Before M.S. Liberhan & T.H.B. Chalapathi, JJ

M/S METONIC INDIA PVT. LTD.,—*Petitioner.*

versus

SMT. KRISHNA & ANOTHER,—*Respondents.*

C.R. No. 1245 of 85

23rd April, 1997

The East Punjab Urban Rent Restriction Act, 1949-S.13-Subletting-Meaning of-Tenant pledges goods to Bank - Bank putting its own lock - Whether amounts to subletting.

(Panna Lal v. *Firm Vakil Chand Pawan Kumar & another, 1980 P.L.R. 734, distinguished).*

Held that, the legal and lawful title of the goods stored in the room under the lock of the Bank continues to vest and remains in the tenant. Therefore, the tenant has been using the demised premises to keep his goods only although the said goods have been pledged with the Bank and the Bank can be said to have the physical possession and control over those goods under the agreement of pledge. This will not amount to subletting as the lawful title and possession of the goods continue to vest in the tenant and the possession was never parted with nor enforceable interest is created in the premises. As the pledged goods are kept in the premises taken on rent by the pledgor, the Bank is not liable to pay any rent. The tenant has not lost control of the premises as he can redeem his goods at any time by repaying the debt. The mere fact that the Bank puts its lock does not amount to subletting as the tenant has not divested himself not only of physical possession but also of the right to possession. The divestment or abandonment of the right to possession is necessary in order to make out a case of subletting.

(Paras 25 & 31)

A.K. Mittal and G.S. Sandhawalia, Advocates *for the Petitioner.*

M.L. Sarin with Hemant Sarin, Advocates *for the Respondents.*

JUDGEMENT

T.H.B. CHALAPATHI, J.

Doubting the correctness of the decision of the learned Single Judge in *Panna Lal* v. *Firm Vakil Chand Pawan Kumar and another* (1), Mr. Justice S.S. Sodhi (as his Lordship then was) referred this revision to a Division Bench.

(2) As stated by his Lordship, the controversy in this case raises the question.

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(1) 1980 PLR 734

(3) Where a tenant in order to obtain a loan or cash credit facility from the Bank, pledges his goods, which the Bank stores in a part of the demised premises over which it thereafter has exclusive possession, in the sense, that it is locked and sealed by the Bank and the tenant cannot without the permission of the Bank, enter that portion or deal with the goods stored there, does it amount to subletting.

(4) The petitioner in this revision is the tenant of the premises belonging to respondent No. 1 who filed the application for eviction of the tenant under Section 13 of the East Punjab Urban Rent Restriction Act on the ground of subletting the premises.

(5) The undisputed facts are that the tenant has taken the premises on lease for carrying on business and he obtained loan from respondent No. 2-Bank by pledging the goods and failed to discharge the loan forcing the Bank to take possession of the pledged goods in exercise of its powers under the agreement of pledge of goods and kept the goods in a room of the demised premises and kept the said room in its possession under lock and key. According to the landlord, this amounts to subletting and the tenant has made himself liable to be evicted on the ground of subletting.

(6) According to clause (ii) of sub-section 2 of Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter referred to as the Act), a landlord is entitled to evict his tenant if the Rent Controller is satisfied that the tenant has without the written consent of the landlord transferred his right under the lease or sublet the entire building or rented land or any portion thereof or used the building or rented land for a purpose other than that for which it was leased.

(7) It is not the case of the landlady that the demised premises have been or being used for any purpose other than for which it has been leased out.

(8) The only ground on which the landlady is seeking eviction is that the tenant sublet the premises to Bank by allowing it to put its own lock to the room in which the pledged goods have been kept. It is, therefore, to be seen whether this act of the tenant in allowing the Bank to take into its possession of the room where the pledged articles have been kept and putting its own lock, amounts to subletting.

(9) The real test to determine subletting is whether the tenant has walked out of the demised premises and has handed over its exclusive possession and control to the sub tenant and thereby created an interest in the Bank.

