

Before H.S. Brar, K.S. Kumaran and Swatanter Kumar, JJ

LT. COL. DR. P.C. VERMAN (RETD.)—Petitioner

versus

MOHINDER SINGH AND OTHERS—Respondents

C.R. NO. 2470 of 79

11th September, 1997

The East Punjab Urban Rent Restriction Act, 1949—S.13—Sub-tenant induced with the permission of the landlord—Claim for eviction—Non-payment of rent and sub-letting taken as grounds for eviction—Sub-tenant impleaded as party—No claim for rent made against sub-tenant—Tenant found in arrears of rent—Can a sub-tenant be ordered to be evicted—Held, no.

Held, that when no demand of rent under Section 13(2)(1) is made against the sub-tenant and no application as provided under Section 13(2) for demand of rent is made before the Controller specifically against the sub-tenant, the sub-tenant is not liable to ejection for non-payment of rent. Obviously, when no demand of rent has been made from the sub-tenant (petitioner) then to eject him for non-payment of rent certainly has caused a serious prejudice to him as he has not been given an opportunity of being heard by the Controller as specifically provided under Section 13 of the Act and particularly so when the landlords having failed to claim and demand the rent from the sub-tenant who pleaded himself to be a direct tenant under the landlords.

(Para 29)

M. Suri, Sr. Advocate with
Deepak Suri, Advocate, for the Petitioner.

L. Sibal, Sr. Advocate with
Arun Bakshi, Advocate, for the Respondent.

JUDGMENT

Harphul Singh Brar, J.

(1) This revision petition has been placed before us for final decision on merits.

(2) A petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called 'the Act') was filed by

the landlords Mohinder Singh and Kulwant Kaur for ejection of Santa Singh tenant and Lt. Col. P.C. Verman, Sub-tenant from 3/8th portion of the first floor of S.C.O. No. 17, Sector 17-E, Chandigarh. It is alleged in the petition that the said premises was let out by the landlords to Santa Singh on a monthly rent of Rs. 300. Originally the tenancy was for 11 months. Santa Singh had sublet the said portion to Lt. Col. P.C. Verman after constructing the said portion, which was against the terms and conditions of the tenancy. Santa Singh had impaired the Value and utility of the premises materially by constructing the rooms on the said premises. Santa Singh was in arrears of rent for the period from April 1, 1974 to May 31, 1976 i.e. for 26 months amounting to Rs. 7,800. A notice terminating the tenancy was served. The ejection was claimed on the following grounds:

(3) Firstly, that the tenant Santa Singh had sublet the portion of the building in dispute to P.C. Verman without the consent of the landlords against the terms and conditions of the lease;

(4) Secondly, by constructing rooms Santa Singh had impaired materially the value and utility of the said premises; and

(5) Thirdly, Santa Singh, tenant, had not paid rent of Rs. 7,800 for 26 months i.e. from April 1, 1974 to May 31, 1976.

(6) Santa Singh, tenant, contested the petition. He admitted the relationship of landlord and tenant and claimed himself to be a statutory tenant of the landlord. He further admitted that he had sublet the premises to P.C. Verman but stated at the same time that it was sublet to P.C. Verman with the consent of the landlords and, thus, this ground was not available to the landlords to eject him. He then pleaded in this written statement that he had paid the rent to the landlords and was not in arrears of the same. He denied the other ground that he had materially impaired the value and utility of the premises.

(7) P.C. Verman, sub-tenant, filed a separate written statement. He pleaded therein that the landlords had filed an application for ejection in collusion with Santa Singh, tenant, who happened to be their domestic servant. Infact, the landlord let out the premises in question to him through Santa Singh but when it was objected to, it was represented to him that because of some tax obligation, it was so done. In spite of that he obtained the signatures and permission of the owners authorising Santa Singh

in the matter of letting the premises to him by Santa Singh. He then pleaded that he had been regularly paying the rent to Santa Singh, tenant, who refused to accept the rent two years ago. He reiterated in his written statement that Santa Singh practically admitted the claim of the landlords and intentionally did not make any tender of the arrears of rent on the first date of hearing. He then pleaded that the rental value of the first floor was stated to be Rs. 2,000 p.m. but it was let out for Rs. 200 only and this was done in order to circumvent the law and that the petition was liable to be dismissed on that ground. The real intention of the landlord was to increase the rent. He pleaded that at the time of letting out the premises to him it was represented that Kulwant Kaur was the owner of the building and 3/8th share of the first floor of the building in dispute was let out to Santa Singh. He further pleaded that due rent had already been paid to Santa Singh as agreed between the parties. The answering respondent never refused to pay the rent and was prepared to pay even now to Santa Singh under the contract.

