

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

CR No.3592 of 2016(O&M)

Date of decision: 18.4.2018

Gau Rakshak Mandal Committee

.....Petitioner

VERSUS

Malkiat Singh and others

.....Respondents

CORAM: **HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Harsh Aggarwal, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against concurrent findings recorded by the Courts whereby application filed under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (in short 'the Act') for ejectment of respondents from demised premises measuring 5611 square feet situated on Gau-Shalla Road and Ubhawal Road, Sangrur, detailed in head-note of the rent application was dismissed by the Rent Controller, Sangrur and the order passed by the Rent Controller came to be affirmed by the Appellate Authority, Sangrur.

The petitioner has averred that Malkiat Singh –respondent No.1 was inducted as tenant at rent of Rs.600/- per annum. He executed registered lease deed dated 10.04.1986 for a period upto 31.12.1990 in favour of the petitioner. After expiry of the lease deed, no fresh deed was executed by Malkiat Singh. Respondent No.1 became statutory tenant at monthly rent of Rs.50/-. The petitioner sought eviction of the respondents

inter alia on the grounds of non-payment of rent by respondent No.1 since 01.01.1991; respondents have raised illegal and unauthorized construction over the demised premises without written permission of the petitioner and sanction from Municipal Council, Sangrur and respondent No.1 has sub-let the demised premises to several persons including respondent Nos.2 to 4 without consent of the petitioner.

The Rent Controller negated claim of the petitioner for eviction on either of the grounds raised in the application. It was further held that respondent No.1 has proved agreement dated 28.05.1990 Ex.R6/A which reflects that permission was given to respondent No.1 to raise construction over the tenanted premises and even for subletting the same to other persons.

In the appeal, the petitioner only pressed plea for eviction on the ground of subletting. As has been noticed hereinbefore, the Appellate Authority rejected the appeal and affirmed findings of the Rent Controller on all the issues including creation of sub-tenancy.

The sole submission made by counsel for the petitioner is that even if it is accepted that permission was granted to respondent No.1 to sublet the whole or a part of the tenanted premises but the said permission is not sufficient to create sub-tenancy in favour of number of persons or either of them without written consent in regard to a particular person specifically. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court **M/s Bajaj Auto Limited Vs. Behari Lal Kohli, 1989(2) RCR (Rent) 320.** Counsel would contend that the referred authority deals with the provisions of Section 14(1)(b) of the Delhi Rent Control Act, 1958 but the provisions of the Delhi Rent Control Act, 1958

dealing with sub-tenancy are almost similar to the provisions of the Act, therefore, the referred authority applies to the controversy raised in the present petition.

I have heard counsel for the petitioner, perused the paper-book particularly the orders passed by the Courts.

Before dealing with findings of the Courts that the petitioner has failed to substantiate its case that respondent No.1 has created sub-tenancy in favour of respondents No.2 to 4, it is appropriate to deal with the agreement Ex.R6/A (Annexure P-2) in order to appreciate import of the document qua permission to respondent No.1 to sublet the premises in question. The petitioner has appended a photocopy of the document in vernacular and its translation (Annexure P-2). In the concluding lines of the agreement, it has been agreed that none of the committee members or somebody else would have any objection against raising further construction or renting out the property. The Courts have consistently held that this recital in the agreement amounts to consent in writing authorizing Malkiat Singh to further let out the premises in question.

Section 14(1)(b) of the Delhi Rent Control Act, 1958 deals with protection of tenant against eviction and the Controller may, on an application made to him in the prescribed manner, make an order for recovery of possession of the premises on one or more of the following grounds contained in clauses (a) to (i). Clause (b) of Section 14(1) provides eviction on the ground of creating sub-tenancy and reads as follows:-

“(b) That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise without obtaining the consent in writing of the landlord.”

In M/s Bajaj Auto Limited's case (supra), the respondent Behari Lal Kohli let out the premises to M/s Bajaj Auto Limited in 1961 and an un-registered deed of lease was executed on that occasion containing one of the clauses that the tenant will not assign or underlet or part with the demised premises without permission in writing of the landlord subject, however, to this proviso that they shall be entitled to assign or otherwise part with possession of the said premises or any part thereof to their associated concerns without such consent but in any event the lessees shall be liable for the payment of rent during the term hereby granted.

The landlord sought eviction on the ground that the tenant/appellant had sublet the premises to M/s United Automobiles without his consent. The eviction proceeding was defended by the appellant on the ground that M/s United Automobiles is the authorized dealer and distributor of the product manufactured by the appellant and has been in occupation of the premises in that capacity and cannot be described as sub-tenant. Hon'ble the Apex Court in concluding para of the judgment has held that the aforesaid clause (referred to earlier) cannot come to aid of the appellant. A perusal of its language would show that it contains the respondent's consent in general terms without reference to M/s United Automobiles. As a matter of fact M/s United Automobiles came to be inducted as a sub-tenant much later. Can such a general permission be treated to be the consent as required by Section 14(1) Proviso (b) of the Act? Further held that this Court in M/s Shalimar Tar Products Vs. S.C. Sharma (1987) 2 RCR 671(SC) has held that Section 14(1) proviso (b) and 16(2) and (3) of the Delhi Rent Control Act, 1958 enjoin the tenant to

obtain consent of the landlord in writing to the specific subletting and any other interpretation of the provisions will defeat the object of the statute and is, therefore, impermissible. Counsel for the petitioner has neither referred to Sections 16(2) and (3) of the Delhi Rent Control Act, 1958 (in short 'Delhi Act') nor would contend that there is a provision in the Act similar to Section 16(2) & (3) of the Delhi Act. In absence of similarity in the provisions of the Act that are applicable to present proceedings viz-a-viz proceedings initiated under the Delhi Act, the petitioner cannot derive advantage to its contention from the referred authority. In this view of the matter, reliance upon the document Ex.R6/A by the Court to negate plea of sub-tenancy cannot be faulted with. This apart, the petitioner has failed to assail factual findings of the Courts that petitioner has failed to prove that respondent No.1 has created sub-tenancy in favour of respondents No.2 to 4 by parting with possession of the tenancy premises in lieu of payment of some compensation or rent, warranting intervention in exercise of limited revisional jurisdiction.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

APRIL 18, 2018

'D. Gulati'

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no