(10) As Lord Denning said in *Cobb* v. *Lane* (2) "The question in all these cases is one of intention. Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land.

(11) It is, therefore, necessary to examine what interest is sought to be conferred on the Bank in the pledged goods in case of default of repayment of loan by the tenant. Exhibit RW 3/A is the agreement of pledge of goods. Under the said agreement the Bank agreed to provide cash credit/ over draft to the tenant up to a limit of Rs. 1,50,000 on the security of the goods pledged. Clause 16 of the agreement empowers the Bank to sell or otherwise dispose of all or any of the securities and to apply the net proceeds of such sale towards the liquidation and Principal and interest monies due to the Bank. It also provides that the goods pledged shall remain and be placed in the exclusive possession and control of the Bank. It also provides that the Bank shall not be responsible for the loss, destruction etc. of the goods pledged. Clause 24 of the agreement provides that the Borrowers (i.e. the tenants) shall bear all expenses incurred by the Bank in connection with the agreement and all such expenses shall be debited to the borrowers account in due course of business.

(12) In the application for eviction, the landlady stated as follows:—

> "Respondent No. 1 i.e. the tenant has transferred his rights under the tenancy to respondent No. 2."

It is further clarified that respondent No. 1 (i.e. the tenant) pledges the finished goods and raw material with respondent No. 2-Bank and obtains the money against the same and the same are stocked by respondent No. 2 in the portion marked 'A' who is using it as a godown. It is further averred "that this portion marked 'A' can be operated upon only by the key of the respondent No. 2. Thus, respondent No. 2 is in exclusive possession of the portion marked 'A' shown in the plan attached with the petition."

(13) Thus, it is clear that even according to the landlady, the goods pledged by the tenant to the Bank have alone been kept in the demised premises and the Bank has put its own lock to the room in which the pledged articles have been kept. There is no averment either in the petition for eviction or in the evidence led in by the landlady that the bank has kept any other property of its own other than the goods pledged by the tenant. Therefore, it can be taken as an admitted fact that the goods pledged alone have been kept in the room which is under the lock and key of the Bank.

(2) 1951 All E.R. 1199

(14) In these premises, the question that arises for consideration is whether the goods which are lying in the room belong to the Bank or the tenant. It is necessary to decide this question as the ultimate result depends on whether the tenant has transferred his right under the lease or any interest in the premises with Bank's exclusive possession.

(15) There cannot be any dispute that the goods kept in the room which has been locked by the Bank are goods pledged to the Bank and no other goods or articles not belonging to the tenant have been kept in that room as can be seen from the averments in the petition for eviction. The appellate Court clearly recorded a finding that "In the room admittedly lie the goods which are pledged by the appellant (i.e. the tenant) with the Bank which is using the room as a godown."

(16) It is, thus, clear that in the room which is in exclusive possession of the Bank, the goods of the tenant pledged with the Bank have been kept. Does the title in those goods vest in the Bank so as to come to the conclusion that the tenant sublet the premises to the Bank to keep its own goods in the demised premises. It is, therefore, necessary to decide whether the Bank has an absolute or exclusive title to the goods pledged with it.

(17) Section 172 of the Contract Act defines pledge as security for payment of debt. The essential ingredients that would constitute pledge are (1) the property pledged should be actually or constructively delivered to the pawnee and (2) pawnee has only a special property in the pledge while the general property in the pledge remains in the pawnor and wholly reverts to him on discharge of the debt.

(18) In *Jaswantrai Manilal Akhaney* v. *The State of Bombay* (3), the Supreme Court summarised the legal position thus:-

"The pledgor has in the present case only transferred his possession of the property to the pledgee who has a special interest in the property of enforcing his charge for payment of an overdraft, if any, whereas the property continues to be owned by the pledgor. The special interest of the pledgee comes to an end as soon as the debt for which it was pledged is discharged. It is open to the pledgor to redeem the pledge by full payment of the amount for which the pledge had been made at any time if there is no fixed period of redemption, or at any time after the date fixed and such a right of redemption continues until the thing pledged is lawfully sold."

