driving a truck. It was held that he was not licensed to drive a truck. Such is not the situation in the present case.

(6) No other point has been raised.

(7) In view of the above, we find no merit in this appeal, It is, consequently, dismissed in limine. No costs.

R.N.R.

Before V. S. Aggarwal, J

M/S ASHISH ENTERPRISES & ANOTHER,—*Petitioners*

versus

M/S KOCHHAR INDUSTRIES & ANOTHER,—*Respondents*

C.R. No. 890 of 1998

23rd April, 1999

Haryana Urban (Control of Rent and Eviction) Act, 1973—Subletting—Third person in possession—Such person asserting independent title—Original tenant denying continuation of tenancy—Inferences of subletting.

Held that the property was let to respondent No. 2 M/s Piyush Art Printers. Admittedly, M/s Piyush Art Printers do not claim any tenancy rights in the suit property. It is the petitioners who are claiming tenancy rights therein. It has been found that the petitioners are not the tenants of the landlord. No such tenancy was created in their favour. Once a third person asserts independent title and the tenant does not claim any right, inferences of subletting or parting with possession are obvious. This is based on well recognised principle that the landlord would be a stranger to any agreement between tenant and the third person. The third person is setting up independent title to the exclusion of the said tenant M/s Piyush Art Printers. Once it is so, it was rightly held that the ground of eviction that the suit property has been sublet is clearly established. There is no ground to take a different view from the learned trial Court and that of the learned Appellate Authority.

(Para 21)

I.K. Mehta, Senior Advocate, with M.S. Kohli, Advocate *for the petitioners*

L.K. Sinhal, Advocate *for the Respondents*

JUDGMENT

V. S. Aggarwal, J

(1) The present revision petition has been filed by M/s Ashish Enterprises and another, hereinafter described as "the petitioners" directed against the order passed by the learned Rent Controller, Faridabad, dated 26th May, 1994 and that of learned Appellate Authority, Faridabad, dated 21st January, 1998. The learned Appellate Authority had affirmed the order of the learned Rent Controller, Hence, the present revision petition.

(2) The relevant facts are that M/s Kochhar Industries, respondent No. 1, had filed an eviction petition with respect to the property in dispute. The property in dispute is stated to be a factory shed. Respondent No. 1 contended that M/s Piyush Art Printers is the tenant in the property in dispute. For the puposes of the present revision petition, suffice to state that it was asserted that the said property has been sub-let to the petitioners without the consent of respondent No. 1 landlord. The other grounds of eviction do not survive not were pressed in this Court.

(3) Respondent No. 2, the alleged tenant, contested the petition for eviction. It asserted that the petition has been filed with *mala fide* intention. The respondent-landlord has not come to the Court with clean hands. Many years ago respondent No. 2, the alleged tenant, had vacated the property. Thus, respondent No. 2 went on to plead that it has ceased to be a tenant and there is no relationship of landlord and tenant between respondent No. 1 and respondent No. 2. It was denied that the property in dispute was sub-let to the petitioners. A plea was raised that it were the petitioners who were the tenants in the property in dispute.

(4) The petitioners had also filed their written statement and contested the eviction petition. They also took up the plea that they were the direct tenants of respondent No. 1. Respondent No.1 had been accepting the rent from them. Respondent No. 1 should be estopped from alleging that the petitioners were sub-tenants in the property. It was accordingly denied that the property has been sub-let or parted with the petitioners.

(5) Issues were framed and evidence had been produced. Both the learned Rent Controller and the learned Appellate Authority held that the property, in fact had been let to respondent No. 2. It continued to be a tenant therein. The petitioners claim their own independent

title and, therefore, must be taken to be the sub-tenant of the said property. An order of eviction accordingly was passed and affirmed by the learned Appellate Autority.

