

Before Surinder Gupta, J.

AMARJIT SINGH ALIAS AMBA—Petitioner

versus

GURBACHAN SINGH AND OTHERS—Respondents

CR No. 6011 of 2001

May 24, 2018

East Punjab Urban Rent Restriction Act, 1949 – S.13 – Code of Civil Procedure, 1908 – Allowing a tenant to sub-let – Stipulation in the lease deed, to sub-let – The condition to sublet the demised premises, ceases to be available after the expiry of the lease – The filing and withdrawal of ejection petition under compromise by the landlord would indicate that he had forgone his right with regards to the existing sub-tenants at that relevant point of time, consequent to which the existing tenants will be approved as authorized tenants – Any sub-letting created without the permission of the landlord is not recognized under the Act – For creating any fresh sub-letting after the withdrawal of ejection petition, the consent and permission of the landlord for sub-tenancy is required – Legal heirs of the tenants are liable to be ejected from the premises except the portion in possession of other sub-tenants who are not ordered to be ejected – The sub-tenants would pay proportionate rent to the landlord for the shops in possession.

Held, that learned Rent Controller as well as Appellate Authority have rightly relied on the above observation of Hon'ble Apex Court while observing that the stipulation in the lease deed Ex.AW1/1 allowing the tenant to sublet the demised premises ceased to be available to the revision petitioner on the expiry of period of lease on 20.05.1973.

(Para 18)

Further held, that the filing and withdrawal of above ejection petition shows that landlord-respondent No.1 under compromise had forgone his right with regard to the existing sub-tenants at the relevant point of time under Harbans Singh, consequent effect of which is that sub-tenancy created inform of those tenants was approved as authorized tenancy.

(Para 25)

Further held, that filing and withdrawal of the petition on the

ground of subletting protect and recognize right of the tenant, who were there in the demised premises at the time of filing/withdrawal of those petitions. However, this does not recognize the right of the legal heirs of Harbans Singh to induct or sublet the premises even thereafter. Status of the legal heirs of Harbans Singh is of statutory tenants. Any subletting created by them without the consent of the landlord is not recognized under the provisions of the Rent Act, 1949. For creating any subletting after withdrawal of the ejection petition on 11.08.1984, legal heirs of Harbans Singh were duty bound to have consent/permission of the landlord and any sub-tenancy created by them after 11.08.1984 is illegal and barred under law and call for their ejection along with the tenants so inducted.

(Para 35)

Further held, that as per the observations of Rent Controller, Ravinder Kumar, Sham Lal, Agya Singh, Krishan Lal, Kailash Chander, Subash Chander, Bahadur Ram, Surinder Kumar and Hari Singh were inducted as sub-tenants in the year 1986. Anshu Kumari, Roop Lal, Harmesh Chander, Gurcharan Singh, Joginder Kumar, Chinta Singh, Tarlochan Singh, Pritam Singh, Mehnga Ram and Gurdev Ram were inducted as sub-tenants by him in the year 1986-87. The tenancy of above tenants, as such, is illegal as the same has been created without consent of landlord-respondent No.1. The above tenants out of list of 37 tenants as mentioned in list (Ex.A4) are liable to be ejected from the premises in their possession. The revision petitioner and other legal heirs of Harbans Singh are also liable to be ejected from the portion of the entire premises except the portion in possession of other sub-tenants in the list of 37 sub-tenants, who have not ordered to be ejected. As the petitioners have not been able to prove that they were inducted as tenants after 11.08.1984.

(Para 39)

Further held, that as a sequel of my above discussion, this revision petition is partly allowed and the order of the Rent Controller and Appellate authority is maintained against legal heirs of Harbans Singh and sub-tenants (whose names find mention in para 39) with modification to the extent that tenancy of sub-tenants, out of 37 tenants as per list Ex.A4, who were inducted as tenants prior to 11.08.1984, continues to be valid as the landlord-respondent No.1 has acknowledged the same under compromise or by withdrawal of ejection petition filed against them which virtually amounts to giving permission for subletting. These tenants continue to be sub-lettee under

statutory tenant i.e. legal heirs of Harbans Singh, who (Harbans Singh's legal heirs) will pay proportionate rent, to landlord-respondent No.1 for the shops in possession of these sub-tenants. On vacation of shops/premises by any of these tenants, the possession will be handed over to respondent No.1 or his legal heirs/authorised representative and not to legal heirs of Harbans Singh. Respondent No.1/his legal heir/authorised representative shall have right to seek ejectment of these sub-tenants as per law and on the ground available to them under the Rent Act, 1949 or the Act prevailing at the relevant time.

