

**(2002) 11 P&H CK 0048**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Revision No's. 2241 and 2242 of 1983

Anand Parkash Mangal

APPELLANT

Vs

The Delhi Cloth and General Mills  
Co. Ltd. (Textile Marketing  
Organisation) and Vinod Kumar  
Jain <BR> Smt. Shiksha Devi and  
Others Vs The Delhi Cloth and  
General Mills Co. Ltd. and  
Another

RESPONDENT

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**Date of Decision:** Nov. 13, 2002

**Acts Referred:**

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13, 15(6)

**Hon'ble Judges:** Swatanter Kumar, J

**Bench:** Single Bench

**Advocate:** V.K. Sharma and Raman Sharma, for the Appellant; C.B. Goel and R.C. Chauhan, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Swatanter Kumar, J.

These two revision petitions are directed against the judgment of the learned first appellate authority, Karnal under the provisions of Haryana Urban (Control of Rent & Eviction) Act, 1973, (hereinafter referred to as the Act), Karnal. As both (SIC) petitions are based on somewhat similar fact and raise common question of law, it will be appropriate to dispose of both these petition by a common judgment.

2. Om Prakash filed an eviction petition against its tenant the Delhi Cloth and General Mills Co. Ltd and Vinod Kumar, on the grounds that the tenant did not pay the rent from 1.9.1976 till date of institution of the petition at the rate of 16.50 paise per month. Secondly, that the premises has been sub letted to Shir Vinod Kumar by the Delhi Cloth and General Mills Co. Ltd. The other eviction petition was filed by one

Anand Parkash, in addition to the above grounds also, on the plea that the tenant had demolished the Chabutra in front of the shop and thus has materially impaired the value and utility of the shop. Eviction on the grounds of personal bonafide need was also sought.

3. Both these petitions were dismissed by the learned Rent Controller vide judgment dated 18th December, 1981. Aggrieved therefrom, the appellant preferred appeals before the appellate authority which also met the same fate and were dismissed, vide judgment dated 6th June, 1983. Questioning the merits and reasoning of these two judgments, the landlord has filed the above two rent petitions.

4. Undisputed facts are that originally the premises belong to the one Shri Ram, who had leased out, the premises to The Delhi Cloth and General Mills Co. Ltd. He had three children. Two petitions were filed, one by Anand Parkash Mangal, while other by Om Parkash being the heirs of deceased Sri Ram claiming their own share in the said property. However, third son of Siri Ram was not either impleaded as party to the rent petitions nor he filed an ejectment petition on any of the grounds stated in these two petitions.

5. Learned Rent Controller framed the following issues in eviction petition No. 74/RC dated 2.8.1977:-

(1) Whether the respondents are liable to be ejected on the grounds mentioned in para 3 of the petition? OPA

(2) Whether the petition cannot proceed in view of preliminary objection No.1 of the written statement ? OPA

(3) Whether Full particulars have not been given as required by rules, If so, its effect ? OPR

(4) Relief.

6. Thereafter additional issues were also framed vide order dated 1.8.1980, which reads as under:-

5-A) Whether the application is bad on account of non-claiming ejectment from the entire tenanted premises and for splitting up the tenancy as alleged in pre-objection No.2 and what is the effect of the finding arrived at in the earlier case on the present application as alleged in preliminary objection No. 2 ? OPR

5-B) Whether the application is bad for non-joinder of necessary parties as alleged in pre-objection No.3? OPR

5-C) Whether the application is bad on account of mis-joinder of parties? OPR

5-D) Whether the plan filed by the petitioners is wrong and incomplete as alleged in P.O. Para ? OPR

5-E) Whether three months notice was required to be given and what is the effect of not giving of such notice ? OPR

5-F) Whether the applicant alone cannot maintain this application and the application is in respect of tenancy premises as alleged ? OPR

5-G) If issue No.1 framed on 11.8.1977 is proved, whether respondent No.1 is not liable to pay water tax and electric charges to applicant ? OPR

7. Having afforded opportunities to the parties to the lis, learned Rent Controller dismissed the eviction petition holding that the landlord has not been able to establish any case and there was no subletting as Vinod Kumar was acting as an agent of Delhi Cloth and General Mills Company Limited. Another pertinent finding which was recorded by the Rent Controller was with regard to the petitions being incompetent on the ground of splitting of tenancy right unilaterally. It held that the entire premises was on lease to one tenant, under one lease agreement and the landlord could not split the said tenancy. The learned appellate authority while affirming the findings recorded by the Rent Controller held as under:-