(6) The first and the foremost question agitated has been as to if the petitioners were the direct tenants of respondent No. 1. As already pointed out above while giving the resume of the facts, the case set up by the petitioners was that earlier respondent No.2 was the tenant. It surrendered its tenancy rights and the petitioners were accepted as tenants. They have been directly making payment of rent to respondent No. 2. While it is being so alleged, the petitioners as well as respondent No.2 felt shy of specifically mentioning the date when the tenancy rights of respondent No. 2 were surrendered and the petitioners were taken as direct tenants. The written statement were conspicuously silent. They left the other party and the Court guessing. The inferences are obvious and are so drawn by the learned Rent Controller and the Appellate Authority. It was to the effect that by making specific assertions the petitioners and respondent No. 2 did not want to pin point this. By keeping the pleadings as vague as possible, they wanted to take advantage of the same subsequently.

(7) As between respondents No. 1 and 2, there was a rent agreement Exhibit A-1. It reveals that the property had been let to respondent No. 2. One of the conditions was that respondent No. 2 will not assign, transfer or sublet any part of the property. Reliance was strongly placed on behalf of the petitioners to the fact that they were directly accepted as tenants and relied upon letters Exhibit RX and Exhibit RY which had been sent to respondent No. 1 on behalf of the petitioners. The said letters read as under :—

"Exhibit RX.

ASHISH ENTERPRISE

MANUFACTURERS & GENERAL ORDER SUPPLIERS OF QUALITY ENGINEERING MATERIALS.

Regd. Office and Factory

91, Industrial Estate, Sector 6, Faridabad—121002 (Haryana)

Ref. No.__________ Dated *23-1-81*

To

Sh. S. S. Kochhar,
27, West Patel Nagar,
New Delhi.

Dear Sir,

Kindly accept the cheques bearing No. 611568 & 611569 for Rs. 2000 each (Two thousand each) drawn on State Bank of India, Faridabad, on behalf of M/s Piyush Art Printers as rent for the month of December, 1980 & January, 1981.

Kindly send us a receipt against the same for our records.

Thanking you,

Yours faithfully,

Sd/- (not legible)

"Exhibit RY

Ref. No. Dated *14.1.81*

To

M/s Kocher Industries,
Delhi.

Dear Sir,

Kindly accept cheques bearing Nos. 611564, 611565, 611566 & 611567 drawn at State Bank of India, Faridabad for Rs. 2000-00 each (Two Thousand each) as rent for the months of August, September, October & November, 1980 on behalf of M/s Piyush Art Printers.

Thanking you

Yours faithfully,

For Ashish Enterprise,

Sd/-

Manager

(8) This clearly shows that rent was sent by the petitioners to respondent No.1 but they were being sent on behalf of M/s Piyush Art Printers i.e. respondent No. 2 whom the landlord claimed to be the tenant. It clearly reveals that the tenancy remained with respondent No. 2.

(9) Similarly, Exhibit RZ is a letter dated 4th September, 1981. It is written by the alleged tenant M/s Piyush Art Printers to respondent No. 1 landlord. It reads as under :—

"Exhibit RZ

Dear Sir,

We have been paying the water and sewer bill since we have taken on rent a shed in the above plot. One water meter being common, your other tenant have been using the water and sewer facilities. We have already requested your other tenants to contribute their share in the water bill but they refused flatly. We have informed you verbally but we regret no action has been taken from your end.

Now there is a total outstanding of Rs. 5436.50 as we stopped the payment and the connection is disconnected. Now having no other alternative we are getting reconnection by paying the outstanding amount. The half of the above amount will be debited in your a/c towards the cost of facilities utilised by your other tenant. The same, however, will be adjusted from the rent payable to you, which please note. Also please note that you have taken any pain for repairing of shutters and ceiling leakage. Please arrange for the necessary repairs failing which we shall get it repaired and the expenses will be adjusted from your rent.

Thanking You,

Yours faithfully,

for Piyush Art Printers

(10) It shows again that it was respondent No. 2 who continued to allege itself the tenant in the property in dipute. It does not lie in the mouth of the petitioners now to assert that, in fact, they were accepted as the tenants. This fact gets due support form the copy of letter Exhibit A-2 dated 6th March, 1984. It had been written by respondent No. 2 whom the landlord claimed to be the tenant. It shows again that it was respondent No. 2 who was paying the rent to the landlord-respondent No. 1. It also carries an endorsement that the cheque has been received as licence money from the said tenant M/s Piyush Art Printers and not from the petitioners. There were other cheques issued by respondent No. 2 M/s Piyush Art Printers given to the landlord which are Exhibit A-9 to A-18. All these cheques clearly reveal that even rent was being paid by the said tenant respondent No. 2 to the landlord respondent

No. 1. The contention raised that, in fact, the petitioners were accepted as tenants, therefore, falls to the ground like a pack of cards.

