

SUPREME COURT OF INDIA

Nirmal Kanta

Vs.

Ashok Kumar

(C.K. Thakker and Altamas Kabir, JJ.)

C.A.No.7160 of 2005

28.03.2008

JUDGMENT

Altamas Kabir, J.

1. This appeal by special leave is directed against the judgment and order dated 7th January, 2002, passed by the High Court of Punjab & Haryana at Chandigarh in Civil Revision No. 2250 of 1984 filed under Section 15 of the East Punjab Rent Restriction Act, 1949, (hereinafter called the 1949 Act). By the said judgment, the High Court set aside the order dated 25th October, 1983, passed by the Appellate Authority and restored the order dated 13th August, 1983, passed by the Rent Controller dismissing the appellant-landlords petition for eviction of the respondents under Section 13 of the 1949 Act. The facts relating to the filing of the eviction petition are set out in brief herein below.

2. One Smt. Nirmal Kanta, wife of Shri T.R.Bhandari, filed the above-mentioned petition under Section 13 of the 1949 Act seeking ejectment of the respondents herein from the shop-room in question. Abetment was sought on the ground that the tenant had not paid the rents for the tenanted shop-room from 2nd March, 1982, till 15th June, 1982, when the eviction petition was filed. It was also alleged that the conduct of the tenant was a constant nuisance not only to the landlord but also to the neighbors as well and that the landlord wanted to construct a first floor on the demised premises, which was being obstructed by the tenant. A separate ground as to creation of sub-tenancy was also pleaded along with some other grounds relating to installation of electric meter and an attempt being made by the tenant to establish his own title to the suit property. The Rent Controller dismissed the application on 13.8.1983 and against such order of dismissal of his petition the appellant filed an appeal before the Appellate Authority. The Appellate Authority allowed the appeal and set aside the order of the Rent Controller by its judgment dated 14th June, 1984. The tenant, the respondent No.1 herein, was directed to put the landlord/appellant in possession of the tenanted premises within three months. The respondent No.1/tenant filed Civil Revision No. 2250 of 1984 before the High Court against the order of the Appellate Authority and the same was allowed on the finding that by allowing a tailor, even on payment, to sit in a part of the shop-room with his sewing machine, while retaining his possession and rights as a tenant

over the premises leased to him, the respondent No.1/tenant did not create a sub-lease and the tailor could at best be said to be a licensee. The High Court held that the appellant landlord had failed to discharge his burden that there was a sub-letting of the demised premises.

3. None of the other grounds appear to have been urged on behalf of the appellant-landlord before the High Court, which set aside the judgment of the Appellate Authority only on the ground of alleged sub-letting. It is against the said order of the High Court that the present Special Leave Petition has been filed.

4. At this juncture, it may be mentioned that the sole petitioner before the Rent Controller died during the pendency of this appeal and she was substituted by her legal heirs in the appeal. The appellant No.1, Tilak Raj Bhandari, the husband of the deceased Nirmal Kanta, who is an advocate, has appeared in person in support of the appeal.

5. He urged that the High Court had erred in reversing the well-considered judgment and order of the Appellate Authority on a wrong understanding of the law relating to creation of sub-tenancies by holding that even if it was established that the respondent No.1-tenant had allowed the respondent No.2, a tailor, to sit inside a part of the demised premises with his sewing machine for the purpose of stitching, the same would not amount to creation of a sub-tenancy or a sub-lease. It was urged that by allowing the respondent No.2 to use a portion of the demised premises, the respondent No.1, had parted with the exclusive possession of the said portion of the demised premises, thereby, in fact, creating a sub-tenancy.

6. The appellant No.1 urged that during the hearing of the application filed before the Rent Controller under Section 13 of the 1949 Act, the Rent Controller had appointed a Local Commissioner on 15th June, 1982, to visit the locale and to report the factual position regarding the use of the portion of the demised premises by Lachman Singh working as a tailor and as to whether, he had affixed his sewing machine, plied by feet, on the floor at a particular point in the site plan. It was pointed out that the Local Commissioner had reported that on his inspection in the presence of the parties, he found that the tailor Master Lachman Singh was operating as a tailor from the point shown in the site plan of the shop-room and that he had got a sewing machine plied by feet fixed to the said spot.

7. The appellant No.1 submitted that the report of the local commissioner had been wrongly interpreted by the High Court, inasmuch as, it amply proved that a portion of the shop-room had been sublet to Lachhman Singh. He also submitted that the Appellate Authority had correctly held that the respondent-tenant was liable to be evicted on account of such sub-letting and the High Court had erred in reversing the said finding upon holding that the fact that the alleged sub-tenant was found sitting inside the shop-room would not alone establish the sub-tenancy and that if any person sits in the shop-room for augmentation of the business of the tenant the plea of sub-tenancy could not be accepted. The High Court further observed that the Rent Controller had arrived at the correct finding that at best Lachman Singh was a licensee under the tenant and not a sub-tenant as alleged by the appellant herein. The appellant submitted that the judgment of the High Court was contrary to the law relating to

licence and sub-tenancy and was liable to be set aside and that of the Appellate Authority was liable to be restored.

8. On behalf of the respondents it was contended that in order to constitute a sub-tenancy, one of the basic ingredients is that the tenant was required to part with possession of the whole premises let out to him and that by allowing a person to sit in a portion of the shop-room even if on payment of rent do not amount to sub-letting but at best could have created a licence. It was urged that from the evidence on record it would be amply clear that the respondent No.1 had not parted with exclusive possession of the shoproom and had only allowed the alleged sub-tenant to operate his sewing-machine from a portion of the shop-room and that too for the purpose of assisting the respondent No.1 in his cloth business.

