

(2015) 09 P&H CK 0097

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2521 of 1987 (O and M)

Paramjit Singh Walia

APPELLANT

Vs

Jagdish Mittar and
Others

RESPONDENT

Date of Decision: Sept. 19, 2015

Acts Referred:

- Haryana Urban (Control of Rent and Eviction) Act, 1973 - Section 13, 13(1), 13(2), 13(3), 13(4)
- Punjab Urban Rent Restriction Act, 1947 - Section 13, 2(c)

Citation: (2015) 180 PLR 743 : (2016) 1 RCR(Civil) 812 : (2016) 1 RCR(Rent) 39

Hon'ble Judges: S.J. Vazifdar, A.C.J; Tejinder Singh Dhindsa, J

Bench: Division Bench

Advocate: Akshay Bhan, Senior Advocate and Harparteek S. Sandhu, for the Appellant; Vivek Sehgal, Advocates for the Respondent

Judgement

S.J. Vazifdar, Acting C.J

The learned single Judge by an order dated 15.07.1988 admitted the petition and ordered it to be placed before the Chief Justice for referring it to a Division Bench. This is how the matter comes before us by way of a reference.

2. The order of reference reads as under:-

"One of the contentions raised in this case by the learned counsel for the petitioner was that he having been put into possession as sub-tenant by the tenant without the consent of the landlord, no relationship of landlord and tenant would come into being between them. Reliance for this proposition was placed on [Kashmiri Lal and another Vs. Madan Lal](#) . I find it difficult to subscribe to the proposition of law enunciated in Kashmiri Lal's case (supra). The subtenant having been put into possession by the tenant without the consent of the landlord would not be a tenant qua the original landlord. For creating a

relationship of landlord and tenant between the tenant and the sub-tenant, the provisions of the Act do not require that the same should have come into being with the consent of the landlord of the tenant. The decision in Kashmiri Lal's case, therefore, in my view, requires consideration. The petition is accordingly admitted and is ordered to be placed before Hon"ble the Chief Justice for referring it to a Division Bench. Stay to continue."

3. Before referring to the judgment, it is necessary to note the relevant provisions of the Haryana Urban (Control of Rent and Eviction) Act, 1973. Sections 2(c), 2(e), 2(h), 13(1), 13(2), 13(3) and 13(4) read as under:-

"2. Definitions.--In this Act, unless there is anything repugnant in the subject or context,--

.....

(c) "landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter provided, and every person from time to time deriving title under a landlord;

.....

(e) "prescribed" means prescribed by rules made under this Act;

.....

(h) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy and in the event of such person's death, such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rent for shops has been framed out, or leased by a municipal, town or notified area committee;

.....

13. Eviction of tenants.--(1) A tenant in possession of a building or a rented land shall not be evicted therefrom except in accordance with the provisions of this section.

(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 application, is satisfied,--

.....

(3) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession--

.....

(4) The Controller shall, if he is satisfied that the claim of the landlord is bonafide, make an order directing the tenant to put the landlord in possession of the building or rented land on such date as may be specified by the Controller and if the Controller is not so satisfied, he shall make an order rejecting the application:

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate."

4. Before referring to the judgment in Kashmiri Lal and another vs. Madan Lal (supra), with which the learned Judge, referring the matter to the Division Bench did not agree, it would be useful to refer to a judgment of a learned single Judge of this Court in Hans Raj Salig Ram vs. L. Niranjan Lal, 1952 (Vol.LIV) The Punjab Law Reporter 31. It is necessary to refer to the manner in which the judgment has been reported in the Punjab Law Reporter. The Reporter firstly refers to the order of reference to the Division Bench. It then refers to the judgment of the Division Bench. The Division Bench answered the reference and put the matter up for decision before a single Judge. The decision of the Division Bench did not deal with the question before us. The judgment of the learned single Judge before whom the matter was placed pursuant to the order of the Division Bench, however, dealt with this issue. The learned Judge held:-

"Under Section 13 of the East Punjab Urban Rent Restriction Act, 1947, a tenant in possession of a building cannot be evicted in execution of a decree passed before or after the commencement of this Act except in accordance with the provisions of that Section, and in the Act of 1949 the provision is the same. A tenant was defined in the Act of 1947 in section 2(i) as follows:

""Tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant; unless with the consent in writing of the landlord, * * *"

Under Section 13(2) a landlord who seeks to evict his tenant shall apply to the Controller,, for a direction in that behalf, and if the conditions laid down in Section 2 are satisfied the Controller can direct the eviction of the tenant. If the Act of 1949 applied to the parties the only tribunal which could order the eviction of Naranjan Lal would be the Controller and if the Act does not apply, then the Controller would have no jurisdiction to pass the order which was made on the 24th November 1947. It was admitted by both parties that the sub-tenancy created in favour of Naranjan Lal was not with the consent in writing of the landlord and therefore in my opinion Naranjan Lal "qua" firm Hans Raj Salig Ram is not a,

tenant as given in the Act of 1947 or the Act of, 1949. Mr. Mukand Lal Puri on behalf of the appellant submitted that because the Punjab Urban Rent Restriction Act of 1941 was repealed by virtue of Section 21 of the Act of 1947 and Narinjan Lal was a tenant within the meaning of the old Act he continues to be a tenant within the meaning of the Act of 1947 also. I am unable to agree with this submission. In the definition Section of the Act of 1947 it is provided:

"In this Act, unless there is anything repugnant in the subject or context-

(1) "tenant" means * * * "

Therefore, whenever the word "tenant" occurs in the Act of 1947, the definition which is given in this Act must apply to that word and we cannot engraft the definition given in another Act to the present Act. Mr. Puri relied on the provisions of the General Clauses Act but I am unable to find that that provision would apply to the word "tenant" as used in the Act of 1947.

It may be convenient at this stage to give the definition of landlord also which is given in Section 2(c) of the Act of 1947 and is as follows:

""Landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a, tenant who sublets any building or rented land in the manner hereinafter authorised, and every person from time to time deriving title under a landlord."

Taking the words landlord and tenant together as used in the definition Section of the Act of 1947, firm Hans Raj Salig Ram cannot be termed landlords because they are not "a tenant who sublets any building in the manner authorised under the Act" because sub-letting is not authorised under the Act, and Narinjan Lal is not a tenant within the Act because the building was not rented to him with the consent in writing of the landlord. The jurisdiction of the Controller under Section 13 extends only to persons who are landlord and tenant as defined under the Act and therefore firm Hans Raj Salig Ram could not make an application to the Rent Controller who had no Jurisdiction under the Act."

(emphasis supplied)

5. This brings us to the judgment in Kashmiri Lal and another vs. Madan Lal (supra), with which the learned Judge who referred the present matter to the Division Bench did not agree. In this case, one Raghunath Sahai was the owner of the property. He gave it on lease to Madan Lal as a tenant. Madan Lal sublet the property to one Lal Chand, who died and was, therefore, represented by Kashmiri Lal and another i.e. the petitioners. Madan Lal filed a suit for ejectment against Lal Chand suing Lal Chand as his tenant. The trial Court decreed the suit and the appellate court dismissed the appeal. Execution proceedings commenced. The legal representatives of Lal Chand-judgment debtors

contended that the decree was a nullity in view of the provisions of the said Act. It was contended that the decree holder was not a landlord and Lal Chand was not his tenant within the meaning of those expressions in the Act. The revision filed by the heirs of the judgment debtor was decided by the learned single Judge. The learned Judge held:-

"4. I have heard the learned counsel for a considerable length but express my inability to accept his contention. The first question that arises is as to whether the Rent Controller had the jurisdiction to decide the matter under the Act. The Rent controller can have jurisdiction if the parties inter alia fall within the definition of words, "landlord" and "tenant". The word "landlord" is defined in the Act and it means any person for the time being entitled to receive rent in respect of any building or rented land and included a tenant who sublet any building or rented land in the manner thereafter provided and every person who from time to time derives title under a landlord. From a reading of the definition, it is clear that a tenant who sublets the building will become a landlord in case he sublets the building in the way prescribed in the Act. The way as to how the building should be let by the tenant has been provided in the definition of word "tenant" which says that the sub tenant will be included in the definition of the word "tenant" if he sublets the building to the sub tenant with written consent of the landlord. If the definition of the words "landlord" and "tenant" are read together, it is evident that a subtenant who has been put into possession of the building by the tenant without the written consent of the landlord would not be a tenant as defined, and the tenant, who put him into possession would not be the landlord. If the relationship of landlord and tenant did not exist between the parties no petition for ejectment was maintainable under the Act. No doubt it is true that Mandan Lal, decree-holder took the plea that he was landlord and Lal a Chand deceased was his tenant but that does not prove that they were so under the Act. It is possible, that the relationship between them did not fall within the definitions of "landlord and "tenant" as defined in the Act, but that relationship could exist between them under the general law. In that eventuality, the jurisdiction of the Civil Court to order ejectment of Lal Chand deceased was there. It is also noteworthy that no plea was taken by Lal Chand in the suit that he was a tenant under the plaintiff as defined in the Act and, therefore, the Civil Court had no jurisdiction to try the suit. Consequently, it cannot be held that the Rent Controller had the jurisdiction to try the matter."