(8) Replication to the written statements was filed by the landlords controverting the allegations made therein.

(9) Following issues were framed by the Rent Controller :—

- “1. Whether the respondent No. 1 has sublet the part of the demised premises, with respondent No. 2 without the written permission of the applicant as pleaded in the application for eviction?
2. Whether the respondent No. impared materially the value and utility of the demised premises?
3. Whether the tenancy was terminated by a valid notice? If not, its effect?
4. Whether the respondents have paid arrears of rent as claimed as pleaded in the replies filed?
- 4-A. Whether the petitioner has filed the petition in collusion with respondent No. 2, If so, its effect?
5. Relief.”

(10) Under issue No. 1, it was held by the Rent Controller that tenant Santa Singh had sublet the part of the demised premises to P.C. Verman with the written permission of the landlords which was allowed under the Act. It was further held that sub-letting did

not, therefore, have any effect on the application.

(11) Issue No. 2, was not pressed before the Rent Controller and it was, thus, decided against the landlords by holding that Santa Singh did not impair the value and utility of the demised premises.

(12) Again issue No. 3 was not pressed before the Rent Controller who decided the same in favour of the landlords by holding that the tenancy was terminated by serving a valid notice.

(13) Under issue No. 4, it was held that the respondents were liable to ejection from the demised premises due to non-payment of arrears of rent.

(14) Under issue No. 4-A, it was held that though there was no direct evidence of collusion even if the same was assumed the ejection was to be ordered on the ground of non-payment of arrears of rent. Resultantly, the Rent Controller after accepting the petition of the landlord ordered the ejection of respondent No. 2 from the demised premises.

(15) An appeal was preferred against the order of Rent Controller. The appellate Court affirmed the finding of Rent Controller on issue No. 1 by holding that Santa Singh was the tenant of the landlords and he had sublet the part of the demised premises to P.C. Verman with the written permission of the landlords.

(16) Finding of the Rent Controller on issue No. 4 was also affirmed by the appellate Court.

(17) Finding of the Rent Controller on issue No. 4-A was also affirmed by the appellate Court. Resultantly, the appeal was dismissed. The order of ejection passed by the Rent Controller was modified to the extent that Santa Singh, tenant, was directed to vacate the premises and deliver the same to the landlords. P. C. Verman who was actually in possession thereof as a sub-tenant of Santa Singh was ordered to be ejected in execution of the order, and he was allowed two month's time to vacate the premises.

(18) A revision was preferred against these orders of the Rent Controller and the appellate authority before the High Court.

(19) The learned Single Judge of this Court heard the counsel for the parties and after noting down the authorities namely Messrs.

Trojan & Co. v. RM. N.N. Nagappa Chettiar, (1), *Sadhu Singh S. Jiwan Singh v. Shamsheer Singh Josh and others* (2), *Kirpal Singh v. Kishan Singh* (3) and *Atma Ram v. Shyam Sunder and another* (4), referred to by the counsel for the petitioner and the authorities namely *Chiranji Lal and others v. Hira Lal* (5), *The Punjab Rajasthan Goods Carrier and others v. Onkar Mal and another* (6) and *Joginder Singh v. Sarup Singh another* (7) referred to by the counsel for the respondents noticed that a question then arises as to whether the landlord can claim the rent from the tenant-in-chief only or from tenant as well, and in case he does not claim the rent from the tenant whether he is liable to pay the rent to the landlords. After noticing the contents of the authorities cited by both the parties, learned Judge held that there appears some divergence of views in the cases referred to by the counsel for the parties and, thus, it would be proper if this revision petition is decided by a Division Bench. At a later stage, the case was referred to, by order of the Hon'ble Chief Justice, before a Full Bench for decision.

(20) This is how the revision petition has come up before us for adjudication.