"...In my opinion reference in schedule I and schedule II goods does not make any difference and it is an internal arrangement between the principal and the agent. Lot of grouse has been made that books of accounts were not produced by respdt No.2 even notice to him. Respdt. No.2 has denied that he maintained any such account books. In face of this denial, how could an inference be drawn against him. In any case RW1 an employee of the respondent No.1 had testified on the basis of the record that rent was being paid by the Co. and that the furniture had also been purchased by the Co. He also placed on record Ex. R2 and Ex. R.3 in this respect. Then again AW3 did not bring the account books because these had not been specified by the appellant. Similar was the case with OM Parkash Gupta AW\$. If the appellant did not give the necessary particulars of the books of accounts, how could he expect the witnesses to bring the same. It therefore, does not lie in his mouth to contend that account books were not being paid by the Co. I have no reasons to doubt the statement of RW1 in this respect that rent was being paid by the company.

17. Regarding insurance, RW2 has appeared and has stated that in respect of the goods including Schedule I and Schedule II insurance stands in the name of the Co. In Loon Karan Sohan Lal's case and M/s Rohtas Industries case "supra" it was on the basis of the agreement that Hon"ble High Courts came to the conclusion that a particular person was not the agent. No benefit therefore can be derived as the proposition of law laid down therein is not disputed. It is terms of the agreement which are material for coming to the conclusion as to whether there is subletting or agency. The status of the agent is that of a licensee and not a lessee as held by the Hon"ble High Court of Punjab and Haryana in Gian Wati's case supra.

18. Keeping into view the terms of the agreement as reproduced above I have therefore no hesitation in holding that respdt. No.2 was in fact an agent of respondent No.1 and there was in question of subletting. The Rent Controller was justified in returning finding on issue No. 1 against the appellant. The finding is consequently affirmed.

19. As far as issue No.5 and 5-A are concerned, the whole of the shop plus a godown, the present premises in dispute being a portion of said shop, were given on rent to respdt. No.1 at a monthly rent of Rs. 65/-. As far as godown is concerned it has come in evidence that the possession was not with the DCM at present. Whereas it is contended by the appellant that it was surrendered, the other side has stated that its possession was forcibly taken. I need not go into the question, because it has no bearing on the case. The fact, however, remains that the tenancy was of the whole shop i.e. building No. 254, half portion of which is claimed to be in the ownership of the appellant. I may also mention here that regarding the other half, the brother of appellant Anand Parkash had filed an eviction petition which was also dismissed by the Rent Controller on 18.12.1981 on the same grounds on which the present application was dismissed. The appeal against that order is also being disposed of by me separately. Since the shop is one, the tenancy cannot be considered to have been split up simply by payment of rent to three sons of the original landlord in certain proportion. For splitting of tenancy, a fresh contract was essential which is not the case of the appellant. In the three judgments cited by the Id. counsel for the respdts. (Sain Dass's case supra, Ram Dhan's case supra and Moti Ram's case supra, it has been clearly held that the court is not competent to divide the split the tenancy. Thus the Rent Controller was justified in returning the finding on issues 5, 5-A and 5.B against the petitioner. I accordingly affirm those findings.

8. The revisional jurisdiction of the High Court is a very limited one. The High Court does not sit as an appellate authority over the orders or judgments of the original order, unless and until the judgment suffers from patent infirmity of law or palpably error of jurisdiction, otherwise, the High Court would decline to interfere in its revisional jurisdiction. Another exception to the rule is that the conclusion of the court below is so perverse that no prudent person could arrive at that conclusion. Learned counsel for the petitioner was not been able to demonstrate in his submissions that the present case falls in any of those exceptions. It is not even disputed before me that two eviction petitions were filed unilaterally splitting the tenancy which apparently was not permissible in law. The predecessor-in-interest of the petitions had entered into a contract for lease in relation to the premises as a whole. The heirs of the landlord has to abide by the terms and conditions of the lease and cannot be permitted to alter or substitute the agreement unilaterally. The other grounds which were taken by the landlord were found to be factually incorrect. The agreement of tenancy exhibit A.1/1 clearly shows that it is an agreement of tenancy and possession of the premises was parted with in favour of respondent No.2 Vinod Kumar to the exclusion of Principal tenant. Different clauses

of the tenancy agreement has been referred to by the courts and the bare reading of such Clauses clearly show that Vinod Kumar was acting and performing the duties of an agent on behalf the Delhi Cloth and General Mills Co.

9. For the reasons afore-stated, the revision petitions are dismissed, leaving the parties to bear their own costs.