(Para 42)

Vikas Bahl, Senior Advocate with Japneet Kaur Advocate, *for the petitioner(s)*.

Anish Setia, Advocate, for respondent No.1.

SURINDER GUPTA, J.

(1) Landlord-respondent No.1 sought ejectment of revision petitioner-tenant and remaining respondents from the demised premises on following grounds:-

“(a) That respondents No.1 to 5 are in arrears of rent from 1.5.1977 upto date.

(b) That respondents No.1 to 5 have removed the rooms, well, parsian wheel and have effected material structure changes. Those two rooms were on the eastern side on the rented land which are now not in existence at present (sic) have been removed without the consent of the petitioner.

(c) That Harbans Singh Mann the original tenant during his life time enjoyed the rights given under the rent note in respect of tenancy in question and after his death and after the efflux of time, Harbans Singh Mann did not dare to (sic could not) exercise the rights of sub tenancy in respect of the tenants who were already inducted during the fixed period of ten years. After the expiry of fixed period of 10 years, Harbans Singh Mann the original tenant was to deliver the possession of the rented land including the built portion thereon to the petitioner/landlord without receiving any compensation. The permission was given by the petitioner /landlord to the tenant to have sub tenant only during the currency of lease i.e. for 10 years only and thereafter, the

tenants were not permitted to have the sub tenant on the premises in dispute. That now respondents No.1 to 5 have inducted the sub tenants on the premises in dispute within the span of 3 or 4 years to respondents No.6 to 37 without the consent of the petitioner and have started receiving the rent from them and has delivered the actual possession to them. The portion which have been transferred to the sub tenants, the rate of rent; and the name and No. of the respondents; have been given in details separately on the separate additional page which may also be read as part of this petition. It has also come to the knowledge that Amarjeet Singh got the rent note executed from different sub tenants within the span of 3 or 4 years and has started receiving the rent from them. Hence, respondents No.1 to 5 have no right to induct sub tenants after of efflux of fixed period of 10 years and moreover the present sub tenants were not in occupation on any part premises of the rented portion during the fixed period of 10 years.”

(2) Rent Controller, Nawanshahr discarded the plea of landlord-respondent No.1 seeking ejectment of the revision petitioner and other respondents from the demised premises on the ground of non-payment of rent from 01.05.1977 and that legal heirs of original tenant Harbans Singh have carried out material alteration in the premises in dispute resulting in diminishing its value and utility. However, it was held that legal heirs of Harbans Singh (including the revision petitioner) have sublet the demised premises to respondents No.6 to 36 without consent of landlord and passed the order of their ejectment allowing them two months time to vacate and hand over vacant possession of the demised premises to the landlord.

(3) In appeal filed by the revision petitioner-tenant, the findings of the Rent Controller were affirmed by the Appellate Authority, Nawanshahr.

Plea of subletting

(4) To understand issue of subletting, it will be required to go into the details of creation of tenancy and subsequent events.

(5) As per case of the landlord-respondent No.1, Harbans Singh Mann was the original tenant. Landlord-respondent No.1 has alleged that the tenancy of Harbans Singh was for 10 years and after expiry of fixed period of tenancy, he had to deliver possession of the demised

premises along with possession of construction raised by him without any permission. He was given permission to induct tenants during the lease period of 10 years only and after the lapse of 10 years, the permission lapsed and the sub tenants inducted by him or his legal heirs are without consent of landlord- respondent No.1.

