

Dev Kumar (Died) Through Lrs vs Smt. Swaran Lata & Ors on 10 November, 1995

Equivalent citations: 1996 AIR 510, 1996 SCC (1) 25, AIR 1996 SUPREME COURT 510, 1996 (1) SCC 25, 1995 AIR SCW 4407, 1996 () HRR 13, (1996) 2 PUN LR 391, 1996 SCFBRC 109, 1996 BOMRC 41, 1996 (113) PUN LR 391, (1996) 1 LANDLR 403, (1996) 1 LJR 100, (1995) 4 SCJ 768, (1996) 1 RENCER 40, (1996) 1 ICC 173, (1995) 2 RENTLR 669, (1995) 2 RENCJ 531

Author: S.C. Agrawal

Bench: S.C. Agrawal

PETITIONER:

DEV KUMAR (DIED) THROUGH LRS.

Vs.

RESPONDENT:

SMT. SWARAN LATA & ORS.

DATE OF JUDGMENT 10/11/1995

BENCH:

G.B. PATTANAIK (J)

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AGRAWAL, S.C. (J)

CITATION:

1996 AIR 510

1996 SCC (1) 25

JT 1995 (9) 331

1995 SCALE (6) 316

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PATTANAIK.J. This appeal is by the tenant, challenging the revisional order of the High Court of Punjab & Haryana whereunder an order of eviction has been passed on the finding that the premises in question has been sub-let and as such the tenant has incurred the liability of

eviction under Section 13(2)(ii)(a) of the East Punjab Urban Rent Restriction Act, 1949, (hereinafter referred to as 'The Act'). The landlady Smt. Swaran Late respondent no. 1, in the present appeal filed an application for ejectment of her tenant Dev Kumar, the deceased husband of the present appellant alleging therein that said Dev Kumar has failed to pay the arrears of rent and has sub-let the premises in favour of respondent nos. 2 to 4 and, therefore, has incurred the liability of being evicted under Section 13(2)

(i) & (ii) (a) of the Act. The tenant before the Rent Controller appeared and controverted all the allegations made by the landlady. The allegations of subletting by him in favour of respondents nos. 2 to 4 was also specifically denied. The Rent Controller on appreciating the evidence led before him came to the conclusion that there exists relationship of landlord and tenant between the respondent no. 1 and appellant and the tenant had tendered the arrears of rent which was accepted by the landlady. On the question of subletting the Controller came to the conclusion that the tenant Dev Kumar has sub-let the premises to respondents 2 to 4 who were carrying on the business in the premises in question. The plea of the tenant that in fact he was carrying on the business as Commission agent of respondents 2 to 4 was not accepted. On this conclusion the Controller held that the tenant has incurred the liability of being evicted under Section 13(2)(ii)(a) of the Act and directed that the possession of premises be given to the landlady within 2 months. It may be stated that the Controller had appointed a local Commissioner calling upon him to find out whether the premises has been sub-let to M/s. Ram Saran Rattan Chand and the said Commissioner had submitted a report which was accepted as Exhibit AW 5/4 and the Commissioner was also examined before the Controller as AW

5. The conclusion of the Rent Controller on the question of sub-letting was essentially based upon the said Commissioner's report and the evidence of the Commissioner. The aforesaid report has also been annexed as Annexure 'D' to the Special. Leave Petition.

Against the order of eviction the tenant preferred an appeal. The Additional District Judge, Amritsar, who was the Appellate Authority re-considered the entire evidence on record and reversed the finding of the Controller on the question of sub-letting. The Appellate Authority came to hold that except the solitary statement of AW 11 no other evidence was produced by the landlady to show that respondents 2 to 4 are in exclusive possession of the disputed premises and that such possession is for valuable consideration. He also held that even AW 11 has not stated that the possession of respondents 2 to 4 is for valuable consideration. The evidence of local Commissioner was also fully discussed and the Appellate Authority held that the said evidence indicates that the tenant Dev Kumar still carries on his business in the disputed premises and has not parted with the possession of the same in favour of respondents 2 to 4. The order of eviction passed by the Controller thus having been set aside and the appeal having been allowed, the landlady invoked the jurisdiction of the High Court in revision under Sub-Section (5) of Section 15 of the Act. The High Court by the impugned judgment dated 3rd of April, 1992, has reversed the findings of the Appellate Authority and relying upon the evidence of the Commissioner has held that the respondents 2 to 4 are in exclusive possession of the demised premises and tenant has parted with the possession in their favour. Therefore, has sublet the premises in their favour and the revision being allowed with the direction that the tenant should handover the vacant possession of the demised premises to the

landlady, the present appeal has been preferred by the tenant.

