendant No.2, who was the tenant. He submits that the plaintiff's evidence coupled with the Cheque, Ex.P-1 issued by the defendant No.1 as Proprietor of C. R. Virmani and Sons clearly goes to prove that it was the defendant No.1, who had become the tenant of the accommodation and therefore, the plaintiff rightly gave a notice for payment of

arrears of rent to the defendant No.1, service of which, was proved. As defendant failed to pay rent within the time stipulated, the plaintiff ought to be granted a decree under Section 12(1)(a) of the Act of 1961. It is submitted that the finding that the defendant No.2-Tilak Raj Sethi is the tenant and the defendant No.1-Ashwani Sethi is not the tenant, is perverse because in para 2 of the written statement, averments of para 2 of the plaint have been admitted. In para 2 of the plaint, the plaintiff clearly averred that the defendants are in possession of the disputed accommodation as tenants, which has been admitted.

Learned counsel for the respondent-plaintiff also pressed into service the cross-objection in so far as the trial Court has rejected the plaintiff's claim for grant of decree under Section 12(1)(d) of the Act of 1961, by submitting that in view of the overwhelming evidence on record, it is proved that Ashwani Sethi, according to the plaintiff, is the tenant, which is admitted in his written statement as well as in the evidence that he has constructed house and now he is residing therein. Therefore, in view of this admission, the plaintiff ought to have been granted decree of eviction on the ground enumerated under Section 12 (1)(d) of the Act of 1961. According to him, Tilak Raj Sethi never entered the witness box to assail that he is the landlord of the premises. Therefore, in the absence of there being any evidence of Tilak Raj Sethi that he is the tenant of the premises, the learned trial Court committed gross illegality in holding that Tilak Raj Sethi was the tenant and not Ashwani Sethi. It is further argued that from the evidence on record, it is clear that Ashwani Sethi has constructed a separate house and as defendant No.2 has become old aged and also sick, therefore, he has permanently left tenanted accommodation and residing with his son. Therefore, this would not constitute reasonable cause, because now all the

defendants have permanently left tenanted premises without any intention of reoccupying. It is further argued that, plaintiff having led unimpeachable evidence that the defendant/tenant has given a part of the tenanted premises by sub letting or unauthorizedly allowing any unknown persons, is said to be workers residing in the house, the learned trial Court ought to have granted decree under Section 12(1)(a) of the Act of 1961 also. It is submitted that the plaintiff ought to have been granted a decree under Section 12(1)(i) of the Act of 1961 also, because according to the evidence of Ashwani Sethi, Tilak Raj Sethi has been provided residential accommodation in the house of his son which amounts to allotment within the meaning of Section 12(1)(i) of the Act of 1961, therefore, the decree ought to have been granted on that ground also. Lastly, it is submitted that Tilak Raj Sethi having died, which has come on record during the pendency of appeal, therefore, in that view of the matter and even according to the case of defendant No.2-Tilak Raj Sethi being the only tenant, therefore, the impugned judgment and decree does not warrant interference and the appeal itself is liable to be dismissed on account of death of the tenant-Tilak Raj Sethi.

8. In reply to the plaintiff's argument on cross objection, learned counsel for the appellant-defendant submits that the learned trial Court has committed no illegality in refusing to grant decree on the grounds under Section 12(1)(a), 12(1)(d) & 12(1)(i) of the Act of 1961, because even according to the pleading of the plaintiff in para 4(c) of the plaint, the entire premises have not been vacated by the tenant but only a part of it have been parted with and unless it is proved that the tenant has parted with the entire possession, no decree could be granted under Section 12(1)(a) of the Act of 1961. Reliance is placed by learned counsel for the respondent-plaintiff on ***Bhagwandas S/o Murarilal Pawaiya vs.***

Kailash Narayan and Bros. (Firm), 1991 MPLJ 801.

Learned counsel for the appellant also argued that the trial Court has illegally granted excessive damages without any basis, which is even more than the rent of the accommodation. The defendant, unless evicted in accordance with law, despite notice of eviction, continuous to be statutory tenant and he is entitled to protection under the law.