(emphasis supplied)

6. Another learned single Judge in [Pishori Lal Vs. Joginder Singh](#), (1992) 102 PLR 659 held:-

"9.....Taking the definitions of "landlord" and "tenant" together as used in clause (c) and (i) of Section 2 of the Act, a tenant cannot be termed as landlord of such sub-tenant if he, without the consent in writing of his landlord, has sublet the building or rented land to the sub tenant. If he sublets the building without the consent of his landlord, then the ejectment petition by tenant against the sub tenant will not be maintainable. The Rent Controller shall have

jurisdiction to entertain the petition if the tenant sublets the building or rented land with the consent in writing of the landlord.....

7. We are entirely in agreement with the observations of the learned single Judges in each of the above cases. The ratio of these judgments is based on the plain language of the provisions of the Act. Section 2(c) defines "landlord" to mean any person for the time being entitled to receive rent in respect of any building on his own account and includes a "tenant" who sublets any building or rented land "in the manner hereinafter provided". The only reference in the Act at least to which our attention was invited which indicates the manner in which a tenant sublets any building or rented land is Section 2(h). Section 2(h) defines a "tenant" to mean any person by whom or on whose account rent is payable for a building or a rented land and includes a tenant. Section 2(h) includes the persons who can be considered tenants and the circumstances in which they can be considered tenants. Section 2(h), however, proceeds to provide: "but does not include a person placed in occupation of a building or rental land by its tenant, except with the written consent of the landlord." A conjoint reading of clauses (c) and (h) of Section 2 indicates that "landlord" includes a tenant who sublets any building or rented land in the manner provided therein, meaning thereby with the written consent of the landlord. There is no other provision of the Act which indicates the manner provided for a tenant to sublet any building or rented land.

Even assuming that this is not so, an action for ejectment under the provisions of the Act is not maintainable by a tenant who sublets any building or rented land without the written consent of the landlord for in that case the person to whom the premises are sublet does not fall within the ambit of the definition of the term "tenant" in Section 2(h) which expressly provides that "tenant" does not include a person placed in occupation of a building or rental land by its tenant "except with the written consent of the landlord". Even in that event, there would be no landlord-tenant relationship. If that is the case, the provision of Section 13 would be inapplicable. The entire Section 13 and each of its sub-sections refer to a tenant and a landlord. Sub-section (2) provides the circumstances in which a landlord can seek the eviction of a tenant.

8. The concluding words in Section 2(c), "and every person from time to time deriving title under a landlord" do not include a tenant for a tenant does not derive a title under the landlord.

9. The respondent, however, contended in the alternative that he did have the written consent of the landlord to sublet the premises. We express no opinion on the merits of the case. That is for the learned single Judge to decide upon this matter being placed for arguments before the learned single Judge.

10. The reference is, therefore, answered as follows:-

(i) A tenant who sublets any building or rented land without the written consent of the landlord is not a landlord within the meaning of that term in Section 2(c);

(ii) The words in Section 2(c) "in the manner hereinafter provided" refer to a tenant, who sublets a building or rented land with the written consent of the landlord;

(iii) Where a tenant sublets any building or rented land without the written consent of the landlord, the person to whom he sublets the building or rented land does not fall within the meaning of the term "tenant" in Section 2(h);

(iv) Accordingly, where a tenant, who sublets any building or rented land without the written consent of the landlord, cannot maintain an action for eviction under Section 13.

The office shall place the matter before the learned single Judge as per roster for disposal thereof on merits.