

## Smt. Banti Vs M/s. Pacific Enterprises

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

**Date of Decision:** Jan. 17, 2001

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Section 47  
East Punjab Urban Rent Restriction Act, 1949 â€” Section 13

**Hon'ble Judges:** V.K. Jhanji, J

**Bench:** Single Bench

**Advocate:** Mr. A.K. Chopra, for the Appellant; Mr. Arun Jain, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

V.K. Jhanji, J

1.This revision petition against order dated 4.8.1997 whereby objection petition field by the respondent NO.2, namely, M/s. Deepak Radios has

been accepted and it has been held that it cannot be evicted in execution of decree dated 1.6.1990 passed on civil suit No. 34 of 11.6.1982.

2. In brief, the facts are that Shander Singh and others (hereinafter referred to as decree holders) hare owners of SCO Nos. 73-74-75, Section

17-D, Chandigarh. Vide rent agreement dated 13.3.1978, decree-holders let out ground floor area measuring 20ft.x40ft. to M/s. Pacific

Enterprises (hereinafter referred to as judgment-debtor). Rent was fixed at Rs. 3,000/- per month. Rent agreement specifically provided that the

tenant shall not sub-let or part with possession of the said tenanted premises or any portion thereof to any person. On expiry of the tenancy period,

judgment-debtor did not vacate the premises and that led to filing of civil suit No. 34 of 11.6.1982, titled as Shander Singh and others v. Pacific

Enterprises, for possession of the tenanted premises on the basis of valid notice to quit. Judgment-debtor preferred civil appeal NO. 163 dated

27.7.1990. Appeal remained pending for a period of six years when on 23.1.1996, by making a statement, judgment-debtor got it dismissed as

withdrawn. After dismissal of the appeal, decree-holders in order to recover possession in pursuance of ejectment decree dated 1.6.1990, filed an

execution application praying that warrants of possession in respect of the tenanted premises be issued and possession be got delivered. It is at this

stage that M/s. Deepak Radios (hereinafter referred to as objector) filed objections against execution of ejectment decree dated 1.6.1990. It took

the following pleas:-

(i) that its status is not of a sub-tenant.

(ii) that it came in possession of the premises in question in December, 1979 as a partner of the judgment-debtor.

(iii) that its status is that of an actual tenant and not of a sub-tenant.

3. Objector further pleaded that the decree-holders colluded with the judgment-debtor with an intention to evict it and for that matter, it was not

made a party to the suit, though it was a necessary and proper party. In reply to the objection petition, decree-holders submitted that they never

inducted objector as their tenant or sub-tenant. Decree-holders denied that the objector was an authorised or actual tenant under the decree-

holders. It was also denied that there any collusion between the judgment-debtor and the decree-holders. Vide order dated 3.9.1996, executing

Court held that the objector was neither an actual tenant nor an authorised sub-tenant. Possession of the objector was found to be on account of

some arrangement entered into between the judgment-debtor and the objector and so, its status qua the demised premises was held not better than

that of a licensee. Executing Court further held that any arrangement between the objector and the judgment-debtor will have no effect on the rights

of the decree-holders to take possession of the premises in execution of decree dated 1.6.1990. Objection petition, thus, was dismissed. Against

order dated 3.9.1996, objector preferred Civil Revision No. 3657 of 1996 in this Court. In the revision petition, objector submitted that the

executing Court did not give any opportunity to prove its case. On 24.1.1997, when the revision petition came up for hearing before me, counsel

appearing on behalf of decree-holders stated that the decree-holders shall have no objection if the case is remanded to the executing Court for

deciding the objection petition afresh after giving an opportunity to the objector to prove its case. In view of the stand taken by the counsel for

decree-holders, the case was remanded to the executing Court to decide the objection petition within six months. It is in pursuance of order dated

24.1.1997 passed Civil Revision NO. 3657 of 1997 that the executing Court framed necessary issues and gave an opportunity to the parties to

lead evidence . After the parties led evidence, executing Court on appreciation of the same, vide order dated 4.8.1997, allowed the objection

petition and held that decree dated 1.6.1990 cannot be executed against the objector.

4. In order to hold that decree against the objector is inexecutable, executing Court has held objector to be an authorised sub-tenant. It also held

that ejectment order was got passed in collusion with the judgment-debtor. It is this order which is under challenge in the present revision petition.