(21) The question which needs the determination in the present case is as to whether a sub-tenant can be ordered to be ejected for non-payment of arrears of rent when he claims himself to be a direct tenant under the landlord. (Though held by the Court as sub-tenant being a sub-lettee from the tenant with permission of the landlord) when the landlord has not sought his ejection on that ground; and as to whether the sub-tenant in the absence of a definite allegation of non-payment of rent by the landlords is under an obligation to pay or tender the rent in terms of Section 13(2)(i) of the Act.

(22) Section 13(2) of the Act enables the landlord of a building in possession of a tenant to seek his eviction on an application to the Rent Controller for direction in that behalf on any one of the grounds provided there-under. If the Controller is satisfied that the tenant has violated and has not fulfilled any of the grounds taken in the ejection petition may make an order directing the

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1. AIR 1953 S.C. 235
 2. AIR 1965 Pb. 457
 3. 1980(1) RLR 20
 4. 1980(1) RLR 230
 5. 1964 RLR 292
 6. 1977(1) PLR 195
 7. 1977(2) RCR 306

tenant to put the landlord in possession of the building.

(23) Section 13 of the Act is reproduced as under:—

13. **Eviction of tenants-**(1) A tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section, or in pursuance of an order made under Section 13 of the Punjab Urban Rent Restriction Act, 1947, as subsequently amended.

(2) A landlord who seeks to evict his tenant shall apply to the controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied—

- (i) that the tenant has not paid or tendered the rent due by him in respect of the building or rented land with fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable; provided that if the tenant on the first hearing of the application for ejection after due service pays or tenders the arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid.
- (ii) that the tenant has after the commencement of this Act without the written consent of the landlord:—
 - (a) transferred his right under the lease or sub-let the entire building or rented land or any portion thereof; or
 - (b) used the building or rented land for a purpose other than that for which it was leased; or

- (iii) that the tenant has committed such acts as are likely to impair materially the value or utility of the building or rented land, or
- (iv)
- (v)

the Controller may make an order directing the tenant to put the landlord in possession of the building or rented land and if the Controller is not so satisfied he shall make an order rejecting the application :

Provided that the Controller may give the tenant a reasonable time for putting the landlord in possession of the building or rented land and may extend such time so as not to exceed three months in the aggregate."

(24) The learned counsel for the petitioner has contended that the petitioner is not liable to be ejected from the premises in question as the landlords-respondents in their ejection application before the Rent Controller did not recognize him as their tenant. The grounds for ejection in the petition were that Santa Singh respondent had sub-let the portion of the demised premises to the petitioner without their written permission; respondent Santa Singh had impaired materially the value and utility of the demised premises and that Santa Singh respondent had not paid the arrears of rent for 26 months amounting to Rs. 7,800 and the petitioner claimed himself to be direct tenant under the landlord and the landlords did not seek his ejection neither on that ground nor any other ground. The learned counsel for the petitioner has further contended that the petitioner could not be ejected on the ground that he had admitted in his written statement that the petitioner had been inducted as a tenant in the demised premises with the permission of the landlords. In order to substantiate his contentions the learned counsel has relied upon *Sukhdev Raj v. Rukmani Devi and others* (8), *Om Parkash and others v. Ram Kumar and others* (9), *Messers Trojan and Co. v. R.M.N.N. Nagappa Chettiar* (10), and *Sheodhari Rai*

8. 1988 (1) PLR 679
9. AIR 1991 SC 409
10. AIR 1953 SC 235

and others v. Suraj Prasad Singh and others (11).

(25) On the other hand, the learned counsel for the landlords-respondents has submitted that when Santa Singh tenant has been ejected on the ground of non-payment of rent to the landlords, the petitioner being held as sub-tenant of the landlords by the Courts below must also go with the tenant Santa Singh. He has then contended that the petitioner is also liable to be ejected as he has admitted in his written statement that respondent Santa Singh tenant had inducted him as a sub-tenant with the consent of the landlords. He has cited *Joginder Singh v. Sarup Singh and another* (12) and *Firm Sriniwas Ram Kumar v. Mahabir Prasad and others* (13).

(26) After hearing the learned counsel for the parties, we are of the considered view that the Rent Controller as well as the appellate authority have gone wrong in ordering the ejection of the petitioner from the demised premises.

(27) The object and the purpose for enactment of the Act is the need for restricting the increase of rent of certain premises situated within the urban areas and the protection of tenants against *malafide* attempts by their landlords to procure their eviction. It is a piece of social legislation designed to protect the tenant from eviction by landlords on frivolous, insufficient and purely technical grounds. A statute containing beneficial provisions should be given strict construction so that the benefit sought to be conferred by the statute is fully available to the persons for whose benefit the statute has been enacted.

