

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No. 1061 of 2017 (O&M)

Date of decision: 07.03.2017

Sunil Dhawan

... Petitioner

versus

Satwant Kaur and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA**

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Present: Mr. G.S Dhillon, Advocate for the petitioner.  
Mr. Divanshu Jain, Advocate for respondent Nos. 1 to 4.

**G.S. SANDHAWALIA, J. (ORAL)**

The petitioner challenges the findings recorded by the authorities below whereby eviction has been ordered on the ground of subletting under the East Punjab Urban Rent Restriction Act, 1949 as extended to Chandigarh. The Rent Controller vide order dated 24.09.2014 came to the conclusion that the premises had been leased out to the present petitioner who had further leased it out to respondent No.5 Chadha Motor Transport Co. (P.) Ltd. He further placed reliance on **M/s Bharat Sales Ltd. Vs. Life Insurance Corporation of India, 1998 AIR (SC) 1240** to hold that since the said respondent was carrying the business of liquor vend in the premises in question and no written consent had been taken from the landlord and there was thus parting of possession and the order of eviction was passed. The Appellate Authority has upheld the same vide order dated 19.10.2016.

The principles of subletting have been laid down by the

Apex Court in Ms. Celina Coelho Pereira and others Vs. Ulhas Mahabaleshwar Kholkar and others, 2009 (2) RCR (Rent) 456 (S.C). The legal position which was summarised was that parting of possession with exclusive right of the same to a third party done without the consent of the landlord would make him liable for eviction. Keeping in view the fact that subletting was a transaction which was secretive in nature, it was held that Court would tear the veil of partnership to find out the real nature of transaction entered into by the tenant. Once the initial burden had been discharged by adducing prima facie proof that a party other than tenant was in exclusive possession of the premises. A presumption of subletting may then be raised and would amount to proof unless rebutted. The principles read as under:-

*"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 subletting 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 subletting may then be raised and would amount to proof unless rebutted.”*

It was the case of the respondents-landlords, who are four in number that half ground floor of the demised premises was under the tenancy of the present petitioner and he was paying Rs. 17,000/-.

Subletting had been effected and complete parting of possession had

been done to respondent No.5 herein. The defence of the petitioner was that the possession was with him and had not been given to the said respondent. The plea taken was that the petitioner was controlling the affairs of respondent No.5. One of the landlord Col. Prabhjit Singh was examined as PW1 and Deepak Bhatt as PW2. The said witness, Deepak Bhatt was the Junior Assistant in the office of Excise & Taxation Department U.T. Chandigarh. He has brought the relevant record to show that the licence had been granted in favour of respondent No.5 for the year 2006-07. The petitioner-tenant, Sunil Dhawan appeared as RW1 and in cross-examination it had spilled out that he has not taken out authority letter from respondent No.5 for operating the licence in the premises. Several opportunities were given to him but he could not produce the same. It was his case that he was licensee of respondent No.5 but no documents as such could be produced by him. Resultantly, the issue of subletting was thus, held against the present petitioners as it is difficult for the landlord to prove subletting by direct evidence or whether sub-tenant had paid monetary consideration.

The Appellate Authority also noticed that licence application Ex. PW2/1 also went on to show the address of respondent No.5 at the demised premises. The factum that there was no partnership deed entered into between the petitioner and respondent No.5 and there was no authority letter, the findings have been accordingly upheld.

Counsel for the petitioner could not demonstrate as to what

was the error as such or any procedural infirmity in the finding which was recorded on the basis of government record, once it is well-known that subletting is secretive transaction. It is thus apparent that the petitioner has sublet the premises for the lucrative liquor business and would be getting heavy consideration keeping in view the location of the premises which was suitable for running liquor vend in Sector-17, Chandigarh abutting to Madhya Marg.

The findings recorded the Courts below are well justified and do not warrant any interference in revisional jurisdiction and not suffering from any legal or procedural infirmity. Accordingly, the present petition is dismissed.

**(G.S. SANDHAWALIA)**  
**JUDGE**

07.03.2017

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Whether speaking/non-speaking: Yes/No  
Whether reportable : Yes/No