(1988) 08 P&H CK 0026

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 921 of 1980

Shri Mukand Lal		APPELLANT
	Vs	
Shri Gobind Lal and another		RESPONDENT

Date of Decision: Aug. 31, 1988

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13(2)(ii)

Hon'ble Judges: J.S. Sekhon, J

Bench: Single Bench

Advocate: Sanjay Majithia, for the Appellant; C.B. Goel, for the Respondent

Final Decision: Dismissed

Judgement

Jai Singh Sekhon, J.
The landlord has directed this revision petition against the order dated 1st February, 1980, of the Appellate Authority, Karnal dismissing his appeal by confirming the order of the Rent Controller.

2. In brief, the facts are that Mukand Lal landlord rented out the shop in dispute situated at Gharaunda to Gobind Lal Respondent vide rent-note, Ex. A. 1 dated 5th January, 1967, with effect from 1st January, 1967, at a monthly rent of Rs. 24/-. Aforesaid Gobind Ram is running the business of commission agent in the shop, in the dame and style of M/s Diwan Dass Rameshwar Dass. The landlord sought ejectment of the tenant from the shop in dispute on the ground of subletting a portion of the same to Respondent No. 2, i.e. Haryana Warehousing Corporation, without his written consent for a certain period- The tenant, Respondent No. 1, denied the allegations of the landlord regarding subletting. However the Warehousing Corporation admitted having taken a portion of the shop in dispute to be used as a Godown after payment of rent to M/s Jiwan Dass Rameshwar Dass on two occasions, i.e. from 3rd July, 1969 to 7th August, 1969 and 14th November to 3rd December, 1969. The learned Rent Controller dismissed the application by

holding that the tenant has not parted with the possession of the property in dispute and thus it was not a case of subletting to the Haryana Warehousing Corporation. It was further held that as both the parties agreed to enhance the rent before the Rent Controller on 24th March, 1976 in an application u/s 4 of the Act, a new tenancy came into force and the default of the tenant committed in the year 1969 regarding subletting even if taken to be true is of no consequence. In appeal, the learned Appellate Authority, Karnal, vide its impugned order partly accepted the contentions of the landlord, that it was a case of subletting, but in view of the creation of a new tenancy with effect from 1st January, 1976, the above-referred default of the tenant in the year 1969 was held to be of no consequence.

3. Mr. Sanjay Majithia, learned Counsel for the Petitioner, contended that in view of the specific provisions of Section 13(2)(ii) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, no amount of acquisance by conduct or otherwise on the part of the landlord will condone an act of subletting by the tenant as the statute provided the consent of the landlord in writing. He had placed reliance on the findings of the Court in Shambhu Datt and Anr. v. Balwant Lal (1968) 70 P. L R. 790, as well as in Kartar Singh v. Shri Vijay Kumar and another 1978 (1) R. L. R. 603. Mr. C.B. Goel, learned Counsel for the Respondent, on the other hand, admitted that a consent of the landlord in writing is required for subletting, but maintained that in the present case the findings of the Appellate Authority regarding subletting are erroneous as the tenant had not parted with the possession of any portion of the shop in dispute, as it is a simple case of allowing the Warehousing Corporation to place some bags containing grains at the shop for a few days at a rent of 6 Paise per bag per month. Reliance in this regard has been placed on the findings of the Supreme Court in Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others,

4. The law is well settled on the the point that no amount of latches and acquiesance on the part of the landlord can amount to according permission in writing to sublet the premises by the tenant. The findings of this Court in Shambhu Datt''s case (supra) and Kartar Singh''s case (supra) relied upon by the learned Counsel for the Petitioner can be referred in support of this conclusion.

5. The question then arises whether under the circumstances of this case, the tenant had exclusively parted with the possession of the portion of the shop in dispute in favour of Warehousing Corporation, The learned Appellate Authority had relied upon the statement of A W. 2 Kulbhushan, Manager of the Warehousing Corporation, who deposed having kept 85 bags of grains from 3rd July to 7th August, 1969 at Godown No. 22, i.e. in a portion of the shop in dispute at the rate of 6 Paise per bag. He further deposed that from 14th November to 3rd December, 1969, 1500 bags of grains were kept in Godown No. 31, i.e. a porn on of the shop in dispute at the above referred rate. He also proved the relevant entries in the original record, copies of which are Exhibit A.W. 2/1-2, besides proving Ex. A.W. 2/3 and Ex. A. W. 3/4 copies of the receipts for payment of rent to the above referred firm of the