5. On perusal of the record and hearing the learned Counsel for the parties, I am of the view that order of the executing Court is against facts

proved on record and thus, is not sustainable in law. In the objection petition, it was never the case of the objector that its possession was that of

an authorised sub-tenant. It was also not its case that during the continuance of tenancy, decree-holder ever permitted the judgment-debtor to sub-

let the tenanted premises or any part thereof. In the objection petition, objector had taken different stands in regard to its status. At one place, it

said that it came in possession of the premise in December, 1979 as a partner of judgment-debtor. At another place, it took the plea that its status

is that of an actual tenant. Yet in para 2, it said that its possession cannot be said to be of an unauthorised sub-tenant. As a matter of fact, the

evidence brought on record has revealed that the objector came in possession of part of the tenanted premises on account of a secret arrangement

between it and the judgment-debtor. Rent agreement dated 13.3.1978 specifically prohibited the tenant to let out the premise or part thereof to

anyone else. In order to avoid eviction on the ground of sub-letting, judgment-debtor and the objector entered into a partnership on 1.12.1979.

The said partnership deed provided that the judgment-debtor would contribute an area measuring 17 ft.x 20 fit, i.e. part of the tenanted premises

to the objector to run business under the name and styled of M/s. Deepak Radios. It also provided that objector shall pay Rs. 2,000/- per month

to the judgment-debtor. The evidence on record has further revealed that after entering into partnership a dispute arose between the judgment-

debtor and the objector. It led to filing of two suits by the judgment-debtor. First suit was for mandatory injunction directing the objector to vacate

the premises in his possession. In the said suit, judgment-debtor alleged that objector was allowed to use the premises on the basis of partnership

deed dated 1.12.1979 and the permission to use the premises was only as a licensee. It was alleged that the partnership had been dissolved and

thereafter, objector has no right to remain in occupation of the premises. In the written statement file in the said suit, objector took the plea that

partnership was a fake document. It was also stated that judgment-debtor has no right to seek eviction of the objector except to receive Rs.

2,000/- per month for allowing it to run business in part of the tenanted premises. Second suit filed by the judgment-debtor was for recovery of

arrears of amount at the rate of Rs. 2,000/- per month which objector had agreed to pay to the judgment-debtor under partnership deed dated

1.12.1979. Vide judgment dated 13.10.1984, suit for mandatory injunction was dismissed. whereas vide judgment dated 27.10.1987, suit for

recovery of the amount was decreed. Two appeals were preferred; one by the judgment-debtor against judgment and decree dated 13.10.1984

passed in suit for mandatory injunction and second by the objector against judgment and decree dated 27.10.1987 passed in the suit for recovery

of the amount. Appeal filed against judgment and decree dated 13.10.1984 was dismissed by Shri H.L. Randev, District Judge, Chandigarh, vide

judgment dated 15.1.1987, holding that partnership deed dated 1.12.1979 was adopted as a camouflage for renting out part of the tenanted

premises to the objector because sub-letting the premises would have afforded a cause to the landlords (decree-holders) for seeking eviction of

the judgment-debtor from the tenanted premises. He thus, held that judgment-debtor had inducted the objector as a sub-tenant and so, he is not

entitled to the relief of mandatory injunction. The other appeal filed against judgment and decree dated 27.10.1987 was allowed by the Additional

District Judge, Chandigarh, vide judgment dated 12.1.1994. He held that partnership deed dated 1.12.1979 which was made the basis of the

claim by the judgment-debtor against the objector, has already been declared to be a fake document which was executed only to cover a

transaction of sub-letting and therefore, it cannot be relied or acted upon and no relief on the basis thereof could be granted to the judgment-

debtor. The afore-mentioned litigation between the judgment-debtor and the objector clearly shows that arrangement between them was in order

to cover up transaction of sub-letting, to which decree-holders were not party. As noticed earlier, rent agreement between the decree-holders and

the judgment-debtor clearly stipulated that the premises shall not be sub-let and it is only to get over this clause of the rent agreement and to avoid

eviction on the ground of sub-letting, that a secret arrangement by way of partnership deed was entered into between the objector and the

judgment-debtor to which the decree-holders were not a party. This being the evidence, in my view, the executing Court fell in error to hold

objector to be an authorised sub-tenant.

6. The other finding of the executing Court that the plea of the decree-holders that objector had come in possession of the premises without their

written consent was not accepted by the Rent Controller is also against the record. The executing Court gave this finding on the basis of three rent

petitions filed by the decree-holders against the judgment-debtor and the objector on the ground of arrears of rent and sub-letting. One petition

was dismissed in default and other two were withdrawn. Perusal of the rent petitions filed u/s 13 of the East Punjab Urban Rent Restriction Act

shows that the same were filed during the pendency of the civil suit. In the said rent petitions, it was specifically mentioned that the same were being

filed without prejudice to the rights of the decree-holders in the pending civil suit. In fact the said petitions were not maintainable because civil suit

for ejectment was already in progress and issue No. 1 therein was "whether the premises in dispute are exempted from the application of East

