

CR No.5423 of 2015 (O&M)**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CR No.5423 of 2015 (O&M)****Reserved on:** August 31, 2023**Date of Pronouncement:** September 11, 2023

Pratishth Mandir Murti Thakur Shyama Balaji (Trust)Petitioner

Vs.

Yad Ram & Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Amit Jain, Sr. Advocate with
Mr. Anupam Mathur, Advocate,
for the petitioner-landlord.

Mr. M.R. Sharma, Advocate,
for respondents-tenants.

HARKESH MANUJA, J**CM-17196-CII-2015**

This is an application seeking condonation of delay of 70 days in re-filing the revision petition.

For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay in refiling, thus, the same is allowed and delay of 70 days in re-filing the revision petition is condoned.

CM-17195-CII-2015

This is an application seeking condonation of delay of 23 days in filing the revision petition.

For the reasons mentioned in the application, which is supported by an affidavit, sufficient cause has been shown for condoning the delay on account of bonafide inadvertence, thus, the

same is allowed and delay of 23 days in filing the revision petition is condoned.

MAIN CASE:

1. By way of present revision petition challenge has been made to an order dated 27.11.2014 passed by the Appellate Authority, Faridabad, affirming the order dated 26.07.2013, passed by the learned Rent Controller, Faridabad, whereby, eviction petition filed at the instance of the petitioner-landlord pertaining to shop No.25 has been dismissed.

2. Briefly stated, petitioner filed an ejectment petition *inter-alia* pleading that it is a Trust duly registered with the Sub Registrar, Delhi and owns Shop No.25 situated at Surdas Market, Civil Hospital Road, Ballabgarh; respondent No.1 took the said shop on rent from the petitioner Trust on payment of monthly rent of Rs.230/- excluding house tax and other charges and in an earlier petition filed under Section 13 of the Act, the rent was agreed to be Rs.750/- per month. The petitioner Trust sought eviction of respondent No.1 on the ground that he was a chronic defaulter in payment of rent and had not paid rent from 01.06.2006 till August, 2010 i.e. for 50 months and had even sub-let the shop to respondents No.2 and 3 in an illegal and unauthorized manner. It was also pleaded that respondent No.1 had divided the shop into two portions by installing two different shutters and the sublettees had changed user of commercial shop into a residential premises.

3. In reply, it was submitted by the respondents that the demised shop was taken on rent from the petitioner by respondent

No.1. In case titled as "PMMT versus Yad Ram" Case No.80/30.5.2006/09 decided on 24.11.2009, the rent of the demised shop was fixed @ of Rs. 750/- per month w.e.f. 24.11.2009 and in a subsequent compromise effected between the parties in the said petition, respondent No.1 had already deposited rent for the period 01.09.2007 to 30.04.2008 and was ready to deposit the remaining amount in the Court. It was also submitted that respondent No.1 neither divided the demised shop into two portions; nor sublet the same to respondents No.2 and 3. It was again submitted that the demised shop was being used only for the commercial purpose and not for residential purpose as alleged by the petitioner, thus, there was no change of user by the respondents.

4. Vide order dated 26.07.2013 passed by Rent Controller, ejectment petition filed by the petitioner was dismissed on all the three grounds i.e. default in payment of rent, subletting and change of user. Aggrieved therefrom, an appeal was filed by the petitioner-landlord, but learned Appellate Authority, Faridabad, vide impugned order dated 27.11.2014 dismissed the same while affirming the order dated 26.07.2013 passed by the Rent Controller .

5. Impugning the aforementioned judgments, learned counsel for the petitioner, at the outset, makes it clear that he does not intend to press the contention regarding default in payment of rent, however, with respect to subletting, he submits that it has been the case of petitioner since beginning that respondent No.1 has divided the shop into two portions by installing two different shutters and while one portion is being used by his elder son for residential

purpose, whereas in another portion, other son is running the shop independently. Placing reliance upon **"Mohri Ram (D) LRs. Ramji Dass v. Shivshankar Lal (D) LRs. Kamla Rani"**, reported as 2006 (2) RCR (Rent) 281, learned Senior counsel contends that it is settled proposition of law that subletting cannot be proved by bringing on record the positive/direct evidence as it is a secret contract between the tenant and sub-tenant. He further submits that in the present case, when there is admission by respondent No. 1 that his son has been helping him in his business, he was required to show that his son is not working independently; but no evidence has been brought on record in this regard. Learned counsel after drawing attention of this Court towards the fact that in the statement of respondent No.1 (PW-7), it has also come-forth that both of his sons are having their own family and living separately. He has also placed reliance upon judgment of this Court in **"Sher Singh v. Chandu Lal"**, reported as 2003 (1) RCR Rent 440 (P&H) to bolster its case.

