

(2003) 07 P&H CK 0176

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 1225 of 1985

Jagjit Singh Bains

APPELLANT

Vs

Brij Mohan Sharma

RESPONDENT

Date of Decision: July 29, 2003

Acts Referred:

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

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: M.L. Sarin, with Mr. Hemant Sarin, for the Appellant; Palwinder Singh, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This is tenant's petition filed under sub-section (5) of the East Punjab Urban Rent Restriction Act, 1949 (for brevity, "the Act") challenging concurrent findings of facts recorded by both the Courts below. Both the Courts have returned categorical findings that the tenant-petitioner has sublet a portion of the premises to one Mr.V.D.Sikri a sub-tenant and that he had been receiving rent from him. It has also been found concurrently that the tenant-petitioner had parted with the possession of front room to Mr.Sikri at a monthly rent of Rs. 12.50 and that the sub-tenant remained in exclusive possession of the premises from 1961 to 1972 till his death.

2. Brief facts of the case which have led to the filing of the instant petition are that on 10.3.1972 the landlord-respondent, namely Mr.Brij Mohan Sharma, Advocate purchased the property in dispute vide a registered sale deed. The tenant-petitioner Mr.Jagjit Singh Bains, Advocate was a tenant in the premises in dispute on a monthly rent of Rs.25/-. The landlord-respondent filed an ejectment petition u/s 13 of the Act on 12.9.1977 on the ground that the tenant-petitioner is in arrears of rent w.e.f. 10.3.1972 at the rate of Rs.25/- p.m. The ground of subletting was also pleaded

alleging that the tenant-petitioner had sublet one room of the demised premises to Mr.V.D.Sikri (since deceased) without any express or implied permission of the landlord-respondent.

3. The stand taken by the tenant-petitioner in his reply has been that he did not sublet any portion of the premises in dispute to Mr.V.D.Sikri and asserted that he was merely a licensee who was permitted to use the office for some time. It was further asserted that the tenant-petitioner and Mr.V.D.Sikri were class-fellows and Mr.V.D.Sikri was a man of saintly nature. The reply filed by the tenant-petitioner further shows that Mr.V.D.Sikri has died long back and the tenant-petitioner has been in exclusive possession even of that portion. The fact of tenancy firstly under the previous owner before 10.3.1972 and thereafter under the landlord respondent was admitted.

4. The Rent Controller on the basis of numerous documents recorded a finding of fact that the tenant-petitioner had sublet front portion of the demised premises to Mr.V.D.Sikri at the rate of Rs. 12.50 as rent without any permission from the landlord-respondent. It has also been held that the tenant-petitioner parted with exclusive possession of the front room to the sub-tenant Mr.V.D.Sikri who remained in its exclusive possession from 1961 to 1975 till his death. The other ground of non-payment of rent did not survive because tender was made by the tenant-petitioner on the first date of hearing which was accepted and that ground was given up. In view of the findings, the Rent Controller allowed the ejectment petition filed by the landlord-respondent directing the tenant-petitioner to hand over vacant physical possession of the premises to the landlord-respondent on or before 17.1.1982. The Appellate Court also affirmed the findings of facts and reached the same conclusion. The learned Appellate Authority went in details of documentary as well as oral evidence produced by the parties. The appreciation of evidence as well as the conclusion recorded by the Appellate Authority reads as under:-

"There is un-challenged evidence to prove that the appellant had parted with the possession of the portion of the property to Shri Sikri and also that he was also getting rent from him. The respondent-landlord had served the appellant-tenant with a notice Ex.AW32, before filing the ejectment petition, wherein it was specifically mentioned in para 5(b) that the appellant had sublet the portion of the property to Shri Sikri without the written consent of the landlord. In the reply to this notice (Ex.A W3/37), the appellant-respondent did not controvert the allegations of the respondent-landlord regarding subletting the portion of the demised premises to Shri Sikri. The plea taken by the appellant-tenant in the written reply that Shri Sikri was a licensee, is an afterthought as the same was not taken at the earliest opportunity while replying the notice served by the landlord. Shri V.D.Sikri, who was Income Tax assessee, had been filing the statement of accounts in the Income Tax Department. The statement of accounts and the returns filed by Shri Sikri are

