Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4189 OF 2014
(Arising out of SLP (Civil) No. 29888 of 2010)

M/s. S.F. Engineer ... Appellant

Versus

Metal Box India Ltd. and Anr. ...Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. This appeal, by special leave, by the landlord arises out of and is directed against the judgment and order dated 12.8.2010 of the Bombay High Court passed in Civil Revision Application No. 355 of 2010, allowing the respondent-tenants' appeal and – in reversal of the concurrent findings of the courts below that there was an unauthorized subletting – dismissing

appellant's application under 13(1)(e) of the Bombay Rent Act, 1947 for an order for grant of possession.

3. The appellant-plaintiff, owner of the suit premises, i.e., Flat Nos. 201 and 204 on second floor of the building known as "Marlow" and two garages Nos. 7 and 8 on the ground floor of the suit building situate at 62-B, Pochkhanwala Road, Worli, Mumbai, instituted RAE No. 45/84 of 1997 for eviction of the first respondent (defendant No. 1) and its former employee, the respondent No. 2 (defendant No. 2). For the sake of convenience, the parties hereinafter shall be referred to as per the rank in the suit.

4. The case of the plaintiff in the court below was that the defendant No. 1 was a tenant under the plaintiff on a consolidated monthly rent of Rs.1075/-. The premises, as set forth in the plaint, was let out to the defendant No. 1 exclusively for the purpose of providing residential accommodation to its executive staff and not for any other purpose. Though the defendant No. 2 had no right to remain in possession of the flat No. 201, yet the employer company

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unlawfully sublet the said flat to him. The plaintiff vide notice dated 19.1.1989 terminated the tenancy of defendant No. 1. The said notice was replied to by the defendant No. 1 through its advocate on 13.2.1989 denying the assertions made in the notice. This compelled the plaintiff to initiate the civil action for eviction of the defendants from the suit premises on the ground of subletting, bona fide requirement and non-user for the purpose for which it was let out.

5. The defendant No. 1 filed its written statement and denied the averments in the plaint. Its affirmative stand was, it had not breached the conditions in using the suit premises for the purpose of which the same was let out for continuous period of six months preceding the date of the suit without reasonable cause and the suit premises had been illegally and wrongfully occupied by the defendant No. 2 against the will of defendant No. 1 by remaining in flat No. 201. As far as flat No. 204 was concerned, the stand of the defendant No. 1 was that it was in occupation of the staff, General Manager, officers and executives

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of the Company. The claim of bona fide requirement was seriously disputed on many a ground. It was the further case of defendant No.1 that the defendant No. 2, as an officer of defendant No. 1 was allotted flat No. 201 as a part of his service amenities under the terms and conditions stipulated in agreement dated 11.5.1982. On 27.5.1988 the defendant No. 1 was declared a sick company by the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provision) Act, 1985 and thereafter on 11.2.1989 the defendant No. 2 resigned from his post which was accepted by the defendant No. 1. The defendant No. 2 continued to occupy the premises and the employer withheld his provident fund dues for which the Commissioner of Provident Fund on 19.10.1993 issued a notice to defendant No. 1. At that juncture, the defendant No. 1 filed writ petition No. 2134 of 1993 before the High Court against the Regional Provident Fund Commissioner and the defendant No. 2 for settlement of dues of the

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defendant No. 2 and for handing over vacant possession of the premises. The defendant No. 1 also filed a criminal complaint under Section 630 of the Companies Act, 1956 which was dismissed for non-prosecution. These asseverations were made to demolish the ground of subletting as asserted by the plaintiff and, eventually, the dismissal of the suit was sought.

6. The defendant No. 2 filed his separate written statement stating, inter alia, that he was not concerned with flat No. 204 and garage No. 8 and he was a statutory tenant in respect of flat No. 201 and he had been in long continuous use and occupation of the suit premises, i.e., flat No. 201 and garage No. 7. It was his further stand that he was not unlawfully occupying the suit premises because he was allowed to use the suit premises as an employee of the defendant No. 1 and hence, he was occupying the part of the suit premises as a lawful sub-tenant with the consent and knowledge of the plaintiff.