5 (i) With respect to change of user, learned Senior counsel submits that while appearing as RW-4 in another case, it was also admitted by respondent No.1 that family of his elder son lived there, but he tried to dilute this fact by stating that they lived there for around 10 days i.e. for a short duration. He concludes his argument by submitting that again, nothing was brought on record that their residence was for a limited duration only and it was just a bare statement which was believed by the Appellate Authority as well as the Rent Controller without any substantiation.

6. On the other hand, learned counsel for the respondents submits that the orders passed by Appellate Authority as well as Rent Controller are well reasoned after properly appreciating the evidence and thus, no interference is warranted, as neither the plea of sub-letting; nor even of change of user was established by way of evidence.

7. I have heard learned counsel for the parties and gone through the paper-book as well as the records of the case. I find substance in the arguments made by the learned counsel for the petitioner.

8. There is no dispute regarding the position of law that subletting being a secret arrangement between the tenant and the sub-tenant, once the landlord, through any means, is *prima facie* able to show that tenant has parted with possession, the onus of proof with respect to the nature of possession shifts upon the tenant. It is for the tenant to show that in what capacity the person alleged to be sub-tenant, is in possession and in the absence of any evidence, explaining the nature of possession, sub-letting would be presumed. In “**Lajwanti and anr. v. Daulat Ram**”, reported as 1990(1) RCR 45, in similar circumstances, it was observed by this Court that though the burden of proof with respect to sub-letting continues to be on the landlord, however, the burden is very light and in particular facts and circumstances of a case, may stand discharged by a statement on oath by the landlord alone and when the onus shifts, tenant is required to explain the nature of possession of the person other than the tenant.

9. If we apply the above discussed ratio in the present case, it could be seen that it has been categorically averred in the rent petition that sons of respondent No.1 are in exclusive possession of the demised shop and for a valuable consideration. In that context, it becomes imperative to peruse the following part of the cross-examination of respondent No.1/ tenant, while appearing as PW-7:

“This is correct that I sit in my shop. You can see me sitting in the morning. We do fabrication and office work in shop number 25. I do fabrication on job work and I also provide bills of job work to the parties. This is correct that in my response and affidavit, I have not attached the copy of any bills. This is incorrect that another son sits on the shop independently. Self stated he helps me....”

10. In view of the admission of the respondent No.1-tenant that his son supports him in his work and he sits at the shop only in the morning, it became obligatory for him to bring on record material evidence so as to show that his son is merely supporting him in the joint business and not working and earning independently. It is relevant to note here that in **Sher Singh’s** case (supra) relied upon by the learned Senior counsel for the petitioner, it was found fatal for case of respondent No.1/tenant that no account books were produced on file to prove that respondent No.1 and his sons constitute a joint Hindu family and they were maintaining a joint account. Relevant portion from para 17 thereof, is reproduced hereunder:-

“It has been observed by this Court in Smt. Sita Devi v. Chaman Lal and Anr., 1984(2) Rent Control Reporter 635 that where the tenant's father was running the shop in

the premises and the tenant had failed to prove that business of father was joint with him, then the only inference is that it is subletting. In the present case, it is otherwise. The demised premises were let out to the father i.e. the petitioner and at present his son, Shiv Kumar, is running a shop in the demised premises and the petitioner has failed to prove that his business is joint with his son and the only inference is that the petitioner has sublet the same to his son, It has been observed by the Hon'ble Apex Court in Bharat Sales Ltd v. Life Insurance Corporation of India, A.I.R. 1988 S.C. 1240 that sub-letting cannot be proved by direct evidence and court can draw inference upon the facts proved at the trial including the delivery of possession to infer that the premises were sublet. The authority Sumitra Singh v. Nahar Singh, 1984(1) R.C.R. 633 cited by learned counsel for the petitioner to contend that the petitioner had allowed his son to help him in business but of love and affection and had not sublet the demised premises, is not applicable to the facts of the present case because in the present case, the petitioner had abandoned his possession and handed over the same to his son. Similarly, the authority Lajwanti and another v. Daulat Ram, (1990-2)98 P.L.R. 426 is not applicable to the facts of the present case. In the said case, the tenant had allowed his son in law to live with him in a separate portion and he was having separate ration card. It was inferred that there was no subletting because it was normally in the era of shortage of accommodation, the in-laws allowed their daughter and son in-law to stay with them. In similar circumstances, this Court in Lal Singh v. Ashok Kumar, (2000-1)124 P.L.R. 44 held that there was sub-letting as the son had sublet the premises to his father and father was doing business independently and it was not proved that the business was joint. In the present case also, no account books have been produced on file to prove that the petitioner and his sons constitute a joint Hindu family and they were maintaining a joint account. On the other hand, it