(28) Section 13 of the Act provides that a tenant can be evicted on any one of the grounds specified in sub-clause (i) to (v) of sub-section 2 of Section 13 of the Act. It is specifically provided under sub-section 2 of Section 13 that a landlord who seeks to evict his tenant shall apply to the Rent Controller for a direction in that behalf and the Controller is obliged to give the tenant a reasonable opportunity of showing cause against the applicant. After the show cause by the tenant if the Controller is satisfied that the tenant has contravened any one of the provisions (specified in any one of the conditions) in clause (i) to (v) of Section 2 of Section 13 of the Act may make an order directing the tenant to put the landlord in

11. AIR 1954 SC 758

12. 1977(2) RCR 306

13. AIR 1951 SC 177

possession of the building and if the Controller is not so satisfied he shall make an order rejecting the application. It is, thus, specifically provided under Section 13 that before a tenant can be evicted the landlord shall apply to the Rent Controller for a direction in that behalf and the Controller shall give the tenant a reasonable opportunity of showing cause against the applicant i.e. the landlord. As per definition of Section 2(i) of the Act tenant includes a sub-tenant . A sub-tenant, thus, gets the same protection under the Act which the tenant has been provided and similarly a landlord who seeks to evict a sub-tenant he will also have to apply under Section 13 to the Rent Controller for a direction in that behalf and he will have to take up any one of the grounds for ejection provided under the Act against the sub-tenant and the sub-tenant is also entitled for a reasonable opportunity of showing cause to the Controller against the applicant-landlord.

(29) It is clearly borne out from the record of this case and from the ejection application itself that the landlords-respondents have not taken up any of the grounds for ejection much less the ground for non-payment of rent as provided under Section 13(2)(i) against the sub-tenant who is the petitioner before us. When no demand of rent under Section 13(2)(i) is made against the sub-tenant and no application as provided under Section 13(2)(i) for demand of rent is made before the Controller specifically against the sub-tenant, the sub-tenant is not liable to ejection for non-payment of rent. Obviously, when no demand of rent has been made from the sub-tenant (petitioner) then to eject him for non-payment of rent certainly has caused a serious prejudice to him as he has not been given an opportunity of being heard by the Controller as specifically provided under Section 13 of the Act and particularly so when the landlords having failed to claim and demand the rent from the sub-tenant who pleaded himself to be a direct tenant under the landlords.

(30) Let us view the matter from another angle, as stated above, according to Section 2(i) of the Act, a tenant includes a sub-tenant. It means the same method for ejection of a sub-tenant under Section 13 shall be adopted for his ejection as is done in case of a tenant. In that event also, the sub-tenant petitioner in this case could not be ejected until and unless an ejection application taking up any of the available grounds for ejection against him could be made and the sub-tenant had the right to be given an opportunity to reply to the claim for ejection made against him and to state his case before the Rent Controller. The

learned Judge in *Joginder Singh's* case (supra) has not touched this aspect of the case at all.

(31) The facts of *Joginder Singh's* case (supra) are that one Sarup Singh was the owner of the premises. He had let the premises out to Gurdit Singh and that Gurdit Singh had sub-let them to *Joginder Singh*.

(32) Sarup Singh filed a petition for eviction of Gurdit Singh and *Joginder Singh inter alia* on grounds that Gurdit Singh had sub-let the premises to *Joginder Singh* without the written consent of the landlord and that the tenant Gurdit Singh had failed to pay the arrears of rent. Gurdit Singh made a statement before the Rent Controller to the effect that arrears of rent were due to him but he was not in a position to pay. *Joginder Singh* claimed to be a tenant of Sarup Singh on the basis of a sub-tenancy with the written consent of the landlord but stated that he was not liable to pay anything to Sarup Singh as the latter had not acknowledged *Joginder Singh* as his tenant. The Rent Controller ordered ejection of the tenant as well as of the sub-tenant on the grounds of unauthorised sub-letting as well as of non-payment of rent. In *Joginder Singh's* appeal, the Appellate Authority under the East Punjab Urban Restriction Act set aside the finding of the unauthorised sub-letting and held that the premises had been sub-let by Gurdit Singh to *Joginder Singh* with the written consent of Sarup Singh. He, however, maintained the order of ejection on the ground of non-payment of rent.

