

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.79 of 2008

M/s Semec Leasing & Marketing Private Limited, A Company
Registered under the relevant provisions of the Companies Act
1956, Through Director Ramakant Sharda, Address:- Shop No.2 &
3, Ashirwad Towers, Near Raj Talkies, G.E. Road, Raipur, Tahsil &
District Raipur (C.G.)

(Defendant No.2)
---- Appellant

Versus

1. M/s Ashirwad Theater Private Limited, Registered office at Amravati
(Maharashtra) at Present C/o Raj Talkies, G.E. Road, Raipur (C.G.)
(Plaintiff)

2. M/s Sharda & Semec Electronics Private Limited, Rajnandgaon,
Tahsil & District Rajnandgaon (C.G.)

(Defendant No.1)
---- Respondents

For Appellant / Defendant No.2: -

Mr. Sachin Singh Rajput, Advocate.

For Respondent No.1 / Plaintiff: -

Mr. Ashish Shrivastava and Mr. Anurag Verma, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

25/09/2019

1. This appeal preferred by defendant No.2 was admitted on the
following substantial questions of law: -

“1) Whether the admission by the respondent No.1 in
the written statement that he is in possession of the suit
accommodation as a tenant of the appellant/plaintiff
could, in the absence of any evidence to prove it, form
the basis for passing a decree for eviction of the
respondent No.1 for the suit accommodation under
Section 12 (1) (b) of the Chhattisgarh Accommodation
Control Act?

2) Whether the decree for eviction under Section 12
(1) (b) of the Chhattisgarh Accommodation Control Act
passed by the trial Court and affirmed by the lower
Appellate Court is liable to be set aside as having been

passed on no evidence led by the respondent No.1 to establish the ground for eviction under Section 12 (1) (b) of the Chhattisgarh Accommodation Control Act?"

[For sake of convenience, parties hereinafter will be referred as per their status shown in the plaint before the trial Court.]

2. The plaintiff filed a suit for eviction on various grounds including the grounds enumerated under Sections 12(1)(a), 12(1)(b), 12(1)(c) & 12 (1)(m) of the Chhattisgarh Accommodation Control Act, 1961 (for short, 'the Act of 1961') stating inter alia that the suit shop was let-out by the plaintiff to defendant No.1 on a monthly rent of ₹ 1,400/- on 1-2-1986 and it was enhanced to ₹ 2,728/- per month commencing from the first day of every calendar month and expiring with the last day of the same month. It has also been pleaded that defendant No.1 has unlawfully let-out the suit premises to defendant No.2 without previous consent in writing of the landlord, as the plaintiff found by verification of cheque issued towards the payment of rent by defendant No.2 and defendant No.1 parted with possession to defendant No.2 and as such, the plaintiff is entitled for eviction on the aforesaid grounds.
3. Defendant No.1 filed its written statement opposing the plaint allegations and admitted that he remained tenant of the plaintiff from 1-12-1986 up to 30-8-1995 and thereafter, from 1-9-1995, defendant No.2 is the tenant in possession of the suit accommodation, whereas defendant No.2 filed its separate written statement stating inter alia that in the suit shop, defendant No.1 was tenant from 1-12-1986 up to 30-8-1995 and with effect from 1-9-1995, defendant No.2 is the tenant carrying on its business and he is in lawful possession of the suit accommodation and paying

rent directly to the plaintiff at the rate of ₹ 2,728/- per month, as such, the plaintiff is not entitled for decree of eviction.