(6) Revision petitioner-tenant Amarjit Singh, in his written reply, has admitted that Harbans Singh, his father had taken two rooms, one Veranda on rent along with vacant land measuring about 7 kanals 15 marlas. Under the permission given by the landlord, he has raised construction over this land and has also let out the same to different tenants as he was permitted to sublet the premises. After the expiry of limited period of lease, Harbans Singh became statutory tenant. Sub-tenant in the premises are those tenants, who were inducted by Harbans Singh Mann and these tenants have executed fresh rent notes in favour of revision petitioner.

(7) Learned Rent Controller while discarding the plea of revision petitioner that he had authority to let out the demised premises observed that the premises has been sublet to different persons during the year 1986-87 i.e. after the death of Harbans Singh Mann, as such, he is liable to be ejected from the demised premises. Harbans Singh had taken the demised premises on rent vide rent note Ex.AW1/1 for a period of ten years. After the expiry of period of 10 years, Harbans Singh attained status of statutory tenant and relying on law settled by Hon'ble Apex Court in case of *Rajinder Singh (Dead) versus Dalip Chand and others*¹, it was held that permission to sublet did not enure after the expiry of the lease by efflux of time. It was also held as proved that the tenancy was created by respondent No.1 after the expiry of period of lease by efflux of time which he was not legally competent to create.

Arguments:-

(8) Learned counsel for the revision petitioner has argued that as per the lease deed dated 21.05.1963 Ex.AW1/1, the tenant was allowed right to raise construction and subletting. Landlord in the year 1969 filed ejectment petition seeking ejectment of Harbans Singh from the demised premises on the ground of non-payment of rent, subletting and material alteration of demised premises. However, that petition was got dismissed as withdrawn. He again filed an ejectment petition in the year 1976 on the similar ground, which was again dismissed as

¹ 1995 (2) PLR 473

withdrawn. 3rd petition was filed by landlord on 30.03.1984 again on similar grounds including the ground of subletting, which was also got dismissed as withdrawn on 11.08.1994. Thereafter, the matter was compromised vide writing dated 27.09.1988 Ex.R1. This writing shows that landlord-respondent No.1 had allowed the revision petitioner to remove the trees over the land and raise construction of multi-storey building. The rate of rent was settled w.e.f. 13.02.1994 as `2400/- per annum. This compromise shows that landlord- respondent No.1 despite knowing the factum of subletting of the premises constructed by Harbans Singh or the revision petitioner had given permission to continue the tenancy which amounts to ratifying and giving permission/approving subletting of the premises, as such, ground to seek ejectment of petitioners on plea of subletting is no more available to landlord-respondent No.1.

(9) While relying on the observations in case of *Sardari Lal Jain versus Smt. Dhanwanti Devi*² and *Mehtab Singh Advocate versus Shri Tilak Raj Arora and Anr*³, he has stressed on the issue that after the withdrawal of earlier petitions, which were filed seeking ejectment of revision petitioner on the ground of subletting, present petition was barred.

(10) Learned counsel for landlord-respondent No.1 has argued that as per the law settled by Hon'ble Apex Court in case of *Rajinder Singh (Dead) versus Dalip Chand and others (supra)*, if sub-lease is a ground for eviction, prior permission granted under the Contract which has expired, cannot be pressed into service. In this case, permission to sublet was allowed under the agreement of lease dated 21.05.1963, which was for a period of 10 years and after the expiry of lease period that agreement has expired and the sub tenancy created by the revision petitioner are against the specific provision of East Punjab Urban Rent Restriction Act, 1949 (for short-Rent Act, 1949) He further argues that withdrawal of the earlier petitions, does not bar this petition by principle of res judicata as the provisions of Civil Procedure Code (for short-CPC) are not applicable to the provisions under the Rent Act. In support of his contention, he has relied on the observations of Division Bench of this Court in case of *Ram Dass versus Sukhdev Kaur*⁴.

² 2002 (3) PLR 483

³ 1988 (1) PLR 269

⁴ 1981 (2) R.C.R.23

(11) The facts of this case relating to creation of tenancy, lease deed dated 21.05.1963 Ex.AW1/1, filing and withdrawal of earlier petitions by respondent-landlord, are not disputed.

(12) Learned Appellate Authority found the execution of the document Ex.R1 by landlord-respondent No.1 as highly doubtful and further observed that even if this document be believed, it nowhere authorises the revision petitioner to sublet the premises.