(33) The learned Judge in that case did not find any fault with the order of ejection of Gurdit Singh but at the same time held that *Joginder Singh* having admittedly been inducted by Gurdit Singh as his tenant must go with his landlord in spite of his falling in the category of tenant by virtue of special definition contained in Section 2(i) of the Act. According to the learned Judge, *Joginder Singh* could not claim to stay in the premises independently of Gurdit Singh through whom he derived the right to stay therein without paying rent to Sarup Singh.

(34) The learned Judge in *Joginder Singh's* case (supra) has not touched the most important requirement of law under section 13(2) of the Act. It has been specifically provided under section 13(2) of the Act that the landlord who seeks eviction of his tenant shall have to apply to the Controller for a direction in that behalf and the Controller is obliged to give the tenant a reasonable opportunity of showing cause against the applicant/landlord and

the tenant includes a sub-tenant also and which has even been noticed by the learned Judge in Joginder Singh's case that tenant includes a sub-tenant.

(35) Obviously, in the case in hand, no prayer for ejectment of the sub-tenant (petitioner) was made before the Controller on any of the grounds available for ejectment under the Act much less the ground for his ejectment for non-payment of rent. The sub-tenant (petitioner) in this case never claimed that he was the sub-tenant of Santa Singh. He claimed in his written statement that he is a tenant directly under the landlords though the landlords never claimed him as a tenant at all. If it is proved that he was the sub-tenant of the landlords and when under Section 2(i) tenant includes a sub-tenant then it was necessary for the landlords at least to make a grievance for violation of any of the conditions provided under section 13 before the Rent Controller against the sub-tenant which has not been done in this case and the ejectment of the sub-tenant (petitioner) has caused a great prejudice to the sub-tenant, when he has been ordered to be evicted by the Rent Controller and, thus, he has been condemned un-heard in this regard. The sub-tenant would also be entitled to a similar protection as provided to the tenant and can be evicted only by adoption of due process of law prescribed under the special Statute. The decree is required to be passed in the event of default and default must be of the person who has to suffer the decree unless the law otherwise specifically provides.

(36) The other ground taken for ejectment of the sub-tenant in Joginder Singh's case was that as the petitioner in that case having admittedly been inducted by Gurdit Singh as his tenant must go with his landlord in spite of his falling in the category of 'tenant' by virtue of the special definition contained in section 2(i) of the Act. He, thus, could not claim to stay in the premises independently of Gurdit Singh (through whom he derived right to stay herein) without paying rent to Sarup Singh. This reasoning advanced by the learned Judge in ejecting the sub-tenant also cannot be held to be correct.

(37) First of all, in the case in hand, it has not been admitted by the sub-tenant that he was inducted as a sub-tenant by Santa Singh, tenant. The stand of the sub-tenant (petitioner) throughout is that he was a direct tenant under the landlords. There is no question of the sub-tenant, thus, deriving his title from Santa Singh, tenant, of the landlords. On the other hand, if the sub-tenant is a

tenant by virtue of special definition contained in Section 2(i) of the Act as has been held by learned Single Judge then obviously the mandatory provisions of Section 13(2) should have been complied with in the case of the sub-tenant (petitioner). In this case also and as has been discussed above it has not been so done.

(38) In view of our discussion made above, we hereby over-rule the decision in Joginder Singh's case which does not lay down good law.

(39) In a Division Bench Judgment in *Sukhdev Raj's case* (supra), the ejection of the sub-tenant was set aside on the ground that the landlord in that case never accepted the sub-tenant as his tenant nor he sought his ejection on the ground of non-payment of rent. It was held in *Sukhdev Raj's case* (supra) that the ejection of the sub-tenant on the ground of non-payment of rent would certainly prejudice the rights of the sub-tenant who never got a chance to avail the opportunity granted to him under the Statute to tender the rent on appearance in the Court and it has been further held therein that even if he had offered to tender the rent, the landlord would have certainly declined to accept it. The relevant portion of the judgment in *Sukhdev Raj's case* is re-produced hereunder for ready reference:—

