

(1973) 04 GUJ CK 0008

In the Gujarat High Court

Case No : Civil Revision Application No. 181 of 1969

Neon Motor Stores and Others

APPELLANT

Vs

Alliance Stores Trading Co. Ltd.

RESPONDENT

Date of Decision : 06-04-1973

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15(1)

Citation : AIR 1974 Guj 168 : (1974) 15 GLR 272

Hon'ble Judges : A.A. Dave, J

Bench : Single Bench

Advocate : G. Gandhi, for the Appellant; J.M. Shahu, for the Respondent

Judgement

1. The petitioners in the instant case are the original defendants while the respondents are the original plaintiffs. For the sake of convenience therefore, I will refer to the parties as plaintiffs and defendants.

2. The facts giving rise to this revision application briefly stated are as under:

One Deepakkumar Navnitlal is the owner of a building known as Deepak Chambers situated at Ahmedabad. The part of the said building as shown in the plaint Ex. 36 as given on lease to Alliance Stores Trading Company Ltd., who is the present plaintiff before us. Out of the premises which were let to it, the plaintiff- Company sub-let the shop bearing M. C. No. 679-14-15-2 to Neon Motor Stores on a monthly rent of Rs. 165/- per month. "The rest of the premises shown in the map is in the occupation of the plaintiffs. It transpires that one Navnitlal Ranchhodlal as the guardian of minor Deepakumar had filed Civil Suit No. 2659 of 1958 against the present plaintiff and Neon Motor Stores and four others on 24th July, 1958 and had prayed for a, decree for eviction on the ground that the Present plaintiff had unlawfully sublet the premises and was recovering rent in excess of the standard rent of the premises from the sub-tenants. In that suit a consent decree Ex. 48, was passed on 20th November 1961. Under the terms and conditions of the said consent decree the plaintiff of

that suit viz. the original landlord gave up all his contentions against the present plaintiff and he agreed to continue the present plaintiff .as his tenant on the same terms and conditions of the tenancy on a monthly rent of Rs. 290/- per month.

3. Thereafter, by a deed of assignment Ex. 54, dated 6th March. 1964 Neon Motor Stores assigned all its interest in business including the goodwill and the right to occupy the suit premises to M/s. Nanavaty Automobiles with effect from 16th February 1964. The present plaintiff thereupon served a notice Ex. 52, dated 9th March 1964 on Neon Motor Stores asking them to vacate the suit premises and to deliver possession thereof on 31st March 1964. A copy of the said notice was also addressed to M/s. Nanavaty Automobiles. The defendants however refused to comply with the requisition. The plaintiff therefore, filed Civil Suit No. 1877 of 1964 against the defendants-the Present petitioner on 1-5-1964. It was urged by the plaintiff that suit premises were required bona fide and reasonably for its own business; that the contract of lease between it and Neon Motor Stores contained express prohibition against the transfer of the subtenancy interest in the premises without its consent in writing; that in breach of the said term the Present petitioners Nos. 1 and 2 viz. defendants Nos. 1 and 2 had executed the document of assignment of their entire interest in the lease, incidental to the sale of their business as a going concern together with the stock in-trade and the goodwill thereof; that the said transaction was sham and collusive. The plaintiff alleged that the first defendant was a statutory tenant who had no transferable interest in the lease and, therefore, the defendants were not protected from eviction by the proviso to sub-section (1) to Section 15 of the Rent Act. The plaintiff, therefore, prayed for a decree for eviction against the defendants on the ground of bona fide and reasonable requirement, non-payment of arrears of rent and for breach of terms and conditions of tenancy by the defendants Nos. 1 and 2.

