

## Ram Avtar Vs Sushma Kumari and Another

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

**Date of Decision:** May 30, 2007

**Acts Referred:** Haryana Urban (Control of Rent and Eviction) Act, 1973 " Section 15(6)

**Citation:** (2007) 4 CivCC 378 : (2007) 4 RCR(Civil) 143 : (2007) 2 RCR(Rent) 342

**Hon'ble Judges:** Satish Kumar Mittal, J

**Bench:** Single Bench

**Advocate:** M.R. Verma, for the Appellant; L.N. Verma, for the Respondent No. 1, for the Respondent

**Final Decision:** Dismissed

### Judgement

Satish Kumar Mittal, J.

The tenant Ram Avtar has filed this revision petition u/s 15(6) of the Haryana Urban (Control of Rent and

Eviction) Act (hereinafter referred to as "the Act"), against the orders passed by the Rent Controller. Bhiwani and the Appellate Authority under

the Act, whereby the ejectment of the petitioner from the shop in question has been ordered on the ground that he has sub-let the demised

premises to respondent No.2, namely Bishan Sarup, who is his real brother.

2. The demised premises is a shop, which was let out to the petitioner by Smt.Sushma Kumari (respondent No. 1 herein) in the year 1984 on

monthly rent of Rs.450/- . In the year 1986, the ejectment petition was filed by the landlady on various grounds, including the ground that without

her written consent the demised premises has been sub-letted by the petitioner to his real brother. It was alleged that the petitioner has handed

over the exclusive possession of the demised premises to his brother and he himself has shifted to a new shop at Patram Gate, near Old Police

Chowki Bhiwani.

3. The petitioner contested the said application by taking the plea that he alone is doing business in the demised premises and he has not sub-letted

the demised premises to his brother Bishan Sarup.

4. The Rent Controller, after taking into consideration the evidence led by the parties, held that the petitioner had parted with the possession of the

demised premises exclusively to his brother Bishan Sarup, who is carrying his business in the demised shop. It was further held that the petitioner

has failed to prove that his brother is not sub-tenant in the demised premises. Consequently, the order of ejectment was passed on the ground of

sub-letting. The Appellate authority has affirmed the order of ejectment by dismissing the appeal filed by the petitioner. Hence, this revision petition

was filed.

5. I have heard the arguments of learned counsel for the parties and gone through the impugned orders, passed by both the courts below.

6. Learned counsel for the petitioner submitted that the finding of sub-letting recorded by the courts below is "perverse being based on misreading

of evidence, and the material evidence led by the petitioner has also been ignored. In this regard, learned counsel submitted that statements of

various witnesses examined by the petitioner have not been properly appreciated. He further submitted that both the courts below have wrongly

recorded the finding that the petitioner has parted with possession of the demised premises exclusively to his brother. He submitted that the said

finding has been recorded merely on the basis of evidence, which only shows that on one or two occasions, in the absence of the petitioner, & his

brother was found present in the demised premises. While referring to the decisions of the Supreme Court in *M/s. Delhi Stationers & Printers Vs.*

*Rajendra Kumar*, 1990 HRR 263 and *Mani Ram Vs. The Presiding Officer, Labour Court*, learned counsel for the petitioner submitted that mere

presence of a person other than the tenant in the shop does not prove case of sub-letting as long as control over the business is kept by the tenant.

He submitted that in order to prove the sub-letting, the landlord is required to prove the parting of legal possession to the sub-tenant and the

burden of making a case of sub-letting lies on the landlord. He submitted that in the instant case, the landlady has not discharged her onus to prove

that the demised premises was subletted by the petitioner to his brother for a consideration. Learned counsel submitted that in this case the courts

below have recorded the finding with regard to parting of possession of the demised premises to the sub-tenant, on the basis of the report of local

commissioner, which is inadmissible in law. He submitted that before appointing the local commissioner, neither a notice was given to the petitioner

nor any intimation was given to him with regard to visit of the local commissioner at the spot. Learned counsel further submitted that in order to

prove the report, the local commissioner was not examined by the landlady. He submitted that both the courts below have totally ignored the

documents Ex.R1 to Ex.R6, which indicate that a shop was purchased by wife of Bishan Sarup, the alleged sub-tenant. From these documents, it is

proved that Bishan Sarup was running his own shop with his son in a different premises, which is situated in front of the demised premises.

According to the learned counsel, these documents have belied the version of the landlady that sub-tenant Bishan Sarup is doing his business in the

demised premises. Learned counsel for the petitioner further submitted that the scope of power of the High Court u/s 15(6) of the Act is more

wider than the power conferred u/s 151 of the CPC or Article 227 of the Constitution of India. Under this section, the High Court is empowered

to examine the legality or perversity of the order under revision. Therefore, learned counsel submitted that this court has ample power to re-

examine the issue of sub-letting in the light of evidence available on record and to set aside a perverse finding recorded by the courts below, which

is contrary to the evidence available on record.