4. The trial Court upon consideration of oral and documentary evidence on record held that the plaintiff let-out the suit accommodation to defendant No.1, but defendant No.1 let-out the suit accommodation unlawfully to defendant No.2 without previous consent in writing of the landlord and despite payment of rent by defendant No.2 to the plaintiff, defendant No.2 is liable to be evicted under Section 12(1)(b) of the Act of 1961 and thereby granted decree only under Section 12(1)(b) of the Act of 1961. On appeal being preferred by defendant No.2, the first appellate Court affirmed the judgment & decree of the trial Court and maintained the decree granted by that Court under Section 12(1)(b) of the Act of 1961. Questioning the judgment & decree passed by the first appellate Court, this second appeal has been preferred in which substantial questions of law have already been formulated which have been set-out in the opening paragraph of this judgment.
5. Mr. Sachin Singh Rajput, learned counsel appearing for the appellant herein / defendant No.2, would submit that since defendant No.2 is tenant of the plaintiff with his knowledge and consent and he was paying rent directly to the plaintiff with effect from 1-9-1995, therefore, he has acquired the status of tenant and as such, he is not liable to be evicted under Section 12(1)(b) of the Act of 1961. He would further submit that on behalf of the plaintiff, one Radheyshyam Tejmal Joshi (PW-1), S/o Tejmal Joshi, was examined and he was not the duly authorised person on behalf of the plaintiff Company, therefore, his evidence would not come

within the meaning of evidence, as such, his statement cannot be relied upon and it is a case of no evidence. Therefore, decree under Section 12(1)(b) of the Act of 1961 cannot sustain and it deserves to be set-aside.

6. Mr. Ashish Shrivastava, learned counsel appearing for the plaintiff / respondent No.1 herein, would submit that defendant No.2 while filing written statement has clearly admitted that defendant No.1 was in possession up to 30-8-1995 and further admitted that defendant No.2 / appellant came in possession with effect from 1-9-1995 with the consent and knowledge of the plaintiff and was paying rent to the plaintiff, then also the ground under Section 12(1)(b) of the Act of 1961 would be made out, as it is not the case of defendant No.2 that defendant No.1 with the previous consent in writing of the landlord / plaintiff, sub-let the whole of the accommodation let-out to defendant No.1 as such, the two Courts below have rightly granted decree under Section 12(1)(b) of the Act of 1961 in favour of the plaintiff. He would further submit that it is not the case of defendant No.2 either before the trial Court or before the appellate Court that plaintiff's witness was not authorised to depose on behalf of the plaintiff as such, the second appeal deserves to be dismissed.
7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
8. The question for consideration would be, whether the first appellate Court is justified in affirming the decree granted by the trial Court under Section 12 (1)(b) of the Act of 1961 for which the two

substantial questions of law have been framed?

Answer to substantial questions of law No.1 and 2: -

9. These two questions of law have arisen from the decree granted to the plaintiffs based on the ground enumerated under Section 12(1) (b) of the Act of 1961, which provides as under: -

“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 Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely :

(b) that the tenant has, whether or before 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;”

10. Thus, under Section 12(1)(b) of the Act of 1961, landlord is entitled to get from a tenant the suit accommodation if the tenant has unlawfully sub-let, assigned or otherwise in any other manner parted with the possession of the whole or any part of the accommodation for consideration or otherwise. The words used in the clause are “has sub-let”. It contemplates a completed event connected in some way with the present time. If the tenant has sub-let the premises without the previous consent of the landlord either before or after the coming into force of the Act, he is not protected from eviction under Section 12(1)(b), and it matters not that he had the right to sub-let the premises under Section 108(j) of the Transfer of Property Act, 1882. (See Gappulal v. Shriji Dwarkadhishji¹.)

11. The word “unlawful” employed in Section 12(1)(b) of the Act of 1961

1 AIR 1969 SC 1291

is very important and it must be read with Section 14 of the said Act. So far as sub-letting assignment is concerned, Section 14 of the Act makes a sub-lease or an assignment unlawful, where it is without the previous consent in writing of the landlord.

12. Section 14 of the Act of 1961 prohibits and restricts a tenant to sub-let the suit accommodation without the previous consent in writing of the landlord. Sub-section (1) of Section 14 of the Act of 1961 provides as under: -

“14. Restrictions on sub-letting.—(1) No tenant shall, without the previous consent in writing of the landlord,—

(a) sub-let the whole or any part of the accommodation held by him as a tenant; or

(b) transfer or assign his rights in the tenancy or in any part thereof.”

