*Before V.S. Aggarwal, J.*

OM PARKASH,—*Petitioner*

*versus*

KAILASH CHANDER AND ANOTHER,—*Respondents*

*C.R. 4642 of 1996*

24th August, 1999

*Haryana Urban (Control of Rent and Eviction) Act, 1973—Ss. 13 and 15(6)—Findings of fact by authorities below—Revisional jurisdiction—Findings of fact not to be inferred with—Sub-letting—Son running office in that portion of shop—Front portion still in occupation of father—Whether sub-letting proved—Held, no.*

*Held,* that when the evidence has been considered and finding has been arrived at, the High Court will not embark upon to reassess the facts and the evidence.

(Para 8)

*Further held,* that the son of the petitioner has given his postal address and receiving the letters at the address of the shop in question. He has got installed a telephone in the suit premises and the advertisement that appear with respect to the business was also showing the address of the suit premises. The tenant himself was carrying on the business, admittedly, from the front portion of the shop. By no stretch of imagination in the facts of the present case, it can be termed that legal possession had ceased to be with the tenant-petitioner. He could displace and dispossess respondent No. 2, his son, at any time. The property, thus, was not sublet to respondent No. 2 and the order of eviction cannot be sustained.

(Para 23)

R.S. Mittal, Senior Advocate with Naresh Kumar Joshi, Advocate, *for the petitioner.*

M.L. Sarin, Senior Advocate with Harsh Rekha, Advocate, *for the respondent.*

## JUDGMENT

*V.S. Aggarwal, J.*

(1) The present revision petition has been filed by Om Parkash, hereinafter described as "the petitioner" directed against the order of the learned Rent Controller, Sirsa, dated 25th May, 1993 and of the

learned Appellate Authority, Sirsa dated 7th October, 1996. By virtue of the impugned order, the learned Rent Controller had passed an order of eviction against the petitioner. The appeal filed by the petitioner was dismissed.

(2) The relevant facts are that the respondent-landlord Kailash Chander had filed eviction petition under section 13 of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (for short "the Act") alleging that the petitioner is a tenant in the suit premises and respondent No. 2, some of the petitioner, is a sub tenant therein. It was asserted that the property as mentioned above has been sublet without the consent of the respondent-landlord. That is the sole ground of eviction surviving for purposes of the present revision petition. By way of elucidation, it was added that respondent No. 2 had set up his independent office of Unit Trust of India, being its Chief Representative at Sirsa. He solicits business from the premises in question which is a shop. The said shop has been divided into two parts. Thus, it was reiterated that the property as such has been sublet.

(3) In the written statement filed, the petitoner contested the eviction petition. It was denied that the property as such has been sublet or exlcusive possesion has been given to respondent No. 2.

(4) Learned Rent Controller had framed the issues and recorded eviddence. It was held on the basis of evidence that the petitioner had sublet a part of the premises to respondent No. 2 who is carrying on his business as a Chief Representative of Unit Trust of India from the part of the premises. In this connection, reliance was placed on the fact that respondent No. 2 has been putting in advertisements showing his office at the suit property. He has been receiving his correspondence at the said address and soliciting the clients. Even he has got the telephone installed at the address of the suit premises. An inference was drawn that it was a case of subletting.

(5) Aggrieved by the same, as mentioned above, the petitioner preferred appeal which was dismissed. Hence, the present revision petition.

(6) On behalf of respondent No. 1—landlord, it was urged that there are concurrent findings of fact and, therefore, this Court in exercise of its revisional jurisdiction will not interfere in the said concurrent findings of fact. Reliance in this regard, thus, was placed on the well known decision of the Supreme Court in the case of *Smt. Rajbir Kaur and another* v. *M/s S. Chokosiri and Co.* (1). The Supreme Court was considering the scope of sub-section (5) to Section 15 of the

(1) AIR 1988 S.C. 1845

East Punjab Urban Rent Restriction Act, 1949. The provision are para materia with sub-section (6) to Section 15 of the Act as applicable to Haryana. It was held that the revisional jurisdiction cannot be equated with the appellate jurisdiction though it may be wider than revisional jurisdiction under section 115 of the Code of Civil Procedure. But the Supreme Court held that when the findings are recorded by the Rent Controller and the Appellate Authority, High Court would be reluctant to embark upon an independent reassessment of the same. The Supreme Court held as under :—

> ".....When the findings of fact recorded by the Court below are supportable on the evidence on record, the revisional Court must, indeed, be reluctant to embark upon an independent reassessment of the evidence and to supplant a conclusion of its own, so long as the evidence on record admitted and supported the one reached by the Courts below. With respect to the High Court, we are afraid, the exercise made by it in its revisional jurisdiction incurs the criticism that the concurrent finding of fact of the Courts below could not be dealt and supplanted by a different finding arrived at on an independent reassessment of evidence as was done in this case....."