7. On the other hand, learned counsel for respondent No. 1-landlady submitted that both the courts below have recorded a pure finding of fact to

the effect that the petitioner has sub-letted the demised premises to his brother without the written consent of the landlady. Learned counsel

submitted that by appreciating the evidence led by both the parties, a concurrent finding has been recorded that the petitioner has handed over

possession of the demised premises to his brother for doing his personal business and he himself has shifted to another shop, where he is doing his

business. Thus, it has been proved on record that the petitioner has voluntarily parted with possession of the disputed shop to his brother for doing

his personal business. Learned counsel submitted that not only the landlady has proved by leading sufficient evidence that the tenant has parted

with possession of the demised shop exclusively to his brother, but the tenant himself in his written statement has not controverted the stand taken

by the landlady that he has shifted his business to a new shop situated at Patram Gate, near Old Police Chowki, Bhiwani. The landlady has also

placed on record the documentary evidence in shape of Assessment Register of the Municipal Committee, which also indicate the possession of

sub-tenant on the demised premises. Learned counsel further submitted that the documents, Annexures RI to R6, produced by the petitioner are

not relevant at all to the controversy in issue. These documents pertain to the purchase of some property by the wife of Bishan Sarup, but the same

do not establish that sub-tenant Bishan Sarup is doing his business under the name of Bishan Sarup Anil Kumar in a different premises, whereas as

per the evidence led by the landlady i.e. statements of AW1 Rang Rao, Fee Collector, it has been proved that the sub-tenant Bishan Sarup is

doing his business in the name of Bishan Sarup Anil Kumar in the demised premises, Counsel submitted that keeping in view the evidence on

record, both the courts below have recorded a pure finding of fact, which does not require any interference in the revisional jurisdiction of this

Court. In support of his contention, learned counsel relied upon decisions of the Supreme Court in Masjid Kacha Tank, Nahan Vs. Tuffail

Mohammed, Shiv Lal Vs. Sat Parkash and Another, , Lachman Lass Vs. Santokh Singh, JT 1995(7) SC 437, Vaneet Jain Vs. Jagjit Singh, 2000

(1) acj 633 (S.C.) : (2000) 126 PLR 263 and Ram Dass Vs. Davinder,

8. After hearing the arguments of learned counsel for the parties and having gone through the record of the case, I do not find any ground to

interfere in the impugned orders of ejectment, passed by both the courts below, on the ground of subletting.

9. In the ejectment application, the landlady has specifically pleaded that the petitioner-tenant has sub-letted the shop in question to his brother

Bishan Sarup. It is further averred that the petitioner has handed over possession and control of the shop in dispute to his brother Bishan Sarup

and he himself has shifted his business to a new shop at Patram Gate, near old Police Chowki. Bhiwani. In the said shop, he is now running the

Karyana business. In the written statement, the petitioner has averred that he and Bishan Sarup are brothers and the business which is being run in

the shop in dispute belongs to the petitioner. He has not disputed the fact that he has not shifted his business to his new shop, situated at Partap

Gate, near old Police Chowki, Bhiwani. Further the petitioner, while cross-examining the witnesses of the landlady, has taken different and

contradictory stands. While cross-examining the landlady, a suggestion was put to her to the effect that the petitioner and his brother were jointly

doing their business in the shop in dispute from the very inception of the tenancy. While cross-examining A W4, a suggestion was given by the

petitioner that his brother Bishan Sarup occasionally comes to his shop. To another witness, a suggestion was put that only the petitioner was doing

the business in the disputed shop. Thus, it appears from the evidence on record that the petitioner was taking different and contradictory stands.

The Courts below have taken this fact adverse to the petitioner.

10. Secondly, the courts below have held that the landlady, by leading cogent and reliable evidence, has proved the parting of possession of the

disputed shop by the petitioner exclusively to his brother. In this regard, the following evidence available on record, has been relied upon:

(i) AW2 Banwari, AW3 Sushma (landlady), AW3/A Subhash Chand and AW.5 Karam Chand have categorically stated that the petitioner has

ceased to occupy the shop and had transferred possession of the same in favour of his brother Bishan Sarup, who alone is now carrying on his

business in the disputed shop.

(ii) The landlady has proved that Bishan Sarup had obtained a license from the Market Committee, Bhiwani in the name of M/s.Bishan Sarup Anil

Kumar and the said firm is running the business in the disputed shop. AW 1 Rang Rao, Fee Collector, Market Committee, Bhiwani, has proved

this fact.