7. The trial Judge initially framed the following issues: -

"(1) Whether the plaintiffs prove that the suit premises have not been used by the defendants without reasonable cause for the purpose for which they were let for a continuous period of 6 months immediately preceding the date of the suit?

(2) Whether the plaintiffs prove that they required the suit premises reasonably and bonafide for their own use and occupation?

(3) To whom greater hardship would be caused by passing the decree than by refusing to pass it?

(4) Whether the plaintiffs are entitled to recover the possession of the suit premises from the defendants?

(5) What decree, order and costs?"

And thereafter framed the following additional issue:-

"Do plaintiffs prove that the defendant No. 1 unlawfully sub-let the part of the suit premises to defendant no. 2?"

8. On consideration of the evidence brought on record the Small Causes court came to hold that the plaintiff had failed to prove that it required the suit premises reasonably and bona fide for his use and occupation and also it had not been proven that greater hardship would be caused to the plaintiff. Accordingly, the issue Nos. 2 and 3 were answered in the negative. As far as issue No. 1 was concerned, i.e. non-user for

a period of six months for the purpose it was let out which is a ground under Section 13(1)(k) of the Bombay Rent Act, 1947 (for short "the Act"), the learned trial Judge came to hold that the plea of non-user in respect of flat No. 204 was not established but the said plea had been proven as far as flat No. 201 was concerned but, regard being had to the language used in the provision enshrined under Section 13(1)(k) of the Act to the effect that when a part of the tenanted premises was not in use of the tenant, the said provision would not be applicable and, accordingly, he answered the said issue against the plaintiff. While dealing with the additional issue the learned trial Judge referred to Section 13(1)(e) of the Act and came to hold that no case of unlawful subletting had been made out in respect of flat No. 204 and one garage, but, as far as flat No. 201 and another garage are concerned, plea of subletting stood established. To arrive at the same conclusion he took note of the fact that the use and occupation of defendant No. 2 on the said part of the suit

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premises before 12.2.1989 was on the basis of agreement Exh. 5A which showed that the defendant No. 2 was in use and occupation of flat No. 201 and garage No. 7 as licencee of his employer-defendant No.1 and thereafter from 12.2.1989 on ceasing to be in service of the defendant No. 1, the use and occupation of defendant No.2 in respect of the said premises could neither be considered as legal nor could it be protected under any provision of law. Thereafter, he considered the rival submissions and referred to clause 13 of the agreement dated 11.5.1982, Exh. 5A, the factum of resignation by the defendant No. 2 and acceptance thereof by the defendant No. 1, the liability on the part of defendant No. 1 to take appropriate legal steps to evict the defendant No. 2 from the said part of the suit premises within a reasonable time, the silence maintained by the defendant No. 1, the dismissal of the criminal proceeding instituted under Section 630 of the Companies Act for non-prosecution and filing of another criminal proceeding only in 2003, the use

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and occupation of the defendant No. 2 at the behest of the defendant No.1, the retention of provident fund by the defendant No. 1 of the defendant No. 2, the stand of the defendant No. 2 that he was in lawful occupation as a sub-tenant, the admission of the sole witness of the defendant No.1 to the effect that the defendant No.2 was in possession as a sub-tenant, and ultimately came to hold that the plaintiff had been able to establish that the defendant No. 1 had unlawfully sublet a part of the suit premises, i.e., flat No. 201 and garage No. 7 and, accordingly, directed that the defendant Nos. 1 and 2 jointly and severally to deliver the vacant possession of the suit premises, i.e., flat Nos. 201 and 204 along with garage Nos. 7 and 8.

9. On an appeal being preferred the Division Bench of the appellate court basically posed two questions, namely, (i) whether the suit premises, more particularly, flat No. 201 was illegally sublet by the defendant No. 1 to the defendant No. 2; and (ii) whether the flat Nos. 201 and 204 were not used for

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the purpose for which they were let out for more than 6 months without sufficient reason.