Exs.A W3/3 to A W3/31. In these documents it is clearly mentioned that the rent of the premises was paid to Shri Jagjit Singh Bains Advocate, at the rate of Rs. 12.50 per month. These statements relate to the period from 1962 to 1975 till the death of Shri Sikri. In Ex.A W3/5, the details of rent paid by Sh.Sikri to his different landlords were mentioned and it is specifically mentioned that rent was paid to Shri Jagjit Singh Bains amounting to Rs. 150/- @ Rs. 12.50 per month for one year. In Ex. A W3/26, which is the statement of account for the assessment year 1967-68, it is clearly mentioned that the rent was paid to Shri Bains @ Rs. 12.50 per month. This evidence is further supported by the fact that Shri Sikri got a telephone connection in this office. Shri RXXKainth, Inspector Telephones, who appeared as A W2, has proved the fact that Telephone No.4092, was installed in the premises in dispute in the name of Shri Sikri. This fact also stands admitted by the appellant-tenant in his examination-in-chief, wherein he stated that Shri Sikri got the telephone connection without his permission. It has also come in the evidence that Shri Sikri used to collect the key of the premises in question from Sat Pal clerk of the appellant-tenant in the morning and used to return the same in the evening, which admission is sufficient to prove that exclusive possession was delivered to Shri V.D.Sikri, of the premises in dispute. It has also come in evidence that Mr.Sikri, has his own library, Telephone, Almirah, and office table. This contention has been proved by Shri Ram Sarup AW4, who was a client of Mr.Sikri. Documentary evidence i.e. account statements and Income Tax Returns of Shri V.D.Sikri, were corroborated by the evidence of Shri Ram Sarup A W4. Otherwise also u/s 32 of the Indian Evidence Act, the said statements of accounts, are admissible in evidence being documents executed by a dead person. It has also come in evidence that Shri Sikri has his sign board displayed in front of the property in dispute adjoining to sign board of the appellant. It was clear from the Photograph he again made a wrong statement that the Board of Shri Sikri is fixed in front of the office of the respondent landlord which fact is factually wrong. In the photograph Ex.AY, the board of the appellant-tenant and that of Mr.Sikri are over the entrance door of the property in dispute and at a considerable distance from the office of the respondent. Moreover, the sign board of Mr.Sikri is towards the extreme left side, whereas the board of the respondent-tenant is towards the office of the respondent-landlord. It is also on record that Sat Pal, who is alleged to be a clerk of the appellant and who used to give key to Mr.Sikri, was in fact never a clerk of Shri Bains appellant-tenant. The appellant was confronted with the record of the District Bar Association, which is maintained regarding the clerks of the lawyers. The appellant admitted that the entries in the said register Ex.AX are in this handwriting and that he mentioned therein that he is not keeping any clerk. He also admitted in his cross-examination that he had not mentioned the name of Sat Pal as his clerk in the register being maintained by the Bar Association, Jalandhar, for the clerks of the lawyers. This clearly falsifies the contention of the appellant that Shri Sikri used to collect the key from Sat Pal clerk of the appellant tenant. It seems that one Sat Pal became handy with the appellant tenant and he cooked up a false story being his clerk and his

giving key to Mr.Sikri. Such a long span about 14 years in which Mr.Sikri remained using the premises as his office clearly establishes that he was using the same in his own right as sub-tenant. From the documentary evidence which goes un-rebutted, it has been clearly established that the appellant-tenant, had sublet the premises in question to Mr.Sikri.

5. On the basis of aforementioned evidence, the learned Appellate Authority on 15.2.1985 had ordered the tenant-petitioner to vacate the demised premises and put the landlord-respondent in its vacant possession within a period of three months. It is against the aforementioned judgments of the Courts below that the instant petition has been filed.