is in evidence that they were not handing over their income to their father. Hence, I hold that it is conclusively proved on file that the petitioner had sublet the demised premises to his son, Shiv Kumar, respondent No.2, who is running business of preparation of tea etc. at present and the petitioner is not in possession of the same.”

11. On the contrary, in present case, there is no averment in the written statement to the effect that it is joint business in which his sons only support him without any valuable consideration and their families are dependant on his father. Despite admission that he issues bills to his clients, no bill has been produced on record to show that in whose name business is running presently. In that circumstance obligation was on respondent No.1-tenant to bring appropriate evidence on record which he failed, thereby, giving credence to the unrebutted presumption that he has sublet the shop to his sons. Therefore, this petition is required to be allowed on the ground of subletting of shop. Reference in this regard can also be made to a decision made by Hon’ble Supreme Court in the case of **“Kailash Chander Vs. Om Parkash”**, reported as (2003) 12 SCC 728. Relevant portion therefrom is reproduced hereunder:-

“...We must also keep in mind that when the appellant established the fact that respondent No.2. was carrying on his activities as UTI agent in the part of the premises exclusively by him, it was for the respondent to establish that his possession on that premises was not as a sub-tenant. Merely because respondent No.1 is the father of respondent No.2, there cannot be any justification to say that it was a not a case of sub-letting.”

12. Regarding contention of “change of user” also, I find substance in the submission made by the learned Senior counsel for the petitioner. Though, in the written statement there is categorical denial that any portion of the shop has been used for residential purposes by his elder son, but while appearing as RW-4 in another case titled as “**PMMT vs. Harswaroop**”, he admitted that family of his elder son was living there from last 10 days. Relevant part of his statement as RW-4 in that previous case which has been proved in the ejectment petition as Ex.P7, is as below:

“...This is incorrect that I have divided my shop in two parts and in one part my elder son lives with his wife. Self stated his house is being repaired so he is living there from last 10 days. It is incorrect that I have given one partition to my elder son....” (emphasis supplied)

Above fact was again admitted by him in the present case as well, when statement recorded in the previous case was put to him. It would be required to have a look at the following part of his statement in the present case while appearing as PW-7:-

“...this is correct that I appeared as a witness in PMMT versus Harswaroop. This is correct that the house of my son was being built and so his wife came for 2-3 days in the morning and evening for cooking the food, after that she never lived there.”

Though, it has been admitted by respondent No.1 that part of this shop was used by his elder son for residential purposes; but further explained by stating that family of his son lived there only for a temporary period when his house was being built. It is apparent that it was not possible for the petitioner to prove the same by

bringing on record any positive evidence in this regard. However, on account of admission of respondent No.1 that there was change of user with respect to the demised shop, even though for a short duration, onus shifted upon respondent No.1 to show that residence of his son was relocated only for a temporary period and after that, family of elder son of respondent No.1 ceased to reside there. But on this aspect also, neither any documentary evidence has been brought on record to show that the present residence of his elder son is at a place different from the shop; nor any other family member of respondent No.1 has appeared as a witness to support this fact. On this ground as well, evidence are lacking from the respondents' side and therefore, on this count also, petition is liable to be allowed.

13. Therefore, in view of the discussion held above, there are sufficient grounds to interfere with the impugned orders passed by the Authorities below, the same having been passed ignoring the material evidence available on record and accordingly, present revision petition filed by the petitioner-landlord is allowed and respondent(s)-tenant(s) are directed to vacate the demised shop within a period of three months from today.

14. Pending application(s), if any, shall stand(s) disposed of.

September 11, 2023
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>