Scope of appreciation of evidence in revision:-

(13) Before proceeding further, it will be relevant to note that in the revision petition, the scope of appreciation of evidence recorded before the Rent Controller/Appellate Authority is quite limited. The finding of fact recorded by the Courts below can be interfered only if the same are legally not sustainable, perverse, against facts proved on file or evidence on record has been ignored or wrongly interpreted. Hon'ble Apex Court, while describing the scope of interference in revision petition, has observed in case of *Hindustan Petroleum Corporation Ltd versus Dilbahar Singh*⁵, as follows:

“We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the First Appellate Court/First Appellate Authority because on re-appreciation of the evidence, its view is different from the Court/Authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the Court/Authority below is according to law and does not suffer from any error of law. A finding of fact recorded by Court/Authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself the correctness or legality or propriety of any

⁵ 2014(9) SCC 78

decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

Questions for consideration:-

(14) The questions, which arise for consideration in this revision petition are as follows:-

(i) Whether as per terms of lease deed Ex.AW1/1, sub-tenancy created by revision petitioner or his father after the expiry of period of lease ensure to be sub tenancy with permission of the landlord?

(ii) Whether sub-tenancy created by Harbans Singh in terms of lease Ex.AW1/1, remain valid even after the expiry of period of lease and the sub-tenants inducted during the period of lease created vide lease deed EX.AW1/1 cannot be ejected on the ground of subletting under Section 13 of Rent Act, 1949?

(iii) What is the effect of the earlier petitions filed by the respondent-landlord seeking ejection of tenant on the ground of subletting and later compromising/withdrawing the same?

Points No.(i) to (iii):-

(15) Above points/questions have been taken up together being inter-connected and inter-linked.

(16) It is not disputed that vide registered lease deed dated 21.05.1963, Harbans Singh was let out land measuring 7 kanals 15 marlas having construction of one *Veranda*, two rooms, compound at the annual rent of Rs.325/-. He was also authorized to raise construction and sublet the premises with condition that after expiry of period of 10 years, he will remove the construction and return the land in its form as

it was let out. The Courts below have relied on the observations of Hon'ble Apex Court in case of *Rajinder Singh (Dead) versus Dalip Chand and others (supra)*, where the point in issue was as follows:-

“The short question that arose for determination and which still requires to be determined is where a contractual tenancy comes to an end by efflux of time, if under the contract, the tenant had a permission to sub- lease whether that permission will enure after the expiry of the lease.”

(17) Hon'ble Apex Court while answering the above question of law, observed as follows:-

“The High Court has answered in the affirmative disregarding the basic principles: (1) After the contract had come to an end, the statute acts over the rights of the parties are governed by the statute of the East Punjab Urban Rent Restriction Act in the instant case. (2) It is settled law that the Rent Control Act is a code in itself. It is equally well-settled that to the extent that the Rent Control Act governs the provisions of Transfer of Property Act will not apply. Further Section 13 of the Act states as follows:

“13. (3)(a) A landlord may apply to the Controller for an order directing the tenant to put the landlord in possession.”

4. Therefore, if sub-lease is a ground for eviction the prior permission granted under the contract, which contract had expired, cannot be pressed into service. The High Court by holding to the contrary has gone wrong. The civil appeal will stand allowed. There shall be no order as to costs. Time to vacate the premises is three months.”

(18) Learned Rent Controller as well as Appellate Authority have rightly relied on the above observation of Hon'ble Apex Court while observing that the stipulation in the lease deed Ex.AW1/1 allowing the tenant to sublet the demised premises ceased to be available to the revision petitioner on the expiry of period of lease on 20.05.1973.

(19) Learned counsel for the revision petitioner could not refer to any citation where the Apex Court has taken a different view than the view taken in case of *Rajinder Singh (Dead) versus Dalip Chand and others (supra)*. As per the law laid down in the aforesaid citation, landlord- respondent No.1 had become entitled to seek

ejection of the revision petitioner and the sub tenants after the expiry of 10 years' period for which the lease was originally created.