13. Section 15 of the Act of 1961, which provides for notice of creation and termination of sub-tenancy, states as under: -

“15. Notice of creation and termination of sub-tenancy.—(1) Where, after the commencement of this Act, any accommodation is sub-let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant or the sub-tenant to whom the accommodation is sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within one month of the date of sub-letting and notify the termination of such sub-tenancy within one month of such termination.

(2) Where, before the commencement of this Act, any accommodation has been lawfully sub-let either in whole or in part by the tenant, the tenant or the sub-tenant to whom the accommodation has been sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within six months of the commencement of this Act, and notify the termination of such sub-tenancy within one month of such termination.

(3) Where, in any case mentioned in sub-section (2), the landlord contests that the accommodation was not lawfully sub-let and an application is made to the Rent Controlling Authority in this behalf, either by the landlord

or by the subtenant, within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the tenant or the sub-tenant, as the case may be, the Rent Controlling Authority shall decide the dispute.”

14. Rules 14 and 15 of the Chhattisgarh Accommodation Control Rules, 1966, which provide for method of issuance of notice relating to sub-tenancy and service of notice, etc., respectively, state as follows: -

“14. Notice relating to sub-tenancy.—A notice of the creation or termination of a sub-tenancy required under Section 15 shall be in Form D.

15. Service of notice, etc.—Unless otherwise provided by the Act, any notice or intimation required or authorised by the Act to be served on any person shall be served—

(a) by delivering it to the person; or

(b) by forwarding it to the person by registered post with acknowledgment due.”

15. Form D, which is a form of notice regarding creation or termination of sub-tenancy statutorily prescribed under Rule 14 of the Chhattisgarh Accommodation Control Rules, 1966, prescribing the contents of notice, reads as follows: -

FORM D
(See Rule 14)

Form of notice regarding creation or termination of sub-tenancy

1. Number of the accommodation and name, if any
2. Street and Municipal Ward or Village in which the accommodation is situated
3. Name of the tenant
4. Name of the sub-tenant
5. Details of the portion sub-let
6. Rent payable by the sub-tenant
7. Purpose for which sub-let, residential or non-residential, and if

latter, the nature of the business, etc. and the number of employees, if any, working therein

8. Date of creation/termination of the sub-tenancy

9. Any other relevant information

.....
Signature of tenant/sub-tenant

16. Section 14(1) of the Act of 1961 starts with negative word “No”.

Another mode of showing a clear intention that the provision enacted is mandatory, is by clothing the command in a negative form. **Crawford in its Statutory Construction** states that prohibitive or negative words can rarely, if ever, be directory and this is so even though the statute provides no penalty for disobedience. In the matter of **M. Pentiah and others v. Muddala Veeramallappa and others**², K. Subba Rao, J. speaking for the Supreme Court has held that negative words are clearly prohibitory and are ordinarily used as a legislative device to make a statute imperative.

17. Similarly, Section 14(1) of the Act of 1961 mandates that “previous consent” in writing of the landlord is must for sub-letting, transferring or assigning whole or any part of the accommodation by the tenant to a sub-tenant. Such a statutory requirement of law is a mandatory requirement. The Supreme Court in the matter of **Biswanath Poddar v. Archana Poddar and another**³ while considering Section 14(1)(a) of the West Bengal Premises Tenancy Act, 1956, which also prohibits the tenant from sub-letting the tenanted premises without the previous consent in writing of the landlord, held that the said requirement is mandatory and observed

² AIR 1961 SC 1107

³ (2001) 8 SCC 187

as under: -

“12. ... the first respondent to establish the previous written consent of the appellant. This being a mandatory requirement of law, in our opinion, the second respondent has failed to establish this mandatory requirement of the Act i.e. Section 14 of the Act.”

