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

CR No. 1889 of 2005 (O&M)

Date of Decision: July 02, 2019

Ashok Kumar

..... Petitioner(s)

Versus

Bhupinder Singh and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Arnav Sood, Advocate
for the petitioner.

Mr. Vikas Singh, Advocate
for the respondents.

LISA GILL, J.(oral)

Petitioner-landlord is aggrieved of the order dated 21.02.2005, passed by the learned Appellate Authority/Fast Track Court, Muktsar whereby appeal filed by respondents-tenants challenging order dated 15.01.2002, passed by learned Rent Controller, Faridkot has been allowed and the order passed by learned Rent Controller has been set aside.

Present petitioner preferred a petition under Section 13 of the East Punjab Rent Restriction Act, 1949 seeking ejectment of the respondents-tenants from the demised premises on the grounds of arrears of rent and subletting of the premises by respondents no.1 to 3 without his written permission. The said rent petition was allowed by the learned Rent Controller vide order dated 15.01.2002, which was, however, set aside by the learned Appellate Authority

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vide impugned order dated 21.02.2005. The petitioner sought ejectment of the respondents on the grounds as mentioned above. It is pleaded that the premises in question were given on rent to respondent no.1 - Bhupinder Singh at a monthly rent of Rs.1,400/- vide rent note dated 01.06.1988. Respondent no.1 took the demised premises on rent on 13.06.1988 for running a restaurant and started running the same under the name and style of 'Hamraj Restaurant'. Electric connection was taken by respondent no.1 - Bhupinder Singh in his own name. It is claimed that respondent no.1 - Bhupinder Singh is in arrears of rent w.e.f. 01.03.1995 till 31.03.1998. It is further pleaded that respondents changed the purpose for which the property in question was to be used. It was let-out for running a restaurant but a beer bar has also been opened in addition. Furthermore, respondent no.1 - Bhupinder Singh sublet the demised premises to respondent no.3 without the written permission or consent of the petitioner. Landlord came to know about the exclusive possession of respondent no.3 about 4 to 5 months prior to filing of the petition. Hence, eviction of the respondents from the demised premises was sought.

Respondent no.1 - Bhupinder Singh did not appear despite service and he was proceeded against ex-parte on 02.06.1998. The petition was contested by respondents no.2 & 3. Various preliminary objections were raised. It is denied that the present petitioner was the owner or the landlord of the demised premises. Respondent no.1 - Bhupinder Singh it is stated never took the premises on rent in his individual capacity. The property in dispute was claimed to belong to Kotkapura Oil Mills Private Ltd., Kotkapura and Lachhman Dass being the Manager of the said property had leased the property

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in dispute to Hamraj Restaurant @ Rs.1400/- per month. The rent was increased to Rs.1600/- per month w.e.f. 01.08.1996. Rent is stated to have been paid upto 28.02.1998 to Lachhman Dass and the remaining rent tendered in Court. It is claimed that there were two partners of this restaurant, namely Bhupinder Singh – respondent no.1 and Jagbir Singh – respondent no.3. Bhupinder Singh withdrew from the partnership in August, 1989 and Jagbir Singh became the sole proprietor of the said restaurant. Bhupinder Singh it is alleged was not on good terms with Jagbir Singh. Therefore, in connivance with the petitioner, a false rent note was prepared merely to cause loss to Jagbir Singh. It is denied that there is any sub-letting of the premises by Bhupinder Singh. Dismissal of the petition was sought.

Rejoinder was filed controverting the pleas taken by the respondents.

Following issues were framed by the learned Rent Controller on the basis of the pleadings:-

- i) Whether respondent no.1 took a shop on rent at the rate of Rs.1600/- per month and respondent is in arrears of rent?OPP.
- ii) Whether respondent no.1 had sub-let the demised premises to respondent no.3 without written permission as alleged ?OPP
- iii) Whether respondents have changed the use of the premises as alleged? OPP
- iv) Relief.

Evidence was led by both the parties to substantiate their respective stands.

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Learned Rent Controller concluded that the property in dispute was let-out to Bhupinder Singh by the petitioner on a monthly rent of Rs.1600/- per month. He did not come present despite service and had not paid the arrears of rent. The petitioner it is held, successfully proved the sub-letting of the premises by Bhupinder Singh to Jagbir Singh, without the prior permission or consent of the landlord. Petition was accordingly allowed vide order dated 15.01.2002.

The appeal preferred by respondents no.2 & 3 was allowed by the learned Appellate Authority, vide impugned order dated 21.02.2005. Aggrieved therefrom present revision petition has been filed.