6. Mr.M.L.Sarin, learned counsel for the tenant-petitioner has argued that the status of sub-tenant late Mr.V.D.Sikri would continue to be that of a licensee because no exclusive possession was ever handed over by the tenant-petitioner to the sub-tenant. According to the learned counsel even if it is assumed for the sake of argument that the tenant-petitioner used to receive some consideration in lieu of the use made by Mr.Sikri the sub-tenant of the front portion of the demised premises, the tenant-petitioner cannot still be evicted from the demised premises because the onus to prove parting of exclusive possession as against the partial possession is on the landlord-respondent. The argument appears to be that subletting the front portion alone would not constitute the basis for ordering the ejectment unless it is shown that whole demised premises was let out. According to the learned counsel only user of the building was allowed and there was no parting of exclusive possession to the sub-tenant Mr.V.D.Sikri. In support of his submission, the learned counsel has heavily relied on the judgments in the cases of AmarNath v. Smt.Savatri Devi, 1955 PLR 276 (P&H); Dev Dutta Verma v. Ajit Singh & others, 1965 CLJ (P&H) 341; Smt.Krishnawanti v. Hans Raj, 1975 RCJ (SC) 164, Smt.Shanti Devi v. Puran Chand and others, 1975 PLR (P&H) 654; Ranjiv Paul Singh v. Mehanga Ram, 1981 (1) RCR (P&H) 329 and Om Parkash v. Kailash Chander, 1999(2) RCR(P&H) 569. He has also relied on another judgment of the Supreme in the case of Dev Kumar through L.Rs. v. Smt.Swaran Lata & Ors., 1995 RCJ 531. Basing his argument on the principle that the sub-tenant must have complete control over the demised premises and in exclusive possession, only then the ground of sub-letting could be deemed to be established.

7. Another argument advanced by Mr.Sarin is that any statement made before the Income Tax authorities which may show that the sub-tenant was in exclusive possession or as in present case paying rent would not be considered an admission u/s 18 of the Evidence Act, 1872. He further submitted that such an admission made by sub-tenant Mr.V.D.Sikri would not bind the tenant-petitioner. For the aforementioned proposition of law, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of Shri Sri Chand Gupta v. Shri Gulzar Singh and Anr., (1992) SCC 143.

8. Mr.Sarin has further argued that ground of sub-letting to Mr.V.D.Sikri would not be available because the subletting, if any, ceased on the date of filing the ejectment petition. According to the learned counsel, the truth with regard to entries made in the Income Tax record would have come out, had an ejectment petition been filed during the life time of Mr. V.D.Sikri the sub-tenant and in any case the entries made in the Income Tax record showing payment of rent to the tenant-petitioner cannot be relied upon and the fact of sub-tenancy cannot be corroborated by the same. The learned counsel has again placed reliance on the judgment of the Supreme Court in Shri Sri Chand Gupta's case (supra). The learned counsel then submitted that long silence on the part of landlord-respondent with regard to sub-letting would lead to an inference that there was nothing unlawful about the sub-tenancy. In this regard, the learned counsel has placed reliance on a judgment of the Supreme Court in the case of [A.S. Sulochana Vs. C. Dharmalingam](#), . He has also submitted that the ground of sub-letting is not available to the landlord-respondent who purchased the demised premises on 10.3.1972. Firstly, he maintained silence till 1979 and then such a ground which was available to the earlier landlord would not be available to the landlord-respondent because the sub-tenancy was continuing since 1961 till the date of death of Mr.V.D.Sikri in 1975. In this regard, he has placed reliance on a judgment of Bombay High Court in the case of Chantinat S.Ghogadev.Rajmal Uttamchand Gugale, 1979 RCJ 102. The learned counsel has also pointed out that a patent error has been committed by the Appellate Authority by observing in paragraph 8 of the judgment that the tenant-petitioner has parted with possession a portion of the property and there is no challenge to the evidence produced in support of this finding, whereas in Ex.A W3/37 on 25.8.1979 the tenant has categorically pointed out that he was in sole occupation of that portion of the demised premises since 1960 at a monthly rate of rent of Rs.25/-.