Mrs. Shyamla Pappu, learned senior counsel appearing for the appellant essentially raised two contentions in assailing the impugned judgment of the High Court :-

(1) However, wide the power of revision under Sub-

Section (5) of Section 15 of the Act may be, it cannot be equated with the appellate power and as such the High Court was not justified in re-appreciating the evidence on record and come to its own conclusion while exercising its revisional jurisdiction under the Act;

(2) The ultimate conclusion of the High Court about subletting is also not sustainable in law, more so, when the same is based upon the tainted evidence of the local Commissioner.

Mr. Krishna Mahajan, learned counsel appearing for the respondent no. 1, on the other hand, contended that the revisional power under Sub-Section (5) of Section 15 of the Act is wide enough to examine the legality and propriety of the order passed by the Appellate Authority and in exercise of such power the High Court was justified in re- appreciating the evidence on record. The learned counsel also urged that the conclusion of subletting rendered by the High Court is fully justified on materials on record and as such the same need not be interfered with by this Court.

In view of the rival submissions at the Bar, the first question that arises for consideration is to what extent the High Court was justified in reappreciating the evidence and interfering with the conclusion of the Appellate Authority on the question of sub-letting. It will be appropriate at this stage to extract Sub-Section (5) of Section 15 of the Act:-

"The High Court may, at any time, on the application of any aggrieved party or in its own motion, call for an examine the records relating to any order passed or proceedings taken under this Act for the purpose of satisfying itself as to the legality or propriety of such order or proceeding and may pass such order in relation thereto as it may deem fit".

In the case of Smt. Rajbir Kaur & Anr. vs. M/s. S. Chokesiri & Co. (1982 (2) SCR (Suppl. 310) this Court examined the revisional power of the High Court under Sub- Section (5) of Section 15 of the Act and held where the findings of fact recorded by the Courts below are supportable of the evidence on record, the revisional Court must be reluctant to embark upon an independent re- assessment of the evidence and supplant the conclusion of its own so long as the evidence on record admitted and supported the one reached by the Courts below.

In the case of Nanak Chand vs. Inderjit & Ors. (1969 All India Rent Control Journal p.881) This Court construed Sub-Section (5) of Section 15 of the East Punjab Urban Rent Restriction Act, 1949 and held that the revisional power conferred on the High Court under Section 15(5) of the Act is wider than that conferred by Section 115 of the Civil Procedure Code and under Section 15(5) of the Act the High Court has jurisdiction to examine the legality or propriety of the order under revision

and that would clearly justify the examination of the finding by the Authority about the requirements of the landlord under Section 13(3)(a)(i) of the Act.

In the case of *Ram Das vs. Ishwar Chander & Ors.* (1988 (1) SCR (Suppl.) 239) this Court again examined the aforesaid provision of Sub-Section (5) of Section 15 of the Act and held that subject to the well known limitation inherent in all revisional jurisdictions, the matter essentially turns on the language of the statute investing the jurisdiction. Examining the language of Sub-Section (5) of Section 15 of the Act the Court further held;

"But here, Section 15(5) enables the High Court to satisfy itself as to the "legality and propriety" of the order under revision which is, quite obviously, a much wider jurisdiction. That jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also, though the revisional Court is not "a second court of first appeal".

In our considered opinion having regard to the aforementioned decisions of this Court laying down the parameters of the High Court's jurisdiction under Section 15(5) of the Act it is neither possible to accept the narrow construction put by the learned counsel appearing for the appellant nor the wide construction put by the learned counsel appearing for the appellant nor the wide construction put by the learned counsel appearing for the respondents. The jurisdiction of the High Court under Sub Section (5) of Section 15 of the Act, therefore, would entitle the Court to examine the legality and propriety of a conclusion of the Appellate Authority and is thus much wider than the revisional jurisdiction under Section 115 of the Code of Civil Procedure. But it has to be exercised subject to the well known limitations inherent in all revisional jurisdictions and cannot be equated with an Appellate jurisdiction. This being the position, unless there is a perversity in the matter of appreciation of evidence by the Appellate Authority or unless the Appellate Authority has arrived at a conclusion which on the materials, no reasonable man can come, the High Court will not interfere with the same.