10. The appellate court answered the question No. 2 in the negative. As far as question No. 1 is concerned, the appellate court took note of the admission of the witness of the defendant No. 1, the inaction on the part of the plaintiff to take steps for eviction against defendant No.2 and proceeded to deal with the contours of Section 13(1)(e) of the Act and in that context opined thus: -

> "It covers different aspects under the heading of subletting, it is not mere subletting, it includes assignment or creating third party interest. Non user of the premises in possession of defendant No.2 by the defendant No. 1 is clear. Defendant No. 2 already found to be not in service after his resignation. With a gap of about three or four years, litigation is started by the defendant No. 1 that too on the count of arrears of provident fund. No substantial suit for seeking possession was filed immediately and act continued on that day. Aspect of subletting has its own importance. We find evidence of defendant No.1's witness is clear in itself. Ld. Trial Court arrived at the conclusion that this aspect attracts section 13(1)(e) of Rent Act. We find said aspect required to be accepted."

11. Being of this opinion, it affirmed the view expressed by the learned trial Judge and upheld the judgment and decree passed against the defendants.

12. The non-success compelled the defendant No. 1 to invoke the civil revisional jurisdiction of the High Court. The learned single Judge referred to the filing of the writ petition with regard to the provident fund dues, appeal by way of special leave preferred by the defendant No. 1 and the ultimate settlement arrived at between the two defendants on 4.4.2007, the stand of the defendant No. 1 that there was no consensus between it and the defendant No. 2 allowing to occupy the premises after he ceased to be in Company's employment and later to initiate action to evict him, and thereafter referred to the decisions in ***Bharat Sales Ltd.* v. *Life Insurance Corporation of India*[1], *Joginder Singh Sodhi* v. *Amar Kaur*[2]** and ***Associated Hotels of India Ltd.* v. *S.B. Sardar Ranjit Singh*[3]** and took note of certain facts, namely, (i) defendant No. 2 was

[1] (1998) 3 SCC 1
[2] (2005) 1 SCC 31
[3] (1968) 2 SCR 548

inducted as a licencee under a licence agreement which was produced before the Courts; (ii) after cessation of his employment defendant No. 2 continued to occupy the premises; (iii) applicant had filed a suit for recovery of overstayal charges and, eventually, was allowed to recover a sum of Rs.4,17,000/- in terms of order of the Court dated 15.3.2007, in Civil Appeal No. 2425 of 2007; (iv) applicant had vacated the premises on 4.4.2007 in terms of the settlement; and (v) applicant was a sick company and not in a position to receive any clandestine payment and concluded thus: -

> "These facts are so glaring, as are the attempts of applicant to get rid of respondent No. 2 that it would be inconsistent with any clandestine agreement of sub-letting. True finding of facts by the courts below may be respected. But the conclusions drawn about a jural relationship was thoroughly unwarranted and runs in conflict with the very requirement of a consensus. Therefore, the decree of eviction on the ground of sub-letting passed by the trial court and maintained upon appeal by the appellate bench cannot at all be sustained."

13. Criticizing the judgment and order passed by the learned single Judge, learned senior counsel for the appellant submitted that though the defendant No. 2,

the employee, retired from service, yet the defendant No. 1, employer, did not take any steps for a period of more than four years from February, 1989 till October, 1993 and allowed the complaint filed under Section 630 of the Companies Act to be dismissed for non-prosecution and was constrained to prefer the writ petition challenging the direction of the Regional Provident Fund Commissioner only when it faced a statutory consequence and these circumstances go a long way to establish its conduct of tacit acceptance of the position of defendant No. 2 as a sub-tenant. He has also highlighted that the defendant No. 1 filed the second complaint under Section 630 of the Companies Act after a span of seven years and filed the summary suit under Section 37, CPC only for recovery of occupation charges and not for eviction after fourteen years of the resignation of the defendant No.2 from service of the defendant No.1 which ultimately resulted in a settlement before this Court, and these aspects, considered cumulatively, do clearly show that in

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effect the defendant No. 1, tenant, had sublet the premises in question and the High Court has fallen into grave error in overturning the finding based on legitimate inferences in exercise of revisional jurisdiction which is a limited one. It is his further submission that the finding recorded by the learned trial Judge and concurrence given to the same in appeal establish two aspects, namely, the defendant No. 2 was allowed to remain in exclusive use and occupation of the premises; and that there was involvement of consideration inasmuch as the employer withheld the provident fund to appropriate the same towards the occupational charges and the arrangement is obvious. The learned senior counsel would also contend that the sole witness of defendant No. 1 has categorically admitted that defendant No. 2 is an unlawful sub-tenant and after such an admission any stand to the contrary has to be treated as paving the path of tergiversation. He has also laid immense emphasis on the fact that the defendant No. 2 in his written statement has clearly

admitted that he was a sub-tenant with the consent of the landlord, but the factum of consent has not been proven.

