
Before N.K. Sud, J

SMT. SHANTI DEVI,—*Petitioner*

versus

SMT. PARAMJIT KAUR KANG & OTHERS,—*Respondents*

C.R. NO. 1829 OF 1997

2nd November, 2004

East Punjab Urban Rent Restriction Act, 1949—S.13— Eviction petition on the ground of subletting in two parts of the demised premises—Rent Controller not accepting the charge of subletting of the main portion of the demised premises—Appellate authority reversing these findings of the Rent Controller—Charge of subletting the side window of the demised premises proved by both the authorities below—Concurrent findings of fact of the authorities below based on material on record—Neither perverse nor unreasonable—Not permissible for High Court to re-appraise the entire evidence & substitute its own findings—Even one charge of subletting proved the tenant is liable to be evicted—Not necessary to go into the correctness of the findings of the Appellate Authority in respect of charge of subletting of the main portion of the demised premises—Petition dismissed.

Held, that the demised premises has been claimed to have been sublet in two parts. The main portion is alleged to have been sublet to Sai Ditta Mal and Sham Lal and the side window to Ramesh Kumar. Even if this charge is proved in respect of either of the two portions, the tenant is liable to be evicted. Both the authorities below have recorded a concurrent finding of fact that the side window of the demised premises having a separate ingress to and egress from is in exclusive possession of Ramesh Kumar who is running the business in the name and style of Sai Pan House from the said portion. This finding is supported by the material on record and, thus, cannot be said to be either perverse or unreasonable. That being so, it is not permissible for this Court to re-appraise the entire evidence and substitute its own findings.

(Paras 14 & 15)

Further held, that there is no scope for interference in the concurrent finding of fact recorded by both the authorities below that the side window had been sublet to Ramesh Kumar. This finding is based on material on record and has not been shown to be irrational or unreasonable. The petitioner is liable to be evicted on the ground of subletting of the side window to Ramesh Kumar. Thus, it is not necessary for me to go into the correctness of the findings of the Appellate Authority in respect of charge of subletting of the main portion of the shop to Sai Ditta Mal and Sham Lal.

(Para 20)

R.C. Setia, Sr. Advocate with Rohit Pathak, Advocate,
for the petitioner

M.L. Sarin, Sr. Advocate, with H.S. Giani, Advocate
for respondent No. 1.

JUDGMENT

N.K. Sud. J.

(1) This civil revision is directed against the order of the Appellate Authority, Chandigarh, dated 3rd April, 1997, dismissing the appeal of the petitioner-tenant against the order of her eviction passed by the Rent Controller, Chandigarh, dated 14th December, 1995.

(2) Kanwal Parkash Kaur, mother of respondent-Paramjit Kaur, being the owner of SCF No. 35, Sector 23-C, Chandigarh, had let out the entire ground floor of the said premises to petitioner-Shanti Devi and Mohinder Kumar (respondent No. 5),—*vide* rent note dated 18th August, 1981 at a monthly rent of Rs. 2,000 exclusive of water and electricity consumption charges. On her death, respondent-Paramjit Kaur had stepped into her shoes as landlady. She filed an eviction petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, claiming that tenants Shanti Devi and Mohinder Kaur had sublet the main shop portion to Sai Ditta Mal and Sham Lal for valuable consideration without her permission. It was claimed that Sai Ditta Mal and Sham Lal were in exclusive possession of the main portion of the demised premises. It was further alleged that the remaining small portion consisting of show window had been sublet

to Ramesh Kumar for valuable consideration without the written consent of the landlady. Ramesh Kumar had separate ingress to and egress from the said show window. It was also claimed that tenants, Shanti Devi and Mohinder Kumar, had nothing to do with the demised premises.

