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**(2013) 04 GUJ CK 0047**

**In the Gujarat High Court**

**Case No :** Civil Revision Application No. 26 of 2013

Patel Chhaganbhai Madhubhai (Dhaduk)

APPELLANT

Vs

Modi Motilal Mohanlal

RESPONDENT

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**Date of Decision :** 03-04-2013

**Acts Referred:**

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(e), 29(2)

**Citation :** (2013) 2 GLR 1582

**Hon'ble Judges :** N.V. Anjaria, J

**Bench :** Single Bench

**Advocate :** Harshad K. Patel, for the Appellant;

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## **Judgement**

N.V. Anjaria, J.—The applicant herein is the original tenant who has filed the present Revision Application under Sec. 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter referred to as "the Rent Act" for sake of brevity). The challenge is directed against judgment and order dated 7th December, 2012 of learned Additional District Judge, Rajula, whereby he dismissed Regular Civil Appeal No. 82 of 2011 confirming the judgment and decree dated 31st December, 2010 and 4th January, 2011 respectively passed in Regular Civil Suit No. 88 of 2002 passed by the learned Principal Civil Judge, Rajula. By the said judgment and decree, the said Court of first instance directed the applicant-tenant to handover vacant and peaceful possession of the suit shop. It further directed that the tenant shall continue to pay Rs. 150/- per month as rent till the possession is handed-over. In the plaint, the landlord's case was that Shop No. 10 situated at Rajula was rented to the defendant-tenant on monthly rent of Rs. 150/-. He pleaded two-fold grounds for seeking tenant's eviction. It was the case that the tenant had sub-let and/or otherwise transferred the premises, and further that he was tenant-in-arrears, unable to vacate the suit premises the shop on those grounds. It was pleaded that the tenant had transferred or sublet the shop rented to him to third parties from time to time. According to the plaintiff, the shop was initially sub-let to one Patel Machinery

Store, thereafter, to another Patel of Jivapar, again to one Jivabhai Patel and then to Bhagyashree Saree & Matching Centre. It was thereafter sub-let to one Hareshbhai Govindram Sangtani, who was doing the business of photography therein. Before institution of the suit, notice dated 22nd March, 2002 (Exh. 26) was issued by the plaintiff-landlord terminating the tenancy. The tenant replied the said notice on 28th March, 2004.

1.1. The suit was contested by the defendant by filing written statement (Exh. 12), wherein it was inter alia concluded that the plaintiffs suit was not tenable; that the plaintiff was also engaged in the business of lending money etc.; that though the suit shop was rented to him, the custody of rent note was with the landlord; that he was not collecting the rent regularly. The tenant contended that the suit shop was in his occupation and was not given or transferred to anybody.

2. The trial Court framed issues at Exh. 14. The parties led oral and documentary evidence. The trial Court found that the ground of arrears of rent was not proved. It held that the ground of sub-letting raised by the landlord was proved on facts and the tenant was rendered exposed to eviction decree under Sec. 13(1)(e) of the Rent Act. The decree passed on the said ground came to be confirmed by the lower appellate Court.

3. Learned Advocate for the applicant-tenant submitted that the evidence on record did not prove the ingredients of Sec. 13(1)(e) of the Rent Act. He submitted that there was no evidence to show that tenant had recovered anything as consideration from the sub-tenant. According to him, the finding that the possession of the premises was handed over or transferred to a person named Haresh Sangatani was erroneous because he was not in possession but the tenant himself was in possession of the shop. He submitted that the landlord and sub-tenant had connived against the applicant and said Sangatani had given false evidence. He relied on decisions of this Court in Patel Shankarbhai Lallubhai Vs. Heirs of Deced. Somabhai Mathurbhai Patel, to submit that as held therein, the transfer of possession was required to be proved to establish act of sub-letting. Another decision of this Court in Shardaben M. Patel Heirs of Maganlal Motiram Patel Vs. Ranjitlal Manuskhilal (Deceased), was relied on for the proposition that the landlord must prove two-fold conditions, namely that exclusive possession of the premises was handed over to third person, and secondly, that it was for valuable consideration.

4. The trial Court has held that the ground of sub-letting was duly proved on evidence. On the basis of appreciation of evidence on record, it is recorded that the act of sub-letting was proved by virtue of evidence of the person who was alleged to be the sub-tenant, namely one Hareshbhai Sangtani. Said Hareshbhai was doing business of photography having a photo-studio in the said shop, according tot he case of plaintiff-landlord. In that context, it could be seen that said person had filed his own affidavit (Exh. 30) stating that the tenant had sub-let the shop to him. The trial Court noted such admission and further finding from his testimony (Exh. 38) that he was handed over the shop by the defendant-

tenant for running business of photography, and that he was paying amount of Rs. 1,000/- every month. The trial Court based on the evidence of said Hareshkumar recorded that he admitted that key of the suit premises was given to him by Chhaganbhai the tenant, and he remained in possession for twenty-three months paying the consideration of Rs. 1,000/-. He identified his signature on Exh. 30 and admitted the contents thereof. As rightly noticed by the trial Court, the aforesaid facts stated by said Mr. Sangatani on oath in Exh. 30 and Exh. 38 drew support from independent evidence of the stamp vendor who in his evidence at Exh. 51 stated the facts mentioned in the affidavit sworn before him.