Effect of ejection petitions filed earlier by respondent No.1:-

(20) The matter, however, does not end here. Landlord had been filing ejection petitions against the revision petitioner from time to time for his ejection from the demised premises on various grounds available to him under the Rent Act, 1949 including the ground of subletting.

First Petition:-

(21) In the petition filed on 22.10.1968, ejection of Harbans Singh was sought on the ground of personal necessity, non-payment of rent and that the tenant was source of nuisance. Ejection of Harbans Singh was not sought on the ground of sub-letting. This petition was withdrawn on 10.01.1969 as the counsel for the petitioner-landlord Mahant Kishan Gir made a statement that he do not want to proceed with the petition.

Second Petition:-

(22) Second petition seeking ejection of Harbans Singh was filed on 28.04.1979 i.e. after expiry of 10 years' period of lease. Besides other grounds, one of the ground for seeking ejection of tenant was as follows:-

“That the permission to sub-let expired with the expiry of the fixed period of tenancy on 20.05.1973 but thereafter the respondent has sub-let major part of the premises in dispute to various tenants without the written consent of the applicant. He has parted with the possession of the premises in dispute in favour of sub-tenants”.

(23) Petitioner Mahant Kishan Gir appeared in the Court on 06.09.1979 and made statement as follows:-

“I have compromised with respondent Harbans Singh. As per compromise, I do not want to proceed with this petition and the same be dismissed.”

(24) As per the above statement of petitioner Mahant Kishan Gir, Rent Controller, Nawanshahr dismissed the petition as withdrawn.

(25) The filing and withdrawal of above ejection petition shows that landlord-respondent No.1 under compromise had forgone his right

with regard to the existing sub-tenants at the relevant point of time under Harbans Singh, consequent effect of which is that sub-tenancy created in form of those tenants was approved as authorized tenancy.

Third Petition:-

(26) Mahant Kishan Gir filed another ejectment petition on 30.03.1984, wherein also, one of the ground seeking ejectment of the legal heirs of Harbans Singh (as he had died by that time) was as follows:-

“That Sh. Harbans Singh Mann and after his death the respdts. have inducted various sub tenants on the property in dispute after the expiry of the fixed period of tenancy without the written consent of the applicant.”

(27) This petition was again withdrawn and dismissed vide orderdated 11.08.1984.

Effect of withdrawal/compromise in earlier petitions:-

(28) Here a question arise for consideration is as to whether by filing and withdrawing the petition seeking ejectment of revision petitioner and other legal heirs of Harbans Singh from the demised premises on the ground of subletting the premises amounts to ratifying/consenting the subletting by the original tenant under Harbans Singh and his legal heirs inducted before 30.03.1984. After the expiry of the tenure of tenancy as per the lease deed/rent note Ex.AW1/1, Harbans Singh had become statutory tenant of landlord-respondent No.1. As per the law settled by Hon'ble Apex Court in case of *Rajinder Singh (Dead) versus Dalip Chand and others (supra)*, the permission allowed to sublet the premises has ceased after the expiry of period of tenancy created vide lease deed Ex.AW1/1. However, by entering into compromise with Harbans Singh while withdrawing the ejectment petition filed on 28.04.1979 Ex.R1 vide order dated 06.09.1979 Ex.R7, landlord-respondent No.1 had virtually consented to the subletting of the premises to the tenants in whose favour the tenancy had been created by Harbans Singh up to withdrawal of the petition on 06.09.1979. As that compromise, on the basis of which, ejectment petition was withdrawn, had not come on record, as such, terms of the compromise cannot be ascertained. However, it is clear that landlord-respondent No.1 had withdrawn the ejectment petition and has forgone her right of seeking ejectment of Harbans Singh on the ground of subletting of the demised premises, which signifies that he had approved the right of Harbans Singh, whereby he had created sub-

tenancy in favour of tenants under him as it existed on the date of withdrawal of that petition.

(29) The next question which arise for consideration is about the effect of withdrawal of second petition dated 11.02.1984. In that petition also, respondent No.1 has sought ejectment of the tenant on the ground of subletting without consent of landlord.