(3) Neither the co-tenant Mohinder Kumar nor the alleged sub-tenants Sai Ditta Mal, Sham Lal or Ramesh Kumar contested the eviction petition and were proceeded against ex-parte. Only the petitioner came forward and contested the petition. She claimed that the co-tenant Mohinder Kumar had left on his own and she was in possession of the premises and was carrying on the business in partnership with some other person in the name of M/s Sai Confectioners. She denied the allegation of subletting and reiterated that the demised premises were in her exclusive possession. The alleged sub-tenant Sham Lal appeared as RW-3 and stated that he along with Pardeep Kumar had entered into a partnership with petitioner-Shanti Devi and placed on record a photo copy of the partnership deed dated 5th April, 1988 (Exh. R-2) in support of his claim. He also placed on record copy of partnership deed dated 1st September, 1981 (Exh. RW-3/1) and copy of the dissolution deed dated 5th April, 1988 (Exh. RW-3/2). He also pointed out that prior to his partnership, Late Sai Ditta Mal, father of Shanti Devi, was a partner with Shanti Devi in the previous partnership. He stated that as per the terms of the partnership, the tenancy had always remained the property of Shanti Devi and he had no connection with the tenancy rights. He also deposed that Ramesh Kumar had never remained in possession of any part of the premises in dispute nor had done any job in the said premises. Ramesh Kumar, who appeared as RW-1, denied that he had ever done any job in the demised premises or had any concern with the same. He stated that he was an employee in the Government Press, U.T. Chandigarh, and had never done the job of selling cigaretters, etc. He denied being a sub-lessee in the demised premises.

(4) The landlady, on the other hand, maintained that the partnership deed dated 5th April, 1988 (Exh. R-3/2) showed that Shanti Devi was merely a sleeping partner and hence she was no more in possession of the demised shop and had sublet the same in favour of the remaining partners who were in exclusive control and possession of the same.

(5) On the basis of the partnership deed and the balance-sheets and alleged accounts produced by the petitioner-tenant, the Rent Controller accepted the claim of the tenant that there was no subletting of the main portion of the demised premises in favour of Sai Ditta Mal and Sham Lal. It was held that no adverse inference could be drawn from the fact that Shanti Devi was merely a sleeping partner. Reference was made to the recital in the partnership deed wherein it had been specifically stated that the tenancy rights of Shanti Devi were not to be affected in any manner. The Rent Controller, however, upheld the allegation of subletting of the show window in favour of Ramesh Kumar. Reliance was placed on the order dated 8th June, 1989 (Exh. P-1) passed by the Chief Judicial Magistrate, Chandigarh, whereby Ramesh Kumar was admonished for an offence under Section 13(1) of the Punjab Commercial Establishment Act, 1958 (for short "the Act"). This order was passed after the demised premises had been inspected on 1st September, 1988 at 4.10 p.m. when Ramesh Kumar was found running his shop from the side window of the demised premises with effect from 1st April, 1982. At the time of inspection, he was found present in the said shop and was challaned under Section 13(1) of the Act. As Against this, the mere denial of Ramesh Kumar as RW-1 was not accepted on the ground that he had not brought any documentary evidence to prove either the factum of his employment with the Government Press, U.T., Chandigarh or his working hours. It was, thus, held that Ramesh Kumar was in exclusive possession of the side window portion where he was doing business in the name and style of Sai Pan House which had not been got registered under the Act to avoid detection of sub-tenancy. Accordingly, the Rent Controller allowed the petition of the landlady and ordered the eviction of the petitioner.

(6) Aggrieved by the order of the Rent Controller, tenant-Shanti Devi preferred an appeal before the Appellate Authority which has been dismissed vide the impugned order. Although the landlady had not filed any appeal against the finding of the Rent Controller that no case of subletting of the main portion of the demised premises to Sai Ditta Mal and Sham Lal had been made out, she was allowed to challenge this finding in the appeal preferred by the tenant. The Appellate Authority observed that despite production of elaborate

evidence consisting of some partnership deeds, dissolution deed and balance-sheets, there were missing links and over-lapping. The same were listed as under :-

- (1) That there is no document produced for the period 15th June, 1982 to 2nd May, 1983 though admittedly possession was not exclusively with respondent No. 2 :
- (2) No document has been produced for the period with effect from 16th March, 1988 to 31st March, 1988 :
- (3) No details about partnership listed at No. III in the earlier table had been proved : and,
- (4) Even Ram Parkash RW2, General Attorney of respondent No. 1 has only sweepingly mentioned that respondent No. 2 was having partnership with Sai Ditta Mal, which was dissolved on 15th March, 1988."