14. Mr. Ganesh, learned senior counsel, per contra, in support of the decision of the High Court would contend that necessary ingredients of subletting have not been fulfilled and when the reasonings ascribed by the trial court and the appellate court are absolutely on the basis of perverse consideration of the materials brought on record, it was obligatory on the part of the High Court to rectify the same in supervisory jurisdiction and that having been done the impugned order is absolutely flawless and totally infallible. It is put forth by him that reliance on some evidence and the stand and stance of the defendant No. 2 who had an axe to grind against the defendant No. 1 and further had an ambitious motive to get the flat from the plaintiff on ownership basis would not establish the plea of subletting. It is further contended that the defendant No. 1 had taken appropriate steps at the relevant time to prosecute

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the defendant No. 2 under various laws and hence, it is inapposite to say that there was a tacit consent allowing the employee to occupy the premises. In any case, submits Mr. Ganesh, that withholding of provident fund dues or settlement as regards the same before this Court would not make out a case of subletting as proponed by the plaintiff-appellant.

15. To appreciate the revalised submissions raised at the Bar it is first necessary to have a survey of authorities of this Court which state the position of law as to how subletting of a premises alleged by a landlord are to be established.

16. In ***Smt. Rajbir Kaur and another* v. *M/s. S. Chokesiri and Co.***[4], after referring to the decision in ***Dipak Banerjee* v. *Smt. Lilabati Chakraborty***[5] and other decisions the Court opined that if exclusive possession is established, and the version of the respondent as to the particulars and the incidents of the transaction is found acceptable in the particular facts and circumstances of the case, it may not be

[4] (1989) 1 SCC 19
[5] (1987) 4 SCC 161

impermissible for the court to draw an inference that the transaction was entered into with monetary consideration in mind. It has been further observed that such transactions of subletting in the guise of licences are in their very nature, clandestine arrangements between the tenant and the subtenant and there cannot be direct evidence got and it is not, unoften, a matter for legitimate inference. Dealing with the issue of burden it held that: -

> "The burden of making good a case of subletting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial."

17. In this context, reference to a two-Judge Bench decision in ***Bhairab Chandra Nandan* v. *Ranadhir Chandra Dutta***[6] would be apposite. In the said case the tenant had permanently shifted his residence elsewhere leaving the rooms completely to his

[6] (1988) 1 SCC 383

brother for his occupation without obtaining the landlord's permission. In that context, the Court observed thus: -

> "**5.** Now coming to the question of sub-letting, once again we find that the courts below had adequate material to conclude that the respondent had sub-let the premises, albeit to his own brother and quit the place and the sub-letting was without the consent of the appellant. Admittedly, the respondent was living elsewhere and it is his brother Manadhir who was in occupation of the rooms taken on lease by the respondent. The High Court has taken the view that because Manadhir is the brother of the respondent, he will only be a licensee and not a sub-tenant. There is absolutely no warrant for this reasoning. It is not as if the respondent is still occupying the rooms and he has permitted his brother also to reside with him in the rooms. On the contrary, the respondent has permanently shifted his residence to another place and left the rooms completely to his brother for his occupation without obtaining the consent of the appellant. There is therefore no question of the respondent's brother being only a licensee and not a sub-tenant."

18. In ***M/s. Shalimar Tar Products Ltd.* v. *H.C. Sharma and others***[7], while dealing with parting of legal possession, the two-Judge Bench observed that there is no dispute in the legal proposition that there must be parting of the legal possession. Parting to

[7] (1988) 1 SCC 70

the legal possession means possession with the right to include and also right to exclude others.