(7) Same view found favour with the Supreme Court in the case of *Lachhman Dass* v. *Santokh Singh* (2). A clear distinction was drawn betwen the appellate jurisdiction and the revisional jurisdiction under the Act. It was held that the High Court will not reassess and reappraise the evidence in a revision filed under sub-section (6) to Section 15 of the Act. The Supreme Court concluded as under :—

> "In the present case sub-section (6) of Section 15 of the Act confers revisional power on the High Court for the purpose of satisfying itself with regard to the legality or propriety of an order or proceeding taken under the Act and empowers the High Court to pass such order in relation thereto as it may dem fit. The High Court will be justified in interfering with the order in revision if it finds that the order of the appellate authority suffers from a material impropriety or illegality. From the use of the expression "Legality or propriety of such order or proceedings" occurring in sub-section (6) of Section 15 of the Act, it appears that no doubt the revisional power of the High Court under the Act is wider than the power under Section 115 of the Code of Civil Procedure which is confined to jurisdiction, but it is also not so wide as to embrace within its

(2) (1995) 4 S.C.C. 201

fold all the attributes and characteristics of an appeal and disturb a concurrent finding of fact properly arrived at without recording a finding that such conclusions are perverse or based on no evidence or based on a superficial and perfunctory approach....."

(8) Indeed, this being the legal position, this Court, when the evidence has been considered and finding has been arrived at, will not embark upon to reassess the facts and the evidence. The findings have been arrived at on the basis of evidence and they cannot be said to be absurb. Those findings are that respondent No. 2, who is the son of the petitioner, has set up his office in a part of the premises. He deals in Unit Trust of India's mutual fund scheme and small saving schemes. He has his own independent telephone from the address of the suit premises let to the petitioner. He has advertised with respect to the said scheme/work from the address of the suit premises. He has been receiving letters on the same address. These findigns, indeed, must be accepted.

(9) Taking these findings to be so, the question still arises if this Court can come to a conclusion as to whether there has been subletting of the property.

(10) Stron reliance in this regard had been placed on the pleadings of the parties and it has been pleaded therein that there is a complete denial that the son of the petitioner has been functioning from the suit property. It has been shown to be otherwise and thus inference of subletting should be drawn. To appreciate this particular controversy, reference can well be made to the petition filed by respondent No. 1. With respect to the relevant ground, respondent No. 1 has pleaded as under :—

"That the respondent No. 1, without the written consent of the petitioner landlord, has also sublet the back portion of the demised shop to respondent No. 2, and has parted with the possession with the said part of the shop by assigning and transferring his rights, to respondent No. 2 in an exclusive manner. The respondent No. 2, in turn, has set up his independent office of Unit Trust of India, being its Chief Representative at Sirsa and he does and solicits business from this office. A separate apartment has been made in the demised shop by dividing it into parts, and the back portion is in exlcusive possession of respondent No. 2 as sub-tenant."

(11) Written statement has been filed and the petitioner while denying the said contention had pleaded as under :

"That para No. 4-f(ii) of the petition is totally wrong and denied. It is wrong that the answering respondent has sublet any portion of the demised premises to respondent No. 2, it is also wrong that the answering respondent has parted with the possession of any part of the shop. The answering respondent is doing his cloth business in the demised premises. It is wrong that the respondent No. 2 has any independent office of Unit Trust of India. It is also wrong that a separate apartment has been made in the demised shop. It is also wrong that the back portion is in exclusive possession of the respondent No. 2 in any capacity. The answering respondent is in possession of entire demised premises and is doing the cloth business in the same."

(12) A perusal of the pleadings would show that the petitioner had specifically asserted that he has not sublet any portion of the premises to his son respondent No. 2. He insisted that he is carrying on his cloth business inthe suit premises and denied that a separate apartment had been made in the suit property. The petitioner reiterated that he is in possession of the back portion and it is not in exclusive possession of his son respondent No. 2. It is obvious from the aforesaid that it is a categorical denial rather than a plea put forward which could be disbelieved to infer that there is subletting of the property. In that view of the matter, it will not be appropriate to draw adverse inferences against the petitioner.

(13) On behalf of the respondent, it was urged that even if it be taken that respondent No. 2 is son of the petitioner, still in the peculiar facts it should be inferred that the property has been sublet. The attention of the Court was drawn towards the decision of the Supreme Court in the case of *Dial Singh* v. *Amrish Kumar and others* (3). To appreciate the ratio decidendi of the judgment, it becomes necessary to refer to the facts in the cited case. The tenant was living in Saudi Arabia. A third person was found to be in occupation of the property. Eviction petition was filed on the ground that the property in question has been sublet. It was held that it is for the third person to prove that he was an agent of the tenant. Once that onus is not discharged, inference of subletting should be drawn. It is abundantly clear that these are not the facts in the present revision petition. Admittedly, the tenant is carrying on his business in the suit premises. Indeed, the said judgment will not come to the rescue of respondent No. 1.

