

**Darshan Kumar Vs. M/S Ex Serviceman Hire Purchase Finance Pvt. Ltd. Co. and Another**

**Darshan Kumar Vs. M/S Ex Serviceman Hire Purchase Finance Pvt. Ltd. Co. and Another**

**SooperKanoon Citation :** [sooperkanoon.com/1160509](http://sooperkanoon.com/1160509)

**Court :** Punjab and Haryana

**Decided On :** Jul-24-2014

**Appellant :** Darshan Kumar

**Respondent :** M/S Ex Serviceman Hire Purchase Finance Pvt. Ltd. Co. and Another

**Judgement :**

CR No.4082 of 2002(O&M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CR No.4082 of 2002(O&M) Date of Decision : 24.07.2014  
Darshan Kumar ....Petitioners Versus M/s Ex serviceman Hire Purchase Finance PVT.LTD.Co.and another ...Respondents CORAM : HON'BLE MR.JUSTICE MAHESH GROVER Present : Mr.Kulbushan Sharma and Mr.H.K.Arora, Advocates for the petitioner Mr.Puneet Jindal, Sr.Advocate with Ms.Neetu Singh, Advocate for the respondent MAHESH GROVER, J.

The petitioner unsuccessfully sought the eviction of the respondent - tenant from the demised premises which are described as Shop No.99 Defence Colony Market, Jalandhar.

The eviction was sought on various grounds but the paramount issue around which the entire controverRs.was centered and answered pertained to subletting of the premises by respondent no.1 by inducting respondent no.2 to conduct

business therefrom without the permission of the landlord.

Concededly the tenancy without a rent note was created by the petitioner in favour of respondent no.1 i.e M/s Exserviceman Hire Purchase Finance PVT.Limited Company.

Its Managing Director is Devinder Singh Gill.

The petitioner alleges that M/s Nayab Finance Company Private Limited - respondent no.2 has been inducted as a tenant to permit its functionality from the same premises without the permission of the landlord and this amounts to sub letting and thus the respondents ought to be evicted from the premises in question.

REKHA201408.11 10:31 I attest to the accuracy and integrity of this document  
High Court Chandigarh CR No.4082 of 2002(O&M) 2 The case of the respondent no.1 in the written statement itself was denial simpliciter but in the evidence it was sought to be projected that respondent no.1 i.e.M/s Ex-serviceman Hire Purchase Finance PVT.LTD.and respondent no.2 i.e Nayab Finance Company PVT.Ltd are being controlled by same family headed by Sh.

Devinder Singh Gill and thus there being no parting of possession exclusively in favour of respondent no.2, there would be no sub letting because two corporate entities which are controlled by the same group would not establish subletting in the eyes of law.

On this premise the learned counsel for respondent no.1 has based his submissions while the learned counsel for the petitioner reasserts his case of subletting against respondent no.1.

I have heard learned counsel for the parties.

For the purposes of reference, the relevant portion of the East Punjab Urban Rent Restriction Act, 1949 where subletting has been defined is extracted herebelow:-  
Section 13(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) xxxxx (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 sublet 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.

A bare perusal of the above extracted provision of law shows REKHA201408.11 10:31 I attest to the accuracy and integrity of this document High Court Chandigarh CR No.4082 of 2002(O&M) 3 that i) a tenant should without the written consent of the landlord transfer his rights under the lease ii) sub let the entire building or rented land or any portion thereof or iii) use the building or rented land for a purpose other than the purpose for which it was leased.

We are primarily concerned with the fiRs.portion of definition regarding transfer of rights over entire building or portion thereof.

Concededly case of the parties is not of the exclusive possession given in favour of respondent no.2 by original tenant i.e respondent no.1 but it only revolves around the fact of respondent no.2 being in continuation of its business from the premises which are let out exclusively to respondent no.1.

It would also be necessary to refer to the pleadings of the parties.

The petitioner in para 3 of the rent petition has asserted about the premises being let out to respondent no.2 by respondent no.1.