The Appellate Authority also referred to the discrepancies of the figures of closing and opening balances of the capital accounts of the partners in the alleged accounts furnished for the years 1991-92 and 1992-93 which had remained unexplained.

(7) The Appellate Authority further observed that Ram Parkash, husband and general attorney of Shanti Devi, appeared as RW-2 and clearly stated that she was not attending the business activity since 1981 and was only a dormant partner never going to the shop in question. It was also observed that despite the fact that she was claimed to be a matriculate and physically and mentally fit, she did not appear in the Court, possibly to avoid facing cross-examination. The Appellate Authority, therefore, concluded that from the failure of Shanti Devi to produce the account books as also profit and loss accounts and balance-sheets of the alleged partnership and also from non-production of Shanti Devi (petitioner) in evidence, it was clear that the entire arrangement was nothing but sham. It was further held that the alleged partnership was not genuine and was a mere subterfuge to circumvent ejection on the ground of subletting. Accordingly, the Appellate Authority reversed the findings of the Rent Controller holding that the landlady had proved that the main portion of the demised premises had been sublet to Sai Ditta Mal and Sham Lal.

(8) Regarding the charge of subletting of the side window to Ramesh Kumar, the Appellate Authority concurred with the Rent Controller and upheld his finding that the demised premises had been sublet to Ramesh Kumar. This issue has been decided by the Appellate Authority in paragraphs 22, 23 and 24 (wrongly numbered as 27) as under :—

“22. Even if the case of appellant-respondent No. 5 is taken to its logical conclusion, it would be clear from order (Ex.P1 dated 8th June, 1989 that he was admonished for violation of the provisions of Punjab Shops and Commercial Establishment Act, 1958. Possession (of respondent No. 5) of the show window in the corner of the Shop (it being a corner shop) is proved from the fact that the said portion of the premises was inspected on 1st September, 1988. he was found in the premises and had been challenged under Section 13(1) of the Punjab Shops and Commercial Establishment Act, 1958 (herein after called the Act). As per statement of Ramesh Kumar RW1 he is working in Government Press U.T., and is not in possession of the premises. Merely because he is a Government servant, does not deprive him to be in possession of the premises if he violates the Conduct Rules applicable to him. Sweeping and highly interested statement made by Ramesh Kumar RW1 can not be taken to be a gospel truth. Order Ex. P1 made by the then Ld. Chief Judicial Magistrate, Chandigarh can not be ignored from consideration. Learned Rent Controller was right in relying upon the said order which has been made by a judicial authority in the regular discharge of his judicial work and carries a sanctity. This order was never challenged by the appellant-respondent No. 2 or any one on her behalf.

23. Learned lower Court in para 19 of the judgement has made the following observations :—

“In the light of the above discussed document Ex. P1, it concluded that Ramesh Kumar respondent No. 5 has been running his shop in the side window portion of the demised shop as the sublettee under the name and style of M/s Sai Pan House. He has not registered his said shop for the reasons best known to him, because if his said shop was got registered under

the Punjab Commercial Establishment Act, 1958, then there would have been direct evidence/proof of the subletting. The answering respondent has sublet the portion of the said side window in a very clever manner in order to escape herself from the consequences of the law. Hence, it is also concluded that respondent No. 5 Ramesh Kumar is in exclusive possession and control of the said side window of the demised shop as sublettee. From the order Ex. P1, it could also be concluded that the subletting in question goes back to the year April 1982. The said subletting has been done by the answering respondent without the permission/consent of the owner.

24. From the un-repudiated evidence on the file, no other conclusion, except the one as rendered by the learned Rent Controller, is possible.”

(9) Mr. R. C. Setia, learned counsel for the petitioner, submitted that the Appellate Authority was not justified in reversing the well reasoned findings of the Rent Controller on the question of subletting of the main portion of the demised premises in favour of Sai Ditta Mal and Sham Lal. He contended that the partnership deed dated 5th April, 1988 (Exh.R-2) had not been doubted by the landlady before the authorities below. The only contention raised before the Rent Controller was that since Shanti Devi was merely a sleeping partner in the said partnership deed, it followed that she was no more in possession of the demised premises and had, thus, sublet it in favour of the remaining partners. He contended that the recital in the partnership deed clearly showed that the tenancy rights had continued with Shanti Devi. He also argued that even if she was shown as a sleeping partner, she continued to be in legal possession of the premises as the possession of the firm is nothing but possession by all the partners.