9. Mr.Palwinder Singh, learned counsel for the landlord-respondent has argued that there are concurrent findings of facts recorded by both the Courts below against the tenant-petitioner and in favour of the landlord-respondent. The learned counsel has pointed out that in view of the law laid down in Siri Ram v. A. Ir. Com. Mahabir Chand, 1981 CLJ 270 concurrent findings of facts recorded by both the Courts below cannot be reversed by this Court unless the same are found to be absolutely perverse. The learned counsel has also pointed out that once the landlord-respondent has proved the fact that there is a subtenant occupying the demised premises or a part thereof, then the burden of proof shifts on the tenant-petitioner and he must show and explain as to how the sub-tenant came in possession. Non-furnishing of any proof would lead to an adverse inference that Mr.V.D.Sikri had remained in possession as a sub-tenant on payment of rent. In support of this submission, the learned counsel has placed reliance on a judgment of this Court in the case of Kartar Singh v. Harbhajan Singh etc., 1980 Current Law Journal 401. The learned counsel has also pointed out that the Sat Pal who appeared as RW-3 has spoken patent lies and has been rightly disbelieved. The learned counsel has also submitted that exclusive

possession was handed over the sub-tenant Mr.V.D.Sikri who has employed Sat Pal as his clerk because Mr.V.D.Sikri used to practice as an Income Tax Adviser.

10. I have thoughtfully considered the rival contentions raised by learned counsel or the parties and am of the view that this petition is liable to be dismissed. Section 13(2)(ii) of the Act incorporates the grounds of sub-letting for ejectment of a tenant as well as sub-tenant which reads as under:-

"13. Evidence of tenants.- (1) xx xx

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of Showing cause against the applicant, is satisfied-

(i)xx xx xx

(ii) that tenant has after the commencement of this Act without the written consent of the landlord-

(a) transferred his right under the lease or sublet the entire binding or rented land or any portion thereof; or

(b) used the building or rented land for a purpose other than that for which it was leased, or"

11. A perusal of the aforementioned provision shows that if the tenant has sublet the entire building or any portion thereof, then the aforementioned grounds would be available for the ejectment of such a tenant. In the present case, it has been categorically found by both the Courts below that exclusive possession of front portion of the building was handed over the sub-tenant Mr.V.D.Sikri by the tenant-petitioner at the rate of Rs. 12.50 p.m. The aforementioned findings have already been quoted in the preceding paragraph of this judgment. Therefore, once it is proved that there is parting of actual physical and exclusive possession by a tenant in favour of third person without the consent of landlord-respondent, it would indicate that the premises has been sublet. The aforementioned view has been expressed by the Supreme Court in the case of Bharat Sales Ltd. v. Life Insurance Corporation of India, 1998(1) RCR(Rent) 272 (SC). It has been held by the Supreme Court that for sub-tenant, parting of exclusive possession of the whole building is not necessary. It would be sufficient if part of the building is proved to be in exclusive possession of a third person. The observations of their Lordships in this regard read as under:-

"Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the

scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person or had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property has been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let." (emphasis added).

Similar view has been taken by the Supreme Court in the case of [Duli Chand \(Dead\) by Lrs. Vs. Jagmender Das, Dev Kumar \(Died\) through LRs. Vs. Smt. Swaran Lata and others](#), *Nihal Chand Rameshwar Dass v. Vinod Rastogi*, (1994) SCC 325, and [Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others](#),

12. In the present case, Section 13(2)(ii) of the Act specifically provides that if a tenant parts with possession of a rented building or apart thereof to a third person without the consent of the landlord which is proved to be in exclusive control of such a third person, then it would be considered as sub-letting. On facts, it has been proved that the tenant-petitioner has handed over possession of front portion of the building to one Shri V.D.Sikri and the fact of payment of rent has also been proved. Therefore, the case of the landlord-respondent is squarely covered by Section 13(2)(ii) of the Act.