(30) Learned counsel for respondent No.1-landlord has argued that provisions of Order 23 Rule 1(3) of CPC are not applicable to the proceedings under the Rent Act, 1949. In support of his contention, he has relied on *Ram Dass versus Sukhdev Kaur (supra)*, wherein a Division Bench of this Court has observed in para 10 and 11 of the judgment as follows:

“10. To conclude, the answer to the question posted at the out-set, is rendered in the negative and it is held that the provisions of Order 23, Rule 1(3) of the Code of Civil Procedure are not applicable to proceedings under the East Punjab Urban Rent Restriction Act, 1949.

11. However, it is necessary to point out that we are in no way deviating from the settled view that the Controller and the Appellate Authority under the Act are entitled to devise their own Procedure in the area which is not specifically covered by any statutory provisions. As to what is the scope or the limitations on the exercise of their powers in the context of allowing or refusing the withdrawal of an eviction application in specific case, independent of the provisions of O. 23, R. 1 of the Civil Procedure Code, is a matter we are not called upon to answer for the present. Equally, we are disinclined to pronounce on the legal consequence that may well ensue from the withdrawal of an ejectment application, if allowed. These are matters on which we have not had the benefit of the arguments of the learned counsel for the parties as they do not arise in this reference. These can be best decided in an appropriate case where they directly fall for determination.”

(31) The question in the above petition before the Division Bench was as to whether during the pendency of the appeal, an application to withdraw the eviction application with permission to file fresh application was maintainable. The observations in the above case are not strictly applicable to the facts of the present case.

(32) In case of *Mehtab Singh Advocate versus Shri Tilak Raj Arora and another (supra)*, a Division Bench of this Court has observed that even though the provisions of CPC are not applicable in ejectment proceedings pending before the Rent Controller but the general principle contained in the Code, which are based on justice, equity and good conscience would govern those proceedings. The question of law before the Division bench in above referred case was as follows:-

“1. The question of law referred for consideration and decision by this Bench is as to whether a second petition for the ejectment of the tenant would be competent on a ground on which earlier petition was got dismissed as withdrawn without liberty to file a second petition.”

It was answered by Hon'ble Division bench as follows:-

“8. In the result, the question of law referred to us is answered in the affirmative and it is held that a second petition for the ejectment of the tenant on a ground on which an earlier petition was got dismissed as withdrawn without liberty to file a fresh petition would be barred and not maintainable.”

(33) In case of *Sardari Lal Jain versus Smt. Dhanwanti Devi (supra)*, a Single Bench of this Court has observed that second petition based on same cause of action is not maintainable under Order 23 Rule 1 CPC.

(34) The law settled in the above referred cases cannot be disputed. The only question is about applicability of the same to the facts and circumstances of the present case. In view of ratio of judgments in the above referred cases, I am of the considered opinion that so far as the right of the sub-tenants, who were inducted prior to 06.09.1979 are concerned, landlord-respondent No.1 had admitted their right to continue in premises under a compromise. Thereafter, the right of the tenant, who were inducted by Harbans Singh or his legal heirs prior to 11.08.1984 are also protected after the dismissal of the earlier petition filed by landlord-respondent No.1.

Status of sub-tenants inducted before 11.08.1984:-

(35) My above observations give rise to another question about the status of tenant, who were inducted in the demised premises after 11.08.1984. Filing and withdrawal of the petition on the ground of

subletting protect and recognize right of the tenant, who were there in the demised premises at the time of filing/withdrawal of those petitions. However, this does not recognize the right of the legal heirs of Harbans Singh to induct or sublet the premises even thereafter. Status of the legal heirs of Harbans Singh is of statutory tenants. Any subletting created by them without the consent of the landlord is not recognized under the provisions of the Rent Act, 1949. For creating any subletting after withdrawal of the ejectment petition on 11.08.1984, legal heirs of Harbans Singh were duty bound to have consent/permission of the landlord and any sub-tenancy created by them after 11.08.1984 is illegal and barred underlaw and call for their ejectment along with the tenants so inducted.

