

**(2006) 07 P&H CK 0196**

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

**Case No:** C.R. No. 5495 of 1997

Murari Lal and Others

APPELLANT

Vs

Amar Lata

RESPONDENT

**Date of Decision:** July 7, 2006

**Acts Referred:**

- East Punjab Urban Rent Restriction Act, 1949 - Section 13

**Citation:** (2006) 4 CivCC 715 : (2006) 4 RCR(Civil) 815 : (2006) 2 RCR(Rent) 340

**Hon'ble Judges:** S.S. Nijjar, J; Ajai Lamba, J

**Bench:** Division Bench

**Advocate:** Amit Jain, for the Appellant; M.L. Jain with Ms. Alka Sarin, for the Respondent

**Final Decision:** Dismissed

**Judgement**

S.S. Nijjar, J.

This revision petition has been admitted to D.B. as there is a conflict of opinion expressed in different Single Bench judgments of this Court, on a question of law. The question of law can be stated as follows:-

"Does the ground of subletting without the written consent of the landlord, survive for seeking eviction of the sub-tenant on the death of the original tenant, during the pendency of the eviction proceedings?"

2. We may notice the relevant facts to illustrate how the question of law involved in this revision petition arises.

3. One Sudhir Kumar, the original landlord filed Rent Petition No.95 of 11.9.1982 u/s 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as "the Rent Act"), for ejectment of Khushi Ram and Murari Lal from the portion of property No.B.IV-448, Chhota Dal Bazar, Ludhiana consisting of six rooms, two bath rooms, open terrace with open space in front of room on first floor and a Barsati and now converted into a room of two portions and terrace in front of on the

second floor alongwith right; to use stair-case as shown red in the plan attached and bounded as under-North : Dal Bazar South : Property of Chand Lal East: Property of Gujar Lal West: Property of Gulzar Singh

4. During the pendency of the petition, Sudhir Kumar died. He was survived by his widow Reenu Bala, daughter Amar Lata wife of Jagdeep Chander and son Master Dhruv Kumar (minor). The demised premises had been given on rent to Khushi Ram son of Mula Ram, who had two brothers. Girdhari Lal and Murari Lal. Khushi Ram died on 15.12.1983, leaving behind Krishna Devi, his widow who also died on 29.7.1993. Girdhari Lal died on 26.8.1995 and was survived by his widow Raksha Rani and son Viney Kumar. Murari Lal also died on 18.7.1998. He is survived by Naresh Kumar and Ramesh Kumar. The Rent Controller decided the Eviction Petition"on 31.5.1989. The Eviction Petition was accepted and an order of eviction was passed in favour of the landlords and order of the Rent Controller (sic) by filing MCA No.1 1 of 31.7.1989 before the Appellate Authority. By judgment dated 9.12.1997, the Appellate Authority upheld the findings recorded by the Rent Controller and ordered the eviction of the tenants. The tenants, namely, Murari Lal, Raksha Rani (widow of Girdhari Lal) have filed this Revision Petition challenging the judgment of the Rent Controller dated 31.5.1989 and the judgment of the Appellate Authority dated 9.12.1997.

5. As noticed above, during the pendency of the petition, Sudhir Kumar, the original landlord died. His legal heirs Amar Lata, Reenu Bala, Master Dhruv Kumar (minor) were impleaded as the landlord-petitioners. The original tenant Khushi Ram also died on 15.12.1983 and his widow Krishna Devi was impleaded as respondent to the eviction petition. During the pendency of the appeal, Krishna Devi died on 29.7.1993. Khushi Ram and Krishna Devi died issueless. Girdhari Lal was brought on record as her legal representative. But Girdhari Lal also died on 26.8.1995 and his LRs Raksha Rani (his widow) and Viney Kumar (his son) were brought on record. At that stage, Murari Lal moved an application through his counsel for bringing on record subsequent events. It was pleaded that on the death of Khushi Ram and Krishna Devi, who died issueless, the inheritance of the tenancy rights will be governed by Section 15(2)(b) of the Hindu Succession Act, 1956. Since Khushi Ram was having only Class II heirs and since Murari Lal was the brother of the deceased, Khushi Ram, therefore, tenancy rights in the property had been inherited by him. He, therefore, became a tenant in the demised premises in his own right. On the basis of this, it was argued before the Appellate Authority that since Murari Lal had become a direct tenant in the demised premises, ground of subletting was no longer available to the landlord for seeking the order of eviction. At this stage, Girdhari Lal gave a further twist of the tale. He claimed that Krishna Devi had executed a will in his favour on 24.6.1987. On the basis of the will, he made an application during the pendency of the Appeal for being impleaded as a party. He claimed that since he was the legatee under the will of Krishna Devi, the tenancy rights would devolve on him and not Jo Murari Lal. On the other hand, it was argued

on behalf of Murari Lal that statutory tenancy rights cannot be bequeathed by a will. The Appellate Authority has held that the tenancy rights can be bequeathed by way of a will. It was further held that since the tenancy rights had been inherited by Girdhari Lal, Murari Lal cannot be said to become a tenant in the demised premises.

6. On the issue of subletting, the Rent Controller, on appreciation of the evidence, had come to the conclusion that the tenanted premises have been sublet by Khushi Ram and Krishna Devi to Murari Lal, without the consent of the landlord. This finding of the Rent Controller was affirmed by the Appellate Authority. The present revision petition has been filed by Murari Lal son of Mulla Ram, Raksha Rani widow of Girdhari Lal and Viney Kumar son of Girdhari Lal. It is in these circumstances, at the question of law formulated at the threshold of this judgment has arisen.

7. We may, at this stage, notice the pleadings and the evidence which was produced before the Rent Controller. The landlord was initially seeking eviction of the tenants on three grounds, namely, (i) non-payment of rent at the rate of Rs.60 per month from 1.10.1979, (ii) bona fide personal necessity, and (iii) material impairment in the value and utility of the demised premises. However, subsequently, an amended petition was filed and the ground of subletting was added. It was pleaded that Khushi Ram has sublet and transferred his tenancy rights in favour of Murari Lal who is in actual occupation of the property in dispute. Subletting has been created by Khushi Ram in favour of Murari Lal, without the consent in writing of the petitioner or the previous owner/landlord.

8. In the joint written statement, the tenants had taken preliminary objections, inter alia, that the petitioners did not require the premises in dispute for their bona fide personal necessity. The petition is liable to be dismissed on the ground that the petitioners had admitted in the previous "proceedings between the parties in the Court of Shri H.P.Handa that the property in dispute is Joint Hindu Family property and that the petitioner was one of the landlords. On the other hand, the petition had been filed by Sudhir Kumar claiming to be exclusive owner and landlord. It was further claimed that Khushi Ram is the real brother of Murari Lal. Khushi Ram was suffering from heart trouble and hypertension. Therefore, Murari Lal was occupying the premises with him as his licensee under him and has continued in possession after Khushi Ram's death. It was also pleaded that the licence is continuing as the widow of Khushi Ram, Krishna Devi was also ailing and that she was issueless. Murari Lal was looking after his ailing sister-in-law. On merits, it has been pleaded that rent was duly paid which is evident from the fact that the rent received by the petitioner was attached by the Income Tax Department u/s 226(5) of the Income Tax Act of 1961, dated 13.1.1981. This notice was duly served on Khushi Ram. Therefore, the rent was duly paid upto 30.6.1982. The same plea was taken with regard to the payment of house tax. But for some time, house tax was not remitted to the Income Tax Authority under attachment when the present petition had been filed. On pleadings of the parties, the Rent Controller framed the following issues?