4. The defendants present petitioners resisted the suit. They contended that defendant No. 1 was not a statutory tenant and that there was no prohibition in the contract of lease against the transfer of the premises without the plaintiff's consent in writing as alleged in the plaint. They contended that the first defendant had transferred its entire interest in the lease to the third defendant on 16th February 1964; that the transfer was incidental to the sale of the business as a going concern together with the stock-in-trade and goodwill thereof; they denied that it was sham or collusive, as alleged in the plaint. They denied that the plaintiff required the suit premises bona fide and reasonably for its personal use. The third and fourth defendants contended that greater hardship would be caused by passing a decree for eviction than by refusing to pass it.

5. The trial Court held that the plaintiff did not require the premises bona fide and reasonably for occupation for its use; that greater hardship would be caused to the third defendant by passing a decree for eviction than to the plaintiff by

refusing to pass it. It also held that the first defendant was a contractual tenant and that the transfer of the interest of the sub-tenant in the premises to the third defendant was incidental to the sale of a going concern together with the stock-in-trade and goodwill thereof and that having regard to the Notification issued by the State Government under the proviso to Section 15(1) of the Rent Act, the plaintiff was not entitled to a decree for eviction. As a result of these findings, the trial Court dismissed the suit for eviction and passed a decree only for Rs. 495/- being the arrears of the rent. Being aggrieved by the said decree, the plaintiff Company Preferred an appeal before the Bench of the Small Causes Court. The learned Judges of the Bench of the Small Causes Court negatived the contention of the plaintiff that the suit premises were required bona fide and reasonably for its occupation. However, the learned Judges held that the trial Court had erred in refusing to pass a decree u/s 13(1)(e) of the Rent Act. They, therefore, decreed the suit for eviction u/s 13(1)(e) of the Rent Act. Against that decree passed by the Bench of the Small Causes Court this revision application has been preferred by the original defendants.

6. Mr. Gandhi, the learned advocate for the petitioners submitted that the learned Judges of the Bench of the Small Causes Court have clearly erred in construing the provisions of Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the Act). He submitted that admittedly, the plaintiff viz. Alliance Stores Trading Company Ltd., was the contractual tenant of the original landlord. It had continued as contractual tenant under the terms of the consent decree, Ex. 48, on the same terms and conditions of tenancy as before. As Alliance Stores Trading Company Ltd. had taken Neon Motor Stores as its tenants Prior to 1959. Neon Motor Stores would be said to be in lawful possession of the premises qua the original tenant who was their landlord. It cannot, therefore, be said that Neon Motor Stores were merely the statutory tenants of the suit premises. In other words they did not merely enjoy the protection of the Rent Act from eviction, so long as Alliance Stores Trading Company Ltd. Continued to remain as tenant of the suit premises, but their relationship inter se between the Alliance Stores Trading Co. and Neon Motor Stores would be that of a landlord and a tenant. Under the circumstances, even though Neon Motor Stores may be sub-tenant qua the original landlord, they are tenants of the head tenant viz. the present plaintiff. Thus, if Neon Motors are considered to be tenants of the present plaintiff, under proviso to Section 15(1) of the Rent Act, it would be open to them to transfer their interest in the suit-premises as specified in the Notification issued by the State Government. Mr. Gandhi therefore, urged that if under the Notification issued by the State Government, a tenant is permitted without the consent of his landlord to transfer or assign his interest in the business along with the goodwill and his interest in the suit premises, it cannot be said that the transferee became the sub-tenant and that thereby provisions of Section 15(1) of the Rent Act were violated. He urged that if there is full and complete transfer in favour of the assignee, the assignee stepped in the shoes of the original subtenant. In that case, the present

plaintiff would have no cause of action against them. He urged that so far as the Present plaintiff is concerned, Neon Motor Stores are its tenants. They are not merely status dry tenants but they are tenants under the contract. They were inducted in the suit premises under an agreement by the plaintiff. Before the tenancy could be determined by the present plaintiff they had completely assigned their interest in favour of Nanavaty Automobiles by a deed of assignment. Mr. Gandhi, therefore, urged that as they have assigned their interest it was not necessary to obtain the permission of the landlord. Under the circumstances Mr. Gandhi submitted that the decree passed by the learned Judges of the Bench of the Small -Causes Court should be set aside and the decree passed by the trial Court be restored.