19. In ***United Bank of India* v. *Cooks and Kelvey Properties (P) Limited***[8] the question arose whether the appellant-Bank had sublet the premises to the union. This Court set aside the order of eviction on the ground that : -

> "....though the appellant had inducted the trade union into the premises for carrying on the trade union activities, the bank has not received any monetary consideration from the trade union, which was permitted to use and enjoy it for its trade union activities. It is elicited in the cross-examination of the President of the trade union that the bank had retained its power to call upon the union to vacate the premises at any time and they had undertaken to vacate the premises. It is also elicited in the cross-examination that the bank has been maintaining the premises at its own expenses and also paying the electricity charges consumed by the trade union for using the demised premises. Under these circumstances, the inference that could be drawn is that the appellant had retained its legal control of the possession and let the trade union to occupy the premises for its trade union activities. Therefore, the only conclusion that could be reached is that though exclusive possession of the demised premises was given to the trade union, the possession must be deemed to be constructive possession held by it on behalf of the bank for using the premises for trade union

[8] (1994) 5 SCC 9

activities so long as the union used the premises for trade union activities. The bank retains its control over the trade union whose membership is only confined to the employees of the bank. Under these circumstances, the inevitable conclusion is, that there is no transfer of right to enjoy the premises by the trade union exclusively, for consideration."

20. In this context we may fruitfully refer to the decision in ***Joginder Singh Sodhi*** (supra) wherein the Court, dealing with the concept of subletting, has observed that to establish a plea of subletting two ingredients, namely, parting with possession and monetary consideration, therefor have to be established. In the said case reliance was placed on ***Shama Prashant Raje v. Ganpatrao***[9] and ***Smt. Rajbir Kaur*** (supra). The Court also extensively referred to the principle stated in ***Bharat Sales Ltd.*** (supra) wherein it has been observed that it would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Though payment of rent, undoubtedly, is an essential element of lease or sub-lease, yet it may be paid in

[9] (2000) 7 SCC 522

cash or in kind or may have been paid or promised to be paid, or it may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. The Court further observed that since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.

21. In this regard reference to ***Celina Coelho Pereira (Ms) and others* v. *Ulhas Mahabaleshwar Kholkar and others***[10] would be pertinent. In the said case a two-Judge Bench, after referring to number of authorities and the rent legislation, summarized the legal position relating to issue of sub-letting or creation of sub-tenancy. The two

[10] (2010) 1 SCC 217

aspects which are of relevance to the present case are:

> "(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established. (one parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.
>
> (ii), (iii) & (iv) .....
>
> (v) Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises."

22. In ***Vinaykishore Punamchand Mundhada and another* v. *Shri Bhumi Kalpataru and others***[11] it has been held that it is well settled that sub-tenancy or sub-letting comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the landlord. In all such cases, invariably the

[11] (2010) 9 SCC 129

landlord is kept out of the scene rather, such arrangement whereby and whereunder the possession is parted away by the tenant is always clandestine and such arrangements takes place behind the back of the landlord. It is the actual physical and exclusive possession of the newly inducted person, instead of the tenant, which is material and it is that factor which reveals to the landlord and that the tenant has put some other person into possession of the tenanted property. It has been further observed that it would not be possible to establish by direct evidence as to whether the person inducted into possession by the tenant had paid monetary consideration to the tenant and such an arrangement cannot be proved by affirmative evidence and in such circumstances the court is required to draw its own inference upon the facts of the case proved at the enquiry.

23. We have referred to the aforesaid decisions only to reaffirm the proposition that the Court under certain circumstances can draw its own inference on the

basis of materials brought at the trial to arrive at the conclusion that there has been parting with the legal possession and acceptance of monetary consideration either in cash or in kind or having some kind of arrangement. The aforesaid authorities make it further spectacularly clear that the transaction of subletting can be proved by legitimate inference though the burden is on the person seeking eviction. The materials brought out in evidence can be gathered together for arriving at the conclusion that a plea of subletting is established. The constructive possession of the tenant by retention of control like in ***Cooks and Kelvey Properties (P) Limited*** (supra) would not make it parting with possession as it has to be parting with legal possession. Sometimes emphasis has been laid on the fact that the sub-tenancy is created in a clandestine manner and there may not be direct proof on the part of a landlord to prove it but definitely it can bring materials on record from which such inference can be drawn.

