

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

CR No.2427 of 2008 (O&M)
Date of decision : 19.09.2018

Amar Singh

...Petitioner

Versus

Mool Chand and another

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. Shahid Hussain, Advocate for
Mr. Ashok Kaushik, Advocate for the respondents.

ANIL KSHETARPAL, J.

Arguments were heard. Judgment was reserved. The judgment is being released.

Landlord-petitioner is in the revision petition against the orders passed by the Rent Controller, dismissing the application filed under Section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter to be referred as “the Act of 1973”), affirmed in appeal.

Landlord-petitioner filed an application claiming that the tenant i.e. respondent No.1 is liable to be evicted on non-payment of rent as well as respondent No.1 had sublet the shop in question to respondent No.2 without the permission and consent of the landlord.

It was further pleaded that respondent No.1 (Mool Chand)

handed over the possession to respondent No.2 (Yad Ram) without the permission and consent of the landlord. Respondent No.1 filed a reply admitted that he had taken the property in dispute on rent from the landlord. However, he submitted that the shop in dispute has not been sublet in favour of respondent No.2 and in fact respondent No.2 has joined respondent No.1 as partner.

Respondent No.2 neither appeared pursuant to notice nor file any reply.

As per Section 13(2)(ii) of the Act of 1973, if a tenant transfers his rights under the lease or sublets without written consent of the landlord, then he is liable to eviction. Section 13 enlists the detailed grounds on which the eviction is being sought. Section 13(2)(ii) of the Act of 1973 is extracted as under:-

“13. Eviction of tenants- (1) xxx xxx

(2) xxx xxx

(i) xxx xxx

(ii) that the tenant has after the commencement of the 1949 Act without the written consent of the landlord -

(a) transferred his right under the lease or sublet the entire building or rented land or any portion thereof; or

(b) used the building or rented land for a purpose other than that for which it was leased;”

Landlord, in order to prove that the premises has been sublet, has examined clerk of the Haryana Electricity Board who disclosed that electric connection in the name of respondent No.2 is installed since

02.09.1980. He further disclosed that Mool Chand i.e. respondent No.1 had filed the affidavit that if Yad Ram (the alleged sub tenant) does not deposit the electricity bills, he shall deposit the same. In other words, exclusive connection in the name of the alleged sub-tenant was proved. Landlord also examined various other witnesses to prove the sub tenancy.

Respondent No.1, when appeared in the witness-box, has stated in his examination-in-chief that he is proprietor of M/s Jai Kishan Engineering Works but Yad Ram is a partner in the firm. In cross-examination, he initially stated that he does not know whether any partnership with Yad Ram was ever executed. However, thereafter volunteered that there is a partnership deed executed between the parties which was written 22 years back.

Yad Ram, even did not appear in evidence.

Learned Rent Controller dismissed the petition on four grounds:-

1. Business from the very beginning is being run in the name of M/s Jai Kishan Engineering Works.
2. Electricity connection in the name of Yad Ram is in existence since 02.09.1980.
3. Petitioner has to stand on his own legs.
4. Parting of the possession is essential ingredient which has not been proved.

When the landlord filed an appeal, learned Appellate Authority affirmed the findings by recording that it has to be proved that the tenant has parted with the legal possession and a right to exclusive possession has been

conferred on the sub tenant. It was further held that the landlord has failed to prove whether the parting of the possession is on account of any consideration. The Court further held that the electric connection in the name of Yad Ram is in existence since 1980.

As is clear from the reading of Section 13 of the Act of 1973, extracted above, it is apparent that that premises cannot be sublet without the written consent of the landlord. It is not the case of the tenant that there is any written consent. Still further, from the very beginning, respondent No.1 has pleaded that respondent No.2 is a partner in the firm. No partnership deed has been produced on file. No document has been produced to prove that M/s Jai Kishan Engineering Works is a partnership firm. Electric connection in the name of Yad Ram is installed in the premises since 1980. It was for respondent No.1 to explain as to how the electric connection in the name of respondent No.2 is running from the premises in dispute. Respondent No.1 has failed to explain that fact. It is well settled that subletting of premises is a secret arrangement between the tenant and sub tenant. The onus lies after initial evidence of the landlord, on the tenant to prove that he has not parted with the premises of the possession without the written consent of the landlord.

In the present case, the tenant has led no evidence to prove that he is in possession of the premises. No books of accounts or documents of purchase of the material or sale of material has been produced. Except oral evidence of respondent No.1 and another witness, no evidence has been produced. No doubt, the petitioner-landlord has to stand on his own legs, however, the landlord cannot be expected to lead negative evidence. In the

present case, the tenant had taken a positive stand that he had inducted Yad Ram as his partner. It was for respondent No.1 to prove that fact. However, no evidence in this regard has been produced. Neither the partnership deed nor books of accounts have been produced to prove that fact. Learned Appellate Authority has itself observed that parting of the legal possession is to be proved by the landlord. Landlord has proved the fact by appearing in the evidence and examining the official from the Electricity Board to prove that electric connection installed in the premises, is exclusively in the name of Yad Ram. In such a situation, onus shifted on tenant-respondent No.1 to explain how electric connection is installed in the premises in the name of Yad Ram. As far as the amount of consideration between the tenant and sub-tenant, it is a secret arrangement and no direct evidence can be produced by the landlord.

Learned Courts have further erred in observing that since business is being run in the name of M/s Jai Kishan Engineering Works from the very beginning, therefore, subletting is not proved. M/s Jai Kishan Engineering Works is only a trade name under which a business is being conducted. Who is running the aforesaid business has not been proved by tenant-respondent No.1-Mool Chand. Other reason assigned by the Rent Controller, are also erroneous as merely because electric connection is running in the name of Yad Ram since 1980. There cannot be any acquiescence. The requirement of law is that the tenant cannot sublet the premises without written consent of the landlord. No written consent has even been claimed.

As regards the evidence of the parting of possession, it may be

noted that the landlord has stepped into the witness-box and has also examined three more witnesses. It was for respondent No.1 to explain and prove that there is no parting of possession.

Keeping in view the aforesaid, the orders under challenge cannot be sustained. Hence, they are set aside.

Revision petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

19.09.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No