9. It was submitted that Lachhman Singh, the alleged sub-tenant, had been allowed to sit in the shop-room to facilitate customers in taking measurements for the purpose of buying cloth and as a master tailor, Lachhman Singh's job was to assist the customer to assess the amount of cloth required for a particular purpose.

10. It was urged that even if the report of the local commissioner showed that a sewing-machine had been affixed to the floor in a portion of the shop-room, that was not in the nature of a sub-tenancy as alleged on behalf of the appellant, but in order to assist the respondent No.1 in his business. It was submitted that the Rent Controller, as also the High Court, had very correctly assessed the situation in holding that at best it could be said that a licence had been created by the respondent No.1 in favour of Lachman Singh in that portion of the shop-room where the sewing-machine had been affixed and from where Lachman Singh was operating.

11. In support of his submission learned counsel firstly relied upon the decision of this Court in *Delhi Stationers and Printers vs. Rajendra Kumar*¹ wherein the meaning of sub-letting had been explained to mean transfer of an exclusive right to enjoy the property in favour of a third party in lieu of payment of some compensation or rent. It was observed that parting with legal possession meant parting with possession with the right to include and to exclude others and that mere occupation is not sufficient to infer either sub-tenancy or parting with possession.

12. Reliance was also placed on the decision of this Court in *Bharat Sales Limited v. Life Insurance Corporation of India*² in which it was held that sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation wholly or in part and puts another person in exclusive possession thereof in such process. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord. It was further observed that it is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property.

13. The learned counsel for the respondent also referred to the decision of this Court in *Joginder Singh Sodhi vs. Amar Kaur*³ in which, while dismissing the special leave petition filed by the landlord this Court observed that as far as sub-letting was concerned, two ingredients, namely, parting with possession and monetary consideration therefor have to be established. It was submitted that neither of the two ingredients had been proved in the instant case and all that was relied upon by the Appellate Authority was the report of the local commissioner which indicated that Lachhman Singh was operating from a portion of the shop-room where he had fixed a feet-driven sewing machine. Regarding parting with exclusive possession learned counsel submitted that the respondent No.1 was always in possession of the entire shop-room and the key of the shop-room was retained by him and till he opened the shop-room no one had access thereto. Various other decisions were also referred to on behalf of the respondents, which need not detain us.

14. The learned counsel submitted that there was no merit in the appeal and both the Rent Controller and the High Court had correctly dismissed the eviction petition filed by the appellant/landlord.

15. What constitutes sub-letting has repeatedly fallen for the consideration of this Court in various cases and it is now well-established that a sub-tenancy or a sub-letting comes into existence when the tenant inducts a third party/stranger to the landlord into the tenanted accommodation and parts with possession thereof wholly or in part in favour of such third party and puts him in exclusive possession thereof. The lessor and/or a landlord seeking eviction of a lessee or tenant alleging creation of a sub-tenancy has to prove such allegation by producing proper evidence to that effect. Once it is proved that the lessee and/or tenant has parted with exclusive possession of the demised premises for a monetary consideration, the creation of a sub-tenancy and/or the allegation of sub-letting stands established.

16. All the different cases cited on behalf of the parties are ad-idem on this interpretation of the law relating to the creation of a sub-tenancy or sub-letting. As was observed by this Court in the case of *Bharat Sales Limited* (supra) the arrangement regarding the creation of a sub-tenancy or grant of a sub-lease without the permission of the landlord has obviously to be done behind the scene to prevent the landlord from coming to learn of such arrangement and it is only after the landlord finds that stranger or a third party, other than the tenant, was occupying the tenanted premises, does he become aware of the creation of such sub-tenancy or granting of such sub-lease. In the instant case, from the report of the Local Commissioner appointed by the Court it stands established that the respondent No.2, Lachhman Singh, was, in fact, operating a feet-driven sewing machine from inside the shop-room comprising the tenanted premises. The same has been interpreted in different ways by the Rent Controller, the Appellate Authority and thereafter by the High Court. From the evidence that has come on record, it appears that the respondent No.2 had been accommodated by the respondent No.1 to assist him in his cloth business by helping customers to assess the amount of cloth required for their particular purposes. The said activity did not give the respondent No.2 exclusive possession for that part of the shop room from where he was operating and where his sewing machine had been affixed. The aforesaid issue has been correctly decided both by the Rent Controller as also the High Court. In our view, the learned Appellate Authority has

mis-construed the principles relating to parting with exclusive possession which is one of the key ingredients for arriving at a finding regarding the creation of a sub-tenancy or grant of a sub-lease. Since from the report of the Local Commissioner it only appears that the respondent No.2 was operating from a portion of the shop-room, it is quite clear that the respondent No.1 had not parted with exclusive possession of the tenanted premises as had been found both by the Rent Controller and the High Court. The main ingredient of the creation of a sub-tenancy and/or grant of a sub-lease not having been established, it may at best be said that the respondent No.2 was a licensee under respondent No.1 which would not entitle the appellant-landlord to obtain a decree for eviction against the respondent No.1-tenant on the ground of sub-letting.

17. Since none of the other points appear to have been urged before either the Appellate Authority or the High Court, we are not called upon to deal with the same.

18. The appeal accordingly fails and is dismissed.

19. There will be no order as to costs.

¹(1990) 2 SCC 0331

²(1998) 3 SCC 0001

³(2005) 1 SCC 0031