Held, that the question which needs determination in the present case, therefore, is, as to whether the sub-tenant can be ordered to be ejected for non-payment of arrears of rent when he claims himself to be direct tenant under the landlord even when the landlord has not sought his ejection on that ground. If the question involved was as to whether a landlord can be given a decree for the arrears of rent in such a situation there would be no difficulty in granting the relief because it could cause no prejudice to the opposite party, he having admitted the liability to pay the rent. The question of his ejection on the ground of non-payment of rent, however, stands on a different footing. As the landlord never accepted the alleged sub-tenant as his tenant nor sought his ejection on the ground of non-payment of rent, his ejection, if ordered on the ground of non-payment of rent, would certainly prejudice the rights of the sub-tenant who never got a chance to avail the opportunity granted under the statute to tender the rent on appearance in the Court. Moreover, even if he had offered

to tender the rent, the landlord would have certainly declined to accept it so that rule appears to be well established that the plaintiff cannot be given any relief contrary to his case on the admission of the defendant if it is going to cause prejudice and injustice to the latter.”

(40) *Buta Singh's case*, (1984) 86 P.L.R. 559, referred to in *Sukhdev Raj's case* (supra), before the Division Bench, wherein, it was held that once the alleged sub-tenant claimed himself to be the direct tenant under the landlord, he has bound to tender the arrears of rent on the first date of hearing. Simply because he is alleged to be a sub-tenant by the landlord, does not absolve him from the statutory duty to tender the arrears of rent on the first date of hearing when this was one of the grounds of ejection claimed in the ejection petition, was overruled.

(41) After considering the various authorities in *Sukhdev Raj's case* (supra), the Division Bench, held as under :—

“So, the rule appears to be well established that the plaintiff cannot be given any relief contrary to his case on the admission of the defendant if it is going to cause prejudice and injustice to the latter.”

(42) Decision in *Sukhdev Raj's case* (supra) has been approved by the Supreme Court in *Om Parkash and others v. Ram Kumar and others*, (14). In *Om Parkash's case* (supra) an application for ejection by the landlord against a tenant on the ground of non-payment of rent was rejected when the landlord did not recognize him as his tenant though the stand of the tenant was that he was a tenant under the landlord directly. The first appellate Court and the High Court had dismissed the plea of the landlords. In the Supreme Court, it was contended on behalf of the landlord that the Courts below in rejecting the application of the landlord had not correctly appreciated the scope of the relevant provisions in the Act in rejecting the application and in a case where the tenant has failed to pay or tender the rent as required under the Act. The ground of non-payment of rent entitling the landlord to an order of ejection is clearly proved. It was then urged before the Supreme Court that it was not necessary for the landlord to specifically allege that the tenant (second respondent in that case) was the tenant or that he defaulted in the payment of rent and seek an order of

ejection against him by an amendment of the application for granting such relief. To fortify that argument, a reference was made before the Supreme Court on *Buta Singh's case* (supra). The Supreme Court while referring to *Buta Singh's case* (supra) and the Division Bench judgment in *Sukhdev Raj's case* (supra) has observed as under :—

“The decision in *Buta Singh v. Banwari Lal* (1984) 86 Pun LR 556, relied on by Mr. Sachhar has no bearing on the facts of the present case. We find the case has been overruled by the Division Bench of the Punjab and Haryana High Court in *Sukhdev Raj v. Rukmani Devi* (1988) 93 Pun. L.R. 679. In the latter case, the question whether the sub-tenant can be ordered to be ejected for non-payment of arrears of rent when he claims to be direct tenant under the landlord even when the landlord has not sought his ejection on that ground was answered by the High Court thus :—

“The question of his ejection on the ground of non-payment of rent, however, stands on a different footing. As the landlord never accepted the alleged sub-tenant as his tenant nor sought his ejection on the ground of non-payment of rent, would certainly prejudice the rights of the sub-tenant who never got a chance to avail the opportunity granted under the Statute to tender the rent on appearance in the Court. Moreover, even if he had offered to tender the rent, the landlord would have certainly declined to accept it. So the rule appears to be well established that the plaintiff cannot be given any relief contrary to his case on the admission of the defendant if it is going to cause prejudice and justice to the latter.”