7. Mr. J. M. Shah, the learned advocate for the opponent, on the other hand urged that as a result of the amendment by the Bombay Ordinance No. 11 of 1959, the possession of the sub-tenants which was considered to be unlawful became lawful from that date. But that would not mean that the sub-tenants obtained the status of contractual tenants. He, therefore, urged that Neon Motor Stores who were the sub-tenants of the suit premises, had no better status than that of a statutory tenant and a statutory tenant cannot transfer or assign any interest in favour of a third party. He, submitted that the proviso to Section 15(1) refers to the original tenant and not a sub-tenant. He therefore, urged that Neon Motor Stores had absolutely no right to assign or transfer their interest in favour of Nanavaty Automobiles, and if they do so, the head tenant-the Present plaintiff would be entitled to a decree u/s 13(1)(e) of the Rent Act. In support of his submission Mr. Shah referred to several decisions to which I will refer in due course.

8. In order to appreciate the rival contentions in their proper perspective it will be necessary to refer to the definitions of "landlord" and "tenant" as given in the Act. Section 5(3) states that

"Landlord means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant a tenant who has sub-let any premises:

9. Similarly, tenant has been defined in sub-section (11) of Section 5 of the Rent Act. It says that "tenant" means any person by whom or on whose account rent is Payable for any premises and includes

"(a) such sub-tenants and other Persons as have derived title under a tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959;

(aa) any person to whom interest in premises has been transferred under the provision to sub-section (1) of Section 15."

10. A combined reading of both these definitions of "landlord" and "tenant" will show that the term landlord would not only include a person from whom the original tenant i.e. the head tenant has taken the lease of the suit property belonging to him, but also the head tenant in respect of the sub-tenant whom the premises have been sub-let by him. In other words, the relationship of landlord and tenant would be created between the head-tenant and the sub-tenant inducted by him in the suit premises. This is clear from the definition of "landlord" which specifically includes in respect of his sub-tenant, a tenant who has sub-let any premises.

11. Similarly the definition of "tenant" includes such sub-tenants, and other persons as have derived interest under a tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 and also any person to whom interest in premises has been, transferred under the proviso to sub-section (1) of Section 15. Keeping in mind the inclusive definitions of landlord and tenant, it will be necessary to consider the respective rights of the parties in this case and their relationships inter se.

12. The facts of this case as narrated above clearly show that the suit Property belongs to one Deepakkumar. From that Deepakkumar Navnitlal the property was taken on lease by Alliance Stores Trading Company Ltd. Alliance Stores Trading Company Ltd. in turn, has sub-let the suit property to Neon Motor Stores. Thereafter, the original landlord viz. Deepakkumar Navnitlal had filed a suit against Alliance Stores Trading Company, M/s. Neon Motor Stores and others in which a consent decree was passed and Alliance Stores Trading Company was continued as tenant on the same terms and conditions of the original tenancy. This fact is very material for the purpose of deciding the respective rights of the parties in this case. There is no dispute that M/s. Neon Motor Stores were inducted in some portion of the demised premises under the same terms and conditions by sub-letting by Alliance Stores Trading Company, while the contractual relationship of landlord and tenant subsisted between Alliance Stores Trading Company and the original owner. Before filing the suit no doubt, the original owner had terminated the tenancy of Alliance Stores Trading Company and Neon Motor Stores by serving notice on them. But in the suit filed for eviction by the owner, there was a compromise under which all the disputes between the parties were waived by the landlord and Alliance Stores Trading Company was continued as tenant on the same terms and conditions of the original lease. The effect of this consent decree is that the notice which was given by the landlord terminating the tenancy of Alliance Stores Trading Company no longer remained operative and Alliance Company continued as contractual tenant of the original owner. Mr. Shah, however, submitted that so far as Neon Motor Stores are concerned, they cannot be said to be contractual tenants and they being merely subtenants, they were deemed to the statutory