1. Whether tender as invalid? OPA
2. Whether respondent No.1 has sublet the demised premises to respondent No.2 without the written consent of the petitioner? OPA
3. Whether the respondent has impaired the value and utility of the demised premises? OPA
4. Whether the petitioner requires the demised premises for his bona fide personal necessity? OPA
5. Whether the petition is not maintainable in view of the preliminary objection Nos.1,2 and 3? OPR.

6. Relief.

9. The Rent Controller decided issue No. 1 against the landlord and held that the tender of rent had been validly made. On issue No.2, it has been held that Khushi Ram, deceased transferred the possession of the demised premises to Murari Lal without the consent of the landlord. The issue has, therefore, been decided in favour of the landlords and against the tenants. Issue Nos.3 and 4 were given up by the landlords. Issue No.5 was held to be redundant as the landlord did not press the ground of personal utility. No separate finding was recorded on the basis of paragraph 3 of the Preliminary Objections, in view of the conclusion that Khushi Ram deceased had transferred the possession of the demised premises to Murari Lal, without the consent of the landlord. The findings of fact recorded by the Rent Controller have been affirmed by the Appellate Authority.

10. Mr. Jain vehemently argued that the findings of fact recorded by the courts below are based on the misreading of evidence. According to the Learned Counsel, both the courts below have ignored Ex. R2 and R3 which would show that the rent which was payable by Khushi Ram had been attached by the Income Tax Department. He further argued that there was no evidence to show that Khushi Ram was not in possession. On the basis of the evidence which is on record, both the courts below have come to the conclusion that subletting has been established. In these circumstances, the High Court would have to examine the record to satisfy itself that the findings of fact recorded by the courts below are not perverse and are based on the material as well as the evidence on record. Learned Counsel submits that whether or not the premises have been illegally sub-let is a conclusion on question of law which can only be derived from findings based on material on record as to the transfer of exclusive possession for consideration. In support of this submission, Learned Counsel has relied on the judgments of the Supreme Court in the case of *Resham Singh v. Raghbir Singh*, 1999 ACJ 251 (S.C.): 1999 (2) RCR (Rent) 216 (S.C.). Learned Counsel also relied on the judgments rendered in the case of *Muni Lalv. Lekh Raj*, 2001 (1) RCR (Rent) 608 (P&H) (V.S. Aggarwal, J.), *Bhagwan Doss (died) through LRs. v. Ramesh Kumar*, 1999 (2) RCR (Rent) 586 (P&H), *Arshad Ali v. Kailash*,

1998 (1) RCR 618 (P&H) (V.S.Agarwal, J.) and KalaDevi and another v. Madho Parshad Vaidya, 1998 (2) RCR 279 (SC).

11. Mr.Sarin, however, submits that both the courts below have given concurrent findings of fact. There is conclusive evidence to show that neither Khushi Ram nor Krishna Devi ever lived in the demised premises. Therefore, the judgments cited by Mr.Jain would not be applicable to the facts and circumstances of the present case. He submits that the scope and ambit of the power of this Court while exercising jurisdiction u/s 15(5) of the Act is very limited. According to the Learned Counsel, the findings of fact recorded by the courts below can only be reversed by the High Court in case of perversity of findings which are not based on the evidence on record. In support of the submission, learned Sr.Counsel relies on the judgment of the Supreme Court in the case of [Dev Kumar \(Died\) through LRs. Vs. Smt. Swaran Lata and others,](#)

12. In view of the submissions made by the Learned Counsel, it would be appropriate to deal with the findings of fact recorded by the courts below, before we deal with legal issue. On issue No.2, the landlords had pleaded that Khushi Ram and subsequently, his wife, Krishna Devi had sublet the demised premises to Murari Lal without their consent. In reply, Murari Lal had pleaded that Khushi Ram and his brothers Murari Lal and Girdhari Lal constituted a Hindu Undivided Family. Khushi Ram was issueless. Murari Lal was living with Khushi Ram and Krishna Devi who had renounced the world. In other words, Khushi Ram, Krishna Devi, Murari Lal and his family were said to be residing in the premises as members of the Joint Hindu Family. The landlord Sudhir Kumar was examined as AW4. He stated that Murari Lal had taken possession of the disputed property during the lifetime of Khushi Ram who had started living in Ahata Kalyan Hosiery Factory. He had further stated that Krishna Devi is living with her husband. The Rent Controller has held that the evidence of Sudhir Kumar could not be discredited during cross-examination. The tenants examined one Rattan Chand. He supported the story of Khushi Ram that Murari Lal was living with him and his wife in a Joint Hindu Family. The evidence given by the tenants was critically examined and disbelieved by the Rent Controller. During the evidence, it had come on record that Krishna Devi had executed a power of attorney in favour of Girdhari Lal. In his power of attorney, Girdhari Lal had been asked to look after Khushi Ram. In the power of attorney, Krishna Devi had been shown to be resident of Bazar Sarafa c/o Kalyan Hosiery Mills. The tenanted premises in dispute was situated in Chhota Dal Bazar. From this fact, the trial court concluded that Murari Lal was not looking after Khushi Ram or Krishna Devi and that Krishna Devi was not residing in the disputed premises. Even Girdhari Lal, in his cross-examination stated that Krishna Devi never cast her vote on the address of the disputed house. He also added that Khushi Ram used to cast his vote on the address of Kalyan Hosiery Mills and that in the voter-list, only the names of tenanted premises, Khushi Ram and his wife was not included. The Rent Controller has carefully considered the evidence given by Murari Lal. He stated in his cross-examination that he has a ration card on the address of the demised

premises. He further stated that this ration card does not include the name of deceased Khushi Ram and his wife Krishna Devi. He further stated that he did not remember whether Khushi Ram had a ration card on this address during the last 10 to 15 years. Murari Lal went on to state that the names of Khushi Ram and his widow Krishna Devi were never included in the voter list at the address of the disputed premises. Murari Lal was unable to produce even the single letter which Khushi Ram might have received from the post office at the disputed address. Taking into consideration the entire evidence, as noticed above, the trial court came to the conclusion that Khushi Ram and Krishna Devi had completely abandoned the possession of the demised premises.

