

Resham Singh

Vs

Raghubir Singh

Civil Appeal No. 6061 of 1998

V. N. Khare, S. N. Phukan JJ)

23.08.1999

JUDGMENT

S.N. Phukan, J. –

1. This is an appeal against the judgment and order passed by learned Single Judge of the High Court of Punjab and Haryana in Civil Revision No. 2006 of 1983. By the impugned judgment the petition filed under sub-Section (5) of Section 15 of East Punjab Urban Rent Restriction Act (for short the Act) was allowed by setting aside both the judgments of the Rent Controller as well as Appellate Authority.
2. The appellant Resham Singh filed a petition for eviction of two respondents namely Raghubir Singh and Kuldeep Singh in respect of disputed suit premises. According to the appellant the suit premises was let out to respondent Raghubir Singh but he sublet it to Kuldeep Singh. It was also pleaded before the Rent Controller that the respondent was in arrears of rent from 1.8.1980. The Rent Controller decided the issue regarding defaulter against the appellant-landlord but ordered eviction of respondent on the ground of sub-letting. The appeal filed by the respondent was dismissed by the Appellate Authority. The High Court by the impugned judgment set aside both the judgments and allowed the revision petition holding that there was no sub-letting and the respondents were not defaulters.
3. We have heard Mr. Munni Lal Verma, learned senior counsel for the appellant and Ms. Rupinder Kaur Wasu, learned counsel for the respondent.
4. It has been urged that sub-Section (5) of Section 15 of the Act does not empower the High Court to set aside the findings of fact. The said sub-Section is quoted below :

"(5) - 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."
5. The question of sub-letting is a conclusion on question of law derived from the findings on materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration. While considering the said sub-Section (5) the above view was also expressed by this Court in *Dev Kumar (Died) Through Lrs. v. Swaran Lata (Smt) and others, 1996(1) SCC 25.*

6. The sub-Section (5) empowers the High Court either on application or in its own motion to call for an examination of the record for the purposes of satisfying itself as to the legality and propriety of such orders or proceedings. In view of the above language of sub-Section (5) we find that the High Court while exercising powers under sub-Section (5) of Section 15 of the Act has got the powers to satisfy itself as to whether the question of sub-letting which is a question of law was properly decided by the courts below. From the impugned judgment of the High Court we find that the Court did not rightly find ingredients of sub-letting. We, therefore, hold that the High Court was justified in setting aside the judgments of courts below.

7. It is settled position of law that to establish sub-letting the onus is on the landlord to prove through evidence that sub-tenant was in exclusive possession of the property in question; that between the sub-tenant and the tenant there was relationship of lessee and lessor and that possession of the premises in question was parted with exclusively by the tenant in favour of the sub-tenant. (See-*Kala and anther v. Madho Parshad Vaidya, 1998(6) 573* and *Benjamin Premanand Rawade (Dead) by Lrs. v. Anil Joseph Rawade, 1998(9) SCC 688*.)

8. In the present appeal it is not disputed that both the respondents are brothers and respondent No. 1 Raghbir Singh who was the tenant was involved in some criminal proceedings and he was absconding for a considerable period. Being an absconder it does not possible for the tenant - respondent No. 1 Raghbir Singh be physically present in the premises in question. It is natural to allow his brother - Kuldeep Singh to look after the shop and this fact would not amount to sub-letting.

9. As stated above, it is settled position of law that burden of making a case of sub-letting is on the landlord/landlady. In the present case there is no evidence regarding parting of possession of the suit premises by respondent No. 1 - Raghbir Singh in favour of his brother respondent No. 2 - Kuldeep Singh and that said Kuldeep Singh was in an exclusive possession of the suit premises. There is also no evidence of relationship of lessee and lessor between the two brothers. For the reasons stated above we do not find any merit in the present appeal and accordingly dismissed.

10. No order as to costs.