In reply to ground under Section 12(1)(i) of the Act of 1961, as raised in the cross-objection, learned counsel for the appellant submitted that there is no evidence to prove that Tilak Raj owns or uses any other house other than the tenanted premises. The accommodation of his daughter-in-law where his son and daughter in law reside, cannot be said to be his own house. Therefore, no decree can be granted on that ground. Reliance has been placed in the case of **Sachchindanand Garg vs. Govindlalji Maharaj, Nathdwara, 1982 MPLJ 129.** He further submits that the evidence with regard to power of attorney is admissible in law, relying upon the decision in the case of ***Man Kaur (Dead) by L.Rs. vs. Hartar Singh Sangha, (2010) 10 SCC 512.***

9. In the present case, cross objection was filed by the respondent-plaintiff and objection to the maintainability of the cross objection was raised by submitting that proper court fee has not been paid and this question was left open for consideration at the time of hearing. Therefore, it is also required to be decided whether the respondent-plaintiff has paid proper court fee on the cross objection, before deciding other issues raised in this appeal and in the cross objection.

10. In this appeal, when cross-objection was preferred by the respondent-plaintiff, the appellant raised an issue with regard to adequacy of the court fee

by submitting that the cross-objection is in the nature of appeal and therefore, the respondent-plaintiff was required to pay the court fee like that on the memorandum of appeal. Vide order dated 11-09-2012, this issue was left open for the decision at the time of hearing of appeal on merits. Later on, the respondent-plaintiff deposited the Court fee of Rs.13,520/- valuing the cross-objection of Rs.1,15,500/-.

Though, number of decisions were cited at the bar, in the considered opinion of this Court, the issue in this regard is no longer res integra and authoritatively decided in ***Superintending Engineer and others vs. B. Subba Reddy, (1999) 4 SCC 423*** by the Supreme Court wherein it has been held that the appeal is substantive right and it is creation of statute and that cross objection is like an appeal having all the trappings of an appeal notwithstanding the form, in which, it is filed, therefore, court fee is payable on the cross-objection like that on the memorandum of appeal. The conclusion arrived at in the aforesaid decision, which sets at rest, the controversy in this regard, as below:-

23. From the examination of these judgments and the provisions of [Section 41](#) of the Act and Order 41 Rule 22 of the Code, in our view, following principles emerge:

- (1) Appeal is a substantive right. It is a creation of the statute. Right to appeal does not exist unless it is specifically conferred,
- (2) Cross objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and the provisions of Rule 1 of Order 41 of the Code, so far as these relate to the form and contents of the memorandum of appeal apply to cross-objection as well.
- (3) Court fee is payable on cross-objection like that on the memorandum of appeal. Provisions relating to appeals by indigent person also apply to cross-objection.
- (4) Even where the appeal is withdrawn or is dismissed for default, cross-objection may nevertheless be heard and determined.

- (5) Respondent even though he has not appealed may support the decree on any other ground but if wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal. Time for filing objection which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the Court like in appeal.
- (6) Cross-objection is nothing but an appeal, a cross-appeal at that. It may be that the respondent wanted to give quietus to whole litigation by his accepting the judgment and decree or order even if it was partly against his interest. When, however, the other party challenged the same by filing an appeal statute gave the respondent a second chance to file an appeal by way of cross-objection if he still felt aggrieved by the judgment and decree or order.

Therefore, it has to be held that the respondent-plaintiff is liable to pay the court fee on the cross-objection like that of an appeal. During the course of appeal, realizing that this was the correct legal position, the respondent -plaintiff valued his cross-objection at Rs.1,15,500/- and has paid therein the Court fee of Rs.13,520/-. The valuation part has not been disputed by the appellant. Therefore, it has to be held that the respondent-plaintiff has paid proper Court fee on his cross-objection.

11. One of the issues raised by the respondent-plaintiff through cross-objection is that the trial Court has committed illegality and perversity in recording a finding that the defendant No.2-Tilak Raj Sethi and not the defendant No.1-Ashwani Sethi, as pleaded, was the tenant of the accommodation.

The learned trial Court on issue No.1 held that the accommodation was let on rent to defendant No.2-Tilak Raj Sethi and not to his son-Ashwani Sethi, defendant No.1.