13. The Appellate Authority re-examined the entire evidence and re-appreciated the same as narrated by us above, and accepted the findings of the Rent Controller. The Appellate Authority noticed another very important document i.e. a power of attorney executed by Krishna Devi on 5.1.1984 soon after the death of Khushi Ram. In this, she gave her address as "Krishna Devi wife of Khushi Ram Verma resident of 34 Rai Bagh, Srinagar, Jammu and Kashmir and as daughter of late Roop Lal Behl Tehsildar, J&K, now residing at Bazar Sarafan C/o Kalyan Hosiery Milis, Ludhiana". The Appellate Authority, therefore, noted that even during the pendency of the rent application, Krishna Devi had made an admission in the Power of Attorney which clinches the issue, that she did not reside in the premises in dispute. The premises were in exclusive possession of Murari Lal-respondent No.2. Even Murari Lal when he appeared as a witness, stated that Khushi Ram had died at Sri Nagar. His dead body was brought to Ludhiana and it was kept at the Ahata Kalyan Hosiery from where it was taken to the cremation ground. The Appellate Authority, therefore, affirmed the findings of the Rent Controller that the premises had been sublet to Murari Lal without the consent of the landlord.

14. We have considered the entire matter at length and perused the entire record. We are of the opinion that findings of the Rent Controller and the Appellate Authority on issue No.2 cannot be said to be either perverse or based on no evidence. The judgments of the courts below do not suffer from any material irregularity, in recording the findings of fact on issue No.2. We, therefore, do not find any merit in the submission of Mr.Jain and uphold the findings of fact recorded by the Rent Controller as well as the Appellate Authority on issue No.2.

15. We may also notice that the landlords had filed cross-objections before the Rent Controller which were dismissed. The legality of the findings of the Rent Controller on this issue was also examined by the Appellate Court. It was held that the cross-objections are not maintainable. However, since both the counsel have not addressed any arguments on this issue, the matter need not be considered any further.

16. The law with regard to the scope and ambit of the power and revisional jurisdiction of this Court u/s 15(5) of the Act has been well settled that has been

amply demonstrated in a catena of judgments which have been relied upon the Learned Counsel for the parties. We may now consider the judgments cited by the Learned Counsel for the parties.

17. In the case of Resham Singh (supra), the Supreme Court upheld the judgment of the High Court by which the judgments of the Rent Controller and the Appellate Authority were set aside. The Revision Petition was allowed holding that there was no subletting and the respondents were not defaulters. In that case, commercial premises had been sublet to one Raghbir Singh. It was alleged that he had sublet the same to his brother Kuldip Singh. Both the courts had ignored the undisputed fact that Raghbir Singh and Kuldip Singh were brothers and the tenant Raghbir Singh was involved in some criminal proceedings. He was absconding for a considerable period. Therefore, it was not possible for him to be physically present in the tenanted premises. He, therefore, allowed his brother Kuldip Singh to look after the shop. Inspite of these facts, it had been held by the courts below that subletting had been established. In these circumstances, the Supreme Court has held as follows:

"4. It has been urged that sub-section (5) of Section 15 of the Act does not empower the High Court to set aside the findings of fact. The said sub-Section is quoted below:

"(5) The High Court may, at any time, on the application of any aggrieved party or in its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceeding and may pass such order in relation thereto as it may deem fit."

5. The question of subletting is a conclusion on question of law derived from the findings on materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration. While considering the said subsection (5) the above view was also expressed by this Court in [Dev Kumar \(Died\) through LRs. Vs. Smt. Swaran Lata and others,](#)

6. Sub-section (5) empowers the High Court either on application or in its own motion to call for an examination of the record for the purposes of satisfying itself as to the legality and propriety of such orders or proceedings. In view of the above language of sub-section (5) we find that the High Court while exercising powers under subsection (5) of Section 15 of the Act has got the powers to satisfy itself as to whether the question of sub-letting which is a question of law was properly decided by the courts below. From the impugned judgment of the High Court, we find that the Court did not rightly find ingredients of sub-letting. We, therefore, hold that the High Court was justified in setting aside the judgments of the courts below.

7. It is settled position of law that to establish sub-letting the onus is on the landlord to prove through evidence that sub-tenant was in exclusive possession of the

property in question; that between the sub-tenant and the tenant there was relationship of lessee and lessor and that possession of the premises in question was parted with exclusively by the tenant in favour of the sub-tenant (See Kala Devi and another v. Madho Parshad Vaidya, 1998(2) RCR(Rent) 279 (SC) and [Benjamin Premanand Rawade \(Dead\) by Lrs. Vs. Anil Joseph Rawade,](#)

18. In view of the clear findings, on Issue No.2, given by the Rent Controller and the Appellate Authority, this judgment would be of no avail to the petitioner. Both the Courts on due appreciation of the entire evidence have come to the unequivocal conclusion that Khushi Ram and Krishna Devi have completely abandoned the possession of the demised premises, and that Murari Lal was in exclusive possession thereof.

19. The judgments in the case of Muni Lal and Bhagwandass (supra) have been rendered on their own facts. In the case of Vidya Wanti (supra), G.S.Singhvi, J. after considering a number of judgments of the Supreme Court, has reiterated the law laid down by the Supreme Court in the case of Resham Singh (supra). The same proposition of law has been reiterated by V.S.Agarwal, J. in the case of ArshadAU"(supra) wherein paragraph 10 of the judgment, it has been held as follows:

"10. From the above said conclusion, it is obvious that in normal circumstances in exercise of the revisional jurisdiction, the High Court will not reappraise the evidence. However, if there is misreading of evidence or findings are absurd or erroneous, the High Court can certainly look into the material on record and come to a different conclusion. It is true that revisional jurisdiction cannot be equated with the appellate jurisdiction but as noticed above, if the findings so arrived at are contrary of law, the correctness of the same can certainly be looked into. With this backdrop, one has necessarily to see if the findings of the authorities, namely, the Rent Controller and that of the Appellate Authority, are perverse or there is any absurdity in arriving at correct conclusion therein or not. Exhibit P-5 is the rent note that has been produced on the record and there is no controversy raised at either end that it was shown that it was the petitioner Arshad Ali who had taken the shop in dispute on rent."

20. These observations had been made by V.S.Agarwal, J., after considering a number of judgments of the Supreme Court which have also been considered by G.S.Singhvi, J. in the case of Vidya Wanti (supra). In the case of Kala Devi (supra), the Supreme Court reconsidered the evidence and came to the conclusion that the Appellate Authority committed an error which had been perpetuated by the High Court. The case related to the alleged parting of possession of the concerned shop, to appellant No.2; who had merely been assisting the tenant in running the shop. Both the Appellate Authority and the High Court had ignored the oral as well as documentary evidence which had been placed on record. The Supreme Court, before re-appreciating the evidence observed as follows:

"3. For what follows, the Appellate Authority committed an error not only in the appreciation of evidence but also by misreading the evidence and assuming the existence of certain facts which were neither alleged nor proved. The High Court also fell into a similar error,"

21. These observations would show that the High Court would not be precluded u/s 15(5) of the Act, from re-examining the evidence, even in cases in misreading of the evidence, and where the Courts below have assumed the existence of certain facts which were neither alleged nor proved. This indeed is the settled position of law with regard to the revisional jurisdiction of the High Court u/s 115 of the Code of Civil Procedure. But then, this power and jurisdiction has to be exercised with care and caution, subject to the well known limitations inherent in all revisional jurisdictions and cannot be equated with an appellate jurisdiction.