tenants at the most for the purpose of the Rent Control Act. They get the protection of the Rent Control Act from being evicted by the original landlord in view of the amendment in the Rent Control Act. But they cannot be said to be contractual tenants and, therefore, they had no authority to transfer their interest to other persons. Mr. Shah urged that a sub-tenant who was afforded protection under the Rent Control Act, could not claim any interest in the demised premises and the only right which a sub-tenant inducted before 1959 in the suit premises without the consent of the landlord would get was that he could not be evicted from the premises so long as he continues to pay the rent of the premises and observes other terms of tenancy. Mr. Shah, therefore, urged that Neon Motor Stores having no interest in the leasehold could not assign their interest to M/s. Nanavaty Automobiles and if they have unlawfully transferred the said interest, it would be open to the head tenant to get a decree for eviction against Neon Motor Stores as well as their assignee M/s. Nanavaty Automobiles. It is difficult to agree with the submission made by Mr. Shah I have already observed earlier that relationship existing between the Alliance Stores Trading Company and Neon Motor Stores would be that of a landlord and tenant inter se. Neon Motor Stores may be subtenant qua the original landlord. But so far as Alliance Stores Trading Company viz. the head-tenant is concerned. Neon Motor Stores would be direct tenant of Alliance Stores Trading Company. Admittedly, Alliance Stores Trading Company was a contractual tenant of the original landlord. Thus, it was open to the Alliance Stores Trading Company to transfer its interest in the lease-hold property to a sub-tenant. That sub-tenant would be a tenant in relation to the head tenant. It is not disputed that Neon Motor Stores were inducted into a portion of the suit premises by Alliance Stores Trading Company prior to 1959. It is true that before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, there was total prohibition on a tenant to sub-let or assign his interest in the suit "property in favour of a third person, even with the consent of the landlord. It can, therefore, be said that prior to the promulgation of the said ordinance the Possession of Neon Motor Stores can be said to be unauthorised and unlawful. However, as Neon Motor Stores had continued on the suit premises at the time the said ordinance came into force, their possession which statutory tenants at the most for the purpose of the Rent Control Act. They get the protection of the Rent Control Act from being evicted by the original landlord in view of the amendment in the Rent Control Act. But they cannot be said to be contractual tenants and, therefore, they had no authority to transfer their interest to other persons. Mr. Shah urged that a sub-tenant who was afforded protection under the Rent Control Act could not claim any interest in the demised premises and the only right which a sub-tenant inducted before 1959 in the suit premises without the consent of the landlord would get was that he could not be evicted from the premises so long as he continues to pay the rent of the premises and observes other terms of tenancy. Mr. Shah, therefore, urged that Neon Motor Stores having no interest in the lease-hold could not assign their interest to M/s. Nanavaty Automobiles and if they have unlawfully transferred the

said interest, it would be open to the head-tenant to get a decree for eviction against Neon Motor Stores as well as their assignee M/s. Nanavaty Automobiles. It is difficult to agree with the submission made by Mr. Shah. I have already observed earlier that relationship existing between the Alliance Stores Trading Company and Neon Motor Stores would be that of a landlord and tenant inter se. Neon Motor Stores may be subtenant qua the original landlord. But so far as Alliance Stores Trading Company -was unauthorised and --unlawful became authorised, and lawful and as defined in the definition of tenant, such sub-tenants and other persons as have derived title under a tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance. 1959 got the status of a tenant. Mr. Shah, however, urged that so far as the original landlord is concerned there was no privity of contract between him and the sub-tenant Neon Motor Stores. Neon Motor Stores did not possess any right or interest in the demised property, whatsoever. They were merely protected from eviction as a result of the said ordinance. However, the said ordinance did not create any legal interest in the subtenant and therefore, such a sub-tenant cannot transfer his interest to a third, -person which he did not possess. If Neon Motor Stores, who were sub-lessees, illegally transferred their interest in favour of Nanavaty Automobiles, the head-tenant viz. Alliance Stores Trading Company would be entitled to, recover possession from them. I am unable to agree. It seems that Mr. Shah is under some misapprehension about the right which the original landlord may possess in relation to his tenant or a sub-tenant and the right which is created in favour of sub-tenant qua the tenant who inducted him into the suit premises. I have already made a reference to the definition of the landlord earlier and that definition specifically includes a tenant qua the sub-tenant. Therefore, if the present case is viewed in this background it will be very clear that Alliance Stores Trading Company is the landlord of Neon Motor Stores. Neon Motor Stores were the contractual tenants of the Alliance Stores Trading Company. It cannot therefore be said that Neon Motor Stores did not possess any legal interest in the suit property as canvassed by Mr. Shah.