12. According to the plaintiff, the premises were let out to one C. R. Virmani & Sons about 30 years ago and right from the beginning, defendant No.2-Tilak Raj

Sethi was residing in that house. Pleading of the plaintiff is that in course of time, the business of C. R. Virmani & Sons was closed and the defendants continued to reside in the premises. Neither in the pleadings nor in the plaintiff's evidence of Inderveer Singh Batra, PW-1, any specific case with regard to date, place and terms and conditions of tenancy with defendant No.1 has been made out. As to when the plaintiff gave the premises in question on rent to defendant No.1, has not been clearly pleaded. Even according to the plaintiff, the premises were let more than 30 years before. The age of defendant No.1-Ashwani Sethi is about 42 years. If that is accepted, defendant No.1 was barely 10 to 15 years of age. Even according to the plaintiff, both the defendants resided in the same house right from the beginning. There are no specific pleadings and evidence to the effect that initially the tenanted premises were let on rent to Tilak Raj Sethi and later on, his tenancy came to an end and then, the defendant No.1-Ashwani Sethi became his tenant. The defendant No.1-Ashwani Sethi in his statement, has stated that the premises were let on rent by his father-Tilak Raj Sethi-defendant No.2, which appears to be probable in the absence of there being any other evidence to disbelieve this version of the defendant No.1 and his evidence as defendant No.1. The only ground, on which, the plaintiff sought to establish relationship of landlord and tenant between himself and the defendant No.1-Ashwani Sethi, is payment vide cheque dated 30-10-2001. There is no specific pleading of payment of rent by cheque dated 30-10-2001 (Ex.P/1). In para 11 of his cross-objection, the plaintiff-Inderveer Singh Batra, PW-1 has admitted that no pleading with regard to cheque dated 30-10-2001 (Ex.P/1) has been made in the plaint or legal notice, Ex.P/4. He also states that the said cheque was not deposited for encashment in any of the banks and according to him, the cheque was not submitted because the plaintiff came to know that there was no sufficient balance in the account of defendant No.1, so to avoid

dishonour of cheque, it was not deposited in the bank. However, in this regard, no certificate of the bank has been submitted. A suggestion has been given to this witness that the cheque was given under a separate business transaction and when the amount was received in cash, the cheque was not submitted in the bank. In para 2 of the cross examination, the plaintiff clearly admits that the tenanted premises were let on rent by his father to defendant No.2-Tilak Raj Sethi and admits that the tenanted premises were given to defendant No.2 on rent. He has admitted in the cross examination that at the time when the tenancy was created with Tilak Raj Sethi, defendant No.2, defendant No.1-Ashwani Sethi was too young and he was grew in the same house and thereafter married.

13. In view of the aforesaid admission on the part of the plaintiff that the tenanted premises was given on rent to Tilak Raj Sethi, defendant No.2 by the plaintiff's father, not to defendant No.1, it was for the plaintiff to come with clear evidence and pleadings as to when the tenancy with Tilak Raj Sethi was terminated and thereafter, fresh tenancy with Ashwani Sethi, defendant No.1 was created. Therefore, in view of above analysis and evidence on record, the finding of the Court below on issue No.1 that the premises were given on rent to Tilak Raj Sethi, defendant No.2 and not to defenant No.1-Ashwani Sethi, does not warrant any interference.

14. The plaintiff claimed a decree of eviction on the ground of default of payment of rent despite notice, defendants having illegally sub let the premises and parted with the possession to third parties and the defendants not residing in the tenanted accommodation for a continuous period of six months preceding from the date of institution of suit without any reasonable cause and that the tenant has purchased and constructed his own house for his residence. Thus,

the plaintiff claimed decree of eviction on the ground stated in Section 12(1)(a), 12(1)(b), 12(1)(d) and 12(1)(i) of the Act of 1961. The learned trial Court framed issue on each of the grounds of eviction raised by the plaintiff. However, in so far as decree sought on the ground of Section 12(1)(a), 12(1)(d) and 12(1)(i) of the Act of 1961 are concerned, the learned trial Court held that none of the grounds are made out. The trial Court granted a decree of eviction to the plaintiff only on the ground enumerated in Section 12(1)(b) of the Act of 1961 by recording that the defendant No.1-Tilak Raj Sethi has parted with the possession one year before the date of filing of the suit and has also illegally sub let a part of the accommodation.