22. Coming now to the judgments cited by Mr.Sarin in the case of Dev Kumar (supra), the Supreme Court again considered the ambit of the jurisdiction as well as powers of the High Court u/s 15(5) of the Act. It has been observed by the Supreme Court as under:

"4. Mr.Krishna Mahajan, Learned Counsel appearing for the respondent No. 1, on the other hand, contended that the revisional power under sub-section (5) of Section 15 of the Act is wide enough to examine the legality and propriety of the order passed by the Appellate Authority and in exercise of such power the High Court was justified in re-appreciating the evidence on record. The Learned Counsel also urged that the conclusion of subletting rendered by the High Court is fully justified on materials on record and as such the same need not be interfered with by this Court.

5. In view of the rival submissions at the Bar, the first question that arises for consideration is to what extent the High Court was justified in re-appreciating the evidence and interfering with the conclusion of the Appellate Authority on the question of subletting. It will be appropriate at this stage to extract sub-section (5) of Section 15 of the Act:

"The High Court may, at any time, on the application of any aggrieved party or in its own motion, call for and examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceeding and may pass such order in relation thereto as it may deem fit."

6. In the case of 5m/. Rajbir Kaur v. Ws.S.Chokosiri &Company,\` 1982 (2) SCR (Suppl.) 310, this Court examined the revisional power of the High Court under sub-section (5) of Section IS of die Act and held where the findings of fact recorded by the courts below are supportable on the evidence on record, the revisional Court must be reluctant to embark upon an independent re-assessment of the evidence and supplant the conclusion of its own so long as the evidence on record admitted and supported the one reached by the Courts below.

7. In the case of *Nanak Chandv. Inderjit*, 1969 All IND RCR 881, this Court construed sub-section (5) of Section 15 of the East Punjab Urban Rent Restriction Act, 1949 and held that the revisional power conferred on the High Court u/s 15(5) of the Act is wider than that conferred by Section 115 of the CPC and u/s 15(5) of the Act the High Court has jurisdiction to examine the legality or propriety of the order under revision and that would clearly justify the examination of the finding by the Authority about the requirements of the landlord u/s 13(3)( 1) of the Act.

8. In the case of *Ram Dass Vs. Ishwar Chander and Others*, this Court again examined the aforesaid provision of sub-section (5) of Section 15 of the Act and held that subject to the well known limitation inherent in all revisional jurisdiction, the matter essentially turns on the language of the statute investing the jurisdiction. Exercising the language of sub-section (5) of Section 13 of the Act, the Court further held (at p. 1424 of AIR):

"But here, Section 15(5) enables the High Court to satisfy itself as to the "legality and propriety" of the order under revision which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the Court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional court is not "a second Court of first appeal".

In our considered opinion having regard to the aforementioned decisions of this Court laying down the parameters of the High Court's jurisdiction u/s 15(5) of the Act it is neither possible to accept the narrow construction put by the Learned Counsel appearing for the appellant nor the wide construction put by the Learned Counsel appearing for the respondents. The jurisdiction of the High Court under sub-section (5) of Section 15 of the Act, therefore, would entitle the Court to examine the legality and propriety of a conclusion of the Appellate Authority and is thus much wider than the revisional jurisdiction u/s 115 of the Code of Civil Procedure. But it has to be exercised subject to the well known limitations inherent in all revisional jurisdictions and cannot be equated with an appellate jurisdiction. This being the position, unless there is a perversity in the matter of appreciation of evidence by the appellate Authority or unless the Appellate Authority has arrived at a conclusion which on the materials, no reasonable man can come, the High Court will not interfere with the same."

The aforesaid observations of the Supreme Court made it clear that this Court would interfere in the findings of fact recorded by the courts below only if it comes to a conclusion that there is perversity in the appreciation of evidence by the courts below and that the courts below had arrived at a conclusion which, on the material, no reasonable man can reach. These observations of the Supreme Court have been re-affirmed by the Supreme Court in the case of *Atma S. Berar Vs. Mukhtiar Singh*,

In this case, it has been held that the revisional court is not to appreciate or re-appreciate the evidence dictated by its mere inclination to take a different view of

the facts. The scope of revisional jurisdiction is confined to testing the legality or propriety of the order under appeal. We may reproduce the relevant observations made by the Supreme Court as under:

"R.C. Lahoti, J. - An order for eviction from residential building on the ground of requirement of the landlord for his own occupation passed by the Controller and upheld in appeal by the Appellate Authority has been upset the reversed by the High Court in exercise of revisional jurisdiction. The aggrieved landlord is in appeal by special leave.

2. Section 13(3) of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter the Act for short) contemplates a landlord making an order directing the tenant to put the landlord in possession of residential building if he requires it for his own occupation. The order of the Controller is subject to appeal before the Appellate Authority. Under sub-section (5) of Section 15 of the Act, the High Court is conferred with the jurisdiction of calling for and examining the records for the purpose of satisfying itself as to the legality or propriety of any order passed or proceedings taken under the Act. The High Court may pass such order in relation thereto as it may deem fit.

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13. Simply because a different Judge of a Court of facts could have been persuaded to change opinion and draw a different inference from the same set of facts is not the jurisdiction of a revisional authority to upset a pure finding of fact. (Emphasis supplied). Precedents galore were cited by the learned Senior Counsel for the parties dealing with jurisdiction of the revisional court to interfere with the findings of fact. In all fairness to the Learned Counsel, we may refer to a few of them.

14. The object of conferring revisional jurisdiction of the High Court, by subsection (5) of Section 15 of the Act, is to enable it satisfying itself as to the legality or propriety of an order made by the Controller or the proceedings before him. In *Ram Dass v. Ishwar Chander* it was held that the nature and scope of revisional jurisdiction conferred on the High Court shall have to be determined on the language of the statute investing the jurisdiction. In *Prativa Devi v. T.V.Krishnan*, a three-Judge Bench held that the revisional power referable to Section 25-B(8) of the Delhi Rent Control Act, 1958 is not as narrow as the revisional power u/s 115 CPC and it is not so wide as an appellate power. Having kept the legal principles in view and on an objective determination and on a proper appreciation of the evidence in the light of the surrounding circumstances a conclusion as to the need of the demised premises for user by the landlord and his bona fides shall not be liable to be interfered with in exercise of revisional power. In *Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta* this Court made a comparative study of the provisions contained in Section 115 CPC in juxtaposition with Section 25-B(8) of the Delhi Act and held that the High Court cannot appreciate or reappreciate evidence dictated by its mere

inclination to take a different view of the facts as if it were a court of facts. A conclusion arrived at which is wholly unreasonable or is one that no reasonable person acting with objectivity could have reached on the material available, ignoring the weight of evidence, proceeding on a wrong premise of law or deriving such conclusions from the established facts as betray a lack of reason and/or objectivity would render the finding "not according to law" calling for an interference u/s 25-B(8) proviso by the High Court. Mudigonda Chandra Moult Sastry v. Muni Lal takes the same view. The scope of revisional jurisdiction u/s 15(5) of the Act is similar, that is, confined to testing the legality or propriety of order of proceedings of the Controller."