The same are extracted herebelow:- 3(b) That respondent no.1 has sublet the premises for the last about 2 years and put respondent No.2 in possession of the demised premises for valuable consideration.

Respondent no.2 is a distinct entity different from respondent no.1.

Respondent no.1 and 2 who filed separate written statements offered a denial simpliciter with no clarification attached to the reply such as management and control of the two companies being with the same person or the companies being a part of the same group though with separate legal entities.

Both the courts below recorded a finding that there was no subletting and the reason for concluding as such was essentially the REKHA201408.11 10:31 I attest to the accuracy and integrity of this document High Court Chandigarh CR No.4082 of 2002(O&M) 4 fact of the two companies being managed by the same family headed by Sh.Devinder Singh Gill.

Learned counsel for the petitioner contends that there was ample evidence on record to establish the presence of respondent no.2 which has not been denied by respondent no.1 but he has not sufficiently shown any justification for such presence.

Reference was made to the report of the Local Commissioner Ex.PW3/A.

The list of Directors Ex.AW2/2 and the returns (Ex.

A.W2/3) filed by respondent no.2 before the Registrar of Firms in 1997 where the address furnished by the said respondent no.2 is the same as that of the demised premises.

Undeniably respondent no.2 is operating from the same premises but the case of respondent no.1 is that such continuation and functionality of respondent no.2 cannot be construed to be subletting in the absence of any evidence to show exclusive parting of possession in favour of respondent no.2.

Emphasis has been laid on the fact that respondent no.1 continues to be in control of the premises and had never abdicated the same.

The question of subletting thus did not arise.

Reliance has been placed upon a judgment of Hon'ble Supreme Court titled as Nirmal Kanta (dead) through Lrs versus Ashok Kumar & another reported as 2008(1) RCR (Rent) 378 (SC) wherein it has been held as under:- 15.

What constitutes sub-letting has repeatedly fallen for the consideration of this Court in various cases and it is now well-established that a sub-tenancy or a sub-letting comes into existence when the tenant inducts a third party/stranger to the landlord into the tenanted accommodation and parts with possession thereof wholly or in part in favour of REKHA201408.11 10:31 I attest to the accuracy and integrity of this document High Court Chandigarh CR No.4082 of 2002(O&M) 5 such third party and puts him in exclusive possession thereof.

The lessor and/or a landlord seeking eviction of a lessee or tenant alleging creation of a sub-tenancy has to prove such allegation by producing proper evidence to that effect.

Once it is proved that the lessee and/or tenant has parted with exclusive possession of the demised premises for a monetary consideration, the creation of a sub-tenancy and/or the allegation of sub-letting stands established.

On due consideration of the matter, I am of the considered view that the petitioner alleges subletting as is evident from the averments made in the rent petition to which the respondent no.1 merely offered a denial without pleading what now he is projecting in evidence and asserting before this Court.

It was not the case of the respondent no.1 that the Director and the management and control of two legal corporate entities were the same and hence, it was not to be construed as subletting in favour of respondent no.2.

It is settled proposition of law that no amount of evidence can be looked into if there are no pleadings to that effect.

It was for respondent no.1 to offer such an explanation in the reply filed by him to the petition.

Faced with this situation learned counsel for the respondents would then argue that the petitioner himself has brought on record such evidence to indicate the commonality of management and control of the two respondents.

A perusal of the evidence produced by the petitioner in this regard would merely indicate the presence of respondent no.2 and its functionality from the same premises but would not indicate the crucial aspect about the management and control vested in the same group.

Ex.AW2/2 would merely reflect the same name of the Directors without REKHA201408.11 10:31 I attest to the accuracy and integrity of this document High Court Chandigarh CR No.4082 of 2002(O&M) 6 indicating their shareholding which would have been the prime indicator to establish the claim of the respondent in this regard.

Hon'ble Supreme Court in case titled as Santosh Ajit Sachdeva & Others versus Anoopi Shahani reported as 2007 (2)RCR (Rent)293 has observed that merely holding of large number of shares would not be sufficient to show control but something more is required to show factum of control and management.