Coming to the second question the expression "Sub-letting" has not been defined in the Act. 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 the transfer of exclusive possession and as to the said transfer of possession being for consideration. As to what is the true meaning of expression "Sub-letting", this Court considered the same in the case of *Jagdish Prasad vs. Angoori Devi* (1984 (3) SCR 216) in an eviction proceeding under UP Urban Buildings (Regulation of Letting, Rent and Eviction) Act. The Court held that merely from the presence of the person other than the tenant in the shop, subletting cannot be presumed and as long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of the person other than the tenant in the shop cannot be assumed. It was further held that in an application for eviction of a tenant from a shop which is based on the allegations that the premises has been sublet, the allegation has to be proved. The question of subletting was considered by this Court in the case of *M/s. Shalimar Tar Products Ltd. vs. H.C. Sharma & Ors.* (1988 (1) SCR 1023) and it was held that in order to construe subletting there must be parting of legal possession of the lessee and parting of legal possession means "Possession with the right to include and also right to

exclude others".

In the case of Smt. Rajbir Kaur & Anr. vs. M/s. S. Chokosiri & Co. (supra) this Court considered the question of subletting and held that the burden of making a case of subletting is on the landlady. It was also held that the transaction of subletting in the guise of licenses are in their very nature clandestine arrangements between the tenant and the sub-tenant and it would be difficult to get direct evidence on the same. If exclusive possession of the alleged sub-tenant is established then it may not be impermissible for the Court to draw an inference that the transaction was entered into with mandatory consideration in mind.

Bearing in mind the aforesaid legal position we would now examine the question whether the landlady, respondent no. 1 in the present appeal, has established her case of subletting by the tenant and further whether the conclusion of the High Court thereon is at all sustainable in law? The case of respondent no. 1 in this context is that respondents 2 to 4 have been given the disputed premises where they are transacting their business in their name and style Ram Saran Rattan Chand. The case of the tenant Dev Kumar, on the other hand, is that alongwith his own business, he was also transacting business as commission agent of M/s. Ram Saran Bhole Nath. The only evidence lead by the landlady in the case is the oral testimony of the power of attorney holder Gian Chand. The High Court, however, has relied upon the evidence of the local Commissioner and his report. The report of the Commissioner merely indicates that on a particular day the Commissioner went to the disputed premises and purchased a piece of cloth and paid the money, the bill for which was given by the seller in the name of M/s. Ram Saran Rattan Chand, Moti Bazar. The disputed premises, however, is not on Moti Bazar but on Pratap Bazar. The report of the Commissioner also indicates that when the Commissioner went for the second time, to the shop and asked for the bill-book, a bill-book was produced in the name of M/s. Ram Saran Bhole Nath having the rubber stamp having the words "Sole Selling Agent Dev Kumar". Production of such a bill-book on being asked by the Commissioner lends support to the case of the tenant that he was transacting business as a Commission agent of M/s. Ram Saran Bhole Nath, of which firm respondent no. 3 is a partner. That apart on the mere purchase of a piece of cloth under a bill M/s. Ram Saran Rattan Chand as indicated in the Commissioner's report, it is difficult for any Court to come to the conclusion that disputed premises was in exclusive possession of the alleged sub-tenant, namely, respondents nos. 2 to 4. In this context it would be appropriate to notice the conduct of the local Commissioner as reflected from his evidence. He has stated that he took a sum of Rs.77/- from Gian Chand, Power of Attorney of the landlady, for purchase of the piece of cloth from the disputed premises and after purchasing the same he also handed over that piece of cloth to Gian Chand. The statement of the local Commissioner, who was examined as AW5, and which has been annexed as Annexure 'E' to the Special Leave Petition unequivocally indicates that he has acted at the behest of the landlady and the said evidence must be held to be a tainted one which in fact has substantially formed the basis of conclusion of subletting by the High Court. In this view of the matter the ultimate finding of the High Court that the report as well as the statement of the local Commissioner is enough to hold that the Firm M/s. Ram Saran Rattan Chand is carrying on the business in the demised premises and that the respondents nos. 2 to 4 are in exclusive possession of the demised premises and the tenant has parted the possession in their favour is wholly unsustainable and we accordingly set aside the said conclusion. At the most, the conclusion can be that while the tenant was continuing his own

business as well as a business of Commission Agent of M/s. Ram Saran Bhola Nath, the respondents nos. 2 to 4 have also been permitted to continue their business in the name Ram Saran Rattan Chand. But that does not establish either the exclusive possession of respondents 2 to 4 or that the tenant has parted with his possession. The exclusive possession of the premises being the first criteria for establishing subletting and the same not being established, the conclusion of the High Court about subletting is vitiated.

In our considered opinion the landlady - respondent No. 1, has utterly failed to establish the plea of subletting and the High Court erred in law in formulating its own conclusion and reversing the finding of the Appellate Authority. In the aforesaid premises the appeal is allowed. The impugned order of the High Court in revision is set aside and the order of the Appellate Authority is affirmed. The application for eviction stands dismissed.

There will be no order as to costs.