23. In view of the above, we are of the opinion that the revisional jurisdiction of the court can be exercised to correct jurisdictional errors or material irregularities contained in the order/judgment or even concurrent findings of fact which are based on no evidence. It is not permissible for the High Court to reach a wholly independent conclusion on re-appreciation of the evidence. We have already come to the conclusion that the courts below have not committed any error of jurisdiction and the findings of fact recorded by them are based on material as well as evidence on record. Therefore, it would be wholly inappropriate for this Court to interfere in the concurrent findings of the fact recorded by the courts below, in exercise of the revisional jurisdiction u/s 15(5) of the Act.

24. Mr.Jain submitted that even if subletting is proved, Murari Lal would become a direct tenant. Even if the tenancy rights have been inherited by Girdhari Lal under the will executed by Krishna Devi on 24.6.1987, he cannot become "the statutory tenant" in place of Khushi Ram. Girdhari Lal, according to all the evidence, never resided with Khushi Devi or Krishna Devi. No rights, according to the Learned Counsel, can be created on the basis of a will. According to Mr.Jain, on the death of tenant during the pendency of the ejectment petition, the tenancy is inherited by the legal heirs who are in possession of the demised premises. Both the courts below have found that Murari Lal was in actual possession of the premises even during the life time of Khushi Ram. Therefore, Murari Lal would inherit the tenancy and the ground of sub-letting would no longer be available to the landlord for seeking an order of eviction. On the other hand, Mr. Sarin submits that the ground of subletting will survive in the facts and circumstances of the present case. According to the learned Sr.Counsel, once the ground of eviction becomes available to the landlord, any subsequent event the like death of the tenant, unless the statute otherwise provides will not efface the ground of eviction. In support of their respective, submissions, Learned Counsel for the parties have made a reference to a large number of judgments. Mr.Jain has relied on the judgments of the Supreme Court in the case of Gian Devi (supra) and the judgments of this Court in the cases of Ram Sarup (deceased) represented by LRs and another v. Lal Chand and others, 1988 (1) RLR 402(G.S.Mital, J.) BabaDaswanda Singh v. Saswant Singh and others, 1997 (1) PLR 503 (R.L.Anand, J.), Chela Ram v. Parshotam Lal, 1999 (2) RCR (Rent) 222

(R.L.Anand, J.) and Sant Lal and others v. NandKishore andanother? (2003) CCC 426 (P&H): 2003 HRR 640 (J.S.Khehar, J.). On the other hand, Mr.Sarin has relied on the judgments of the Supreme Court in the cases of Vasant Partap Pandit v. Dr.Anant Trimbak Sabnis, 1994(1) RCR(Rent) 747 (SC); Bhavarlal Labhchand Shah v. Kanaiyalal Nathalal Intawala, 1986( I) RCR(Rent) 690 (SC); [Gian Devi Anand Vs. Jeevan Kumar and Others,](#) and the judgments of this Court in the cases of Ravi Parkash v. Dewan Chand, 1999 (1) RCR(Rent) 148 (V.S.Agarwal, J.), RamjiDass andothers v. Smt.Kamla Rani andothers, (Crl.Rev.No. 1358 of 1981 decided on 3.3.2006) (S.S.Saron, J.)

25. Mr.Sarin, learned Sr.Counsel further submitted that the crucial date for determining as to whether the premises had been sublet without the written consent of the landlord would be the date of the filing of the eviction petitioner, u/s 13 of the Act before the Rent Controller. In support of the submission, the learned Sr.Counsel has relied on the judgments of the Supreme Court in the case of [Kamleshwar Prasad Vs. Pradumanju Agarwal \(dead\) by LR's.,](#) Pratap Rai Tanwani & Anr. v. Uttam Chand and Anr., 2004 ACJ 391 (S.C.): 2004 (6) Supreme 658 (SC) and in the case of [Gajanan Dattatraya Vs. Sherbanu Hosang Patel and Others,](#) Learned Sr.Counsel further submitted that even if tenancy is inheritable, the tenant would inherit the tenancy rights as well as the obligations of the tenancy. In support of this submission, learned Sr.Counsel relies on the judgment of the Supreme Court in the case of [Parvinder Singh Vs. Renu Gautam and Others,](#) and [Imdad Ali Vs. Keshav Chand and Others,](#) . Learned Sr.Counsel also relied on a Division Bench judgment of this Court in the case of Naurang Lal v. Suresh Kumar, 1964 PLR 505.

26. It would, at this stage, be appropriate to make a reference to the relevant parts of the judgments for setting out clearly the ratio of law as it emerges therefrom. In the case of Ram Sarup (supra), G.C.Mital, J. has held as follows:

"2. Shri R.L.Sarin vehemently contends that once a ground of eviction is established in favour of the landlord no supervening facts can take away that right of the landlord. This broad-based argument, to my mind, is not applicable on the peculiar facts of this case. The alleged sub-tenant, (sic) Otherwise the rule laid down by the Supreme Court in Gian Devi's case (supra) would become meaningless. Accordingly, I am of the view that the decision of the Appellate Authority is perfectly just and legal and this revision is dismissed."

27. G.C.Mital, J. had relied on the ratio of law laid down by the Supreme Court in the case of Smt.Gian Devi Anand (supra) wherein the Supreme Court considered the question of law which was posed in paragraph 5 of the judgment as follows:

"5. The question, for consideration in this appeal by special leave is whether under the Delhi Rent Control Act, 1958 (for the sake of brevity hereinafter referred to as the Act), the statutory tenancy to use the popular phraseology, in respect of commercial premises is heritable or not. To state it more precisely the question is whether the heirs of a deceased tenant whose contractual tenancy in respect of

commercial premises has been determined, are entitled to the same protection against eviction afforded by the Act to the tenant."

After considering the amendment brought about in the Delhi Rent Control Act, 1958 by the Delhi Control (Amendment) Act, 1976, it has been held as under:

"36. Accordingly, we hold that if the Rent Act in question defines a tenant in substance to mean a tenant who continues to remain in possession even after the termination of the contractual tenancy till a decree for eviction against him is passed, the tenant even after the determination of the tenancy continues to have an estate or interest in the tenanted premises and the tenancy rights both in respect of residential premises and commercial premises are heritable. The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant....."

A bare perusal of the observations of the Supreme Court makes it clear that the legal heirs would inherit all the rights and obligations of the deceased tenant i.e. they would step into the position of the deceased tenant. Therefore, if the original tenant was liable to be evicted, then the legal heir cannot claim a superior right to remain in the tenanted premises. In our opinion, the ratio of law laid down in the case of Gian Devi (supra) was only partially appreciated by this Court in the case of Ram Sarup. The legal heir was given the benefit of the inherited rights, without the liabilities which had been incurred by the deceased tenant.