13. Mr. Shah invited my attention to the case of Balkrishna Maruti v. Saidanna Sayanna, (1963) 65 Bom LR 149, wherein it was observed that Section 15(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which validates under specified conditions transfers and assignments by tenants does not legalise every transfer and assignment effected by the sub-tenants or by transferees and assignees of subtenants.

14. In order to appreciate the ratio of that case it is necessary to refer to the facts of that case. There the property which was the subject-matter of the dispute formerly belonged to one Ganpat, but on his death it devolved upon the present plaintiff as a legatee and executor under the Will of Ganpat. The plaintiff filed a suit against six persons for possession of the premises in their occupation on the ground that defendant No. 1 who was the original tenant had sub-let the premises to defend-ant No. 2 that defendant No. 2 had sub-let the property to

defendant No. 3, that defendant No. 3 had, in turn, sub-let the Property to defendant No. 5 and that the several defendants were profiteering by charging exorbitant rent to one another. The plaintiff also sought possession on the ground that the premises were required by him bona fide for his personal use and occupation.

15. It will thus be seen that in the Bombay case the suit was filed by the original owner of the property against the assignee or the assignee of a subtenant. Thus, the ratio of that case could not govern the facts of the instant case. In the instant case as already observed earlier, the sub-tenant viz. Neon Motor Stores were tenants in relation to the head-tenant - Alliance Stores Trading Company. Alliance Stores Trading Company was the contractual tenant on the date it sub-let some portion of the -premises to Neon Motor Stores. Thus, it had transferred its legal interest in favour of Neon Motor Stores. It cannot, therefore, be said that Neon Motor Stores had no right whatsoever to transfer or assign whatever interest they possess in the demised premises. Even Chandrachud J. who decided the Bombay case has observed that- "In the -present case, if defendant No. 5 were to claim through defendant No. 1 who was the original tenant, it may have been possible to accept the contention of Mr. Marathe that a sub-tenancy in favour of defendant No. 5 must be held to be valid as it has been legalised by the ordinance. But what is -the -right which defendant -No- :5 claims in the present case? Admittedly, he does not claim under the tenant, viz. defendant No. 1, but he claims under defendant No. 3 who in turn claims under defendant No. 2, who, in turn, is the subtenant of defendant No. 1. In one word, therefore, defendant No. 5 claims under a transferee of the sub-tenant of a tenant. It seems to me difficult to take the view that the intention of the legislature was not only to validate transfers and assignments by tenants but also to legalise every transfer and assignment effected by the sub-tenants or by transferees and assignees of sub-tenants.

16. It may be borne in mind that in the instant case the suit has not been filed by the original owner. The suit has been filed by the head-tenant against the sub-tenants in respect of the premises in their possession. It is, therefore, difficult to agree with Mr. Shah who relied on the Bombay case that the sub-tenants had no legal interest in the property. In my opinion, the sub-tenants were tenants qua the head-tenant and legal interest had vested in them so far as the portion of the demised premises was concerned. Therefore the head-tenant could not come before the Court and say that the sub-tenants, who were inducted by it in the premises while it was the contractual tenant, had no authority to assign their interest in favour of a third person.