15. Once it has been held that the accommodation was let on rent to Tilak Raj Sethi, defendant No.2 and not to defendant No.1-Ashwani Sethi, the plaintiff's cross-objection on the finding that the plaintiff is not entitled to decree under Section 12(1)(a) of the Act of 1961 on the ground of default of payment of rent, does not warrant any interference, because the entire case of the plaintiff is based on the premise that the defendant No.1-Ashwani Sethi was the tenant, to whom, the notice for payment of arrears of rent was given, who despite service of notice of payment of arrears of rent, has failed to pay the same as required under Section 12(1)(a) of the Act of 1961. It is not even the case of the plaintiff that he served a demand notice to defendant No.2-Tilak Raj Sethi. Therefore, in the absence of there being any pleading that defendant No.2 has neither paid nor tendered the whole of the arrears of rent legally recoverable from him within two months of the date on which a notice of demand for arrears of rent has been served on the plaintiff by the landlord in the prescribed manner much less any evidence in this regard, the learned trial Court has committed no illegality in holding that the plaintiff is not entitled to decree of eviction on the ground of

default of payment of rent as provided under Section 12(1)(a) of the Act of 1961.

16. The next issue, which arises for consideration is whether the plaintiff is entitled to decree of eviction on the ground stated in Section 12(1)(b) of the Act of 1961. In this regard, it would be apposite to first refer to the relevant statutory provision providing the landlord a ground of eviction. Section 12(1)(b) of the Act of 1961 reads as under:-

Section 12 Restriction on eviction of tenants- (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely:

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(b) that the tenant has, whether before or after the commencement of this Act, unlawfully sub-let, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise;

----- XXXX -----

A reading of the aforesaid provision would show that the landlord is required to establish that the tenant has unlawfully sub-let, assigned or otherwise parted with the possession of the whole or any part of the accommodation for consideration or otherwise, to be entitled to decree of eviction. The aforesaid provision entitles the landlord to get decree of eviction when the tenant has unlawfully :-

- (a) sub-let
- (b) assigned or;
- (c) otherwise parted with the possession, of the whole or any part of the accommodation, for consideration or otherwise.

The aforesaid provision reads that such parting with the possession may be for consideration or otherwise. The use of the word “otherwise” reflects

peculiar statutory scheme applicable in the State of Madhya Pradesh/Chhattisgarh that even where the tenant has parted with the possession which may or may not be for consideration, the landlord would be entitled to decree of eviction. It is relevant to note that the aforesaid provision provides for a ground to the landlord not only when the tenant has sub let or assigned but also where the tenant has otherwise parted with the possession of the premises which may not be sub letting or assigning for any consideration. The residuary clause “otherwise parted with the possession” is indicative of the legislative intention that where the tenant has parted with the possession of the accommodation, whole or any part of the same, then also the landlord becomes entitled for a decree of eviction. Moreover, law does not require the landlord to establish that the tenant has parted with the possession of whole of the premises let out to him. If the tenant has parted with the possession of only a part of the premises, then also, the landlord becomes entitled for decree of eviction on the grounds enumerated under Section 12(1)(b) of the Act of 1961.

17. Learned counsel for the appellant laid great emphasis on the submission that the parting of the possession has to be for consideration, relying upon **S.F. Engineer, Nirmal Kanta (Dead) through L.Rs., Delhi Stationers (supra)** and **Shama Prashant Raje vs. Ganpat Rao and Others, (2000) 7 SCC 522.**

18. However, learned counsel for the appellant could not establish that the provisions of the Tenancy Act, applicable in those cases were pari materia provisions contained in Section 12(1)(b) of the Act of 1961 as applicable in the present case.

19. In the case of **S.F. Engineer** (supra), the Supreme Court was dealing with the landlord's right to seek eviction under the tenancy laws applicable in the

State of Maharashtra.

In the other case of ***Nirmal Kanta*** (supra), the tenancy laws as applicable in the State of Punjab and Haryana were applicable. That was a case where the Court found that the case of sub letting was not established because main ingredients of creation of sub tenancy was not established as the tenant had not parted with the exclusive possession of the tenanted premises and that in order to prove sub tenancy, a landlord is required to prove that the tenant has parted with the exclusive possession of the tenanted premises for monetary consideration.

In the case of ***Delhi Stationers and Printers*** (supra), the provisions of Section 13(1)(e) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 were under consideration. On facts, it was held that it was not a case of parting with the possession.

In the case of ***Shama Prashant Raje*** (supra), upon consideration of the applicable provisions under C.P. And Berar Letting of Houses and Rent Control Order, 1949, finding was arrived at that in order to prove sub letting, the landlord is required to prove two ingredients namely parting with the possession and some considerations therefor.