(36) Keeping in view the peculiar facts and circumstances of this case, I find myself confronted with yet another proposition as to whether for subletting of any portion of the tenanted premises, legal heirs of Harbans Singh are liable to be ejected from entire premises or only from the part of the premises which has been sublet after 11.08.1984. The demised premises comprised of total area of 7 kanals 15 marlas and many shops on this land, have been erected by Harbans Singh or his legal heirs. As discussed above, the tenants, who were inducted before 11.08.1984 by Harbans Singh or his legal heirs have right to continue their tenancy but the tenants who were inducted later on are liable to be ejected. While seeking ejectment of such tenants, the landlord is also entitled to get legal heirs of Harbans Singh ejected from the other part of premises, which is in their possession. For the tenants inducted before 11.08.1984, the landlord has remedy for seeking their ejectment on the other grounds as permissible under the Rent Act, 1949.

Sub-tenants inducted after 11.08.1984

(37) To see as to which of the tenant out of 37 tenants as mentioned in the list attached with the petition Annexure A4 were inducted after 11.08.1984, reference can be made to the observation of Rent Controller to this effect, which are reproduced as follows:-

“16. The petitioner has also sought eviction of respondents on the ground of sub-letting. It is not disputed that the disputed premises was taken on rent by Harbans Singh from Kishan Gir for a period of 10 years vide Rent Note Ex.AW1/1. After the expiry of said period of 10 years, Harbans Singh became statutory tenant and after the death of Harbans Singh, his legal heirs became statutory

tenant in disputed premises. Amarjit Singh, who is one of the legal heirs of Harbans Singh admitted in his cross-examination that Ravinder Kumar, Sham Lal, Agya Singh, Krishan Lal, Kailash Chander, Subash Chander, Bahadur Ram and Surinder Kumar were inducted as sub-tenants by him in the year 1986. that all these persons executed separate rent notes in his favour. He further admitted that Anshu Kumari, Roop Lal and Harmesh Chander were also inducted as sub tenants by him in the year 1986 and 1987. That he also inducted Gurcharan Singh as his sub tenant after the period of 1987. That he also inducted Joginder Kumar, Chinta Singh, Tarlochan Singh and Pritam Singh as his sub-tenants during the period of 1986-87, whereas Hari Singh was inducted as sub tenant in the year 1986. He further deposed that Mehnga Ram and Gurdev Ram were also inducted as the sub tenants by him in the year 1986-

87. As such, from perusal of the testimony of RW1, it is amply proved that respondent No.1 has sub let the premises in dispute to different persons during the year 1986-87. The counsel for contesting respondent submitted that respondent No.1 being statutory tenant has got every right to sublet the disputed premises. On the other hand, the counsel for the petitioner referred to **1995(1) R.C.R. 528** in which the Hon'ble Supreme Court of India has held that after the expiry of lease by efflux of time, permission to sub let will not enure after the expiry of contract of lease. The counsel for the petitioner submitted that as such in the case in hand after the expiry of lease that is 10 years, Harbans Singh had got no right to sub let the premises in dispute. As such, respondent No.1 has also got no right to sublet the premises in dispute after the expiry of contract of lease. However, in the case in hand as the respondent No.1 has admitted that he has sub let the disputed premises to different persons in the year 1986-87, he is liable to be ejected from the disputed premises.”

(38) Appellate Authority on perusal of the record also observed that tenancy in favour of some of the respondents were created in the year 1986- 87 and this fact was not disputed before it.

(39) As per the observations of Rent Controller, Ravinder

Kumar, Sham Lal, Agya Singh, Krishan Lal, Kailash Chander, Subash Chander, Bahadur Ram, Surinder Kumar and Hari Singh were inducted as sub-tenants in the year 1986. Anshu Kumari, Roop Lal, Harmesh Chander, Gurcharan Singh, Joginder Kumar, Chinta Singh, Tarlochan Singh, Pritam Singh, Mehnga Ram and Gurdev Ram were inducted as sub-tenants by him in the year 1986-87. The tenancy of above tenants, as such, is illegal as the same has been created without consent of landlord-respondent No.1. The above tenants out of list of 37 tenants as mentioned in list (Ex.A4) are liable to be ejected from the premises in their possession. The revision petitioner and other legal heirs of Harbans Singh are also liable to be ejected from the portion of the entire premises except the portion in possession of other sub-tenants in the list of 37 sub-tenants, who have not ordered to be ejected. As the petitioners have not been able to prove that they were inducted as tenants after 11.08.1984.