18. The Supreme Court in Waman Shrinivas Kini (supra) dealing with Section 13(1)(e) read with Section 15 of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947, has clearly held that in view of the non-obstante clause in Section 15 of the said Act which prohibits sub-letting and makes it unlawful for a tenant to assign or to transfer his interest in the premises let to him, it would bar the tenant even by virtue of the provision contained in Section 108(j) of the Transfer of Property Act, 1882 and sub-letting would be unlawful. It was further held that Section 15 of the said Act of 1947 is based on public policy and the statutory rights enacted for the benefit of an individual cannot be condoned by any conduct or agreement of parties. It was observed as under: -

“7. This section prohibits sub-letting and makes it unlawful for a tenant to assign or to transfer his interest in the premises let to him. The non-obstante clause would mean that even if any other law allowed sub-letting, e.g., S. 108 of the Transfer of Property Act the sub-letting would, because of S. 15, be unlawful. This would apply to contracts also as all contracts would fall under the provisions of the law relating to contracts i.e. Contract Act. An agreement contrary to the provisions of that section (S. 15) would be enforceable as being in contravention of the express provision of the Act which prohibits it. It is not permissible to any person to rely upon a contract the making of which the law prohibits. (S. 23 of the Contract Act.)”

19. Similarly, in Gappulal (supra), it was held by the Supreme Court that permission of landlord for sub-letting is not established from the mere fact that landlord realised the rent after sub-letting.

20. In the matter of K.K. Krishnan v. M.K. Vijaya Raghavan⁴, it was held by Their Lordships of the Supreme Court that notwithstanding the right available to tenant under Section 108(j) of the Transfer of Property Act, 1882, a tenant would be liable to be evicted under Section 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965, if a State Rent Act makes provision for eviction on certain specified grounds.
21. In the matter of Hiralal Kapur v. Prabhu Choudhury⁵, the Supreme Court has held that even in case where after sub-letting of portion by tenant, rent was being received by landlord by way of two cheques, one drawn by tenant and another by sub-tenant, coupled with the fact that landlord was aware that certain activities of sub-tenant were being carried on in a part of premises, it was not sufficient to establish that landlord had accepted the sub-tenant as tenant in respect of portion used by sub-tenant.
22. Following the principles of law laid down in Hiralal Kapur (supra), the Supreme Court in the matter of Ram Saran v. Pyare Lal and another⁶ held that by a unilateral action of the tenant of surrendering his right of tenancy in favour of a third party by delivering possession of the tenanted premises to the said third party, no new tenancy is created which may legally bind the landlord. By mere acceptance of rent for the tenanted premises tendered by tenant in the name of the registered society, neither a new tenancy or a valid sub-tenancy is created. Their Lordships further held that there is no estoppel against statute and mere

4 AIR 1980 SC 1756

5 AIR 1988 SC 852

6 AIR 1996 SC 2361

acceptance of rent by landlord will not constitute valid sub-tenancy in favour of sub-tenant unless landlord has given written consent. It was observed as under: -

“24. The Rent Act is a special statute governing and regulating tenancy and sub-tenancy. Such provisions in the special statute supersede the general law of tenancy if the provisions of the special statute are incompatible with the general law of tenancy. Under Section 14 of the Rent Act, mere knowledge of the landlord about occupation of the tenanted premises by the said registered society and acceptance of rent for the tenanted premises tendered by the tenant in the name of the registered society, will not create a sub-tenancy unless induction of a sub-tenant is made with the written consent of the landlord. It is nobody's case that the landlord has given any written consent for induction of sub-tenant. There is no estoppel against statute. Hence, even if the landlord has accepted payment of rent for the disputed premises from the said society, such acceptance of rent will not constitute legal and valid sub-tenancy in favour of the registered society. Consequently, landlord will not be stopped from claiming eviction of unauthorised sub-tenant along with the tenant for indulging in inducing sub-tenant without lawful authority.”