20. Learned counsel for the appellant could not satisfy this Court that the aforesaid decisions were rendered upon application of identical statutory provisions providing a ground of eviction to the landlord, as applicable in the present case, under the statutory scheme of Section 12(1)(b) of the Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961. In the provision of law applicable in the present case, the use of the word “consideration or otherwise” clearly indicate that where there is parting with the possession, with

or without consideration, it shall provide the landlord, a ground to seek eviction of tenant under Section 12(1)(b) of the Act of 1961.

21. It is therefore required to consider whether the plaintiff on pleadings and the evidence, has succeeded in proving that he is entitled to eviction on the ground enumerated in Section 12(1)(b) of the Act of 1961.

22. In para 4(b) of the plaint, the plaintiff has categorically pleaded that the defendant has unlawfully sub-let or parted with the possession of a part of the tenanted premises, which has been indicated in the map attached with the plaint. It has further been pleaded that a part has been given to one lady Vasudha Bataviya and she is using the part occupied by her for carrying on educational activities by giving tuition to students. Further, categoric pleading has been made that another part show in the map attached with the plaint comprising of three flats, a part of which has been occupied by unknown persons and upon being enquired, it is revealed that they are employees of defendant No.1-Ashwani Sethi, but refused to disclose their names. It has been categorically asserted in the pleading that such act of the defendant is without any permission in writing of the plaintiff-landlord and therefore, decree under Section 12(1)(b) of the Act of 1961 has been claimed.

23. The defendants have, however, denied that they have sub-let or parted with the possession of tenanted accommodation in the manner pleaded by the plaintiff.

24. The plaintiff, Inderveer Singh Batra, PW-1 has stated in para 6 of his affidavit under Order 18 Rule 4 CPC that without the permission and authority of the landlord, defendant No.1 has sub-let or parted with the possession or a part of the tenanted premises and handed it over to one Vasudha Bataviya, who is

using that part by carrying educational activities and another part has been given to the employees working in the hotel of the defendant No.1-Ashwani Sethi, who refused to disclose their identity. In his cross-examination, the plaintiff has remained firm on the statement by stating that the defendants have left the tenanted premises and they are residing in a house at Khamhardih for the last two years and a part of tenanted premises have been occupied by their employees. In para 13 of his cross-examination, he has been given suggestion that the defendant No.2 is still residing there, which is denied. In para 14 of his evidence, he has further deposed that a part of the tenanted premises has been occupied by one lady Vasudha Bataviya, who is operating tuition class for 50-60 students.

25. Ramnath Sahu, PW-2 in his affidavit under Order 18 Rule 4 CPC has stated that he is working as Caretaker of the tenanted premises and looks after the operation of pump house and maintaining entry, electricity etc. He has stated in his evidence that a part of the tenanted accommodation has been occupied by one lady Vasudha Bataviya, who is operating tuition classes and another part has been occupied by the employees of the hotel of the defendant No.1-Ashwani Sethi and those employees reside with their family. The fact that this person is the caretaker has not been controverted in his evidence but suggestion has been given that the plaintiff is his master and so he is making false statement. He has denied suggestion that the defendant No.2-Tilak Raj Sethi still reside along with his wife in the tenanted premises and denied suggestion that the employees of the hotel of defendant No.1-Ashwani Sethi are not residing.

26. In the present case, it is to be noted that the defendant No.2-Tilak Raj Sethi has not entered the witness box. The defendants did not even make any

attempt to seek examination of the defendant No.2 by way of commission, in view of the fact that he is an old aged person and not keeping well and as stated by all the parties and this being an admitted position on the basis of the evidence of both the parties. The defendant No.1-Ashwani Sethi has examined himself as DW-1, who states in his affidavit under Order 18 Rule 4 CPC that he is not in possession of the tenanted premises nor he was the tenant, but says that his old aged parents are residing in the tenanted premises. Though, it is his evidence that his father has not sub-let or parted with possession of the tenanted premises in the manner as stated by the plaintiff, there is no evidence on record of defendant No.2 to controvert such statement of the plaintiff landlord. Once the plaintiff has clearly asserted in his pleading and categorically deposed in his evidence regarding defendant having unlawfully sub let or parted with the possession or part of the tenanted premises by making categoric averment as to how and to whom such possession has been delivered, coupled with the categoric evidence that the defendant No.2 is residing with his son-defendant No.1 in another house, it was incumbent on the defendant No.2 himself to depose and rebut such categoric evidence that he has not sub let or otherwise parted with the possession of the premises. His son- Ashwani Sethi, defendant No.1 and DW-1 has admitted in para 1 of his examination that his father Tilak Raj Sethi, defendant No.2 had undergone by-pass surgery, suffering from diabetes, Aarthorities and Prostate problem for the last 15 years and suffering from serious diseases. He has also admitted that he looks after him and makes all arrangement for his treatment. He has also admitted that his father has no source of income. It is also his admission in the cross-examination that for the last 1 & ½ years, his father is not engaged in any working. Other witness of defendant is Umed Ram Gajendra, DW-2, who appeared as a witness only in the capacity as Power of Attorney holder of defendant No.2-Tilak