Validity of writing dated 27.09.1988:-

(40) Learned counsel for the revision petitioner-tenant has relied on a writing Ex.R1 alleged to be a settlement with Kishan Gir to defend the right of revision-petitioner to sublet the premises. Learned Appellate Authority has taken note of this document in its order and observed as follows:-

“11. The learned counsel for the appellant has contended that original landlord Kishan Gir accepted him as his direct tenant by executing Ex.R1 on 27.9.1988. The learned counsel for the respondent/landlord has denied the execution of Ex.R1. After hearing the counsels and after going through the file, I am of the considered opinion that the execution of Ex.R1 by Kishan Gir is highly doubtful. My opinion above said is based on the following reasons:-

a. Ex.R1 is alleged to have been executed on 27.9.88 i.e. at the time when the rent petition in question was already pending before the learned Rent Controller. Vide the same, the landlord is alleged to have agreed to withdraw the petition. It is agreed that the petition was never withdrawn, nor the appellant ever insisted for its withdrawal.

b. Although the document is alleged to have been executed as early as 27.9.88, yet it saw light of the day for the first time on 10.8.1995 i.e. when the appellant entered in the witness box as RW1. In fact, even at that time, only a photo

state copy of the said document was placed on the file. Prior to that, written statement, which was filed by the appellant in June, 1989, was amended by him on 30.1.1996. However, Ex.R1 was not referred to therein. Similarly, the respondent/landlord appeared in the witness box as AW4 on 5.9.94, but no suggestion was given to him that Ex.R1 had already been executed by the landlord. Thus, the above said long unexplained silence of about six years in respect of the execution of Ex. R1, leaves a loud and clear message that Ex.R1 was never executed by the landlord.

c. The above said long silence becomes meaningful when one goes through Ex.R1. Though, it is deemed to have been executed on 27.9.88, but Ex.R1 speaks of enhancing the rent from Rs.320/- per annum to Rs.2400/- per annum not with effect from 27.9.88, but with effect from 13.2.1994. No explanation has been put-forth as to what prompted the parties to select 13.2.1994, as the date for enhancement of the rent particularly when the document vide which enhancement is alleged to have been effected, was executed on 27.9.88. Apparently above said factor burries the said document deep down into sea of doubt and suspicion.”

(41) The above document Ex.R1 has been rightly discarded by the Appellate Authority being beyond pleadings and I have no reason to interfere with the observation of the Appellate Authority in this regard.

Conclusion:-

(42) As a sequel of my above discussion, this revision petition is partly allowed and the order of the Rent Controller and Appellate authority is maintained against legal heirs of Harbans Singh and sub-tenants (whose names find mention in para 39) with modification to the extent that tenancy of sub-tenants, out of 37 tenants as per list Ex.A4, who were inducted as tenants prior to 11.08.1984, continues to be valid as the landlord-respondent No.1 has acknowledged the same under compromise or by withdrawal of ejection petition filed against them which virtually amounts to giving permission for subletting. These tenants continue to be sub-lettee under statutory tenant i.e. legal heirs of Harbans Singh, who (Harbans Singh's legal heirs) will pay proportionate rent, to landlord-respondent No.1 for the shops in possession of these sub-tenants. On vacation of shops/premises by any

of these tenants, the possession will be handed over to respondent No.1 or his legal heirs/authorized representative and not to legal heirs of Harbans Singh. Respondent No.1/his legal heir/authorized representative shall have right to seek ejection of these sub-tenants as per law and on the ground available to them under the Rent Act, 1949 or the Act prevailing at the relevant time.

(43) Revision petitioner and the tenants (named above), who have been ordered to be ejected from demised premises are allowed two months time to vacate and hand over vacant possession of the demised premises, provided they pay to revision petitioner damages for use and occupation of premises @ Rs.10/- per square feet from the date of decision of this revision petition till delivery of possession.

Dr. Payel Mehta