Learned counsel for the petitioner argues that the learned Appellate Authority has grossly erred in setting aside the order passed by the learned Rent Controller. Sub-letting of the premises in dispute is proved by the evidence on record. Reference is made to the rent deed (Ex.P-A) dated 1.6.1988 while submitting that the premises were let out on rent to Sh.Bhupinder Singh alone. So-called partnership deed was created on 10.10.1988 with retrospective effect from 14.06.1988. It is submitted that the no objection certificate (Ex.A-5) was given by the landlord for transfer of electric connection on 15.06.1988 in favour of Bhupinder Singh. Learned Senior counsel further submits that the alleged deed of dissolution of partnership (Ex.R-110) shows that the premises were in fact sublet to Jagbir Singh for running a restaurant. In the invitation cards (Ex.A-8) for the inaugural ceremony of the restaurant on the premises, name of Jagbir Singh

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is conspicuous by its absence. It is Gurdial Singh, Raj Kumar Garg and Bhupinder Singh whose names were mentioned in the card. It is thus clear that the restaurant was thereafter managed by Jagbir Singh. The tenancy was not created in favour of either the restaurant or the partnership firm or in the joint names of Bhupinder Singh and Jagbir Singh. Furthermore, even if Ex.R-110 i.e. dissolution deed of the partnership is accepted, it shows that Bhupinder Singh, in whose favour the tenancy was created, had withdrawn therefrom. Thus, subletting is proved. Moreover, learned Appellate Authority has erred in holding that the relationship of tenant and landlord did not exist. There was no issue framed in this respect and neither is the controversy sought to be raised by the tenant. The premises in question had been leased out to the present petitioner by his father Lachman Dass and the demised premises were, thereafter, rented out to Bhupinder Singh by the petitioner. Therefore, the learned Appellate Court has grossly erred in allowing the appeal.

Learned counsel for the respondents while refuting the arguments raised on behalf of the petitioner, submits that the learned Appellate Authority has passed a well reasoned order after proper appreciation of the record. It is contended that specific documentary evidence has been brought on record to show that Jagbir Singh was running the restaurant right from its inception in 1988. Bills regarding the furniture and other expenditure incurred in setting up this restaurant have been proved on record. Income Tax returns of M/s. Hemraj Restaurant have been placed

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on record which shows that the same was being run by Jagbir Singh. It is urged that Bhupinder Singh in connivance with the petitioner prepared a fraudulent document (Ex. P-A) i.e. the rent deed. The account books and the liquor license have been placed on record which reflect running of the restaurant by Jagbir Singh. It is further submitted that even as per the case of the petitioner himself, the rent was received upto February, 1995, therefore, it is clear that he continued receiving the rent from 1988 onwards till 1995 from Jagbir Singh. Bhupinder Singh had left the partnership in 1989 itself therefore there was no question of payment of rent by Bhupinder Singh to the petitioner thereafter. It is further contended that the learned Appellate Authority rightly held that the present petition is not maintainable at the instance of Ashok Kumar as he is not the landlord in question. It is thus prayed that the present petition be dismissed.

I have heard learned counsel for the parties at length and have gone through the record with their assistance.

The petitioner has relied upon the rent note dated 01.06.1988 (Ex.P-A) to prove that the premises in question were let-out on rent by the present petitioner to Bhupinder Singh. An objection had been raised that the rent note, initially Mark-A, was not sufficiently stamped and therefore, is not admissible in evidence. It is a matter of record that the said document was impounded and the petitioner paid the stamp fee and penalty as per the law. Therefore, learned Rent Controller has rightly held that the same is admissible in evidence and it was exhibited as Ex.PA. A perusal of the said

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rent note reveals that the premises in question were taken on rent by Bhupinder Singh. It is specifically mentioned that the premises are taken on rent from the petitioner Ashok Kumar. It has been vehemently argued that the relationship of landlord and tenant between petitioner - Ashok Kumar and the respondents could not exist as the premises in question were taken on rent from Lachhman Dass, who is the father of Ashok Kumar and the Managing Director of Kotkapura Oil Mills, Kotkapura. However, learned counsel for the respondents is unable to deny that there is no such positive evidence on record to show the taking on rent of the premises from Lachhman Dass, father of the present petitioner Ashok Kumar. Learned Appellate Authority has erred in holding that the relationship of landlord and tenant between the parties did not exist on the ground that the present petitioner Ashok Kumar son of Lachhman Dass did not have the authority to let out the premises. This observation is made on the basis of the fact that the premises in question had initially been taken on lease by the present petitioner from the Kotkapura Oil Mills of which his father Lachhman Dass was the Managing Director. There is indeed nothing in the lease deed (Mark-C) in favour of Ashok Kumar, which bars him from giving the premises on rent. Grievance if any in this respect can at best be available to Lachhman Dass only. Furthermore, there is not an iota of evidence on record to show that the demised premises were let out to Bhupinder Singh or Jagbir Singh by Lachhman Dass or that rent was being paid to Lachhman Dass. Therefore, this finding of the learned Appellate Authority is set aside being opposed to the evidence on record.