(43) After discussing the scope of Section 13 (2) of Haryana Urban (Control of Rent and Eviction) Act, 1973, in *Om Parkash's case* (supra), it has been finally held by the Supreme Court, like this :—

“A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights

under the statute. In an action by the landlord the tenant is expected to defend only the claim made against him and if a cause of action arises to the landlord on the basis of the plea set up by the tenant in such action, it is necessary that the landlord who seeks to enforce that cause of action in the same proceedings by suit at the amendment or by separate proceedings to entitle the landlord to relief on the basis of such cause of action. The principle that the Court is to mould the relief taking into consideration subsequent events is not applicable in such cases."

(44) The second contention of the learned counsel for the petitioner that he had admitted in his written statement and that he claimed himself to be a direct tenant of the landlords or that he had been inducted as a tenant in the demised premises with the consent of the landlords also seems to be quite tenable. This point in issue is not re-integra. A Division Bench of this Court in *Sukhdev Raj's case* (supra) has held and rightly so that when the landlord never accepted the sub-tenant as a tenant at any stage of the proceedings the landlord would not, therefore, be entitled to claim any relief on the admission of the sub-tenant according to the rule laid down by the Supreme Court. The relevant para of the judgment of the Supreme Court in *Ouseph Varghese v. Jhseph Alley and Ors.* (15), is reproduced as under :—

The High Court was wrong in passing the decree in respect of plaint item No. 1 on the basis of the admission of the 2nd defendant in her written statement. The plaintiff did not at any stage accept the agreement pleaded by the defendant as true. The agreement pleaded by the plaintiff in his plaint and that pleaded by the defendant in her written statement were two totally different agreements. The plaintiff did not plead at any stage that he was ready and willing to perform the agreement pleaded in the written statement of defendant. A suit for specific performance has to conform to the requirements prescribed in Forms 47 and 48 of the 1st Schedule in the Civil Procedure Code. Before a decree for specific performance can be given the plaintiff has to plead the satisfy the Court about his willingness to perform his part of the contract."

(45) Even in *Om Parkash's* case, a reference of which has been made above, the Supreme Court has categorically held that rule appears to be well established that the plaintiff cannot be given any relief contrary to his case on the admission of the defendant if it is going to cause prejudice and in-justice to the latter.

(46) As it has been discussed above, the in-action of the landlords in not raising the ground of non-payment of rent against the sub-tenant (petitioner) and consequently the Rent Controller not giving the sub-tenant (petitioner) an opportunity to put up his case will certainly cause a great prejudice and in-justice to the sub-tenant if he is ejected in that manner.

(47) We will make a brief reference of the Supreme Court authorities cited by the counsel for the petitioner for the proposition that the decision of a case cannot be based on grounds outside the pleadings of the parties though it is not very much necessary after the issue has been clinched by the Supreme Court in *Om Parkash's* case (supra).

(48) In *M/s Trojan & Co.'s* case (supra) it was observed as follows :—

“It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court, was not entitled to grant the relief not asked for.”

(49) In *Sheodhari Rai's* case (supra), it has been observed by the Supreme Court that where the defendant in this written statement sets-up title to the disputed land as the nearest reversioner, the Court cannot on failure of the defendant to prove his case, make out a new case for him which is not only made in the written statement but which is wholly inconsistent with the title set-up by the defendant, namely, that the defendant was holding under a shikmi settlement from the nearest reversioner.

(50) Let us now examine the contentions of the learned counsel for the landlords-respondents and the case law cited by him for substantiating his contentions.

(51) The first contention of the learned counsel for the respondents-landlords is that the landlords had filed an application for eviction against Santa Singh tenant on the ground of arrears of rent. When Santa Singh did not deposit the rent on the first date

of hearing then the sub-tenant who is the petitioner in this case, should have deposited the rent in such a case to escape eviction. According to the learned counsel the term 'tenant' included a sub-tenant also. He has tried to strengthen his arguments on the basis of a Single Bench Judgment of this Court in *Joginder's case* (supra) wherein it has been held that a sub-tenant could not claim to stay in the premises independently of the tenant (through whom he derived right to stay therein) without paying rent to the landlord. We are least impressed by this contention of the learned counsel for the respondents-landlords. The Act requires that the landlord who seeks eviction of the tenant in possession is required to make an application in this behalf before the Rent Controller. The application contemplated under the statute is one for a direction to the tenant to put the landlord in possession. The application has to be sustained on any one of the grounds specified in sub-section (2) of Section 13 of the Act. When a specific allegation is made that the tenant is in arrears of rent then the tenant is given an opportunity to pay or tender the rent within the stipulated period and avoid an order of ejection. In the absence of a definite allegation of non-payment of rent by the sub-tenant, he is not under an obligation to pay or tender the rent stated to be in arrears in terms of sub-clause (2) of Section 13 of the Act; so long as the landlord does not accept him as a tenant. It is only when the landlord seeks an order directing the tenant to put him in possession on the ground of non-payment of rent and the tenant is called upon to answer the claim, the occasion for the tenant to pay the arrears of rent arises.