23. The *pari materia* provision contained in Sections 14(1), 16(2) and (3) of the Delhi Rent Control Act, 1958, which mandates the tenant to obtain consent of landlord in writing to the specific sub-letting, came up for consideration before the Supreme Court in the matter of Shalimar Tar Products Ltd. v. H.C. Sharma and others⁷. Highlighting the object of specific provision it was held by Their Lordships of the Supreme Court that this requirement serves a public purpose i.e. to avoid dispute as to whether there was consent or not. It was further held that the word 'previous' is significant and the consent must be to the specific sub-letting and must be in writing. It was observed as under: -

“5. ... We are of the opinion on reading of the different

⁷ (1988) 1 SCC 70

provisions that the consent enjoined by bargain between the parties in this case must be in writing and must be to the specific sub-letting.

6.

“

However, sub-section (3) of Section 16 prohibits subletting of the premises after commencement of Act of 1958 without the 'previous' consent in writing of the landlord. The use of word 'previous' in this sub-section shows that where it was the intention of the legislature that the consent in writing should be obtained before subletting, it said so specifically. The absence of the word 'previous' in sub-section (2) shows that it was not the intention of the legislature that the consent in writing could be obtained before subletting. Before the Act of 1952 a tenant could successfully show acquiescence of the landlord in subletting to escape forfeiture of tenancy. Since the absence of consent in writing by a landlord for subletting gave rise to unnecessary litigation between a landlord and a tenant, the Act of 1952 required the consent of the landlord in writing after its commencement. The purpose seemed to be that the consent of the landlord evidenced by a writing would cut out litigation on this ground. After all a landlord could always agree to subletting either before or after subletting of the premises. For that reason no condition was laid down that such consent should be obtained before subletting the premises."

7. We are in agreement with this approach to the interpretation and it is in consonance with the view expressed by this Court earlier as mentioned hereinbefore. In the aforesaid view of the matter we are of the opinion that it was necessary for the tenant to obtain the consent in writing to subletting the premises. The mere permission or acquiescence will not do. The consent must be to the specific subletting and must be in writing. Indeed there was no implied permission also here. Our attention was drawn to the fact that the landlord had written letter to the tenant and the landlord objected to the subletting the moment he realised the situation.

13. Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his individual capacity. We are, however, in this case unable to agree. Firstly, in this case there was no case of waiver. Waiver is a question of fact which has to be tested by facts and evidence. There was no conscious relinquishment of the

advantage of any statute. No court has gone into this fact. It does not seem to have been urged before the High Court also. Apart from this, in this requirement of the statute which is in the public interest there cannot be any question of waiver of a right, dealing with the rights of the tenants or the landlord. In *Chaplin v. Smith*⁸ it was held that physical possession was not sufficient, there must be legal possession. ”

24. The principle of law laid down in **Shalimar Tar Products Ltd.**

(supra) has been followed with approval by the Supreme Court in the matters of **Shantilal Rampuria and others v. Vega Trading Corporation and others**⁹, **Bajaj Auto Limited v. Behari Lal Kohli**¹⁰ and **Pulin Behari Lal v. Mahadeb Dutta and others**¹¹.

25. In **Pulin Behari Lal** (supra), Their Lordships clearly held that in view of the clear provision contained in Sections 13(1)(a) and 16(1) of the West Bengal Premises Tenancy Act, 1956, mere knowledge of the sub-letting and/or acceptance of rent, in absence of proof of conscious relinquishment of right to eviction, would not amount to waiver by landlord and an inference of giving up of a right under a statute would not be easily drawn by invoking the theory of acquiescence in such cases. Their Lordships relying upon **Shalimar Tar Products Ltd.** (supra) highlighting the object of such restrictive provision, observed as under: -

“4. A perusal of the above provisions clearly show that when there was no previous consent in writing of the landlord for creation of subtenancy it shall be a ground for eviction in terms of Section 13(1)(a) of the Act. Even in case of creation of such subtenancy with the consent of the landlord in writing it was necessary to follow the further procedure prescribed under Section 16(1) of the Act. Mere knowledge and/or acceptance of rent cannot defeat the landlord's right to get a decree for ejection on the ground of subletting. If the view as contended on

8 (1926) 1 KB 198

9 (1989) 3 SCC 552

10 (1989) 4 SCC 39

11 (1993) 1 SCC 629

behalf of the appellant is accepted the provisions of both the above Sections 13 and 16 would become nugatory. There is a clear mandate in Section 13(1)(a) that the protection against eviction to the tenant shall not be available in case the tenant transfers, assigns or sublets in whole or in part the premises held by him without the previous consent in writing of the landlord. ...”

