

Dev Kumar (Died) Through Lrs.

Vs

Swaran Lata (Smt) and Others

Civil Appeal No. 4204 of 1992

(S. C. Agarwal, G. B. Pattanktaswami JJ)

10.11.1995

JUDGMENT

PATTANAIK, J.

1. This appeal is by the tenant, challenging the revisional order of the High Court of Punjab and 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 Lata Respondent 1, in the present appeal filed an application for ejection 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 Respondents 2 to 4 and, therefore, has incurred the liability of being evicted under Section 13(2)(i) and (ii)(a) of the Act. The tenant appeared before the Rent Controller and controller and controverted all the allegations made by the landlady. The allegation of sub-letting by him in favour of Respondents 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 Respondent 1 and the appellant and the tenant had tendered the arrears of rent which was accepted by the landlady. On the question of sub-letting, 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.

2. Against the order of eviction the tenant preferred an appeal. The Additional District Judge, Amritsar, who was the appellate authority reconsidered 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

Respondent 2 to 4 is for valuable consideration. The evidence of the 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 the High Court in revision under sub-section (5) of Section 15 of the Act. The High Court by the impugned judgment dated 3-4-1992, has reversed the findings of the appellate authority and relying upon the evidence of the Commissioner has held that Respondents 2 to 4 are in exclusive possession of the demised premises and the tenant has parted with the possession in their favour. Therefore (sic he) has sub-let the premises in their favour and the revision being allowed with the direction that the tenant should hand over the vacant possession of the demised premises to the landlady, the present appeal has been preferred by the tenant.

3. 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 reappreciating 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 sub-letting is also not sustainable in law, more so, when the same is based upon the tainted evidence of the local Commissioner.

4. Mr. Krishan Mahajan learned counsel appearing for Respondent 1, on 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 reappreciating the evidence on record. The learned counsel also urged that the conclusion of sub-letting 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.

5. 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 on its own motion, call for, and 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."

6. In the case of *Rajbir Kaur v. S. Chokesiri & Co.* 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 reassessment 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.

7. In the case of *Nanak Chand v. Inderjit* 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.

8. In the case of *Ram Dass v. Ishwar Chander* 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 : (SCC p. 135, para 13)

"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, quit 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 appellate 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 property 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 to, the High Court will not interfere with the same.

9. Coming to the second question the expression 'sub-letting' has not been defined in the Act. The conclusion on the question of sub-letting 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 the expression 'sub-letting', this Court considered the same in the case of *Jagdish Prasad v. Angoori Devi* in an eviction proceeding under U. P. 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, sub-letting 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 sub-let, the allegation has to be proved. The question of sub-letting was considered by this Court in the case of *Shalimar Tar Products Ltd. v. H. C. Sharma* and it was held that in order to construe sub-letting 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".

10. In the case of *Rajbir Kaur v. S. Chokesiri & Co.* this Court considered the question of sub-letting

and held that the burden of making a case of sub-letting is on the landlady. It was also held that the transaction of sub-letting in the guise of licences 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.

11. Bearing in mind the aforesaid legal position we would now examine the question whether the landlady, Respondent 1 in the present appeal, has established her case of sub-letting by the tenant and further whether the conclusion of the High Court thereon is at all sustainable in law. The case of Respondent 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 along with his own business, he was also transacting business as Commission Agent of M/s. Ram Saran Bhola Nath. The only evidence led 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 Moth 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 Bhola 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 transaction business as a Commission Agent of M/s Ram Saran Bhola Nath, of which firm Respondent 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 the disputed premises was in exclusive possession of the alleged sub-tenant, namely, Respondents 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 Gain 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 Gain Chand. The statement of the local Commissioner, who was examined as AW 5, 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 sub-letting 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 Respondents 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, Respondents 2 to 4 have also been permitted to continue their business in the name of Ram Saran Rattan Chand. But that does not establish either the exclusive possession of Respondents 2 to 4 that the tenant has parted with his possession. The exclusive possession of the premises being the first criterion for establishing sub-letting and the same not being established, the conclusion of the High Court about sub-letting is vitiated.

12. In our considered opinion the landlady, Respondent 1, has utterly failed to establish the plea of

sub-letting 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.

13. There will be no order as to costs.