28. In Baba Daswanda Singh's case (supra), it has been held as follows:

"10. Faced with this situation Shri Sarin then submitted that the respondents are liable to be evicted from the demised premises on the ground of sub-letting. Supplementing his argument, Shri Sarin submitted that after the death of Mana Singh, his sons have divided the tenancy premises by metes and bounds. Though the tenancy, according to Mr. Sarin is inheritable, yet it is not divisible. With the division of the tenancy premises by the heirs of Mana Singh each heir is in exclusive possession of the demised premises and as such sub-tenancy stands proved. The argument is again devoid of any merit. It is a settled law that the tenancy rights of a tenant are heritable. The respondents are the legal heirs of the original tenant. It is the mode of enjoyment inter se between the heirs of the tenant with respect of the demised premises. No case law has been cited by the Learned Counsel for the petitioner in support of his argument. So long as the heirs of Mana Singh are in possession and in control of the demised premises, they cannot be held to be sub-tenants."

29. A bare perusal of the aforesaid observations would show that the learned Single Judge had come to conclusion that sub-tenancy had not been proved. No ratio of law has been laid down as the learned Single Judge has clearly stated that no case

law has been cited by the Learned Counsel. No reference has been made by the learned Single Judge to any of the decided cases. The judgment is clearly confined to the facts of that case. In the case of Chela Ram (supra). R.L.Anand, J. has held as follows:

"21. There is another angle of vision for looking at this revision and from that angle also. This revision is bound to succeed. Chela Ram has expired during the pendency of this petition on 30.11.1989. His tenancy had been inherited by son. It has been held in Ram Sarup (deceased) represented by Harish Kumar and another v. Lal Chand and others, 1988 ( 1) RCR 251, that when an ejectment petition has been filed on the ground of sub-tenancy by alleging that the tenant has sub-let the premises to the son and during the pendency of the ejectment petition, the death of tenant takes place and the son inherits the tenancy rights, the ground of sub-letting is not more available to the landlord."

30. In the case of Sant Lal (supra), J.S.Khehar, J. has observed as follows:-

"8.....As noticed in the beginning of the instant order, Sant Lal had died during the pendency of the present petition. His son Ved Parkash has been impleaded as his legal representative in the present proceedings. On the basis of the aforesaid undisputed position, Learned Counsel for the petitioner contends that after the death of Sant Lal, his tenancy rights must be deemed to have been inherited by Ved Parkash. In the aforesaid context, Learned Counsel for the petitioner has placed reliance on a decision rendered by this Court in Ram Sarup (deceased by LRs) Vs. Lal Chand and others, . The factual position in the aforesaid judgment is substantially similar to the controversy in hand. In the aforesaid case also, an ejectment petition had been filed against a tenant on the ground that he had sub-let the premises to his son. The tenant died during the pendency of the proceedings, whereupon, his son Ram Sarup i.e. the alleged sub-tenant was impleaded as the legal representative of the deceased tenant. this Court relying on the judgment rendered by the Apex Court in Gian Devi Anand Vs. Jeevan Kumar and Others, ) arrived at the conclusion that tenancy came to be inherited after the death of the original tenant and as such the son of the original tenant (who was alleged to be the sub-tenant), became a direct tenant. Even on the basis of the aforesaid factual as well as legal position, it is not possible at the present juncture to pass an order of eviction on the ground of sub-letting against Ved Parkash.

31. In our opinion, the judgments in all these cases would be of no assistance to the case put forward by the petitioners, in view of the law laid down by the Supreme Court.

32. In the case of Vasant Partap Pandit (supra), the Supreme Court considered the question as to whether tenancy rights under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 can be demised by a will. The Supreme Court answered the question in the negative with the observations that if the word "heir"

is to be interpreted to include a legatee, even a stranger may have to be inducted as a tenant for there is no embargo upon a stranger being a legatee.

33. In the case of *Bhavarlal Labhchand Shah* (supra), considering Section 5(11) XCXii) and 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947), the Supreme Court has held that the heritability of a tenancy after the determination of the lease, which is protected by the Act is restricted in the case of residential premises only to the members of the tenant's family mentioned in sub-clause (i) of Clause (c) of Section 5(11) of the Act and in the case of premises let for business, trade or storage as the case may be in the said premises and as may be decided in subclause (ii) thereof. It has further been held that when the statute has imposed such a restriction, it is not possible to say that the tenant can bequeath the right to such tenancy in the case of premises let for business, trade or storage in favour of a person not possessing the qualification referred to in Section 5(11)(c)(ii) of the Act. It has also been observed that even the extended meaning given to the expression "tenant" by sub-section (11) of Section 5 of the Act, does not authorize the dispossession of the right to the tenancy of the premises governed by the Act under a will. Ordinarily, it is only an interest that can be inherited, that can be bequeathed.

34. In the case of *Smt. Daljit Kaur* (supra) S.S.Sodhi, J. held that the judgment in the case of *Bhavarlal Labhchand Shah* (supra) was distinguishable. It was held that even a statutory tenancy is heritable. It was observed by S.S.Sodhi, J. as follows:

"11. The competency of a statutory tenant to transfer his tenancy right by Will is here a matter which directly arises in this case and cannot, therefore, be avoided. In dealing with this question, keeping in view the relevant provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Rent Act) it must be appreciated that a bequest of tenancy right by statutory tenant in favour of a stranger cannot but stand on at different footing than one to his legal heirs. Whereas in the former, it would be thrusting of "uncontemplated stranger" in the premises in the latter it would be no more than the coming in the some, if not all, of those upon whom the legislature has conferred a right to succeed to such tenancy rights. It is also well settled that an interest that can be inherited can be bequeathed too. On principle, therefore, no exception can be taken to the entitlement of a statutory tenant to bequeath his tenancy rights by Will to one or more his legal heirs who would have succeeded to them had he died interestate."

35. Inspite of these observations, no relief was granted to the appellant - *Daljit Kaur* in view of the peculiar facts of this case. While declining the relief to *Daljit Kaur*, S.S.Sodhi, J. observed as follows:

"13. Further in the context of the fact that *Daljit Kaur* had never been in possession of the shop, the other relevant aspect to be kept in view is that Rent Acts operate on the concept of reciprocity namely the right to continue in possession and the

corresponding liability for payment of Rent. The fact that a statutory tenant had a heritable interest cannot be deemed to ipso facto fasten liability for the payment of rent upon his legal heirs unless and until they are in possession, there could be no corresponding liability upon her for payment of rent, she cannot, therefore, be heard to rest her claim for relief here on the provisions of the Rent Act. The claim of Daljit Kaur for the relief sought, thus has no legs to stand on. This is all the more so with the concurrent findings of courts below that this suit had been filed by her at the instance and on behalf of her brothers who were the unsuccessful parties to the earlier suit."

36. From the above, it becomes apparent that in the cases of Ram Sarup; Baba Daswanda Singh; Chela Ram; Daljit Kaur and Sant Lal (supra), it has been held that the ground of eviction would not be available against the legal heirs of the deceased tenant.

37. However, in the case of Ravi Parkash (supra), V.S. Aggarwal, J. considering the same proposition has held that once the ground of eviction becomes available to the landlord then any subsequent act like the death of the tenant unless the Statute says otherwise, will not efface the ground of eviction. We may quote the relevant observations:

"As regards the grounds of sub-letting of the property, on behalf of the petitioners it was urged that during the pendency of the proceedings, tenant Sada Lal had died. On his death, petitioners would inherit the rights of tenancy and, therefore, the ground of eviction that the property had been sublet to the petitioner will not be available. The said contention on the face of it being without merit has to be rejected. Once the ground of eviction becomes available to the landlord then any subsequent act like death of the tenant unless the statute says otherwise will not efface the ground of eviction. It is a statutory right to seek eviction if established under the Act. It would only come to end in accordance with the provisions of the Act. If the property had been sublet during the life time of Sada Lal and the ground of eviction becomes available. Indeed, it cannot be defeated even if Sada Lal tenant had died."