(10) Mr. Setia also challenged the findings of the authorities below on the dispute about subletting of the side window to Ramesh Kumar. According to him, the order (Exh.P-1) of the Chief Judicial Magistrate, Chandigarh, has been procured merely to create evidence for seeking eviction. He contended that Ramesh Kumar was not present before the Chief Judicial Magistrate when the order was passed. At any rate, according to the learned counsel, it does not prove the exclusive possession of the show window by Ramesh Kumar, nor

is there any material on record to prove any consideration received from him. According to the learned counsel, this order merely proves that Sai Pan House was being run from the side window from which it could not be concluded that the said shop was being run by Ramesh Kumar who was paying rent to Shanti Devi.

(11) Mr. M.L. Sarin, learned counsel for the respondent-landlady, on the other hand, supported the order of the Appellate Authority. Mr. Sarin contended that both the authorities have recorded a concurrent finding of fact that the side window had been sublet to Ramesh Kumar and he was having a separate ingress to and egress from the said window. According to him, this concurrent finding had been recorded on the basis of the inspection report of Inspector of Shops and Commercial Establishments conducted on 1st September, 1988 at 4.10 p.m. on the basis of which the Chief Judicial Magistrate, Chandigarh, had admonished Ramesh Kumar,—*vide* order dated 8th June, 1989 (Exh.P-1). Thus, he argued that a concurrent finding of fact recorded by the authorities based on material on record, cannot be interfered with. For this purpose, he placed reliance on the judgment of this Court in **Amar Nath versus Guru Ramdas Textile Mills (Paul Silk Industries) and another (1)**.

(12) Mr. Sarin strongly objected to the contention raised on behalf of the petitioner that the order of the Chief Judicial Magistrate dated 8th June, 1989 had been procured to create evidence of subletting. He contended that there is a presumption of correctness of the government record and the Chief Judicial Magistrate and Inspector of Shops and Commercial Establishments could not be said to have colluded with the petitioner. At any rate, no such allegation had been levelled against them before the authorities below. Mr. Sarin also contended that since the exclusive possession of Ramesh Kumar of the side window had been proved despite his denial as also the denial of Shanti Devi, the inference of subletting clearly followed. It was for them to prove as to in what capacity Ramesh Kumar was in the exclusive possession of the side window.

(13) Mr. Sarin also supported the order of the Appellate Authority whereby the charge of subletting of the main portion of the demised premises in favour of Sai Ditta Mal and Sham Lal has been upheld. According to him, the Appellate Authority has given detailed reasons for drawing an adverse inference against the petitioner-tenant

from non-production of books of accounts and for not explaining the missing links in the evidence produced in this behalf.

(14) I have heard the counsel for the parties and have perused the relevant record. The demised premises has been claimed to have been sublet in two parts. The main portion is alleged to have been sublet to Sai Ditta Mal and Sham Lal and the side window to Ramesh Kumar. Even if this charge is proved in respect of either of the two portions, the tenant is liable to be evicted.

(15) In the present case, both the authorities below have recorded a concurrent finding of fact that the side window of the demised premises having a separate ingress to and egress from, is in exclusive possession of Ramesh Kumar, who is running the business in the name and style of Sai Pan House from the said portion. This finding is based on an inspection report submitted by the Inspector of Shops and Commercial Establishments. Inspection stands proved not only from order dated 8th June, 1989 (Exh.P-1) passed by the Chief Judicial Magistrate against Ramesh Kumar but also from order dated 3rd February, 1989 (Exh.P-2) whereby the Chief Judicial Magistrate has levied a fine of Rs. 75 on Sham Lal, Pardeep Kumar and Shanti Bajaj. The inspection report in respect of the main portion i.e. Sai Confectioners, is numbered 6377 dated 1st September, 1988 whereas the inspection report in respect of Sai Pan House is numbered 6378 dated 1st September, 1988. Exh. P-1 also shows that Ramesh Kumar was present before the Chief Judicial Magistrate on 8th June, 1989 as he was admonished. I, therefore, do not find any merit in the contention raised on behalf of the petitioner that the said order has been procured to create evidence in favour of the landlady. It has been correctly pointed out that there is no material on record to show any collusion between the landlady and the Inspector or the Chief Judicial Magistrate. There is a presumption, about the correctness of the official record and the petitioner has failed to rebut the said presumption. It is, thus, clear that both the authorities have concurrently found that the side window had been sublet to Ramesh Kumar and this finding is supported by the material on record and, thus, can not be said to be either perverse or unreasonable. That being so, it is not permissible for this Court to re-appraise the entire evidence and substitute its own findings. In **Amar Nath's case** (*supra*), this Court, by relying on the judgment of the Supreme Court in **Dr. Goyal Parkash versus Som Nath and others (2)**, has held that concurrent finding of fact given by the Rent Controller and the Appellate Authority should not be