(14) In that event, reliance was placed on the decision of this Court in the case of *Dr. Ashok Kumar Thapar* v. *Amrit Lal and others* (4). In

(3) (1995) H.R.R. 130
(4) 1998 H.R.R. 344

the cited decision, a third person was in occupation. It was found that he was an employee but was working in the suit premises in his own right as proprietor of a clinical laboratory. He had his own independent cabin from where he was giving the reports to the patients. It was in this backdrop that it was held that it was a case of subletting. Herein also, the facts were totally confined to the said revision petition.

(15) In all cases of subletting, the law is well settled that if a third person is in occupation then inference of subletting can be drawn. It is for the tenant or that person to explain the position. However, if it is explained that he is merely a licencee having no right or legal possession of the premises, in that event, it is improper to draw inference of subletting and it must be taken that the position has been explained. It cannot be accepted as a broad principle of law that the moment a third person is found in possession, it must be inferred that it is a case of subletting. The facts of each case must be examined, scrutinized and thereupon inference should be drawn.

(16) This controversy has been considered more often than once. Reference to some of the precedents would be in the fitness of things. In the case of *Smt. Krishnawati* v. *Shri Hans Raj* (5), a petition for eviction was filed under the Delhi Rent Control Act, 1958. It was alleged that the property has been sublet. Smt. Krishnawati had taken the premises on rent. The shop was being run by her husband. The question in controversy arose before the Supreme Court was as to if the property was sublet or not. The contention was repelled and it was held that if two persons live together in a house as husband wife and if one of them own the house and allow the other to carry on the business, it would be rash inference to draw that it has been sublet.

(17) More close to the facts of the present case is the decision of the Delhi High Court in the case of *Chander Kishore Sharma and another* v. *Smt. Kampa Wati* (6). The tenanted premises had been taken by the father. He was living with his son. The question arose as to whether when the son had set up his independent business in the suit premises it was subletting or not. It was held that the presumption would be otherwise and the Court went on to conclude as under :—

> "It is true that there is no presumption in law that a father or a son can never sublet, assign or otherwise part with possession of the tenanted premises in favour of the other. But it will be disastrous to hold that because the parent or progeny of the

(5) AIR 1974 S.C. 280
(6) AIR 1984 Delhi 14

tenant lives or carries on business in the tenanted premises, one must presume that there is some kind of parting with possession. Such an approach is not permitted by law, unless there are facts which unequivocally compel one to do so. The accepted way of life in this country is that a father and a son are normally expected to live together, earn together and spend their separate earnings for each other and the family. Cogent and strong facts are required to displace this life style. For these observations I will draw support from *Smt. Krishnawati* v. *Hans Raj,* AIR 1974 SC 280, wherein the Supreme Court held that if two persons live together in a house as husband and wife and if one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence, a rash inference to draw that the owner has let out that part of the premises..."

(18) Supreme Court in the case of *Jagan Nath (deceased) through L.Rs.* v. *Chander Bhan and others* (7), was also concerned with a similar situation. The tenanted premises were residential-cum-commercial. The tenant was carrying on the business with his sons and the family was a joint Hindu Family. The tenant retired from the business and his sons had been looking after the business. It was held that as the father had a right to displace the occupatnts from the suit premises, it cannot be termed that it would be subletting. The findings of the Supreme Court in this regard are as under :—

".....It is well settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant, user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of Cl. (b) of S.14 (1) of the Act. Even though the father had retired from the business and the sons had been looking after the business in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession....."

(7) AIR 1988 S.C. 1362

(19) Similary, in the case of *Sohan Lal and another* v. *Kamlesh Rani and another* (8), this Court was dealing with similar facts as in *Jagan Nath's case* (supra). It was found that the son was carrying on the business in the property. The inference drawn was that it could not be subletting unless more than more possession was established.

(20) Once again in the case of *M/s Delhi Stationers and Printers* v. *Rajendra Kumar* (9), the tenanted premises consisted of three rooms, a kitchen and a toilet. The landlord filed an eviction petition and one of the grounds was that the property has been sublet. It was held that merely if the brother-in-law of the tenant was using the latrine and kitchen was not enough to conclude that the properly has been sublet. The Supreme Court held as under :—

> "If the instant case is considered in the light of the aforesaid principles laid down by this Court it cannot be said that the appellant has either sub-let or parted with the possession of a part of the premises in favour of Mahendra Singh who is brother-in-law of the appellant and is also employed with the appellant. Mahendra Singh is a tenant under the respondent in respect of room marked 'J' in the site plan (Ex. A-1). The mere user of the kitchen and latrine by Mahendra Singh while residing in the portion let out to him by the respondent cannot mean that the appellant has transferred the exclusive right to enjoy the kitchen and latrine and has parted with the legal possession of the said part of the premises in favour of Majhendra Singh."