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24. Coming to the case at hand, on a studied scrutiny of the evidence it is quite vivid that an agreement was entered into by the landlord and the tenant in respect of the premises with the stipulation that it would be used only for providing the residential accommodation of the executive staff and not for any other purpose. It is not in dispute that the defendant No. 2 was a member of the executive and he was provided the premises as a part of the amenities towards his perquisites. As the company sustained loss and was declared sick under SICA, the defendant No. 2 resigned from his post on 11.1.1989 and the defendant No. 1 accepted the same. As is evincible, the plaintiff had terminated the tenancy on 19.1.1989. Submission of Mr. Sundaram, learned senior counsel, is that though the defendant No. 2 resigned from service and there was termination of tenancy, yet the defendant chose not to take any steps for evicting the defendant No. 2 from the premises in question. He has also highlighted on the factum that the application under Section 630 of the

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Companies Act, 1956 for seeking possession of the premises was filed after the notice for eviction was issued and the same was allowed to be dismissed for non-prosecution. It has also come out in evidence that only after a proceeding was initiated by the Regional Provident Fund Commissioner, the defendant No. 1 filed the writ petition and the controversy ended by way of settlement before this Court in an appeal. The summary suit was filed only for recovery of occupational charges after a span of 14 years wherein a decree was obtained. That apart, learned senior counsel has drawn our attention to the stand and stance put forth by the defendant No. 2 claiming himself as a sub-tenant. He has also, as has been stated earlier, referred to the admission of the witness cited by the defendant No. 1. It is apt to note here that from the aforesaid circumstances the learned trial Judge as well as the appellate court has drawn inferences to come to the conclusion that the defendant No. 2 was an unlawful sub-tenant thereby attracting the frown of Section 13(1)(e) of the Act

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justifying the eviction. Mr. Ganesh, learned senior counsel, submitted that mere procrastination on the part of the defendant No. 1 to take steps cannot be treated to have given rise to the legitimate inference to come to a conclusion that there was sub-letting in view of the authorities of this Court. He has also drawn inspiration from some parts of the assertions made by the defendant No. 2 in the written statement. To bolster the stand, he has pointed out that the defendant No.2 has clearly admitted that his possession was as sub-tenant as his entry was legal and further he had claimed that he had entered into negotiation with the plaintiff to become a tenant and thereafter to acquire ownership.

25. The facts being admitted, it really requires whether the High Court was justified in unsettling the conclusion arrived at by the courts below by taking note of certain factors into consideration. As we have stated earlier, the learned trial Judge has applied the principle of legitimate inference which has been given the stamp of approval by the learned appellate

Judge. The basic question that emerges for consideration is whether in the obtaining factual matrix the principle of legitimate inference could have been invoked to come to a conclusion that the defendant No. 2 had been inducted as a sub-tenant. It is settled in law that the requisite conditions for establishing the factum of sub-letting are – parting of legal possession, and availing of monetary consideration which can be in cash or kind and which fact may not be required to be directly proven by the landlord in all circumstances. As is perceptible, the defendant No. 2 was given possession by the defendant No.1 as an executive of the company. It was made available to him under the conditions of service and such provision was in consonance with the agreement entered into by the landlord and the tenant, i.e., the plaintiff and the defendant No.1. Submission of the learned senior counsel for the appellant, as is clear, is founded on inference made by the learned trial Judge that the provident fund, gratuity and other dues of the defendant No. 2 were

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withheld in lieu of allowing the defendant No. 2 for such occupation. The aforesaid foundation needs to be tested. For the said purpose it is essential to refer to the stand put forth in the written statement by the defendant No. 2 which has been emphatically referred to by Mr. Sundaram: -

> "This defendant submits that this defendant is occupying the suit premises as a lawful sub-tenant, sub tenancy having been created in favour of this Defendant with the knowledge and consent of the plaintiffs."

Thereafter, the stand of the defendant No. 2 is as follows: -

> "In February, 1988, there was a lock-out in defendant No. 1 company. The financial position of defendant No. 1 deteriorated. The defendant No. 1 was not even able to fulfill their minimum and urgent financial obligations and commitments. Since there was no scope of future progress with the defendant No. 1, this defendant resigned from the employment of Defendant No. 1 in January, 1989 on the understanding that he will continue to occupy the flat No. 201 and Garage No. 7 as Defendant No. 1 had no more use for the same and also the dues were still not settled. The defendant No. 1 was not even able to pay this defendant's dues like Provident Fund, Gratuity, Leave Salary etc. The defendant No. 1 was not even in a position to pay rent in respect of the suit premises as also other outgoings in respect of the suit premises as also other outgoings incurred by the Marlow Residents Association. At the request of the Defendant No.1, this

defendant continued to use and occupy the suit premises."