(52) In the case in hand, in the application for the eviction no demand of rent was made by the landlords-respondents from the petitioner and that is why no issue could be framed as to whether the petitioner was at-all in arrears of rent. He was not considered by the landlords as their tenant at-all. We, therefore, reject this argument of the learned counsel for the respondents-landlords in view of our discussion made above while over-ruling *Joginder Singh's case* (supra).

(53) The next contention of the learned counsel for the respondent-landlords is that the petitioner has admitted in this written statement that respondent Santa Singh had inducted him as a sub-tenant with the permission of the landlords, is itself sufficient for his eviction. The learned counsel has tried to substantiate his argument on the following observation of the Supreme Court in *Firm Siriniwas Ram Kumar's case* (supra) while

making reference to the provisions of the Order 2 Rule 2 C.P.C :—

“A demand of the plaintiff based on the defendant’s own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit.”

(54) The abovementioned observations of the Supreme Court in *Firm Siriniwas Ram Kumar’s case* (supra) are not applicable to the facts of this case. Even in *Firm Siriniwas Ram Kumar’s case* (supra) ratio of the judgement is that when the whole case of the plaintiff is admitted by the defendant even in that case the plaintiff cannot take the benefit of admission if it results into injustice to the other side.

(55) In *Sukhdev Raj’s case* (supra), it has been held that when the landlord never accepted the sub-tenant as a tenant at any stage of the proceedings, the landlord would not be entitled to claim any relief on the admission of the sub-tenant according to the rule laid down by the Supreme Court.

(56) Supreme Court in *Om Parkash’s case* (supra) has held that a party cannot be granted relief which is not claimed, if the circumstances of the case are such that granting of such relief would result in serious prejudice to the interested party and deprive him of his valuable rights, under the statute. It has been further held in the same judgment that in an action by the landlord the tenant is expected to defend only the claim made against him. The principle that the Court is to mould the relief taking into consideration Subsequent event is not applicable in such cases.

(57) In the case in hand, it has been made clear above that the landlords never acknowledged the petitioner as their tenant at any point of time and that is why they did not demand the rent from the petitioner. The petitioner, thus, could not be ordered to be ejected for non-payment of arrears of rent when he claimed himself to be direct tenant under the landlords and even when the landlords have not sought his ejection on that ground.

(58) As has been discussed above, in the case in hand, the sub-tenant (petitioner) has been condemned un-heard and the order

of ejectment passed by the Controller without giving an opportunity of being heard on the question of non payment of rent by the Controller has caused grave injustice to him and he has been deprived of the valuable rights accrued to him under the Act.

(59) In view of our discussion made above, we accept this revision-petition, set aside the orders dated 5th March, 1979 and 1st September, 1979, passed by the Rent Controller and the Appellate Authority, respectively, and dismiss the application of the landlords however, without any orders as to costs.

S.C.K.

Before Dr. (Mrs.) Sarojnei Saksena, J.

DHOULI—Appellant

versus

RAM NIWAS—Respondents

FAO No. 82 M of 92

19th May, 1997

Hindu Marriage Act, 1955—S. 28—Appeal filed against decree granting divorce on grounds of cruelty—Husband died before appellant could file appeal—Such appeal does not abate on account of death of husband where such death takes place prior to filing of appeal—Pending appeal.

Held, that despite the fact that the respondent-husband has died before the wife could file this appeal, the appeal does not abate as it not only determines her status as a widow/divorcee but also determines her social status and proprietary rights in the property of the deceased-husband.

(Para 8)

Hindu Marriage Act, 1955—S.13—Condonation of Cruelty—Cruelty alleged—Complaint lodged against husband and relations under section 406/498-A—Thereafter compromise arrived at between parties before Panchayat—Return of wife to matrimonial home—Deemed that husband condoned alleged acts of cruelty.

Held, that the appellant-wife has admitted that she has lodged a complaint against her husband and his relations under sections