Raj Sethi. He has also stated that the defendant No.2 and his wife both are seriously ill. Nowhere in his evidence, he has stated regarding defendant No.2 residing in the tenanted premises either alone or with his wife or any servants. On the issue of sub letting or parting with the possession by defendant No.2, this witness has not stated anything, therefore, the evidence of Ashwani Sethi, DW-1 on the issue of unlawfully sub letting or parting with the possession is not supported by the evidence of this witness Umed Ram Gajendra, DW-2. In his cross-examination, this witness, however, admits that the business of Virmani Enterprises was closed 10 to 12 years earlier and thereafter, the defendant No.2-Tilak Raj Sethi became seriously ill and continues to remain seriously ill. In his cross-examination, he has further admitted that he had last seen the tenanted premises one year before. He has further admitted that Tilak Raj Sethi is seriously ill for the last 8 to 10 years and unable to walk and bedridden. He has also admitted that Tilak Raj Sethi has no source of income.

27. Weighing the evidence on probabilities that as against categoric pleadings and evidence of the plaintiff-landlord of defendant having unlawfully sub-let or parted with the possession of the tenanted premises to one lady Vasudha Bataviya, who is running tuition classes and another part used by the employees of the hotel owned by the defendant No.1, defendant No.2 has not entered into the witness box to rebut such categoric pleadings and the evidence of defendant No.1 himself that he does not reside and he and the other defendant's witness, Umed Ram Gajendra, DW-2 having admitted that the defendant No.2 is seriously ill since many years, no source of income and badridden and unable to walk and that the defendant No.1 looks after his parents, the learned trial Court has committed no illegality or perversity in recording a finding of fact that the defendant No.2 is not residing and has parted

with the possession to different persons without any authority or permission of the plaintiff. It is not the case of the defendants that the defendants had parted with the part of the possession or sub let the property with the permission of the landlord.

28. Much emphasis has been led by learned counsel for the appellant on the submission that as there is no categoric evidence of having sub-let the tenanted premises or a part of the tenanted premises parted with the possession in lieu of any consideration, the essential ingredients of Section 12(1)(b) of the Act of 1961 have not been fulfilled and mere parting with the possession would not make a ground of eviction. However, in view of the analysis of the statutory scheme, where parting with the possession was either wholly or in part for consideration or otherwise, it has to be held that once it is proved that the tenant has parted with a part of the tenanted premises to third parties even though, payment of any consideration is not proved by any categoric evidence, in the absence of there being any permission or authority of the landlord, it would be a case of tenant having unlawfully parted with the possession of the tenanted premises. According to peculiar statutory scheme in the present case, it is not necessarily required that such parting of possession must be in lieu of consideration, ground of eviction would be made out under Section 12(1)(b) of the Act of 1961. The authorities, on which, reliance has been placed by learned counsel for the appellant, referred to hereinabove, holding that the considerations would be one of the essential ingredients would not be applicable in the present case because of the peculiar statutory provisions under Section 12(1)(b) of the Act of 1961 as the provision ends up with “for consideration or otherwise”. Therefore, the finding of the learned trial Court that the landlord is entitled to decree of eviction on the ground stated under Section

12(1)(b) does not warrant any interference.

29. The learned trial Court granted decree only on the finding that the landlord has succeeded in proving that the tenant has unlawfully sub-let a part of the tenanted premises without permission in writing of the landlord. However, in the cross-examination, the respondent-landlord has assailed the finding of the learned trial Court in so far as eviction on the ground stated under Section 12(1) (d) of the Act of 1961 is concerned.