26. Reverting to the facts of the present case, qua the first submission of learned counsel for the appellant herein / defendant No.2, it is quite vivid that it is the case of the plaintiff that defendant No.1, who is the original tenant, has unlawfully, without his previous consent in writing, sub-let the whole of the suit premises to defendant No.2 with effect from 1-9-1995 which defendant No.2 has also admitted that he is in possession with effect from 1-9-1995, but it is the case of defendant No.2 that he is in possession of the suit accommodation as tenant with the knowledge and consent of the landlord and after payment of rent to the plaintiff – landlord. But, admittedly, defendant No.1 has not stated by entering into the witness box that Section 15 of the Act of 1961 read with the Rules made thereunder has been complied with and any notice under Section 15(1) of the Act of 1961 read with the Rules made thereunder was issued ever to the plaintiff. Defendant No.2 has not led any evidence or pleading to say to any new tenancy was created by defendant No.2 with the plaintiff at any point of time after entering into his possession with effect from 1-9-1995, as he came into possession upon parting with the possession by defendant No.1, with effect from 1-9-1995. Even otherwise, the sole witness examined on behalf of the appellant / defendant No.2 namely, Ramakant Sarda (DW-1) in his statement before the Court in paragraph 8 has clearly stated that defendant No.1 without the

previous consent in writing of the landlord / plaintiff, let-out the suit premises to defendant No.2 / appellant herein. He has further stated that since they were paying rent directly to the plaintiff and that was accepted, therefore, that amounts to written consent of the plaintiff. Therefore, there is sufficient material on record to hold that defendant No.1 without previous consent in writing of the landlord / plaintiff parted or unlawfully sub-let the whole of the suit premises to defendant No.2, as defendant No.1 has failed to prove previous consent in writing of the landlord / plaintiff to sub-let the whole of the suit premises held by it. Defendant No.2 also failed to establish that any new tenancy was created with effect from 1-9-1995 with the plaintiff. The first appellate Court has rightly recorded a finding that defendant No.2 has failed to prove any creation of tenancy as tenant with the plaintiff with effect from 1-9-1995. As such, concurrent finding recorded by the two Courts below that mandatory requirement of previous consent in writing of the landlord for the tenant to let-out the whole of the suit accommodation which the tenant was in possession, has not been complied with is a finding of fact.

27. Thus, the two Courts below have rightly concluded that defendant No.1 / defendant No.2 has failed to establish the previous consent in writing of the landlord to sub-let the suit premises. The finding recorded by the two Courts below is a finding of fact based on the evidence available on record and I do not find any perversity or illegality in the said finding.

28. Coming next to the plea that the witness of the plaintiff was not authorised to make statement on behalf of the plaintiff, the said plea

is also not born out from the record. Radheyshyam Tejmal Joshi (PW-1) was cross-examined in paragraph 9 of his evidence in which he has stated that he has not filed any certificate to the effect that he is the General Manager of the plaintiff Company. Even otherwise, this fact has not been expressly raised before the first appellate Court by defendant No.2 and no question of law has been framed in this regard, the only question is, as to whether the decree under Section 12(1)(b) of the Act of 1961 that has been granted, is based on evidence or not. As such, this submission also sans merit and it is accordingly rejected.

29. As a fallout and consequence of the aforesaid discussion, by answering the substantial questions of law against the defendants and in favour of the plaintiff, it is held that the appeal has no merit, it deserves to be and is accordingly dismissed. No order as to cost(s).

30. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge