Bhoolchand and Another

Vs

Kay Pee Cee Investments and Another

Civil Appeal Nos. 4701 & 4702 of 1985

(J.S. Verma, K. Jayachandra Reddy JJ)

10.10.1990

JUDGMENT

VERMA, J. -

1. These appeals by special leave are by the tenant and the sub-tenant against a decree for eviction passed on the grounds of sub-letting and the reasonable and bona fide requirement of the respondent-landlord specified in clauses (f) and (h) of the proviso to sub-section (1) of Section 21 of the Karnataka Rent Control Act, 1961 (hereinafter called 'the Act'). The trial court had rejected the landlord's application for an order of eviction on these grounds, but the High Court in a revision under Section 50 of the Act has set aside the trial court's order and passed the decree for eviction on these grounds. Hence these appeals.

2. The material facts are undisputed at this stage. The premises comprise of two shops and a house adjoining the shops and belonged earlier to one T.A. Jotindranath Mudaliar. The premises were let out by the original lessor to M/s. Bhoolchand Chandiram (appellant in Civil Appeal No. 4701 of 1985) on October 4, 1943 on terms contained in the letter dated October 4, 1943 from the original lessor to M/s. Bhoolchand Chandiram which reads as under :

> #"T.A. Jotindranath 933, LaxmipurMudaliar Mysore, October 4, 1943To,Messrs Bhoolchand Chandiram,Silk Merchant,C/o Messrs Bhagwandas Shyam Sunder & Co.,112, Commercial Street,Bangalore Cantt.##
>
> Dear Sirs,
>
> With reference to your letter dated September 30, 1943 and your personal conversation about renting out my shops in the Commercial Street, Bangalore Cantonment, it is agreed and confirmed that you are prepared to take the two shops at monthly rent of Rs. 430 (Rs. Four hundred and thirty only) with two years agreement and three month's advance and execute the necessary rental deed, with the option of sub-letting one of the shops. As for the house adjoining the shops at monthly rent of Rs. 50 (Rs. Fifty only) with one month's advance and eleven month's rental deed. You have option of sub-letting the house also.
>
> # Yours sincerely, Sd/- T.A. Jotindranath Mudaliar"##

3. M/s. Bhoolchand Chandiram continued as a tenant in the premises and some time in the year 1946 sublet one of the two shops to one 'Arts Palace'. Later, w.e.f. April 1, 1948 the appellant M/s.

Bhoolchand Chandiram inducted another sub-tenant M/s. Super Dry Cleaners (appellant in Civil Appeal No. 4702 of 1985) in place of Arts Palace in the same shop. In 1960, a partition took place in the Hindu undivided family of Mudaliar brothers, the original lessor and the suit premises fill to the share of Narendranath Mudaliar. M/s. Bhoolchand Chandiram continued in the premises as the tenant with Super Dry Cleaners as the sub-tenant in one shop from April 1, 1948. The original lessor (including Narendranath Mudaliar after partition in the HUF of Mudaliar brothers) continued to take rent from the tenant M/s. Bhoolchand Chandiram of the entire premises i.e. two shops and the house adjoining the shops till May 1974. On June 28, 1974, the said Narendranath Mudaliar executed a registered sale deed in favour of respondent 1, M/s. Kay Pee Cee Investments, a registered partnership firm comprising of three ladies of one family as partners, for the sale consideration of Rs. 1,40,000. It may be mentioned that in a proceeding for fixation of standard rent between the original lessor and the tenant, monthly rent of Rs. 325 was fixed for the entire premises i.e. two shops and the house and the rent due up to May 1974 was paid by the tenant to the original lessor. After execution of the said sale deed in favour of respondent 1, the tenant attorned in favour of respondent 1 and paid rent for the entire premises @ Rs. 325 per month to respondent 1.

4. The suit premises comprises of shop Nos. 44 and 45 (new Nos. 1 and 2) in Commercial Street, Bangalore Cantonment and House No. 250 (new No. 22 Narain Pillai Street Cross). Admittedly, the premises are in a prestigious commercial locality of the city of Bangalore. Respondent 1 landlord claims that the entire suit premises is reasonably and bona fide required by the landlord for its own business as agents of various textile mills for the purpose of opening a showroom for which it was purchased. It is also alleged that one of the shops was unlawfully sublet w.e.f. April 4, 1948 giving rise to the other ground of sub-letting also for eviction. Respondent 1 gave a notice on July 31, 1975 terminating the appellant-tenant's tenancy. Thereafter on September 5, 1975 a petition was filed by respondent 1 for eviction of the appellant on the grounds of sub-letting and bona fide need of the landlord under clauses (f) and (h) of the proviso to sub-section (1) of Section 21 of the Karnataka Rent Control Act, 1961. As earlier stated, the trial court dismissed the application, but the High Court has set aside that order and passed a decree for eviction on both the grounds.

5. The ground of sub-letting is to be decided on the above undisputed facts on the basis of legality of the Act of sub-letting on April 1, 1948 in theses circumstances. The ground of bona fide need of the landlord is to be decided on the basis of the evidence led which is entirely oral from both the sides with reference to the infirmity, if any, in the High Court's findings permitting interference therewith in these appeals. Dr. Y.S. Chitale, learned counsel appearing for the appellant-tenant assailed the High Court's findings on both these questions. Shri S. Ghosh, learned counsel appearing for the sub-tenant adopted the arguments of Dr. Chitale. Shri Chidambaram, learned counsel appearing on behalf of respondent 1 landlord has urged that there is no infirmity in the High Court's decision on both the questions to permit any interference in these appeals.

6. We shall first take up the question relating to the landlord's reasonable and bona fide requirement which is a ground for eviction under clause (h) of the proviso to sub-section (1) of Section 21 of the Act. It may be recalled that the trial court had negatived the existence of this ground while the High Court reversing that conclusion has held it to be proved. The question before us is whether there is any infirmity in the High Court's reversal of this finding justifying interference in these appeals. Against the decision of the trial court, the provision made in Section 50 of the Act is of a revision and not an appeal to the High Court. However, the power of revision is not narrow as in Section 115 CPC but wider requiring the High Court to examine the impugned order 'for the purpose of satisfying itself as to the legality or correctness of such order or proceeding' which enables the High Court to 'pass such order in reference thereto as it thinks fit.' It is clear that the High Court in a

revision under Section 50 of the Act is required to satisfy itself not only as to the legality of the impugned order or proceeding but also of its correctness. The power of the High Court, therefore, extends to correcting not merely errors of law but also errors of fact. In other words, the High Court in a revision under Section 50 of the Act is required to examine the correctness of not only findings on questions of law but also on questions of fact. It is significant that the revision provided is directly against the trial court's order and not after a provision of appeal on facts. All the same, the power in revision under Section 50 of the Act cannot be equated with the power of the appellate court under Section 107(2) of the Code of Civil Procedure which is the same as that of the original court; and the revisional power under Section 50 of the Act even though wide as indicated, must fall short of the appellate court's power of interference with a finding of fact where the finding of fact depends on the credibility of witnesses, there being a conflict of oral evidence of the parties.

7. It has, therefore, to be seen whether the High Court in the present case while reversing the trial court's finding on the question of landlord's reasonable and bona fide requirement of the suit premises exceeded its jurisdiction. Admittedly, the only evidence led by the landlord for this purpose is oral comprising of the testimony of PW 1 Dinesh, the Power of Attorney holder of the landlord and son of one of the three ladies who were partners of that firm. The evidence in rebuttal is also oral comprising essentially of denial of the plaintiff's requirement.

8. The credibility of the oral evidence adduced by the parties has to be assessed in the background of certain undisputed facts and circumstances. It is undisputed that respondent 1 firm comprising of three partners, all women, belonging to a family of businessmen having textile business also was constituted in 1958 and the firm was registered in 1961; the power of attorney was given to PW 1 Dinesh, son of one of the partners, on September 4, 1970; the suit premises was purchased by respondent 1 firm in 1974; respondent 1 firm has its business in one room on the third floor in a rented premises in Bangalore and it does not have any other premises for this purpose; and PW 1 Dinesh is looking after the entire business of the respondent 1 firm as a duly constituted attorney. RW 1 Thakurdas Bhoolchand, proprietor of M/s. Bhoolchand Chandiram also admitted that the children of the ladies who were partners of the respondent 1 firm are carrying on the business and that business is being carried on in a premise at Sakalaji Market, Avenue Road, Bangalore which according to respondent 1 is a rented accommodation. RW 1 has merely denied knowledge of the premises being taken on rent by respondent 1. The question, therefore, is whether on these undisputed facts and circumstances the landlord's reasonable and bona fide need has been proved.

9. The trial court in deciding against the landlord was influenced considerably by the fact that in support of the landlord's case 'no piece of documentary evidence is produced'. The trial court accepted that the family of respondent 1 carries on textile business but held it not proved that partition in the family has taken place to give rise to the requirement of respondent 1 firm for the suit premises when the joint family owns other premises in Bangalore. According to the trial court, the respondent 1 firm is not a separate entity detached from the family. The trial court was obviously in error in being influenced by the absence of any documentary evidence to support the need set up by respondent 1. There is no finding recorded by the trial court of the existence of any document which was material for deciding the question and it being in possession of respondent 1 had not been produced at the trial. In the absence of any such finding, the effect of non-production of any documentary evidence being put in scales against the landlord resulted in an infirmity permitting the High Court to examine the correctness of the finding even when it was based on the credibility of the oral evidence adduced by the parties. Similarly, the suit premises belonging, admittedly, to the three ladies who were partners of the respondent 1 firm and to no other member of the family to which those ladies belonged, the premises, if any, belonging to other members of

the family could not be taken into account for assessing the reasonable and bona fide need of the business of respondent 1 firm. Since the three ladies constituting the respondent 1 firm come from a family having textile business and for the purpose of the suit premises, they being distinct from other members of the family with their separate business in a rented accommodation in the same city, the trial court's finding was vitiated by another infirmity when it failed to examine the need set up by respondent 1 firm in the correct perspective. The High Court was, therefore, justified in re-examining the correctness of the finding on this question correcting both these errors which had vitiated the trial court's finding. These infirmities in the trial court's finding clearly show that the weight of the trial court's findings of fact in the present case was considerably reduced and the High Court in a revision under Section 50 of the Act was empowered to examine the correctness of this finding after eliminating both the infirmities.

10. It is obvious that the partners of the respondent 1 firm belonging to a family already having large textile business would not purchase the suit premises in a prestigious commercial locality at Bangalore merely for earning the monthly rent of Rs. 325 after investing the amount of Rs. 1,40,000 in 1974 to acquire the business premises. This factor indicating the greater probability also has to be put in scales while assessing the landlord's bona fide requirement set up in the present case. Viewed in this manner, the High Court's finding on this question based on the oral evidence adduced by the parties in the background of undisputed facts and circumstances of the case reaching the conclusion that the landlord's reasonable and bona fide requirement of the suit premises for its own occupation is proved does not suffer from any infirmity which can justify interference therewith in these appeals. This alone is sufficient to affirm the decree for eviction passed against the appellants in these appeals.

11. We shall now consider the other question relating to sub-letting which is a ground for eviction specified in clause (f) of the proviso to sub-section (1) of Section 21 of the Act. The basic point for decision is whether the sub-letting made by M/s. Bhoolchand Chandiram to M/s. Super Dry Cleaners of one shop which is a part of the suit premises w.e.f. April 1, 1948 was unlawful being contrary to any provision of law then in force. Considerable argument was advanced from both sides relation to the law then in force. We may here indicate that existence of the ground of sub-letting loses much of its significance on our above conclusion that the landlord's reasonable and bona fide need was rightly held proved by the High Court with the consequence that the decree for eviction can be sustained on that ground alone. The ground of sub-letting, however, remains of practical significance only for the purpose of applicability of sub-section (4) of Section 21 of the Act since that would be attracted only if the ground of sub-letting also found proved by the High Court, is not upheld herein. If, however, this ground also is upheld, then the decree being passed even on this ground, the further question of greater hardship to the landlord or the tenant under Section 21(4) of the Act would not arise. It is for this reason that we consider it necessary to examine the question of sub-letting.

12. The main controversy between the two sides on the ground of sub-letting is whether a written consent of the landlord for sub-letting was necessary on April 1, 1948 when the sub-letting was made and, if so, was there such a written consent given by the landlord ? The written consent of the landlord on which reliance is placed by the tenant as well as the sub-tenant, the appellants in these appeals, is that contained in the abovequoted letter dated October 4, 1943 of the original lessor. Unless the written consent of the landlord contained in the above letter dated October 4, 1943 can be held to be subsisting on April 1, 1948 when the sub-letting was made in favour of M/s. Super Dry Cleaners, there would, admittedly, be no written consent of the landlord to this sub-letting. There is no controversy in this respect.

13. The first point for consideration, therefore, is whether the written consent of the landlord contained in the abovequoted letter dated October 4, 1943 can be treated as subsisting and available on April 1, 1948 when the sub-letting in question was, in fact, made. There is no case set up by the tenant and sub-tenant of any implied consent of the original lessor or waiver of the ground of sub-letting and, therefore, that question does not arise for consideration.

14. The written consent of the landlord for sub-letting on April 1, 1948 according to learned counsel for the appellants is to be found in the letter dated October 4, 1943 of the original lessor. The consent of the landlord for sub-letting is a question of fact. Such consent is an act of volition of the landlord and is not to be inferred from any statutory provision. The effect of the statute comes in, if at all, only for the purpose of ascertaining whether the landlord's consent can be treated as subsisting after lapse of the period for which it was expressly given. There being no compulsion on the landlord to give such consent it cannot ordinarily extend beyond the period for which alone it was expressly given. Admittedly, the consent which was given by the original lessor in the present case is to be found only in the said letter dated October 4, 1943. We must, therefore, see the consent given therein.

15. The aforesaid letter dated October 4, 1943 of the original lessor confirming the creation of the tenancy with effect from October 4, 1943 states that two shops were let out on a monthly rent of Rs. 430 for two years with the option of sub-letting one of the shops; and the house adjoining the shops was let out on a monthly rent of Rs. 50 for eleven months with the option of sub-letting the house also. There is no dispute that subsequently in a proceeding for fixation of the standard rent, the entire premises comprising of the two shops and the houses, was treated as one premises and the monthly rent of Rs. 325 was fixed for the entire premises and this is how the tenancy was treated by both sides as one tenancy instead of two separate tenancies appearing in the letter dated October 4, 1943. The letter dated October 4, 1943 created contractual tenancy for a period of two years in respect of the two shops and for a period of eleven months for the adjoining house. Obviously, the consent of the landlord for sub-letting mentioned therein by giving the tenant the option of sub-letting cannot, therefore, be construed as consent for a period beyond the period of the contractual tenancy which was only two years in respect of two shops. It would neither be reasonable nor appropriate to construe that the consent was given for any period after expiry of the period of contractual tenancy specified therein. There is nothing in the said letter dated October 4, 1943 to suggest the continuance of the tenancy after the expiry of the specified period of contractual tenancy and, therefore, there could be no occasion to contemplate any consent for sub-letting after expiry of the period of contractual tenancy of two years in respect of the two shops. This is the factual position emerging from the aforesaid letter dated October 4, 1943 which alone is the basis of appellant's assertion that sub-letting w.e.f. April 1, 1948 was with the written consent of the original lessor. Admittedly, creation of the sub-tenancy w.e.f. April 1, 1948 in respect of one of these shops was long after the expiry of the period of contractual tenancy of two years specifically mentioned in the letter. The question, therefore, is : whether the landlord's consent given in the said letter dated October 4, 1943 could be treated as subsisting for creation of a valid sub-tenancy w.e.f. April 1, 1948 after expiry of the period of contractual tenancy ?

16. The argument of Dr. Chitale, learned counsel for the appellant-tenant, which has also been adopted by Shri Ghosh, learned counsel for the appellant sub-tenant is that on expiry of the contractual tenancy, the tenant became a statutory tenant by virtue of the restriction on his eviction except on one of the ground for eviction provided in the statute and, therefore, all the terms and conditions of the contractual tenancy became the terms and conditions of the statutory tenancy. On this basis, it was argued that the written consent of the landlord for sub-letting during the period of

the contractual tenancy continued to subsist as one of the terms and conditions of the statutory tenancy also. It was argued that for this reason, even through the sub-letting was made w.e.f. April 1, 1948 after the period of the contractual tenancy, yet it too must be deemed to be with the written consent of the landlord which was available during the period of the contractual tenancy. Dr. Chitale also referred to the fact that the first sub-letting in 1946 to Arts Palace of the same shop which was later sublet w.e.f. April 1, 1948 to M/s. Super Dry Cleaners was also after expiry of the period to two years of the contractual tenancy. This fact, however, is not material in the present case since the first sub-letting ended before commencement of the second sub-letting on April 1, 1948 and it is only the validity of the subsisting sub-letting w.e.f. April 1, 1948 which is in question in the present proceedings. Dr. Chitale relied on a number of decisions of this Court in support of his contention that the written consent of the landlord for sub-letting during the period of contractual tenancy continued as one of the terms and conditions of the statutory tenancy when the sub-letting was made w.e.f. April 1, 1948. In reply, Shri Chidambaram contended that the written consent of the landlord for sub-letting is not one of the terms which enures to the benefit of the tenant during subsistence of the statutory tenancy after expiry of the contractual tenancy. The decisions cited at the bar on this point are Damadilal v. Parashram (1976 Supp SCR 645), Y. Dhanapal Chettiar v. Yesodai Ammal ((1980) 1 SCR 334), Smt. Gain Devi Anand v. Jeevan Kumar (1985 Supp 1 SCR 1), Mahabir Prasad Verma v. Surinder Kaur ((1982) 3 SCR 607), Shalimar Tar Products Ltd. v. H.C. Sharma ((1988) 1 SCC 70), Shantilal Rampuria v. Vega Trading Cooperation ((1989) 3 SCC 552), Bajaj Auto Limited v. Behari Lal Kohil ((1989) 4 SCC 39), Duli Chand v. Jagmender Dass ((1990) 1 SCC 169) and Tara Chand v. Ram Prasad ((1990) 3 SCC 526).

17. The decision in Damadilal case (1976 Supp SCR 645) and others in the same line related primarily to the question of heritable interest in the premises of the legal representatives of the deceased tenant who was in occupation as statutory tenant. Pointing out that the concept of statutory tenancy under the English Rent Acts and under India statutes like the one with which we are concerned rests on different foundations, it was held that the statutory tenant had a heritable interest in the premises which was not merely a personal interest but an interest in the estate like that of a contractual tenant. On this conclusion, the right of legal representatives of the statutory tenant to protect the possession and prosecute the appeal against eviction order was upheld. The main question for decision in Damadilal case (1976 Supp SCR 645) was the heritable nature of the statutory tenancy and it was in this context that the terms and conditions of a statutory tenancy were held to be the same as those of the contractual tenancy preceding it. No question arose in Damadilal case (1976 Supp SCR 645) of the right of a statutory tenant to create a sub-tenancy after replacement of the contractual tenancy with the statutory tenancy. The observations made and the decision rendered in Damadilal case (1976 Supp SCR 645) cannot, therefore, be construed as holding that a statutory tenant has a right to create a sub-tenancy during subsistence of statutory tenancy after expiry of the contractual tenancy when the Rent Acts give the same protection against eviction to the tenant except on one or more of the specified grounds. Obviously, the protection to the statutory tenant and the heritable nature of the statutory tenancy providing the same protection against eviction to the tenant's heirs does not further require conferral of the right of inducting a sub-tenant which is not necessary for enjoyment of the tenancy and the protection against eviction given by the Rents Acts. There is no rationale for inferring or extending the landlord's written consent for sub-letting beyond the period of contractual tenancy for which alone it is given. No separate discussion for the later decisions in the same line is necessary because of the same distinction in all of them.