30. In the plaint, the plaintiff has categorically averred that the defendants which includes the defendant No.2 also have left the tenanted premises and shifted in the new constructed house of defendants at Khamhardih. This pleading has been denied in the manner that it is only defendant No.1, who has shifted to new house at Khamhardih which has been purchased by his wife, but as far as defendant No.2 is concerned, it is stated that he is still residing in that house. In order to support the aforesaid pleadings that the defendants have not used the tenanted premises continuously for the last one year preceding from the date of institution of suit, Inderveer Singh Batra, PW-1 has clearly deposed in para 8 of his affidavit under Order 18 Rule 4 CPC that the defendants without any reasonable cause are not residing in the tenanted premises but he is residing at Country Club at Raipur, which is stated to be their own house. He has remained firm on this evidence and even in his cross-examination, he has denied suggestion that the defendants are still residing in the tenanted premises. His witness, Ramnath Sahu, PW-2 has also stated in his affidavit under Order 18 Rule 4 CPC that the defendants are residing in another house and not residing in the tenanted house for the last 1 & ½ years. He has denied suggestion that the defendant No.2-Tilak Raj Sethi is still residing in the tenanted house. As observed earlier, the defendant No.2 has not entered the

witness box to asset that he is still residing in the tenanted premises and only evidence of his son-Ashwani Sethi, defendant No.1, who is not residing in the house and in his pleadings, he has stated that his father is seriously ill, bed ridden and having no source of income, as discussed hereinabove. The evidence of both the parties unmistakably prove that as far as defendant No.2 is concerned, he is not doing any work, no source of income, and he is seriously ill, bedridden and his entire treatment and care is being done by the defendant No.1-Ashwani Sethi, who himself has shifted to another house, which according to defendant No.1, was purchased by his wife. With this emphatic and overwhelming evidence, non-examination of defendant No.2 as one of the evidence to depose by his personal knowledge that he is still residing in the accommodation, would be fatal, because though the initial burden of proving that the defendant No.2 is not residing in the tenanted premises for more than one year, was on the plaintiff, as this fact was asserted by the plaintiff in his pleading. Once it is held that the defendant No.2 is not actually residing in the tenanted premises for the last 1 & ½ years preceding the date of institution of suit, the onus was shifted on the defendant No.2 to discharge the burden that he has reasonable cause for not living there. On the basis of other evidence regarding illness, the learned trial Court has recorded a finding that the illness of defendant No.2 constitutes a reasonable cause for not residing.

31. It is relevant to note here that the defendant No.2 is stated to be ill, old aged and not earning anything, has come in the evidence of other witness, defendant No.2 himself has not entered into the witness box. It is not the case of the defendants that the evidence of defendant No.2 could not be taken even by way of commission. Therefore, non-examination of defendant No.2 before the Court that he had a reasonable cause, which fact he himself has to prove, it

is to be held that the defendant No.2 is not using the tenanted premises for a continuous period of more than one year, without any reasonable cause, therefore, the plaintiff is entitled to decree under Section 12(1)(d) of the Act of 1961 as well.

32. The conclusion of this Court finds support from the verdict of the High Court Madhya Pradesh in the case of ***Bhagwandas S/o Murarilal Pawaiya vs. Kailash Narayan and Bros. (Firm), 1991 MPLJ 801***, wherein it was held that as the tenant failed to come out with a specific case of reasonable cause whereas landlord proved that the tenant was not using the tenanted premises for a continuous period of six months immediately preceding from the date of institution of civil suit, ground for eviction under Section 12(1)(d) is made out. Similar view has been taken by the High Court of Madhya Pradesh in the case of ***Bhagwandas Pawaiya vs. Registered Firm Kailash Narayan & Bros., Gwalior, AIR 1991 MP 191***.

33. The plaintiff had also prayed for decree on the ground enumerated under Section 12(1)(i) of the Act of 1961 that as the defendant/tenant has purchased another house at Khamhardih, therefore, on that ground also, the landlord is entitled to decree, did not find favour with the trial Court. The basis of the finding in this regard is that the house at Khamhardih is stated to be owned by the daughter-in-law of the defendant No.2-Tilak Raj Sethi and there is no evidence on record to prove that the house at Khamhardih is owned by the defendant No.2. The burden was on the plaintiff to prove by clinching evidence that the house at Khamhardih was owned by the defendant No.2, which the plaintiff has failed to prove. On the contrary, the evidence on record is that the house at Khamhardih has been purchased by the wife of Ashwani Sethi, and therefore, the learned trial Court has committed no illegality by holding that the plaintiff is

not entitled to decree on the ground stated under Section 12(1)(i) of the Act of 1961.