17. Similarly, the case of N.M. Nayak Vs. Chhotalal Hari Ram and Others, , relied upon by Mr. Shah will not help him. In that case it was observed that "A person seeking to claim protection afforded by provisions contained in the notification issued by the State Government under the proviso to Section 15(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, must establish

that his transferor was a "lessee" of the premises transferred or assigned. In other words the only persons who are entitled to transfer or assign the interest in the premises must satisfy the character of a "lessee" as defined in Section 105 of the Transfer of Property Act, 1882, namely, the transferee of an interest in immovable property. The assignee of a lessee cannot be termed as "lessee" as defined by the Transfer of Property Act."

It was further observed that " Section 15(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, validates the sub-letting, transfer and assignment by tenants and not further sub-letting or further derivative transfer or assignment by such sub-lessees transferees or assignees. The protection conferred by the Ordinance referred to in the section can be availed of by only those persons who can be described as sub-lessees, assignees or transferees from the contractual tenant."

18. In my opinion, this case does not in any way support the point canvassed by Mr. Shah before me. In the instant case, the sub-tenants Neon Motor Stores were inducted in the suit premises by Alliance Stores Trading Company Ltd while the relationship of contractual tenant between the Alliance Stores Trading Company Ltd., and the original landlord subsisted. As Neon Motor Stores were inducted prior to 1959, their possession which was unauthorised and unlawful prior to 1959 became authorised and lawful and they are protected under the provisions of the Rent Control Act from being evicted. In fact, after the amendment in 1959, M/s. Neon Motor Stores got the status of sub-tenant qua headtenant. The relationship of landlord and tenant came into existence between Alliance Stores Trading Company Ltd., and M/s. Neon Motor Stores. Therefore, M/s. Neon Motor Stores can be said to be lessee u/s 105 of the Transfer of Property Act so far as Alliance Stores Trading Company Ltd. is concerned. If that is so, then it cannot be said that M/s. Neon Motor Stores had no legal interest capable of being assigned u/s 105 of the Transfer of Property Act.

19. This High Court had an occasion to consider the question of relationship between the tenant and sub-tenant under the Rent Control Act in the case of Glamour Cleaners v. Chandrakant Chhotalal Gandhi, (1962) 3 Guj LR 941, wherein P. N. Bhagwati J. (as he then was) observed as under:

"The meaning of the word "sub-let" being to carve out a subordinate interest out of the interest held by contractual tenant, the tenant in order to fall within the definition of landlord contained in Section 5(3) qua his sub-tenant, must be, a contractual tenant, for he cannot be a landlord within the meaning of that definition unless he has sub-let the -premises to the sub-tenant which he cannot do unless he is a contractual tenant."

20. In the instant case, there is no dispute that when Alliance Stores Trading Company Ltd. inducted M/s. Neon Motor Stores into the premises Alliance Stores Trading Company was the contractual tenant of the original landlord. Therefore, Alliance Stores Trading Company Ltd. had a legal right to continue M/s. Neon

Motor Stores as its sub-tenant. No doubt, after the amendment of the Act in 1959, a tenant can sub-let the premises to a sub-tenant with the consent of the landlord, but that question does not arise for my consideration for the simple reason that M/s. Neon Motor Stores entered into the premises prior to 1959. All the arguments advanced by Mr. Shah seem to be on the basis as if this suit was filed by the original landlord against the sub-tenant. So far, as the original landlord is concerned, it can be said with some justification that there was no privity of contract between the original landlord and sub-tenant. Therefore, a sub-tenant cannot claim any contractual relationship qua the original landlord. But so far as the headtenant is concerned the sub-tenant can certainly claim contractual relationship and the relationship of landlord and tenant would arise between the head-tenant and sub-tenant. Therefore, the sub-tenant would be a lessee qua the head-tenant -and he would have authority to assign his interest as per the Notification issued by the State Government.