18. One decision which requires specific mention and is obviously nearest on facts to the present case is Mahabir Prasad Verma v. Surinder Kaur ((1982) 3 SCR 607). In that case, the contractual

tenancy was for a period of one month from April 1, 1974 to April 30, 1974 with the landlord's consent for sub-letting. The tenant continued to occupy the premises even after expiry of the contractual tenancy on April 30, 1974 and inducted therein a sub-tenant. The landlord sued for eviction of the tenant on the ground of unlawful sub-letting of the premises which was a ground for eviction under the relevant Rent Act. There was some dispute about the time of induction of the sub-tenant, it being claimed by the tenant that the induction of the sub-tenant was in the month of April 1974 during subsistence of the contractual tenancy while the landlord contended that the sub-letting was after the month of April 1974. It was found as a fact that the tenant had sublet in the month of April 1974 when the written consent of the landlord subsisted and not subsequent to it in May as claimed by the landlord. The crux of the question for decision therein was stated thus : (SCC p. 269, para 24)

> "The crux of the question, therefore, is whether the sub-letting by the tenant with the written consent of landlord during the currency of the tenancy becomes unlawful and illegal on the determination of the tenancy and furnishes a ground for eviction within the meaning of Section 13(2)(ii)(a) of the Act."

On the finding that the sub-tenant had been inducted during the period of contractual tenancy on the basis of the written consent for sub-letting given by the landlord, the sub-letting did not become unlawful merely because the contractual tenancy of the tenant came to an end and the protection against eviction to the tenant as a statutory tenant also enured to the benefit of the lawful sub-tenant recognised by the statute. It was held as under : (SCC p. 271, paras 26 & 27)

> "Sub-letting lawfully done with the written consent of the landlord does not become unlawful merely on the ground that the contractual tenancy has come to an end. Sub-letting to constitute a valid ground for eviction must be without the consent in writing of the landlord at the time when the tenant sublets any portion to the sub-tenant.
>
> A sub-letting by the tenant with the consent in writing of the landlord does not become unlawful on the expiry of the contractual tenancy of the tenant, unless there is any fresh sub-letting by the tenant without the written consent of the landlord. Mere continuance in possession of a sub-tenant lawfully inducted does not amount to any fresh or further sub-letting. We are, therefore, satisfied that in the instant case the tenant has not sublet any portion without the written consent of the landlady after the commencement of the Act... Mere continuance of possession by the sub-tenants lawfully inducted by the tenant with the written consent of the landlady contained in rent note does not afford any ground to the landlady for eviction of the tenant on the ground of sub-letting, as the tenant has not sublet after the commencement of the Act any portion without the consent in writing of the landlady."

Of all the decisions cited at the bar, this decision is, admittedly, nearest on facts to the present case with the only difference that the sub-letting in the present case was after expiry of the contractual tenancy and after type commencement of the Act prohibiting sub-letting without the written consent of the landlord when it was made on April 1, 1948, while the sub-letting in Mahabir Prasad case ((1982) 3 SCR 607) was during the period of contractual tenancy when the express written consent of the landlord for sub-letting was available. The principle for application, however, is the same with the only difference in the result since in Mahabir Prasad case ((1982) 3 SCR 607) the sub-letting was made during subsistence of the contractual tenancy with the written consent of the

landlord. It is significant that the judgment in Mahabir Prasad case ((1982) 3 SCR 607) was by A.N. Sen, J. who also wrote the opinion in Gain Devi case (1985 Supp 1 SCR 1) relied on by Dr. Chitale as one of the decisions in line with Damadilal case (1976 Supp SCR 645). It is clear that A.N. Sen, J., who wrote the opinion of the bench in Mahabir Prasad case ((1982) 3 SCR 607) as well as in Gian Devi Case (1985 Supp 1 SCR 1) did not construe the earlier decisions starting with Damadilal case (1976 Supp SCR 645) in the manner read by Dr. Chitale. If Dr. Chitale is correct in his submission on this point, then the entire emphasis in Mahabir Prasad case ((1982) 3 SCR 607) on the sub-letting being made during the period of contractual tenancy in April 1974 and not thereafter being decisive of the validity of sub-letting was misplaced and a futile exercise. In our opinion this was not so and the correct premise is that landlord's written consent for sub-letting during the period of contractual tenancy cannot be construed as his consent subsisting after expiry of the contractual tenancy. The submission of learned counsel for the appellants runs counter to the clear decision in Mahabir Prasad case ((1982) 3 SCR 607) which, in our opinion, is in no way contrary to the decisions starting with Damadilal case (1976 Supp SCR 645), the observations wherein are in the context of heritability of the statutory tenancy. In fact, it is rightly not even contended by Dr. Chitale that the decision in Mahabir Prasad case ((1982) 3 SCR 607) runs counter to Damadilal case (1976 Supp SCR 645) and other decisions following them. This is sufficient to indicate that the appellants' contention is untenable.

19. There is some controversy between the parties about the legislative history of the Rent Acts in the Bangalore Civil Station wherein the suit premises is located, but an in-depth consideration of that controversy is not necessary. The only question is : whether on April 1, 1948 when the sub-letting was made in favour of M/s. Super Dry Cleaners, the contractual tenancy giving written consent for sub-letting having expired was the written consent of the landlord for sub-letting necessary under the statute then in force ? It is sufficient to state that the Bangalore House Rent and Accommodation Control Act, 1946 was brought into force w.e.f. October 1, 1946 for a period of two years expiring on October 1, 1948. Later enactments were Mysore House Rent and Accommodation Control Act, 1951 and then Karnataka Rent Control Act, 1961 w.e.f. December 31, 1961. The suit for eviction was filed in September 1975 on the grounds contained in clauses (f) and (h) of the proviso to sub-section (1) of Section 21 of the Karnataka Rent Control Act, 1961. In the Bangalore House Rent and Accommodation Control Act, 1946 which applied at the time of sub-letting in the present case on April 1, 1948 the provision for eviction of tenants was made in Section 9 thereof. Sub-section (2) specifies the grounds on which a landlord was entitled to seek eviction of his tenant. One such ground in sub-section (2) is of sub-letting and the relevant portion reads as under :

> "(iii) that the tenant has after the commencement of this law without the written consent of the landlord -
>
> (a) sub-let the entire building or any portion thereof; or......."

20. It is, therefore, clear that the written consent of the landlord for sub-letting was necessary under the relevant statute applicable on April 1, 1948 when the sub-letting was made in the present case. In fact, this requirement of written consent of the landlord was the basis on which both sides argued the case and the main thrust of Dr. Chitale's argument was that such a written consent was to be found in the letter dated October 4, 1943 of the original lessor. We have, earlier, indicated that the landlord's consent in the aforesaid letter dated October 4, 1943 was not available on April 1, 1948 after expiry of the contractual tenancy. The rest is only a logical corollary to this conclusion leading to the inevitable result that induction of the sub-tenant M/s. Super Dry Cleaners w.e.f. April 1, 1948

by the tenant M/s. Bhoolchand Chandiram was unlawful being made contrary to the provision of law then in force which constitutes the ground for eviction contained in clause (f) of sub-section (1) of Section 21 of the Karnataka Rent Control Act, 1961. These is, thus, no ground to differ with the conclusion reached by the High Court that the ground of sub-letting has been made out, even though our reasons are different.

21. On the above conclusion that the ground of sub-letting also was rightly held proved by the High Court in addition to the ground of landlord's reasonable and bona fide requirement, the question of applicability of sub-section (4) of Section 21 of the Karnataka Rent Control Act, 1961 does not arise and, therefore, it is not necessary to examine the question of comparative hardship. In that view of the matter, the appeals must fail.

22. Consequently, both the appeals are dismissed. In view of the fact that the appellants are carrying on their business in the suit premises for a long time and will, therefore, need some reasonable time to shift to some other place, we grant to the appellants time till March 31, 1991 for vacating the suit premises and delivering vacant possession thereof to the landlord respondent 1, subject to undertaking in the usual terms being filed by the appellants within a period of four weeks. No costs.

</html