Mr. Ganesh, learned senior counsel has also drawn immense inspiration from the written statement. The relevant part on which emphasis is put is as follows: -

> "This defendant thereafter approached the Plaintiffs' office to tender the rent in respect of part of suit premises. However, this defendant was told and assured by the plaintiffs that as soon as the plaintiffs would be able to settle with the Defendant No.1, they would accept the entire arrears of rent proportionately, i.e. rent of Flat No. 201 and Garage No. 7 from this defendant. Till 1994 and even till date, neither the plaintiffs nor the defendant no.2 has settled the accounts to enable this defendant to pay the rent in respect of the suit premises to the plaintiffs."
>
> xxx xxx xxx
>
> The defendant No. 1 has been declared as a sick unit by BIFR. The Defendant No. 1 is now acting in collusion with the Plaintiffs. The plaintiffs and the defendant No. 1 are acting in collusion and falsely denying rights of this defendant in respect of Flat No. 201. This defendant is ready and willing to pay the rent in respect of the suit premises to the Plaintiffs.
>
> The residents of Marlow Building formed Marlow Residents' Welfare Fund. This defendant has also contributed towards the said Welfare Fund since its inception and continues to contribute like any other member including the Plaintiffs who is also a member. The said Welfare Fund has also carried out major repairs of the building. This defendant has contributed his share towards major repair of the building. These facts are known to the plaintiffs."

26. On a close perusal of the assertions made by the defendant No. 2 it is luminous that he was allowed to occupy the premises as an executive by the company and thereafter as his dues could not be paid to him, he remained in occupation and also tried to become the owner of the premises. True it is, the defendant No. 1 did not initiate action at an early stage but in 1993 when the Provident Fund Commissioner made a demand, it moved the writ court and ultimately the matter was settled before this Court. The terms of the settlement in CA No. 1425 of 2007 are reproduced hereinbelow: -

> "(i) The respondent shall pay to the appellant a sum of Rs. 3,24,000/- (Three Lakhs and Twenty Four Thousand only) in full and final settlement of the amount payable by the respondent for overstaying in the premises in question.
>
> (ii) A sum of Rs.4,17,000 (Rupees Four Lakhs and Seventeen Thousand only) has been deposited by the appellant in the High Court of Bombay in Writ Petition No. 2134/1993. The said amount of Rs.4,17,000/- together with interest that may have accrued thereon, after deducting the amount of Rs. 3,24,000/- shall be paid to the respondent. The sum of Rs.3,23,000/- shall be paid to the appellant.

(iii) The respondent shall handover vacant possession of the premises in question to the appellant on a date and time to be fixed by the senior Prothonotary of the High Court of Bombay in the presence of a representative of the Senior Prothonotary who shall record a memorandum signed by the respondent and a representative of the appellant. The possession shall be handed over by the respondent to the appellant within a period of three weeks from today. The amount payable to the respondent shall be handed over to him forthwith, or soon after the possession of the premises in question is handed over to the appellant.

(iv) The parties agree that Summary Suit No. 947/2004 pending before the High Court of Bombay; Complaint Case No.1195/S/2003 pending before the Metropolitan Magistrate, Dadar, Bombay which is challenged before the High Court of Bombay in Criminal Writ Petition No. 2514/2006 and Writ Petition No. 2134/1993 shall be withdrawn by moving appropriate applications by the party concerned. Two suits, namely, RAE Suit No. 45/1984 pending before the Small Causes Court, Bombay giving rise to Appeal No. 372/2005 and TE&R Suit No. 153/165 of 2001 pending before the Small Causes Court, Bombay which have been filed by the landlord of the premises in question shall continue and the appellant herein may contest the same, if so advised. So far as the respondent herein is concerned, he shall stand absolved of any liability in the said wo suits before the Small Causes Court."