21. Similarly the case of *Hiralal Vallabhram v. Kasturbhai Lalbhai*, (1964) 5 Guj LR 941, relied upon by Mr. Shah could not help him. In all these cases the suit was filed by the original landlord on the ground and that the sub-tenant had assigned his interest in the suit premises to the third party.

22. Similarly, the case of *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, would not take the case of the opponent any further. There it was observed by the Supreme Court as under:

"A Person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly, though in law not accurately called a statutory tenant. Such a person is not a tenant at all; he has no estate or interest in the premises occupied by him. He- has merely the protection of the statute in that he cannot be turned out so long as he pays the standard rent and permitted increases if any, and performs the other conditions of the tenancy. His right to remain in Possession after the determination of the contractual tenancy is personal."

23. With respect, I am in entire agreement with the above observations but in the instant case, it cannot be said that Alliance Stores Trading Company was not a contractual tenant. It is nobody's case that Alliance Stores Trading Company had illegally sub-let the suit premises to M/s. Neon Motor Stores. That argument cannot be available to the opponent for the simple reason that such sub-letting has been legalised by the Ordinance of 1959.

24. In this background, now it will be profitable to refer to Section 15 of the Rent Control Act. Section 15(1) of the Rent Control Act is as under:

"15(1): Notwithstanding anything contained in any law, but subject to any - contract to the contrary, it shall not be lawful after the coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein."

25. Thus under sub-section (1) of Section 15 of the Rent Control Act, a tenant would have no authority to sublet the whole or any part of the premises let to him or to assign or transfer his interest in any other manner except with the permission of the landlord. We are not concerned with this aspect because the tenant had already created sub-tenancy prior to 1959 and that sub-tenancy has been now legalised by law. The subtenant has sold off their entire interest with the stock-in-trade and, goodwill thereof and interest in the suit -premises under a deed of assignment, Ex. 54, dated 6th March, 1964. The proviso to sub-section (1) of Section 15 states that the State Government may, by notification in the Official Gazette, "Permit in any area the transfer of interest in premises held extent as may be specified in the Notification. Such a Notification was issued by the Government of Bombay under which transfer or assignment incidental to the sale of a business as a going concern together with the stock-in-trade and the goodwill thereof was permitted provided that the transfer or assignment is of the entire interest of the transferor or assignor in such leasehold premises together with the business and the stock-in-trade and goodwill thereof.

26. The deed of assignment clearly shows that M/s. Neon Motor Stores have assigned their entire interest in the leasehold premises together with their business as a going concern with the stock-in-trade and the goodwill thereof. The deed of assignment, Ex. 54 is a registered document. No Court has recorded a finding that this document was sham and bogus. A perusal of this document clearly shows that M/s. Neon Motor Stores had assigned their entire Interest in the leasehold premises together with the business as a going concern with the stock-in-trade and goodwill. Under the circumstances, M/s. Nanavaty Automobiles who became the assignees of Neon Motor Stores would have a right to continue the said business in the suit premises. I do not agree with Mr. Shah that the proviso to Section 15 was limited only to the original tenant and not to the sub-tenant. I have already sufficiently dealt with this aspect of the case. I have already observed that Alliance Stores Trading Company is a landlord qua the sub-tenant viz. M/s Neon Motor Stores. Thus, M/s. Neon Motor Stores who are the contractual tenants of Alliance Stores Trading Company could assign their interest as per the Notification issued by the State Government. In my opinion the learned Judges of the Bench of the Small Causes Court were clearly in error in holding that the assignment was unlawful and unauthorised and in passing a decree for eviction on that score.

27. In the result, the revision application succeeds. Civil Revision Application No. 181 of 1969 is allowed. The judgment and decree passed by the learned Judges of the Bench of the Small Causes Court, Ahmedabad, are hereby set aside and the judgment and decree passed by the trial Court are restored. The Opponent will pay the costs to the petitioners throughout.

28. Application allowed.