(11) Strong reliance in that event was placed on the fact that certain payments had been made by the petitioners to respondent No. 1 and, therefore, it must be held that respondent No. 1 accepted the peitioners as tenants. To buttress his argument, learned counsel referred to the decision of this Court in the case of *Neti and another* vs. *Ram Kishan and others* (1). It had been held that payment of rent is one of the most important circumstance from which inference can be drawn about the relationship of landlord and tenant. Indeed, it is so but mere payment of rent does not itself establishes that it has created the relationship of landlord and tenant between the parties. It has to be established that there is intention to create a demise in the property. Once the said intention is missing, mere payment now and then and not regularly will not make the petitioners as tenants. As already referred to above, rent was being paid on behalf of M/s Piyush Art Printers and not on behalf of the petitioners. Thus, the landlord only accepted the rent on behalf of M/s Piyush Art Printers who was the tenant . The said argument must, therefore, be repelled to be without force.

(12) Confronted with this position, it had been urged that the landlord kept silent for long and the petitioners are working therein. This is a circumstance to show that the petitioners should be taken to be the direct tenants. The argument is simply stated to be rejected. Once there is no intention to create a demise, in that event merely because the petitioners came in occupation and there was delay on the part of the landlord to initiate action will not make the petitioners direct tenants. It has to be pointed out at the risk of repetition that even rent was always accepted on behalf of M/s Piyush Art Printers and this negatives the whole edifice set up because the passage of time should be taken to be creating a right of tenancy in the facts of the case.

(13) That prompted the learned counsel to urge that petitioner No. 1 is managed by Smt. Aruna Luthra, wife of respondent No. 2. Since she is the wife of said tenant, there should not be taken to be any sub-letting of the property in question. Attention of the Court was drawn to the decision of this Court in the case of *Baldev Krishan of Sangrur* vs. *Raja Ram and others* (2). In the cited case, according to the writing executed by the landlord, father of the alleged sub-tenant was the direct tenant. This fact was supported by oral evidence. Electric connection was given in the name of the said sub-tenant. Their

(1) 1991 P.L.J. 134
(2) 1985 H.R.R. 470

possession was proved from the property tax register. It was held that it is not a case of subletting.

(14) The brief facts clearly reveals that they were confined to the peculiar situation of that case that came up for consideration before this Court. It is not a case where sub-tenant was claiming any independent title in the property. It will, therefore, not help the petitioners.

(15) Similarly, in the case of *Subhash Chander* vs. *Surinder Singh and others* (3), the facts were that the landlord had alleged that he had let the property to a particular tenant who had further sublet it. The landlord had kept quite for many years. This Court had concluded that a sham transaction of tenancy had been created and consequently subletting was not proved. In the present case, it is not being alleged that any sham transaction had been created. The result would be that the petitioners cannot take advantage of the logic and reasoning of the cited decision.

(16) At this stage, reference was further made to the decision of this Court in the case of *Raghbir Singh* vs. *Rasham Singh and another* (4). In the cited case, the alleged sub-tenant was brother of tenant who had gone underground to avoid his arrest in a criminal case and his brother was carrying on business in the property. It was held that there was overt act on the part of the tenant and thus there could not be subletting.

(17) A precedent is a good judicial precedent if the principle of law is decided or there is complete parity of facts. The cited case reveals and that it was confined to a peculiar situation where the tenant without handing over possession of the property to the other person had gone underground. The Court, therefore, recorded the finding that there could not be subletting. It is not so herein.