38. This view has been reiterated in the case of Ramji Dass (supra), by S.S. Saron, J. The relevant facts of that case have been set out in paragraph 1 of the judgment, as follows:

S.S. Saron, J. - This order will dispose of the above said two Civil Revision Petitions Nos. 1358 and 1359 of 1981 which relate to somewhat similar facts and circumstances. The tenants-petitioners in both the cases are common. The landlords-respondents are also almost common inasmuch as one petition for eviction had been filed by the landlord Shiv Shankar Lal in his own capacity and the other by the Raghunath Dass Trust, Charkhi Dadri through Shiv Shankar Lal aforesaid and his wife Smt. Kamal Rani as trustees of the said Trust. Both the

petitions for eviction are filed against the same tenants Mohri Ram (Petitioner No. 1) son of Balak Ram and his sons Ramji Dass (petitioner No.2) and Ram Dayal (petitioner No.3). Mohri Ram died during the pendency of the petition on 3.9.1985 and Ramjit Dass, Ram Dayal, Subhash Chand, Munish Kumar, Chander Bhan sons of Mohri Ram, Bimla daughter of Mohri Ram and Bhirawan Bai widow of Mohri Ram were impleaded as his LRs and are on record. Therefore, both the petitions can be disposed of by a common order."

We may further notice that by separate orders dated 27.8.1979, the Rent Controller dismissed both the petitions for ejectment. The Appellate Authority by order dated 10.3.1981 accepted the appeal and ordered the eviction of the tenants. The tenants had, therefore, filed revision petitions u/s 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (hereinafter referred to as the Haryana Act). In both the cases, the eviction of Mohri Ram had been sought on the ground that he had sublet the premises to his sons Ramji Dass and Ram Dayal. It was argued on behalf of the petitioners that Ramji Dass and Ram Dayal had become direct tenants on the death of Mohri Ram, and, therefore, the ground of subletting was no longer available to the landlord. S.S.Saron, J., after taking into consideration, the entire case law, has held as follows:

"The petitioners by reason of death of Mohri Ram not only inherit his rights but also his obligations. In view of the said position the stand taken by the learned senior counsel for the petitioners that with the death of Mohri Ram his LRs have become direct tenants of the landlords in the two cases is not legally sustainable in view of the judgments referred to above. Besides, it may be noticed that the position has to be seen at the time of institution of the suit. In Shakuntala Bai and Others Vs. Narayan Das and Others, in a case seeking eviction on the ground of bona fide requirement of landlord it was held that crucial date for deciding the matter is the date of institution of the proceedings. It was held that by reason of the death of original landlord, the bona fide need would not come to an end. In Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another, it was held that the basic rule is that the rights of the parties shall be determined on the basis of the date of institution of the suit or proceedings and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, it was observed, does not mean that event happening after institution of the suit/proceedings cannot be considered at all and the Court may take into account subsequent events inter alia that the relief claimed originally has by reason of subsequent change of circumstances become inappropriate or it is necessary to take notice of subsequent event to shorten the litigation or it is necessary to do so in order to do complete justice between the parties. However, the basic rule is that the position is to be seen on the date, of institution of the suit. In Sait Nagjee Purushotham and Co. Ltd. Vs. Vimalabai Prabhulal and Others, it was observed that it is common experience in our country that specially landlord-tenant litigation prolongs for a long period. It is true that neither can the person who has

started the litigation sit idle nor can the development of the events be stopped by him. Therefore, the crucial event should be taken as on the date when suit for eviction was filed unless the subsequent event materially changed the ground of relief. Therefore, at the time when the proceedings were initiated the tenant Mohri Ram had committed a default of subletting which entitled the landlord to an order of eviction of the tenants. The death of Mohri Ram in the circumstances would not disentitle the landlord to seek eviction of the petitioners and the default committed by Mohri Ram in subletting the premises cannot be said to be eclipsed so as to make it lose its significance altogether with his demise.

In the circumstances, there is no merit in these revision petitions and the same are accordingly dismissed."

39. A perusal of the aforesaid observations would show that there is a clear divergence of opinion as to whether the ground of sub-letting would be available to a landlord against the legal heirs of a statutory tenant who dies during the pendency of the eviction proceedings. In this background, we may now examine the judgments relied upon the counsel for the parties.

40. In the case of Kamleshwar Prasad (supra), the application of the landlord for eviction of the tenant on the ground of bona fide requirements was dismissed by the prescribed authority. The Appeal filed by the landlord was accepted by the Appellate Authority. The order passed by the prescribed authority was set aside. Aggrieved against the order of the Appellate Authority, the tenant carried the matter to the High Court by filing a writ petition. During the pendency of the writ petition, the writ petitioner in the High Court i.e. the landlord died and was substituted by his legal heirs, namely, his widow two sons and the married daughter. It was argued on behalf of the landlord that the decree passed by the Appellate Authority having become final, in a proceeding under Article 226 of the Constitution of India, the High Court will not be entitled to take into consideration any subsequent event that had occurred. On behalf of the tenant, it was argued that the landlord having died, the bona fide requirement which was found to be existed by the Appellate Authority no more survives. Therefore, taking into consideration the subsequent event, the High Court must quash the order of eviction passed by the Appellate Authority. The High Court came to the conclusion that the decree of eviction had become final and the finality cannot be disturbed on the application under Article 226 of the Constitution, by taking into account the fact that the original landlord died during the pendency of the writ petition. The Supreme Court held as follows:-

"3. Under the Act the order of the Appellate authority is final and the said order is a decree of the Civil Court and decree of competent court having become final cannot be interfered with by the High Court in exercise of its power of superintendent under Articles (sic) into account any subsequent event which might have happened.

That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises...."

41. In the case of Pratap Rai Tanwani (supra) again the Supreme Court observed as follows:

"9. We cannot forget that while considering the bona fides of the need of the landlord the crucial date is the date of petition. In Ramesh Kumar v. Kesho Ram (1992 [Suppl.] (2) SCC 623 a two-Judge Bench of this Court (M.M.Venkatachalia, J., as he then was, and N.M.Kasliwal, J.) pointed out that the normal rule is that rights and obligations of the parties are to be determined as they were when the lis commenced and the only exception is that the Court is not precluded from moulding the reliefs appropriately in consideration of subsequent events provided such events had an impact on those rights and obligations. What the learned Chief Justice observed therein is this (SCC pp.625 27, para 6):

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the list. But this is subject to an exception. Wherever subsequent events of fact or law which a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a "cautious cognizance" the subsequent changes of fact and law to mould the relief."