Again in paragrpah 13, it has been observed as follows:—

"It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by

(3) 1956 SC 575

him until a certain contingency arises or to be disposed of by him on the happening of a certain event. The person who transfers possession of the property to the second party *still remains the legal owner of the property* and the person in whose favour possession is so transferred has only *the custody of the property to be kept or disposed of by him for the benefit of the other party,* the person so put in possession only obtaining a special interest by way of claim for money *advanced or spent upon the safe keeping of the thing or such other incidental expenses as may have been incurred by him* (Emphasis added)."

(19) In *Lallan Prasad* v. *Rahmat Ali and another* (4), the Apex Court observed:—

"A pawn, therefore, is a security, whereby contract of deposit of goods is made as security for a debt. *The right to property vests in the pledgee only so far as is necessary to secure the debt*.....The pawner, however, has a right to redeem the property pledged until the sale..... The pawnee's right of sale ..... *The pawnee's right of sale is derived from an implied authority from the pawnor and such a sale is for the benefit of both the parties* (Emphasis added.)"

(20) In *Balkrishan Gupta and others* v. *Swadeshi Polytex Ltd. And another* (5), the Supreme Court held:—

"Under Section 176 of the Indian Contract Act, 1872, if the pawnor makes default in payment of the debt or performance at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security, or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. In the case of pledge, however, the legal title to the goods pledged would not vest in the pawnee. The pawnor (Sic for pawnee) has only a special property. A pawnee has no right of foreclosure *since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law.*"

(21) Thus, it is clear that the legal title in the goods pledged by the tenant to the Bank continues to be vested in him only and the right of the Bank is only to secure its due by selling them. Thus, the goods which are lying in the room which has been locked by the Bank belong to the tenant and the entire demised premises including the room are being used only

(4) AIR 1967 S.C. 1322
(5) AIR 1985 S.C. 520

for the purpose of keeping the goods of the tenant only though they have been pledged with the bank. As held by the Supreme Court in *Jaswant Rai's case* (supra), the Bank is entitled to recover the money spent by it upon the safe keeping of the pledged goods. If the goods are kept in the premises of the pledgor either owned by himself or taken on rent, then there is no question of bank spending any monies for safe keeping of the pledged goods.

(22) It is now to be seen whether the action on the part of the tenant in allowing the Bank to put its own lock to the room in which the pledged goods have been kept, amounts to subletting.

(23) Under clause (ii) of sub-section 2 of Section 13 of the Act, the tenant is liable to be evicted if he has transferred his right under the lease or sublet the entire building or rented land or any portion thereof without the written consent of the landlord.

(24) It is not the case of the landlady that the tenant transferred his rights under the lease to respondent No. 2 Bank. Her case is, that the petitioner-tenant has sublet part of the premises to the Bank. Subletting postulates parting of legal possession of the demised premises and handing over its exclusive possession and control to the sub-tenant.

(25) As already observed, the legal and lawful title of the goods stored in the room under the lock of the Bank continues to vest and remains in the tenant. Therefore, the tenant has been using the demised premises to keep his goods only although the said goods have been pledged with the Bank and that the Bank can be said to have the Physical possession and control over those goods under the agreement of pledge. In our considered view, this will not amount to subletting as the lawful title and possession of the goods continue to vest in the tenant and the legal possession of the room is with the tenant alone and the possession was never parted with nor enforceable interest is created in the promises. In *Jagdish Prasad* v. *Angoori Devi* (6), the Apex Court held thus:—

> "Merely from the presence of a person other than the tenant in the shop subletting cannot be presumed. There may be several situations in which a person other than the tenant may be found sitting in the shop, for instance, he may be a customer waiting to be attended to, a distributor who may have come to deliver his goods at the shop for sale, a creditor coming for collection of the dues, for some social purpose or the like. As long a control over the premises is kept by the tenant and *the business run in the premises is of the tenant,* subletting flowing

(6) AIR 1984 S.C. 1447

...om the presence of a person other than the tenant in the shop cannot be assumed. The Act does not require the Court to assume a sub-tenancy merely from the fact of presence of an outsider."