(21) Similarly, in the case of *Shamsher Singh* v. *Sampuran Singh and others,* (10) eviction petition was filed on the ground of subletting. Sampuran Singh respondent had taken the premises on rent. He started the business in the said property. Respondent No. 2, son of the tenant who was residing with the tenant, conducted some business from the said premises. It was held that when legal possession was retained by the tenant and that they were closely related. It cannot be inferred that it is a case of subletting. In paragraphs 13 and 14 of the judgment, this Court observed as under :—

> "13. In the present case in hand, most of the facts found are not subject matter of much controversy. The property in question

(8) 1989 (1) R.L.R. 556
(9) 1990 H.R.R. 263
(10) 1998 (2) R.L.R. 584

was let out to one Sampuran Singh tenant by the petitioner. Sampuran Singh had executed a rent note. He started business under the name and style of M/s Sampuran Timber and Steel Works. He filed an application in Form-F under the Shop and Establishment Act showing himself as the proprietor of the business. It was established that Sampuran Singh was doing the business of manufacturing of wooden and steel goods. He had obtained an electric connection. Later on he filedan application for increase in the load from 1 Horse Power to 2 Horse Power. It was sanctioned. Respondent No. 2 Gurdip Singh is residing with respondent No. 1. The business is being done which was not the original business conducted by respondent No. 1. This business is that of respondent No. 2. However, respondent No. 1 also conducts his business from the said property. Respondent No. 2 was challenged from the address of the suit premises.

14. Can on these facts it be said that property has been sublet by respondent No. 2. One finds no hesitation in concluding that findings of the Appellate Authority which are of facts should be approved. There is nothing to indicate that respondent No. 2 is in occupation for consideration. He has not set up his independent title in the property. If he has any permissive occupation with respondent No. 1, it is not a possession to the ouster of respondent No. 1. They are close relatives and, therefore, in the peculiar facts it cannot be inferred that there is subletting of the property. The revision petition, therefore, must be termed to be without merit."

(22) No different was the view taken by this Court in the case of *Satish Kumar* v. *Kirpal Singh and others.* (11) This third person stated to be in possession were brothers of the tenant. The shop was found to be partitioned but there was no legal possession and the Court repelled the contention that, it was subletting. In paragraph 3 of the judgement, it was held as under :—

".....The photograph R-4 would mainfest that in fact there is one sign board over the shutter of the shop on which there are two separate inscriptions. Under both inscription the name of proprietor is written as Kirpal Chand Harnam Dass. It may be mentioned that Local Commissioner who visited the spot mentioned in his report that at the time he visited the premises,

(11) 1999 (1) P.L.R. 557

he found the shop having been partitioned into two parts by a counter and there were two separate sign boards displayed on the said shop. The sign board on the front portion of Part 'A' read as "Fancy Embroider Works" on which the name of the proprietor had been written as Vijay Kumar Harnam Dass whereas on part 'B' of the shop the board read as "Fancy Ready-made Store" proprietor Kirpal Dass Harnam Dass. Even if it be assumed on the basis of the sign board that there was some kind of partition that itself will not prove sub-tenancy having been created by the original tenant Kirpal Chand in favour of respondents 2 and 3. This Court is of the firm view that Appellate Authority has rightly appreciated the oral and documentary evidence that was led by the parties and there is no illegality or impropriety in the impugned orders passed by the Courts below."

(23) Reverting back to the facts of the present case, it had already been found that the son of the petitioner has given his postal address and receiving the letters at the address of the shop in question. He has got installed a telephone in the suit premises and the advertisement that appear with respect to the business was also showing the address of the suit premises. But it cannot still be inferred that he was in legal possession of the same to the ouster of the tenant. The tenant himself was carrying on the business, admittedly, from the front portion of the shop. A Local Commissioner had been appointed in the trial Court and he has reported that the petitioner is carrying onhis business. There were some tables and chairs on the back portion of the shop. Even if it be taken that it was being used by the son of the petitioner, still it cannot be termed that he was in legal possession of the suit premises. This is for the added reason that the only approach to the back portion is from the front portion of the shop where the tenant-petitioner has been carying on his business. By no stretch of imagination in the facts of the present case, it can be termed that legal possession had ceased to be with tenant-petitioner. He could displace and dispossess respondent No. 2, his son, at any time. The impugned order and judgement, thus, cannot be sustained.

(24) For these reasons, the revision petition is accepted and the impugned order and judgment are hereby set aside. Instead, eviction application is dismissed.

*S.C.K.*