42. Again in the case of Gajanan Dattatraya (supra), the Supreme Court observed that crucial date with regard to the expression "the tenant has sublet" (as provided in Section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947) is the date on which the notice of eviction is served. The Supreme Court observed as follows:

"17. The appellant repeated the same contentions which had been advanced before the High Court. The provisions of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 indicate that a tenant is disentitled to my protection under the Act if he is within the mischief of the provisions of Section 13(IXa) namely that he has sublet. The language is that if the tenant has sublet the protection ceases. To accede to the contention of the appellant would mean that tenant would not be within the mischief of unlawful subletting if after the landlord given a notice terminating the tenancy on the ground of unlawful subletting the sub-tenant vacates. The landlord will not be able to get any relief against the tenant in spite of unlawful subletting. In that way, the tenant can foil attempt of landlord to obtain possession of the premises, on the ground of subletting every time by getting the sub-tenant to vacate the premises. The tenant's liability to eviction arises once the fact of unlawful subletting is proved. At the time of the notice if it is proved that there was unlawful subletting, the tenant is liable to be evicted. The High Court rightly rejected the

revision petition."

43. The aforesaid dicta of the Supreme Court makes it abundantly clear that the crucial date for determining the rights of the parties u/s 13 of the Act would be the date of filing of the rent petition.

44. In the case of *Imadad AU* (supra), it has been clearly held as follows:-

"14. Under the Madhya Pradesh Accommodation Control Act having regard to the interpretation clauses as noticed herein before, tenant remains a tenant so long as the tenancy continues. The thrust, in terms of sub-section (3) of Section 12 is upon "any accommodation". Default in payment of rent by a tenant thus, is in respect of any accommodation. A further default would also be in respect of the same accommodation. Sub-section (3) of Section 12 provides for an exception to the general rule contained in Clause (a) of sub-section (1) of Section 12 that in the event a tenant becomes a defaulter he is liable to be evicted. An exemption granted in favour of a tenant in terms of subsection (3) of Section 12 if read in conjunction with the proviso appended thereto, must be held to be for one time only. Proviso appended to sub-section (3) of Section 12 controls the main provisions. The exemption contained in sub-section (3) of Section 12 thus is not extended to a tenant who becomes a defaulter for more than once, it matters not whether such default is made by the original tenant or by his successor inasmuch as the successor-in-interest of the original tenant continues to be a tenant within the meaning of the provisions thereof. By reason of death of original tenant, a new tenancy is not created. A successor-in-interest of a tenant holds his tenancy right subject to rights and obligation of his predecessor. He does not and cannot claim a higher right than his predecessor. It is now well settled that a person by reason of inheritance or assignment does not derive any better title than his predecessor and thus the right which the original tenant did not possess cannot be passed on to his successor."

(Emphasis supplied)

45. In the case of *Parvinder Singh* (supra), the Supreme Court has clearly held as follows:

"6. Tenancy is a heritable right unless a legal bar operating against heritability is shown to exist. Thus, the one who inherits tenancy rights also inherits the obligations incurred by the deceased tenant along with the rights which he had. It is difficult to accept a proposition that on death of the tenant his heir inherit only rights and not obligation. (Emphasis supplied), if that be so, then the heirs would not be liable to pay any arrears of rent which were not paid by the deceased-tenant."

46. In the case of *Naurang Lal* (supra) a Division Bench of this Court considering the same proposition has held as under:

"2. The question is short. Section 13 of the East Punjab Urban Rent Restriction Act renders a tenant liable to eviction if it is shown "that the tenant has after commencement of this Act without the written consent of the landlord sublet" a portion of the building let to him. It is clear that as far as the point of time is concerned, the only reference is to the "commencement of the Act" and once it is shown that there has been subletting even of a portion of the building by the tenant subsequent to the enactment of the Act the tenant becomes liable to be evicted. In *Lekh Ram v. Chander Bhan Rajinder Parkash*, however, Falshaw, J., sitting alone, took the view that the implication of this particular provision is that a subletting which is to form the ground of ejectment must be one which subsists at the time of the filing of the portion. This implication was read into the Act by the learned Judge on two grounds:

- (1) the Act was intended for the protection of tenants and it was unreasonable to think that any kind of subletting, however, short its period and, however old with reference to the eviction petition it may have been, could be a ground or ejectment; and
- (2) that the landlord would normally become aware of a subletting in the case of urban property and if he chooses to remain quiet for some time, he is by law to be considered as having waived his right,

When this case was argued before Harbans Singh, J., he was doubtful of the weight of this reasoning and my impression is the same. I say this because the language of the statute seems perfectly clear, and it is unwise and perhaps dangerous to read into it something which is not put there by the Legislature. The fact, that the East Punjab Urban Rent Restriction Act is meant as a protection to tenants, does not by itself throw any light on the meaning of any particular provision of the Act, and that meaning has necessarily to be gathered from the language of the provision. Nor is the argument on the ground of waiver of much assistance, for waiver is a fact which must depend on the evidence in a particular case. As I read Section 13 of the East Punjab Urban Rent Restriction Act, it seems clear that once a tenant without the landlord's written consent sublets any portion of the building let to him, he is in law liable to be evicted. (Emphasis supplied. I am not saying, of course, that in such a contingency the tenant may not be able to show that the landlord had in some manner, whether by waiver or otherwise, forfeited his right to evict him. All I am saying is that the tenant's liability to eviction arises once the fact of sub-letting is proved and there is nothing in the Act to support the suggestion that the subletting must be in subsistence at the time the landlord applies for the tenants eviction (Emphasis supplied). I am, therefore, unable to agree with the view adopted in *Lekh Ram's* case. The petition before us not being supported on any other ground and it must, in the circumstances, fail and I would dismiss it with costs."

47. In our opinion, these observations leave no manner of doubt that the legal heir of a statutory tenant continues to be a tenant only within the meaning of the

provisions of the Act. A successor-in-interest of a tenant would hold the tenant rights subject to rights and obligations of his predecessor. By reason of the death of the original tenant, a new tenancy is not created. The successor-in-interest cannot claim a higher right than his predecessor. Thus, a right which the original tenant does not possess cannot be passed on to his successor. The observations in Parvinder Singh's case (supra) make it even more explicit that on the death of the tenant, the heirs do not inherit only the rights of the tenants, but also obligation. In our opinion, the view, therefore, expressed by V.S. Aggarwal, J., in the case of Ravi Prakash (supra) and S.S. Saron, J. in the case of Ramji Dass (supra) are in consonance with the law laid down by the Supreme Court in the judgments noticed above. We are unable to agree with the contrary view expressed in the cases of Ram Sarup, Smt. Daljit Kaur, Baba Daswanda Singh, Chela Ram and Sant Lal (supra). In our opinion even a statutory tenancy is heritable but the legal heirs would inherit the tenancy rights as well as the obligations. Any disability which is attached to the original tenant would also be passed on to the successor-in-interest. A statutory ground on which the eviction is sought would not be effaced on the death of the original tenant during the pendency of the proceedings. The crucial date for determining the rights of the parties would be date of the commencement of the lis i.e. normally it would be the date of the filing of the eviction petition. However, subsequent events can be taken into account cautiously for moulding the relief. In view of the above, we find no merit in revision petition and the same is dismissed. No costs.