(26) In *Rajbir Kaur and another* v. *M/s S. Chokosiri and Co.* (7), it has been held that "Thus exclusive possession itself is not decisive in favour of lease and against a licence, for, even the grant of exclusive possession might turnout to be only a licence and not a lease where the grantor himself has no power to grant the lease. In the last analysis the question whether a transaction is a lease or a licence turns on the operative intention of the parties" and that there is no single, simple litmus test to distinguish one from the other. The "solution that would seem to have been found is, as one would expect, that it must depend on the intention of the parties.

(27) The Supreme Court in Rajbir Kaur's case (supra) also referred the tests laid down by Lord Denning in *Marchant* v. *Charters* (8), for determining whether an occupier is a licencee or tenant.

(28) In the words of Lord Denning "Eventually the answer depends on the nature and quality of the occupancy was it intended that the occupier should have a stake in the room or did he have only permission for himself personally to occupy the room whether under a contract or not, in which he is a licencee."

(29) In *Dev Kumar (Died) through LRs* v. Smt. *Swaran Lata and others* (9), the Supreme Court observed:—

"The conclusion on the question of subletting is a conclusion on a question of law derived from the findings on the materials on record as to transfer exclusive possession and as to the said transfer of possession being for consideration."

(30) Keeping in view the principles as enunciated by the Apex Court in its Judgements referred to above, we have to see whether the order of eviction of the petitioner can be sustained in the circumstances and facts of the present case.

(31) The irresistible conclusions that can be arrived at from the admitted or proved facts in this case may be summarised as follows:—

(1) The petitioner took over the premises belonging to landlady for the purpose of carrying on the business;

(2) In course of its business, the petitioner obtained an overdraft

(7) AIR 1988 S.C. 1845
(8) All ELR 918
(9) JT 1995(9) S.C. 331

cum open cash credit facility from the bank by pledging its goods with the Bank;

(3) The pledged goods have been retained by the tenant (pledgor) in its possession in the demised premises though under law the Bank is deemed to be in constructive possession of the pledged goods;

(4) As the tenant (pledgor) failed to repay the loan advanced by the Bank, the Bank locked the room in which the pledged goods have been kept and the room is part of the demised premises.

(5) The lawful title in the pledged goods continues to vest and remain in the tenant pledgor.

(6) Thus in the room which was locked by the Bank the goods belonging to the tenant only have been lying. Though the Bank has put up a note on the door of the room that the goods belong to the Bank as per the Commissioner's report, the lawful title to the goods, is, under law, with the tenant only. The Bank has got a right to sell the goods if the debt is not cleared.

(7) The legal possession of the demised premises continues with the tenant only as his goods are kept in the room though pledged with the Bank;

(8) As the goods pledged are kept in the premises taken on rent by the pledgor, the Bank is not liable to pay any rent. If the Bank removes the goods and keeps them in some other godown taken on rent by the Bank, then the pledgor is liable to pay the amount spent by the Bank for safe keeping of the goods as observed by the Supreme Court in *Lallan Prasad's case* (supra) Advancing of the loan or granting over draft or cash credit facility cannot be described as consideration for the lease.

(9) The tenant has legal possession of the demised premises and has not parted with his possession to the Bank nor has he lost control of the premises as he can redeem his goods at any time by repaying the debt. The mere fact that the Bank put its lock does not amount to subletting as the tenant has not divested himself, not only physical possession but also of the right to possession. The divestment or abandonment of the right to possession is necessary in order to make out a case of subletting.

(10) In the circumstances and facts of the case, it is clear that the intention of the petitioner-tenant is not to create any interest in the Bank with regard to the demised premises and the tenant has not lost control over the property which he has taken on lease.