(iii) It has been proved from the statements of various witnesses examined by the landlady that the petitioner had shifted his business in a different

shop at Patram Gate, near old Police Chowki, Bhiwani. This fact has not been controverted by the petitioner even in his written statement. The

report of local commissioner also proves that at the time of visit of the local commissioner, Bishan Sarup was doing the business in the disputed

shop. The landlady has also placed on record copy of the Assessment Register from the Municipal Committee, as Ex.P4, in which Bishan Sarup

has been shown to be in exclusive possession of the disputed shop as tenant of the respondent-landlady.

(iv) It has been found by both the courts below that the petitioner has not produced the records of his business. He could have produced the sale

tax permit number and Municipal Committee or Market Committee License to show that he was doing his business from the demised premises but

he did not produce any such documentary evidence. Therefore, an adverse inference has been drawn against him.

11. Thus, on the basis of the aforesaid evidence, it has been held that the petitioner had parted with the possession of the demised premises and

handed over the same exclusively to his brother. I do not find any illegality or perversity in the said finding of fact. In view of this factual position,

onus to prove that there was no subletting shifts on the petitioner-tenant. It is true that burden to prove the ground of eviction lies on the landlord,

but once the landlord proves the fact that the tenant has parted with the possession of the demised premises exclusively to a third person, then onus

to prove that there was no sub-letting shifts on the tenant. In cases where the tenant and the alleged sub-tenant happen to be close relations or

brothers inter se, as in the case in hand, it is very difficult for the landlord to prove secret arrangements between brothers regarding the valuable

consideration. Therefore, if the parting of possession of the demised premises by the tenant exclusively in favour of his co-relation is proved, then

the onus to prove that there was no sub-letting shifts on the tenant. In this regard, reference can be made to the judgments of this court in Dr.Ram

Sarup Vs. Smt.Savitri Devi, 1969 RCJ 97, Dharam Chand Vs. Kasturi Lal & Ors., 1977 (2) RCJ 276 and Kislian Chand of Gurdaspur Vs.

Banarsi Dass and others, (1989) 96 PLR 590 as well as decision of the Supreme Court in Ram Dass Vs. Davinder, .

12. The contention of learned counsel for the petitioner that Bishan Sarup was though occasionally found sitting on the shop, but he was not in

actual control of the premises, cannot be accepted, because in this case, the landlady had led sufficient evidence, as discussed above, which clearly

establish that the petitioner has handed over possession of the demised premises exclusively to his brother Bishan Sarup, who is now running the

business in the same. In such a situation, the courts below have rightly come to the conclusion that the onus of proof was shifted on the petitioner

and this onus could not be discharged by him by leading any cogent evidence. Another contention of learned counsel for the petitioner that by

producing on record the documents Ex.R1 to Ex.R6, the petitioner has rebutted the presumption and proved that his brother Bishan Sarup is

running his own business in a different shop, situated in front of the demised premises, is also not tenable. In my opinion, from these documents, it-

cannot be said that Bishan Sarup is running his business in the name of M/s.Bishan Sarup Anil Kumar in a different premises, because the petitioner

has not led any evidence to this effect, which he could have led by producing Sales Tax Number, Market Committee/ Municipal Committee

License in the name of Bishan Sarup, running the business in a different premises. That is why, adverse inference for non-production of the best

available evidence has been drawn against the petitioner. On the other hand, the landlady has produced on record the license of M/s.Bishan Sarup

Anil Kumar, which is being run by Bishan Sarup in the demised premises. This evidence led by the landlady clearly proves that in the demised

premises firm M/s.Bishan Sarup Anil Kumar is doing the business. In my opinion, both the courts below have rightly recorded a finding of fact to

the effect that without the written consent of the landlady, the petitioner has sub-letted the demised premises to his brother Bishan Sarup. It is well

settled that there can be a sub-letting between father and son and between brother and brother. In this regard, reference can be made to a decision

of this Court in Ravi Parkash and Others Vs. Dewan Chand, .

13. Since both the courts below have recorded a pure finding of fact, I do not find any ground to interfere in the said finding of fact, in exercise of

the revisional jurisdiction of this Court u/s 15(6) of the Act. The said finding of fact has been recorded by both the courts below after considering

all the evidence led by the parties. In revisional jurisdiction, re-appraisal of the evidence is not permissible, as has been held by the Supreme Court

in Lachman Dass's case (supra). In Shiv Lal's case (supra), the Supreme Court observed that while exercising the jurisdiction u/s 15(5) of the

East Punjab Urban Rent Restriction Act, 1949, the court does not act as a regular third appellate court and can interfere only within the scope of

sub- section, discussed and defined in many reported cases of the Supreme court. It is held that re-consideration of the evidence, led by the

parties, by the High Court is not justified in the revisional jurisdiction.

14. In view of the above, I do not find any merit in the instant petition and the same is, hereby dismissed with no order as to costs.