It thus concluded eventually that subletting stood established.

The facts of this case need to be noticed to understand the observations of Hon'ble Supreme Court which are as follows:- 2.The suit was filed by the plaintiff Smt.

Anoop Shahani (respondent herein) against the defendant No.1 MRS.Santosh Ajit Sachdeva (appellant herein) wife of Mr.Ajit Sachdeva since died who was the original tenant of the suit premises for eviction on the ground of subletting of the premises.

The suit premises, i.e., 61, Anjali, 6th floor, Behind Radio Club, Colaba Bombay 5 was let out by the plaintiff on the monthly rent of Rs.1300/-.

It was contended that the defendant No.2 was a proprietary concern of the defendant No.1 known as M/s Pearl Advertisings.

During the pendency of the suit the plaint was amended and the defendants Nos 4& 5 joined as defendants.

The joining of defendants Nos.4 & 5 were unlawful in respect of the suit premises.

It is the case of defendant No.1 who unlawfully sublet the suit premises to defendants Nos.3, 4 & 5.

The defendant Nos.3, 4 & 5 claimed rights through defendant No.1.

According to plaintiff, defendant No.1 has unlawfully sublet the suit premises to REKHA201408.11 10:31 I attest to the accuracy and integrity of this document High Court Chandigarh CR No.4082 of 2002(O&M) 7 defendant No.3 in the month of September, 1998 and therefore, the defendant No.1 has lost protection of the Bombay Rent Act and therefore, the defendant No.1 is liable to be evicted from the suit premises.

The plaintiff by giving a notice dated 19.8.1989 through her advocate terminated the tenancy of the defendant No.1 in respect of suit premises and called upon the defendant No.1 to quit, vacate and deliver the quiet and peaceful possession of the suit premises.

But no reply was given.

Hence, the suit was filed against the defendants for eviction.

On the basis of pleadings of the parties, the learned trial judge framed three issues in the suit on 7.11.1997.

Similarly, in case titled as M/s Co.& Kings LTD.versus Smt.

Chander Malhotra reported as 1997(1) RCR (Rent) 493 it was held that when a foreign company who was the original tenant assigned 60% share to an Indian company and permitted it to occupy the premises without permission of landlord, it was held to be subletting.

Testing the evidence on the basis of the provisions of law and the interpretation placed by different courts it is evident that concept of subletting comes into existence when a tenant gives the possession of the premises wholly or in part to another person.

The landlord in this case is disadvantaged as he cannot prove atleast the monetary considerations or arrangement between the tenant and the subtenant and therefore, it is the conduct of the parties which becomes relevant.

In the instant case report of the Local Commissioner and the other evidence on record would indicate that the respondent no.2 is carrying on business from the same premises and has given out the address to the Registrar of Companies which would REKHA201408.11 10:31 I attest to the accuracy and integrity of this document High Court Chandigarh CR No.4082 of 2002(O&M) 8 undeniably establish its presence in the premises.

It was thus incumbent upon the respondent no.1 to forthrightly explain as to how the respondent no.2 is present in the premises which were let out to it only.

There ought to have been pleadings to this effect before any evidence in this regard could have been considered.

The respondent no.1, however, chose not to offer any explanation.

The landlord having established the presence of a third party in the premises let out to the tenant sufficiently discharges his onus of proving subletting and it is for the tenant to explain and justify the presence of the third person in the demised premises.

The respondent no.1 having failed to plead and prove the aforesaid crucial aspect cannot derive any benefit from the material produced by the petitioner which only establishes the presence of respondent no.2 but does not establish the control and the management by same person which would have been crucial to appreciate the stand of respondent no.1.

For the aforesaid reasons, instant petition is accepted.

Respondents are directed to be evicted from the premises forthwith.

July 24, 2014 (MAHESH GROVER) rekha JUDGE REKHA201408.11 10:31 I attest to the accuracy and integrity of this document High Court Chandigarh