27. We have referred to the written statement in extenso and the terms that have been recorded by this Court solely for the purpose of appreciating the plea whether creation of sub-tenancy by the landlord has really been established. The thrust of the matter is whether the trial court and the appellate court have correctly arrived at the conclusion of sub-letting on the foundation of legitimate inference from the facts proven. As is evincible, the defendant No. 2 was put in possession by the defendant No. 1 while he was in service. There was an agreement between the defendant No. 2 and the defendant No. 1 which has been brought on record. The agreement of tenancy between the plaintiff and the defendant No. 1 is not disputed and one of the stipulations in the agreement is that the tenant has been given the premises on lease for the purpose of occupation of its executive staff. Thus, handing over of the possession of the premises to the defendant No. 2 is in accord with the terms and conditions of the agreement entered between the landlord and the tenant and, therefore,

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the entry of the defendant No. 2 into the premises is legal. The trial court as well as the appellate court has drawn inference that after the defendant No.2, the employee, resigned from service and remained in occupation while he was not entitled to, the defendant No. 1 did not take any steps to get back the possession and the proceedings initiated under the Companies Act were dismissed for non-prosecution and at a belated stage only a suit for recovery of occupational charges was instituted. The emphasis is on the inaction on the part of the defendant No. 1 to institute a suit for eviction. Such inaction would not by itself persuade a court to come to the conclusion that the sub-letting was proved. Nothing has been brought on record by way of documentary or oral evidence to suggest that there was any kind of arrangement between the defendant No. 1 and the defendant No. 2. The written statement which has been filed by the defendant No.2, in fact, is a series of self serving assertions for his own benefit. His stand would show that non-

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payment of provident fund and gratuity and other retiral dues amounted to consideration or a kind of arrangement. That apart, he has claimed himself to become a tenant under the landlord and also had put an aspirational asseveration that he had negotiated with the landlord to purchase the property to become the owner. The High Court has noted that the tenant, defendant No.1, was a sick company under the SICA and could not have received any money in a clandestine manner. Be that as it may, withholding of retiral dues cannot be considered as a consideration or any kind of arrangement. The settlement before this Court shows that the defendant No. 2 had paid the amount for overstaying in the premises in question and the deposited amount with the High Court was required to be paid towards the dues of the defendant No. 2 after deducting overstayal charges. Mr. Sundaram, learned senior counsel for the appellant, has contended that the settlement before this Court was between the defendant No.1 and the defendant No. 2

to which the landlord was not a party and hence, it cannot have any effect on the issue of sub-letting. True it is, it is a settlement between the defendant No. 1 and defendant No.2, but it is a settlement between an employer and an erstwhile employee and, therefore, the landlord had no role. We have noted the settlement only to show that barring withholding of the retiral dues the employer had not received any thing either in cash or in kind or otherwise from the defendant No. 2 and hence, under these circumstances, it is extremely difficult to hold that the factum of sub-letting has been established.

28. At this juncture, we are obliged to deal with the submission of Mr. Sundaram, learned senior counsel for the appellant, that the High Court in exercise of its civil revisional jurisdiction could not have dislodged the concurrent findings of the courts below. We have been commended to an authority in ***Renuka Das* v. *Maya Ganguly and another***[12] wherein it has been opined that it is well settled that

[12] (2009) 9 SCC 413

the High Court, in revision, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary. There cannot be any cavil over the said proposition of law. But in the present case, as we notice, the trial court as well as the appellate court has reached their conclusions on the basis of inferences. As has been held by this Court, the issue of subletting can be established on the basis of legitimate inference drawn by a court. In ***P. John Chandy and Co. (P) Ltd.* v. *John P. Thomas***[13], while dealing with a controversy under the rent legislation arising under the Kerala Buildings (Lease and Rent Control) Act, 1965, it has been ruled that drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. We entirely agree with the aforesaid view. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at

[13] (2002) 5 SCC 90

on that basis becomes absolutely legally fallible. Therefore, it cannot be said that the High Court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the courts below. Therefore, we have no hesitation in holding that the High Court has not committed any illegality in its exercise of revisional jurisdiction under the obtaining facts and circumstances.

29. Consequently, we do not perceive any merit in this appeal and, accordingly, the same stands dismissed without any order as to costs.

.....J.
[Anil R. Dave]

.....J.
[Dipak Misra]

New Delhi;
March 28, 2014.

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