13. It is further well settled that the question relating to sub-letting is a question of fact as has been held by the Supreme Court in [Kehar Singh Vs. Yash Pal and others](#), ; *Shalimar Tar Products Ltd.*'s case (supra), [Bhoolchand and Another Vs. Kay Pee Cee Investments and Another](#), and in the case of [Smt. Krishnawati Vs. Shri Hans Raj](#), .

14. Once it is established that sub-letting is a question of fact, then this Court would not be inclined to exercise its revisions jurisdiction conferred on it under subsection (5) of Section 15 of the Act. The aforementioned view has been taken by this Court in the cases of *Harjit Singh v. M/s. Daya Ram Sat Narain*, 2003(1) PLR 579 and *Dhani Ram v. Madan Lai*, 2003(2) PLR 564. In both these judgments, the scope of

interference under sub-section (5) of the Section 15 of the Act has been elaborately considered and it has been found that this Court can interfere even in the findings of facts in limited cases. The observations made by this Court in the case of Harjit Singh (supra) read as under:-

"From the above enunciation of law laid down by the Supreme Court it is evident that despite wider nature of power of revision with the High Court under the Rent Act than the power of revision u/s 115 of the Code of Civil Procedure, 1908 a distinction has to be maintained between a revision and an appeal. The grounds of revisions are limited and can be summed up as under-

(a) Findings are perverse;

(b) Findings are bald and without evidence;"

(c) Findings are based on perfunctory and superficial approach;

(d) Findings are wholly unreasonable;

(e) Findings cannot be reversed by re-assessing evidence merely because a view different than the one recorded by the Courts below is possible;

(f) Powers of revision under sub-section (6) of Section 15 of the Act do not extend to power of regular appeal."

15. On detailed examination of the evidence as is high-lighted by the learned Appellate Authority in paragraphs 8 and 9 extracted above, there is ample evidence on record to conclude that findings of facts of sub-letting, surrendering of exclusive possession of front portion of the building and payment of rent have been duly proved. By no stretch of imagination those findings could be considered to be perverse or without evidence. No reasonable man on the basis of evidence adduced could conclude that aforementioned findings are not possible to be arrived at or that the approach adopted by the Courts below is perfunctory. It is also well settled as has been found in Harjit Singh's case (supra) that power of revision of this Court under sub-section (5) of Section 15 of the Act does not extend to power of appeal. Therefore, no interference in the aforementioned concurrent findings is called for.

16. The arguments of learned counsel for the tenant-petitioner that the landlord-respondent did not have any right to seek ejectment of the tenant-petitioner because of the waiver, would not require any detailed consideration in view of the fact that such a waiver was required to be pleaded and proved the Courts below. It is well settled that waiver is a question of fact which has to be established by the parties who wish to rely upon such principles. In this regard reliance may be placed on the judgment of the Supreme Court in Duli Chand's case (supra). In the present case, there is no finding as to when the landlord came to know of sub-letting and parting of possession and this cannot be permitted to be raised for the first time.

17. The other arguments that the Income Tax return reflecting payment of rent by Mr.V.D.Sikri to the tenant-petitioner cannot be used as evidence is also liable to be rejected because there is ample evidence other than the Income Tax return which shows that the rent at the rate of Rs. 12.50 p.m. was used to be paid. The statement of A-4 Ram Sarup and the statements of accounts have been placed on record in evidence. Moreover, no such argument has been raised before the Courts below. Therefore, I have no hesitation in rejecting this submission of the learned counsel also.

18. The other argument that no exclusive possession was ever delivered or that Mr.V.D.Sikri was merely a licensee would not be acceptable in view of the firm findings of facts returned by both the Courts below.

19. For the reasons above, this petition fails and the same is dismissed. The tenant-petitioner is directed to hand over vacant possession of the demised premises to the landlord-respondent within a period of three months from today. He shall also deposit all the arrears of rent till the date of vacation of the demised premises with the Rent Controller within a period of two months from today.