tenant. No doubt, the tenant simply denied having sublet a portion of the shop in dispute to the Ware Housing Corporation, but under the circumstances of the case, this denial on the part of the tenant is not of much consequence as in his heart of hearts, he thought that the act of allowing the Ware Housing Corporation to place some bags of grains on a portion of the shop in dispute, would not amount to subletting. It is noteworthy that the shop is being used for running an Arhtia business of commission agent business and the perusal of the plan, Exhibit A. 5 shows that it comprises of two rooms in the front with opening at the G.T. Road passing through Gharaunda, while there is a big hall at the back of these two rooms and again a big hall and then there are two rooms which in turn lead to a regular Verandah Then there is another improvised Verandah having roof of C.G.I. sheets. Thereafter, there is open place it is noteworthy that the only access to the building is through the front two rooms. The landlord has not elicited from A.W. 2 Kulbhushan as to whether a room was specifically rented out to the Ware Housing Corporation for placing the above referred bags during the relevant period. It is not even stated by Shri Kulbhushan or Shri Senapati, A.W. 3 a Mechanic of the Ware Housing Corporation, who used to work as a peon in the office of the Corporation at Gharunda during the relevant period, that a separate room was taken on rent by the Corporation and it remained under the lock and key of the Corporation. Under these circumstances it cannot be said by any stretch of imagination that the tenant had parted with the exclusive possession of a portion of the shop in dispute, especially when the rent was being charged on the basis of the number of stacked bags. It appears to be a case of that type where the Ware Housing Corporation after purchasing of some grains from the Ahrtia''s shop of the tenant had allowed the same to remain on the premises of the tenant for a few days only before transporting the same to its regular Godowns and the tenant had retained the right of re-possession of this portion This view is supported by the findings of the Supreme Court in Jagan Nath''s case (supra). In that case, it was held that the tenant cannot be said to have parted with the possession of the property so long as the tenant retained the legal possossion or in order words, there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession, there is no parting with possession in terms of Clause (b) of Section 14(1) of the Delhi Rent Control Act. The wording of the said section are the same as the corresponding wording of Section 13(2)(ii) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 Under these circumstances, the findings of the Appellate Authority are not legally sustainable.

6. There is, however, considerable force in the contention of the learned Counsel for the Petitioner that the mere increase in the rent would not amount to creating a new or fresh tenancy as held by the Supreme Court in Goppulal v. Takurji Shriji Shriji Dwarkadheeshji 1969 R.C.J. 442. In the above referred authority, the controversy was whether clubbing of the rent of six shops in the year 1953, four out of which

was rented in the year 1944 and the other two in the year 1945, would amount to creation of a new tenancy, as held by the High Court in connection with subletting of two shops without the permission of the Landlord. Under these circumstances, while upsetting the findings of the High Court in this regard in para 4 of the judgment, it was held that mere increase or reduction in rent does not necessarily means the surrender of the existing lease and the grant of a new tenancy. Reference was made to Article 385, page 493 of 14th Edition of Hill and Redman''s law of landlord and tenancy, which ran as under as quoted in the said judgment:-

But a surrender does not follow from a mere agreement made during the tenancy for the reduction or increase of rent, unless there is some special reason to infer a new tenancy, where, for instance, the parties make the change in the rent in the belief that the old tenancy is at an end.

In the case in hand, the original tenancy was created vide rent-note, Ex A1 dated 5th January, 1967, with effect from 1st January 1967 for a period of eight months. There is no dispute between the parties that after the expiry of this period, this tenancy continued by way of so called statutory tenancy. There are other stipulations in the rent note like that the landlord will be responsible for effecting repairs at his expense, but the cleanliness had to be maintained at the expense of the tenant, and that the tenant will himself reside therein and would not rent it out in favour of any person, besides that the expenses on account of electric supply will be borne by the tenant. Thus, none of these terms can be said against the provisions of the Act and would remain in force even after the coming into existence the so-called statutory tenancy The findings of the Full Bench of Bombay High Court in Ratanlal Chandiprasad Jalan and Ors. v. Raniram Darkhan and Ors. 1986 (2) R.L.R. 272, can be safely referred in this regard. In that case the controversy related to the right of statutory tenancy to sublet the building after the expiry of the contractual tenancy, wherein such a stipulation was there. Under these circumstances, it was held that the sub-tenancy by the tenant will be permissible even after the expiry of the contractual tenancy. Our own High Court in Dalip Chand and Ors. v. Rajinder Singh and Ors. (1962)90 P.L.R. 497, had taken a similar view

7. The question then arises whether, a new tenancy has been created by the conduct of the landlord and the tenant in arriving at a compromise before the Rent Controller enhancing annual rent with effect from 1st January, 1976, as evidenced by fix. D 1 for fixing the fair rent under the provisions of Section 4 of the said Act, in an application filed by the landlord. There is no indication from the joint statement, Exhibit D. 1, recorded on 24th March, 1976 by the Rent Controller, of the parties whether they had entered into a new contract of tenancy or had rescinded the terms of the original tenancy. Under these circumstances, it has to be presumed that an agreement between the parties regarding enhancement of rent only would not amount to creation of a new tenancy or novation of a contract. Supposing for the sake of argument that if the parties had not consented to enhance the rent and

the Rent Controller had passed such order, it would not have amounted to novation of contract and simply because the Rent Controller bad done so with the consent of parties, it cannot be said by any stretch of imagination that this has resulted in creating a fresh tenancy. The findings of our own High Court in Santosh Kumari Passi v. Smt. Kamla Wati (1987) 92 P.L.R. 367, are not attracted to the facts of the present case. In that case, the initial contract between the parties was to pay the rent in advance, but subsequently in the year, 1974 the rent was increased to Rs. 150/- from Rs. 120/-per month and the landlady in her application had not set up a case that the tenant was liable to pay rent in advance. Under these circumstances, it was held that a new tenancy has come into existence since the year, 1974 and the terms of original contractual tenancy regarding the payment of rent in advance cannot be enforced. Thus, the findings of the Appellate Authority regarding the creation of a new tenancy being unsustainable are set aside.

8. For the foregoing reasons, even though it has been found that no new tenancy was created simply by enhancement of rent, but all the same in view of the above referred findings regarding subletting, this revision petition fails and is hereby dismissed However, the parties are left to bear their own costs in view of the peculiar circumstances of the case.