Punjab Urban Rent Restriction Act, 1949". Sub Judge I Class, Chandigarh vide judgment dated 1.6.1990, decided the said issue in favour of the

decree-holders and held that the building in question was exempted from the provisions of the Rent act. Two rent petitions were got dismissed as

withdrawn after the rent was tendered. While withdrawing the rent petitions, counsel for decree-holders made a statement that the same were

being withdrawn because of pending suit for eviction. The third rent petition was got dismissed in default. It is also worth noticing that in writing

statement dated 1.12.1982 filed by the objector in response to the rent petition filed by decree-holders, the plea taken by it was that it is in

occupation of the premises along with the judgment-debtor and not as a sub-tenant. It also objected to its impleadment as party to the rent petition.

Para 3 of the written statement filed by objector reads as under:-

That para 3 of the petition is not correct and is not admitted. The answering respondent not in occupation of any part of the premises in disputed

building as alleged as sub-tenant under respondent No.1. The answering respondent has been impleaded as a party wrongly. There is also no

question of his making payment of any rent to the petitioner since the rent is payable by the respondent No. 1 only. The answering respondent has

no knowledge if the said respondent No. 1 is in arrears of rent.

7. The plea of the objector throughout in the litigation either with the judgment-debtor or State Government had never been that it is in occupation

of premises as an authorised subtenant. As a matter of fact, the finding of the two courts in the civil suits between the judgment-debtor and the

objector had been that objector was put in possession by the judgment debtor without consent of the decree-holders and the arrangement in the

shape of partnership deed dated 1.12.1979 between them was to avoid eviction on the ground of sub-letting. The Rent Controller seized of the

rent petition never recorded any finding that the objector was a sub-tenant and, therefore, the finding of the executing Court to the contrary is not

correct.

8. The next question to be considered is whether decree for eviction was obtained by the decree-holder in collusion with the judgment-debtor. The

answer is NO. Civil Suit NO. 133 of 1982 was filed on 9.5.1982. It was hotly contested by the judgment-debtor and after a protracted trial, Sub

Judge I Class, Chandigarh, passed decree for eviction against judgment-debtor on 1.6.1990. Judgment-debtor preferred an appeal against the

said judgment and decree, which remained pending for nearly six years when on 23.1.1996 it was got dismissed as withdrawn. In my view, the suit

which was contentious one in its inception does not cease to be as such simply because the defendants who had lost in the trial Court had chosen

to withdraw the appeal. It will not prove that there was any collusion between the plaintiff and the defendant and that any dishonest purpose was

intended to be achieved. In this regard, the matter is squarely covered by a judgment of the Supreme Court in *Rup Chand Gupta Vs. Raghuvanshi*

*Private Limited and Another, .* In the case before the Supreme Court, a landlord brought suit against his lessee after serving valid notice to quit but

without impleading sub-lessee as defendant. The lessee did not contest the suit in pursuance of his agreement with the landlord and an ex parte

decree was passed. The sub-lessee thereupon brought a suit against the landlord and the lessee for a declaration that he is not bound by the

decree which had been obtained by collusion between the defendants in order to injure the plaintiff and to evict him from the premises without a

decree being passed against him. The suit was dismissed on the ground that the plaintiff had failed to establish collusion. When the matter came up

before the Supreme Court, their Lordships of the Supreme Court held that the suit was rightly dismissed. It was held that the mere fact that the

defendant agreed with the plaintiff that if a suit is brought he would not defend it, would not necessarily prove collusion. It is only if this agreement is

done improperly in the sense that a dishonest purpose is intended to be achieved that they can be said to have colluded. In para 12 of the

judgment, their Lordships of the Supreme Court observed:

It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee for possession of the land

on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to

eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-

lessee. This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-lease. the law allows this and so

the omission cannot be said to be an improper act.

9. The facts of the present case stand on a much better footing than the facts of the case before the Supreme Court. In the case before the

Supreme Court, there was a ex parte order of eviction whereas in the present case, suit was hotly contested by the judgment-debtor and it

remained pending in the trial Court for 8 years and first appeal remained pending for nearly 6 years, meaning thereby that decree-holders could

obtain an eviction order after a protracted trial 14 years. This being the case, the finding of the executing Court that the law of estoppel, acquiescence

and waiver is applicable to the facts and circumstances of this case, too cannot be sustained.

10. For the reasons recorded above, the revision petition is allowed with cost and order of executing Court set aside. Executing Court is directed

to issue process without any further delay for enabling the decree-holders to take possession of the tenanted premises in execution of the decree.

Costs are quantified at Rs. 10,000/-