34. Lastly, in so far as the issue regarding monthly rent of the premises is concerned, the learned trial Court has accepted the case of the landlord that the rent of the premises was Rs.9,625/- under issue No.3. As this finding has been assailed by the appellant in this appeal, it also requires consideration as to what was the rent payable by the defendants to the plaintiff.

35. The plaintiff has categorically pleaded in his affidavit under Order 18 Rule 4 CPC, supported by his oral evidence that initially two flats and additional space to be used for non-residential purposes was let out and later on, another flat was given on rent. The evidence of the plaintiff in this regard has been that the defendant No.2 was inducted as tenant for the rent of Rs.7,625/-, but later on, when number of family members were increased, another flat was taken on rent and the rent thereafter was enhanced to Rs.9,625/-.

The plaintiff-landlord, Inderveer Singh Batra, PW-1 not only in his affidavit under Order 18 Rule 4 CPC but also in his cross-examination has remained firm on his case that the monthly rent was Rs.9,625/-. The defendant No.1-Ashwani Sethi S/o Tilak Raj Sethi, though has disputed this fact by stating that the rent of the premises was Rs.4,500/- and not Rs.9,625/-, in his cross-examination, he admits that the agreement of tenancy was entered into between his father and the plaintiff about 30 years before and he has no knowledge and he does not know about the details because the rent used to be paid by his father to the plaintiff. He further admits in his cross-examination that when his father used to pay rent, he was not present nor he knows about it. Thus, from his evidence, it is revealed that he was neither a party nor he has personal knowledge

regarding monthly rent which was agreed to between the landlord and his father. The other defendant's witness-Umed Ram Gajendra is only power of attorney holder of Tilak Raj Sethi. Though, in his affidavit under Order 18 Rule 4 CPC, he claims that Rs.4,500/- was fixed as rent both for residential and non-residential use, he does not have any personal knowledge about this fact. He stated that he was not present at the time of agreement entered into between the plaintiff and the defendant's father on one hand and defendant No.2 on the other. In his cross-examination, this witness admits that he does not know as to when and which part was taken on rent by Tilak Raj Sethi and admits that Tilak Raj Sethi has taken three flats on rent. He further states that the rent was fixed for the three parts under the tenancy, is not known to him but only says that he used to pay Rs.4,500/- to the plaintiff. He then in the next breath admits that he does not know whether Rs.4,500/- was fixed as rent, at the time of creation of tenancy. His further evidence in the cross-examination only elicits that this witness has no personal knowledge as to when the tenancy was created, when different parts of the tenanted premises was taken by Tilak Raj Sethi and what rent was fixed. The defendants have not produced the receipts of rent of Rs.4,500/- paid as monthly rent. Against the categorical evidence of the plaintiff monthly rent of Rs.9,625/-, there is no reliable evidence in rebuttal and evidence by any person much less the son of the defendant No.2 or his power of attorney holder regarding fixation of monthly rent. Moreover, as has already been noticed hereinabove, the defendant No.2-Tilak Raj Sethi did not enter the witness box and he would have been the best witness for the defendants to depose with regard to monthly rent fixed between the plaintiff and the defendant No.2. Therefore, the finding recorded by the learned trial Court regarding monthly rent of the premises was fixed at Rs.9,625/- does not warrant any interference.

36. The appellant has joined a dispute on awarding damages @ Rs.500/- per day, upon failure of the defendant-tenant to handover vacant possession of the premises within three months. Taking into consideration that the tenanted premises are situated in a prime area, which consisted of three flats and additional space given to the tenant for non-residential purposes, in the city of Raipur, this finding of the trial Court also does not warrant any interference. However, the submission that the defendants were continuing by virtue of an interim order passed by this Court on 01-07-2008, during the period of operation of order of stay, the plaintiff is not liable for payment of damages @ Rs.500/- per day and the same deserves to be accepted for the limited period during which interim order remained in operation i.e. 01-07-2008 till date. During the period of stay, the appellant would be liable to pay rent at the rate of Rs.9,625/-.

37. In the result, the appeal is dismissed whereas, cross-objection of the plaintiff is partly allowed to the extent that the plaintiff is also held entitled for decree of eviction under Section 12(1)(d) of the Act of 1961. A decree be drawn accordingly.

SD/-
(Manindra Mohan Shrivastava)
Judge