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

Civil Revision No.2902 of 2015

Date of decision: 02.02.2017

Krishan Lal (since deceased) through his L.R.

...Petitioner

Versus

Kamaljit and others

...Respondents

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

Present: Mr. Sarju Puri, Advocate for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner-landlord challenges the judgment dated 18.2.2015 passed by the Appellate Authority, SBS Nagar whereby eviction order passed by the Rent Controller on 17.2.2014 on the ground of subletting was set aside.

The Appellate Authority, SBS Nagar came to the conclusion that it was a case of misreading of evidence by the Rent Controller that the property had been sublet to Gurdial Singh and Bhutto. The Rent Controller had observed that since the books of account did not show Bhutto to be in service of respondent no.1-tenant, therefore, it amounted to subletting. It was noticed that the tenant is running a small time workshop and therefore he could not be faulted at for not producing the books of account to show that the salary was being paid to the said Bhutto. That no conclusion as such had been reached by the Rent Controller that the original tenant had parted with possession of the demised premises or part of it muchless for consideration. Therefore once the tenant continued to be in possession of the demised premises and had not proved to have parted with his exclusive

possession, mere explanation of the tenant that respondents no.2 and 3 were his helping hand could not have led to assumption that they were sub-tenants.

Counsel for the petitioner has vehemently argued that there was a categorical averment that Gurdial Singh and Bhutto were running the business of denting and painting and the respondent-tenant was receiving money and therefore subletting was done secretly. It was alleged that even the reply as such to the plea taken by the tenant was that they were reachable persons but the tenant did not know those persons. The said respondents had also taken the plea that they had never come into possession of the demised premises.

A perusal of the ejectment application would go on to show that the necessary ingredients as such to prove subletting had not been averred to get an order of eviction under Section 13 (2) (ii) of the East Punjab Urban Rent Restriction Act, 1949. The absence of written consent of the landlord and that the right had been transferred as such plus the factum of exclusive possession were missing. It is settled principle that to prove subletting the original tenant has to move out of the premises in question and the sub-tenant has to take over who is a stranger to the landlord. The second ground would be that there was some consideration as such. Though the arrangement is always a secret arrangement but the fact remains in the said case that the original tenant has continued to be in possession, therefore, the Appellate Authority was well justified in holding that eviction could not be ordered once the tenant himself was continuing to be in possession. The Appellate Authority was also well justified in

holding that respondents no.2 and 3 were basically helpers as such and therefore, in absence of any parting of possession by the tenant, the eviction could not have been done.

The principles of subletting were laid down in **Ms. Celina Coelho Pereira & others Vs. Ulhas Mahabaleshwar Kholkar & others (2010) 1 SCC 217**, which 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 sub-letting 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 sub-letting may then be raised and would amount to proof unless rebutted.

29. The main question that falls to be determined in the present case is: is High Court justified in non-suiting the landlord on the ground that he has not pleaded that business of the firm M/s. Mandovi Tours and Travels is not conducted by its partners, but by Balaji Lawande and Netravalkar and that tenant has parted with the premises by subletting the same to these two persons under the garb of deed of partnership by constituting a bogus firm? In our judgment, the answer have to be in negative. In the plaint, the landlord averred that the tenant has sub-let the premises to M/s. Mandovi Tours and Travels, a partnership concern, without his permission and that the sub-lessee has been exclusively running the business in the rented premises although he has not pleaded specifically that the premises have been sublet to Balaji Lawande and Netravalkar but such lack of pleading cannot be held to be fatal. It has to be kept in mind that a transaction such as sub-letting by tenant which is not permissible under lease may be outwardly a deceptive arrangement and landlord may not come to know of true facts. The pleadings in such matters ought not to be construed too technically. The true test, as has been repeatedly said, is to see whether the other side has been taken by surprise or prejudiced.

30. If the purpose of constituting partnership by the tenant

is ostensible and a deed of partnership is drawn to conceal the real transaction of subletting in a given case, the court may be required to tear the veil of partnership to find out the real nature of transaction entered into by the tenant and in such circumstances the evidence let in by the landlord cannot be ignored on the ground that there is some variance between pleading and proof. In a case such as the present one, the rule of secundum allegata et probata is not strictly applicable as the tenant cannot be said to have been put to any prejudice.”

The said findings do not suffer from any infirmity or illegality which would warrant interference by this Court.

Counsel for the petitioner has relied upon the judgment of Delhi High Court in **Man Singh Vs. Kaushalia Devi (since deceased) through L.R. Vijay Kumar Bhasin** 2010 (1) RCR (Rent) 26 to submit that onus had shifted upon the tenant.

As noticed the material factual aspect had to be proved as such and which was first and foremost regarding parting of possession and loss of control. In the absence of parting of possession, sub-letting cannot be inferred, therefore, the order of the Appellate Authority is justified.

Accordingly, the present revision petition is dismissed in limine.

February 02, 2017
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(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No