4.1. The other evidence in the nature of one Upendrakumar Shukla (Exh. 51) and Bhupatrai Shantilal Desai (Exh. 50) revealed the fact about the suit shop having been transferred or assigned, as they stated in their evidence that the rent note (Exh. 29) was executed in favour of defendant before eight to nine years, but every time the shop was found to be occupied by some other person, and also that they used to see different persons other than the applicant-defendant doing business in the shop. Whenever they passed by the shop, they had noticed the same, witness Upendrakumar knew Hareshbhai Sangatani and stated further that he had come to him on 29-1-2002 for doing an affidavit. He stated that said Hareshkumar was giving one thousand rupees to the tenant Chhaganbhai Madhubhai and for twenty-three months, in all Rs. 23,000/- were given for occupation of the shop. Besides this, the trial Court took into consideration invitation card (Exh. 31) which suggested that the suit shop was once upon being occupied by and was given to third party Bhagyashree Saree Centre, who while starting its business there, had got printed the invitation card. Thus, the plea that the tenant was from time to time transferring the suit shop to another person was substantiated by the said evidence.

4.2. On the basis of aforementioned evidence brought on record, it was amply demonstrated that there was an act of sub-letting or illegal transfer. The tenant failed to dislodge the same by disproving the facts elicited in evidence by the landlord. In *Babubhai N. Patel v. Heirs of Nathabhai Marghabhai*, 1998 (2) GLH (UJ) 12, this High Court has set out the proposition of law on this score by observing (Para 12):

When the landlord claims the possession of the premises let to the tenant on the ground sub-letting, initial burden of proving unlawful sub-letting or assignment lies on him. Once the landlord shows that the third person, i.e., a stranger to the contract of tenancy is in occupation, and that the tenant himself is not in occupation of the premises, the burden of proving nature of occupancy of the third person, shifts to the tenant for the landlord is not expected to know the agreement, or agreed terms between his tenant and the occupant. He can intrinsically say from the conduct of the parties, or on the basis of exclusive possession, or independent business, payment of charges, for use and occupation, etc. The tenant having person knowledge when fails to discharge his burden by leading proper and satisfactory evidence, the Court may be justified in

drawing the inference against him.

4.3. The trial Court had before it a cluster of cogent evidence which indicated and established that the tenant had sub-let and/or otherwise transferred and assigned the suit shop and the requirements of ground under Sec. 13(1)(e) were satisfied. The prime evidence was that of the person named Hareshbhai Govindram Sangatani himself, who allegedly used the shop as sub-tenant, and in whose favour the shop was transferred. There was no circumstance shown, much less any evidence brought out on record, which could suggest even remotely and substantiate submission of learned Advocate that the landlord and said Sangtani were acting in collusion. Such a contention sought to be raised by learned Advocate remained in the realm of conjectures and surmises. All the findings of fact recorded by the trial Court were examined and tested by the appellate Court and stood the test of scrutiny.

5. Thus, both the Courts have recorded concurrent findings of fact that the sub-letting and/or transfer of the suit shop in illegal manner was established on the basis of appreciation of evidence, it was held that the suit shop was given to said named person Hareshkumar Gonvindrām Sangatani exclusively. On his own admission, he was paying one thousand rupees. The evidence showed both the elements considered essential for proving sub-letting, namely parting with exclusive possession and passing of valuable consideration were shown in the evidence from the proved facts. As far as monetary consideration is concerned, a fair indication thereof from the evidence may suffice, as it is difficult to have direct evidence in this regard. Noticeably, Sec. 13(1)(e) of the Rent Act provides that notwithstanding anything contained in the Act but subject to the provisions of Sec. 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the tenant has, since the coming into operation of this Act, lawfully sub-let the whole or part of the premises or assigned or transferred in any other manner his interest therein.

5.1. Even if the elements of exclusive possession and passing of valuable consideration are not established, decree can be passed on the ground of transfer or assignment of tenancy rights in any manner. As discussed above, in this case the ingredients of exclusive transfer of possession of premises and payment of consideration were shown to have been proved to constitute illegal transfer by way of sub-letting. Following observations in *Kansara Vrijlal Gugaldas v. Vinod Nyalchand Doshi*, 1996 (2) GLH (UJ) 1 may be noticed (Para 18):

.....It is by now well-settled that where it is found that a person other than the tenant is in exclusive possession of the premises, and carries on the business on his own account in the suit premises, and there is no other evidence to prove the nature of the occupation, the Court would be justified in holding that the tenant has sub-let, assigned, or transferred his interest in the suit premises to such other person, and this would amount to unlawful sub-letting within the meaning of Sec. 13(1)(e) of the Bombay Rent Act.

5.2. The findings in the above regard have been arrived at by both the Courts below on the basis of proper appreciation of evidence. The reading of evidence on record and the conclusions recorded were reasonable. They were in no way perverse. In *Patel Valmik Himatlal and Others Vs. Patel Mohanlal Muljibhai (Dead) Through L.Rs.*, , which was also a case of decree passed on the ground of sub-letting with concurrent findings, the Supreme Court reiterated the scope of powers of the High Court under Sec. 24(2) of the Rent Act and observed that mere fact that a different view was possible on re-appreciation of evidence cannot be a ground for High Court to substitute its own findings. In view of the foregoing discussion, no interference is warranted in the judgment and decree passed by the Courts below. The present Revision Application is devoid of merits. The same is summarily dismissed.