(18) On the contrary, this principle cannot be accepted as a working rule that there cannot be subletting between close relatives. In the case of *M/s Shalimar Tar Products Ltd.* vs. *H.C. Sharma and others* (5) Supreme Court held that in order to constitute subletting there must be parting of the legal possession. In paragraph 16 of the judgment, Supreme Court held as under :—

> "There is no dispute in the legal proposition that there must be parting of the legal possession. Parting of the legal possession

(3) 1994 H.R.R. 524
(4) 1998 H.R.R. 406
(5) A.I.R. 1988 S.C. 145

mean possession with the right to include and also right to exclude others. That is, in our opinion, is the matter of fact. In this case, it has been found that there was a right of possession in favour of the sub-lessee R.C. Abrol & Co. Pvt. Ltd. and right to exclude indeed as it appears from the narration of the fact that the company has gone into liquidation and the official liquidator has taken possession of the premises on behalf of the liquidator and that must be on the basis that it was the asset belonging to the company. In the aforesaid view of the matter we are unable to accept this proposition that there was no subletting."

(19) Similarly, in the case of *Kehar Singh* vs. *Yash Pal and others* (6) the alleged sub-tenant was the son of the tenant. Besides holding that the Supreme Court will not interfere in concurrent finding of fact, the abovesaid principle had not been accepted.

(20) More close to the facts of the present case is the decision of the Supreme Court in the case of *Ram Saran* vs. *Pyare Lal and another* (7) Herein, the tenant had surrendered his tenancy right in favour of registered society without consent of the landlord. It was held that mere acceptance of rent tendered by tenant in the name of the registered society will not constitute legal and valid sub-tennacy. The plea that rent was accepted and, therefore, there was knowledge of sub-letting and it must be taken to be sub-tenancy was repelled. No different was the position in the case of *Mohammedkasam Haji Gulambhai* vs. *Bakerali Fatehali (dead) by LRS.* (8) In the cited case, the property had been let. The sole proprietor tenant entered into partnership with his four sons. Later on, he retired from partnership. He was having no concern with the new partnership. The tenant was not in actual physical possession. The other tenants were the sons but it was held that it amounted to subletting of the property.

(21) Reverting back once again to the facts of the present case, the position can be re-analysed. It has already been found above that the property was let to respondent No. 2 M/s Piyush Art Printers. Admittedly, M/s Piyush Art Printers do not claim any tenancy rights in the suit property. It is the petitioners who are claiming tenanacy rights therein. It has been found that the petitioners are not the tenants of the landlord. No such tenancy was created in their favour. Once a third person asserts independent title and the tenant does not claim

(6) A.I.R. 1990 S.C. 2212
(7) A.I.R. 1996 S.C. 2361
(8) (1998) 7 S.C. C 608

any right, inferences of subletting or parting with possession are obvious. This is based on well recognized principle that the landlord would be a stranger to any agreement between tenant and the third person. The third person is setting up independent title to the exclusion of the said tenant M/s Piyush Art Printers. Once it is so, it was rightlly held that the ground of eviction that the suit property has been sublet is clearly established. There is no ground to take a different view from the learned trial Court and that of the learned Appellate Authority.

(22) For these reasons, the revision petition must fail and is consequently dismissed. The petitioners are granted one month time to vacate the demised property.

S.C.K.

Before Jawahar Lal Gupta & N.C. Khichi, JJ

JAGAN NATH SHARMA & ANOTHER,—*Petitioners*

versus

CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH & OTHERS,—*Respondents.*

C.W.P. No. 18195 of 1998

30th November, 1998

Constitution of India, 1950—Arts. 14 & 226—Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996—Rls. 4(2) & 11 (c)—Allotment of Government Accommodation—Person in Govt. service cannot claim allotment to an accomodation allotted to his Govt. official father retiring from service—Allotment is not governed by a system of inheritence and son is not entitiled to succeed to the house allotted to his father—Merely because in earlier cases such allotments had been made would not give rise to discrimination since an authority cannot be compelled to perpetuate an illegality-Merely because son has not claimed house rent allowance during the currency of the allotment to his father would not entitle him to out-of-turn allotment—Claim for out-of-turn allotment can be made in accordance with Rule 11 (c)—Concession of out-of-turn allotment made admissible to spouse not to son—The provision being based on policy in public interest is non-discriminatory and intra vires the Constitution—Vires of Rl. 4(2) also upheld.