
(2003) 01 P&H CK 0249
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 317 of 1987

Kali Charan Keshan and Others	Vs	APPELLANT
Vishvanath and Another		RESPONDENT

Date of Decision : 28-01-2003

Acts Referred:

Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 13(2), 15(6)
Trusts Act, 1882 — Section 47

Citation : (2003) 134 PLR 562 : (2003) 2 RCR(Rent) 172

Hon'ble Judges : Adarsh Kumar Goel, J

Bench : Single Bench

Advocate : H.S. Giani, for the Appellant; H.N. Mehtani, for the Respondent

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—The petitioners herein namely trustees of Seth Kirorimal Charity Trust filed a petition through their attorney Ram Kumar for eviction of respondent No. 1-tenant and respondent No. 2-sub-tenant on the ground that premises were let out to the tenant who sub-let the same. The Rent Controller held that sub-letting was proved and, therefore, respondents were liable to be evicted. Order of eviction was accordingly passed. On appeal by respondent No. 1-tenant, the appellant authority, while confirming finding of the trial court on the issue of sub-letting reversed the finding of the Rent Controller about the proper form of the eviction application and held that since all trustees were not made parties, the petition was not maintainable as held by Gujarat High Court in *Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another*, .

2. Learned counsel for the petitioners-trustee submitted that the Rent Controller had rightly rejected the contention of the tenant in view of power of attorney Ex.AW4/A whereby all the trustees jointly authorised Ram Kumar as the attorney for filing eviction application. 3. Learned counsel for the tenant relied on the decision of a Full Bench of Gujarat High Court in *Atmaram* case (supra)

4. I have considered the rival submissions and perused the record of the case.

5. u/s 47 of the Indian Trust Act, 1882, a trustee cannot delegate his office unless the instrument of the trust so provides or delegation is in regular course of business or delegation is necessary or beneficiary consents to the same. In the present case, filing of eviction application was a regular course of business and all the trustees jointly authorised Ram Kumar to file the application. No prohibition for such a course being adopted was shown in the trust deed. Filing of eviction application against a tenant on the ground of sub-letting is an obvious act in the regular course of business and necessary for safe-guarding the interest of the trust-property. It could not be held that such an act was unauthorised. Learned counsel for the petitioners filed a copy of registered trust deed and referred to Clause 26 thereof which specifically authorised trustees to delegate the powers. In the circumstances of the present case, it could not be held that the suit was not maintainable. The decision relied upon by learned counsel for the respondent-tenant is distinguishable. In *United Bank of India v. Naresh Kumar and Ors.* AIR 1997 S.C. 3, it was held that procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause and substantive right should not be allowed to be defeated on account of procedural irregularity which was curable.

6. For the above reasons, this petition is allowed. Judgment and order of the appellate Court is set aside and that of the trial court is restored. Respondents are given three months time for vacating the premises and handing over peaceful possession thereof to the petitioners.