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It is relevant to note that respondents no.2 and 3 have set up a specific case of having taken the premises on rent alongwith Bhupinder Singh for running of the Hamraj Restaurant. The evidence on record does not indicate that the premises in question were given on rent jointly to Bhupinder Singh and Jagbir Singh for running of the restaurant. A perusal of the invitation card (Ex. A-8) regarding the inaugural ceremony of the Hamraj Restaurant reveals that name of the respondent Jagbir Singh is conspicuous by its absence. It is the name of Bhupinder Singh, Gurdyal Singh and Raj Kumar, which finds mention in the said card. RW-11 Jagbir Singh has admitted the said invitation card Ex. A-8 to be correct. Jagbir Singh respondent has sought to explain the same by stating in his cross-examination, that he had to go out of station, a week prior to the inaugural ceremony and he came back after a week from 13.06.1988. It is highly improbable that in case Jagbir Singh was one of the partners, his name would not find even a mention in the invitation card only on the ground that he was out of station. Furthermore, there is no explanation regarding the appearance of the names of the other two persons on the invitation card. Though, learned counsel for the respondents submits that Gurdyal Singh was one of the partners, this is clearly not the pleaded case. Jagbir Singh is claimed to be running the restaurant in question being its sole proprietor.

It is further pertinent to note at this juncture that the rent note Ex.PA is dated 01.06.1988. A partnership deed was allegedly created by Bhupinder Singh and Jagbir Singh on 10.10.1988 with retrospective effect from 14.06.1988. The electric connection of the premises was obtained by

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Bhupinder Singh in his name. No objection to the same was submitted by the petitioner Ashok Kumar (Ex. A-5) before the SDO, Punjab Electricity Board, Kotkapura in this respect. It is a matter of record that it is Bhupinder Singh who had applied for the electric connection and was so granted the same. Said document Ex. A-5 is duly proved on record. Learned Appellate Authority has clearly erred in relying upon the income-tax return Ex. R-8 which pertains to the assessment year 1990-1991 and the subsequent income-tax returns Ex. R-9 to Ex. R-15 i.e. the income-tax returns for the year 1993 till 2000 to conclude that the rent in this case was being paid by Jagbir Singh to Lachhman Dass.

It is to be noticed that sequence of events clearly points out that the premises in question were initially let out on rent by Ashok Kumar to Bhupinder Singh for running of the restaurant in question. The restaurant was indeed started on the premises. The partnership deed between the respondents Bhupinder Singh and Jagbir Singh came into existence subsequently in October 1988, stated to be having retrospective effect from 14.06.1988, which is also after the creation of the tenancy in favour of Bhupinder Singh on 01.06.1988. Respondents themselves have relied upon the deed of dissolution of partnership Ex. R-110 dated 26.09.1989. As per the said document, Bhupinder Singh withdrew his share from the partnership and also agreed to withdraw his capital as on 24.09.1989. There is no mention of any other partner. Even if the said document is accepted to be correct, Bhupinder Singh withdrew from the partnership, which came into existence in October 1988. In the absence of any evidence on record to show that the tenancy was created in favour of both Bhupinder Singh and Jagbir Singh or in favour of M/s. Hamraj Restaurant,

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subletting of premises by Bhupinder Singh in favour of Jagbir Singh is clearly proved. The bills regarding the expenditure etc. purportedly incurred in setting up of the restaurant which is stated to be borne by Jagbir Singh, cannot be relied upon to hold that the premises in question were let out to both Bhupinder Singh and Jagbir Singh. Once it is proved that the tenancy was in favour of Bhupinder Singh in his individual capacity, it stands proved that the premises was further sub-let to Jagbir Singh for running the restaurant. Similarly, the argument vehemently urged on behalf of the respondent, that rent is admitted to have been received till 31.03.1998, proves tenancy in favour of Jagbir Singh as well, is devoid of any merit in the factual matrix of the case and the evidence on record. This stand does not cast any cloud on the landlord's case in the wake of tenancy in favour of Bhupinder Singh in his individual capacity being proved.

No other argument has been raised.

Therefore, it is clear that learned Appellate Authority has erred in setting aside the well reasoned decision dated 15.01.2002 of the learned Rent Controller, Faridkot. Accordingly, impugned order dated 21.02.2005, passed by the learned Appellate Authority is set aside and that of learned Rent Controller is upheld.

Revision petition is accordingly allowed.

July 02, 2019

Sunil

(Lisa Gill)
Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No