disturbed by the High Court and that the High Court is not entitled to re-appraise the entire evidence.

(16) The scope of revisional power of the High Court has been explained by the Apex Court in a number of cases. In **Shiv Lal versus Sat Parkash and another (3)**, it has been held by the Apex Court that while exercising jurisdiction under Section 15(5) of the East Punjab Urban Rent Restriction Act, 1949, the High Court does not act as a regular third appellate court and can interfere only within the scope of the sub-section. The High Court cannot re-examine the evidence on record to reverse the concurrent finding of fact recorded by the courts below.

(17) In **Parveen Kumar and others versus Suresh Chand and others, (4)** the Supreme Court (in para-4) has observed as under :—

“4. Having heard learned counsel for the parties, we find that the question whether there was service on the appellants or not, the High Court fell into error. When the trial Court after taking into consideration evidence on the record including the opinion of the handwriting expert came to the conclusion that there was no service and allowed the application, then High Court could only under its revisional power have interfered if trial Court committed any jurisdictional error, or its decision would have resulted into any manifest injustice. Trial Court not having committed any such error the High Court should not have interfered with the finding recorded by it. On the other hand High Court entered into weighing evidence and recording that trial Court should not have found no service, only because handwriting expert says so.”

(18) Similarly, in **P.K. Mohd. Shaffi versus Pallath Mohd. Haji (Dead) by L.Rs. and others (5)**, it was held that the High Court, in exercise of revisional power, cannot enter into re-appreciation of evidence, unless, of course, the acceptance or rejection of the evidence was based on a wrong legal approach or application of wrong legal proposition.

(3) 1993 Supp. (2) S.C.C. 345

(4) 2001 AIR S.C.W. 4779

(5) 2003 AIR S.C.W. 3290

(19) In **Ranjeet Singh versus Ravi Parkash**, (6) the scope of powers of the High Court under Article 227 of the Constitution of India was explained as under :—

“...As to the exercise of supervisory jurisdiction of the High Court under Art. 227 of the Constitution also, it has been held in *Surya Dev Rai (supra)* that the jurisdiction was not available to be exercised for indulging into re-appreciation or evaluation of evidence or correcting the errors in drawing inferences like a Court of appeal. The High Court has itself recorded in its judgment that “considering the evidence on the record carefully” it was inclined not to sustain the judgment of the appellate Court. On its own showing, the High Court has acted like and appellate Court which was not permissible for it to do under Art. 226 or Art. 227 of the Constitution.”

(20) In view of the above, it is clear that there is no scope for interference in the concurrent finding of fact recorded by both the authorities below that the side window had been sublet to Ramesh Kumar. This finding is based on material on record and has not been shown to be irrational or unreasonable. In **Veerayee Ammal versus Seeni Ammal** (7), the Apex Court has observed that merely because on appreciation of evidence another view is also possible would not clothe the High Court to assume the jurisdiction by terming the question as substantial question of law and substitute its own finding for the findings of the courts below. I am of the considered view that the petitioner is liable to be evicted on the ground of subletting of the side window to Ramesh Kumar. Thus, it is not necessary for me to go into the correctness of the findings of the Appellate Authority in respect of charge of subletting of the main portion of the shop to Sai Ditta Mal and Sham Lal.

(21) Accordingly, the revision petition being devoid of any merit is dismissed.

R.N.R.

(6) 2004 AIR S.C.W. 4221

(7) 2001 AIR S.C.W. 4377