No interest in the Bank is created either for consideration or without.

Thus, in our opinion, on the facts of this case, the order of eviction cannot be sustained and is liable to be set aside.

(32) This revision has been referred to a Bench as the correctness of the decision in *Pannalal's case* (supra), was doubted. But in our view that decision has no application to the facts of the present case. The Rent Controller and the appellate authority placed reliance on the said decision even without looking into the salient facts of the case. That decision has to be confined to the facts of that particular case and the learned Judge did not decide any general proposition that whenever the tenant permitted his creditor (pledgor) to enter the premises, it amounts to subletting. A close examination of the facts of that case is necessary to decide whether the decision therein is correct on its own facts.

(33) In *Pannalal's case*, (supra), the original tenant was the Firm Vakil Chand Pawan Kumar i.e. respondent No. 1 in that case. The alleged Sub tenant i.e. respondent No. 2 in that case was another firm which held a licence for sale of gur. Respondent No. 2 pledged its stock of gur to the Central Bank of India. For the purpose of storing the gur pledged by respondent No. 2 in favour of the Central Bank of India, respondent No. 2 took a room from respondent No. 1 and in that room gur was stocked and the Bank took charge of that room and put its own lock to the said room. Thus, in that case the alleged sub-tenant was not the Bank but another firm, namely, respondent No. 2 whose goods were pledged with the Bank. Thus, it was a clear case where the demised premises in that case where used not to keep the goods of the original tenant but of respondednt No.2 who was the sub-tenant. By allowing respondent No. 2 to use the room for stocking its goods under pledge with the Bank the original tenant i.e. respondent No. 1 not only parted with the physical possession but also lost control over the demised premises. On these facts the Learned Single Judge made the following observations:—

"The appellate authority has fallen in a patent error in assessing as to whether it was a case of subletting or not. The crucial circumstance which is completely ignored is that one of the rooms of the demised shop was made available by respondent No. 1 to respondent No. 2 and the later had in turn used it as a godown for pledging his stocks of gur with the Bank. An

important feature of this transaction is that the room which was used as godown, was taken possession by the Bank Authorities who had put their own lock in the same which is a normal procedure in such transaction of pledge. This being so there is no escape from the conclusion that the tenant had parted with the possession and control of a part of the shop and has thus transferred his right under the lease. It cannot be said that it was only done as a matter of courtesy. Indeed, it was difficult for the landlord to prove that respondent No. 1 had actually charged some rent or other compensation from respondent No. 2 for allowing the use of the room as a godown of the Bank because evidence regarding the same could not possibly fall in the hands of the petitioner, the transaction being strictly between both the respondents."

(34) Thus, *Pannalal's case* (supra) stands on a different set of facts. It has been decided on its own facts. Therefore, the said case has no application where the tenant kept his own goods in the demised premises and allowed the Bank to put its lock to the said room as the said goods were pledged with the Bank as security for repayment of loan secured by the tenant from the Bank in the ordinary course of his business.

(35) We are, therefore, of the opinion that the decision is correct in so far as it relates to the facts of that case.

(36) In view of our foregoing discussion, we allow the revision petition and set aside the order of eviction passed by the Rent Controller as confirmed by the appellate authority. There will be no order as to costs.

S.C.K.

Before K. Sreedharan, C.J., N.K. Sodhi & T.H.B.
Chalapathi, JJ

KULDIP SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB & OTHERS,—*Respondents*

CWP No. 12923 of 94

May 7, 1997

Constitution of India, 1950-Arts. 14, 16 & 226-Punjab Civil Service (Judicial Branch) Rules-Rl. 7-Competitive selection—'Rounding off' of marks—50% qualifying marks in aggregate condition precedent for being called for interview and minimum 33% marks in each subject—Candidate securing 32.5% in one paper & 49.5% marks in aggregate—Claim for rounding off to the next whole number is untenable—Mandamus—Court