

Brochure

on

SUB-LETTING

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SUB-LETTING

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INTRODUCTION

(Containing gist of the Chapter)

By virtue of Section 108(j) of Transfer of Property Act (contained in chapter V dealing with leases of immovable property), in the absence of a contract to the contrary tenant is at complete liberty to sublet the whole or part of the tenanted property. However, under Rent Control Acts of almost all the States sub-letting is prohibited unless it is with the consent of the landlord, mostly in writing. Under U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 hereinafter referred to as U.P.R.C. Act (or U.P. Rent Control Act or U.P. Act no. 13 of 1972) sub-letting is prohibited [Section 25(1)] and is a ground of eviction [Section 20(2)(e)] unless it is of part of the tenanted premises and created with the permission of the landlord in writing and of District Magistrate, [Section 25 (2)].

Sub-letting (or letting) is not defined under Rent Control Acts, hence, general definition of lease given under Section 105 of Transfer of Property Act can be adopted.

By virtue of Section 107 of Transfer of Property Act, tenancy (or sub-tenancy) from month to month may be made either by registered instrument or by oral agreement (oral or written in U.P.) accompanied by delivery of possession. Accordingly, for sub-letting (as well as for letting) three things are required; agreement, delivery of possession and rent.

Under U.P. Rent Control Act if tenant allows the building or part thereof to be occupied by non-family member he is deemed to have sublet the building or the part [Section 12(1)(b) and 25 Explanation (i)]. In case of non-residential building admitting a non-family member as

partner in the business amounts to sub-letting. [Section 12(2) and 25(2) Explanation (i)]. Family member means spouse, male lineal descendants and specified parents/ grant parents, daughters/granddaughters [Section 3(g)].

Under Delhi, Rajasthan and West Bengal Rent Control Acts the words used are sub-letting, assignment or parting with the possession. In some authorities, parting with possession has been held to be distinct from sub-letting. However, in this context parting with possession is not distinct from sub-letting, it is in fact a facet of sub-letting rather a mode of proving the same. The words 'allow to occupy' used under U.P. Rent Control Act mean the same thing as 'parting with possession', the words used in the above Acts. Both denote exclusive possession of alleged sub-tenant. However, every type of presence in or permissive user of tenanted accommodation by third party does not amount to his exclusive possession.

The other two ingredients of sub-letting i.e. agreement and payment of rent are not possible to be proved by direct affirmative evidence as both take place secretly and landlord is kept in dark. Accordingly, for establishing sub-letting the only thing required to be proved is exclusive possession of alleged sub-tenant. Even the bald pleading that the property has been sub-let is sufficient and it is not necessary to plead payment of rent by sub-tenant to the tenant.

Even if sub-letting is continuing since before passing of the Rent Control Act or its applicability on the building in question, it is a ground of eviction. Discontinuance of sub-tenancy before institution of suit or other proceedings is immaterial, and tenant will be liable to eviction thereupon. If suit (or other proceedings) is instituted on some other

ground, and during pendency thereof sub-letting takes place, it may also be set forth as a ground of eviction in that very suit by amending the plaint.

1. RELEVANT PROVISIONS

T.P. Act:

Section 105:

“A lease of immovable property is a transfer of right to enjoy such property made for a certain time expressed or implied or in perpetuity, in consideration of a price paid or promised, or of money, share of crops, service or any other thing of value, to be rendered periodically on or specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”

Section 107 (first two paragraphs):

“A lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.”

In U.P. second para of Section 107 has been substituted as follows:-

“All other leases of immovable property may be made either by a registered instrument or by an agreement oral or written, accompanied by delivery of possession.”

Section 108(j):

“The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not by reason only of such transfer, cease to be subject to any of the liabilities.

Nothing in this clause shall be deemed to authorize a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;”

U.P.R.C. Act (U.P. Act No. 13 of 1972):

Section 3(g) defining family and section 12 have been quoted in synopsis 2 of the chapter Vacancy Release and Allotment.

S. 20(2)

“A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:

(a) to (d).....

(e) that the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building.

(f), (g).....

S. 21 (1) Explanation (i)

“Section 21 (1) Explanation– in the case of a residential building:-

- (i) where the tenant or any member of his family (who has been normally residing with or is wholly dependent on him) has built or has otherwise acquired in a vacant state or has got vacated after acquisition a residential building in the same city, municipality, notified area or town area, no objection by the tenant against an application under this sub-section shall be entertained;*

Note- For the purposes of this clause a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee.”

`S. 25:

“Prohibition of sub-letting – (1) No tenant shall sub-let the whole of the building under his tenancy.

(2) the tenant may, with the permission in writing of the landlord and or the District Magistrate, sub-let a part of the building.

Explanation – For the purposes of this section -

- (i) Where the tenant ceases, within the meaning of clause (b) of sub-section (1) of sub-section (2) of Section 12, to occupy the building or any part thereof, he shall be deemed to have sub-let that building or part;*
- (ii) Lodging a person in a hotel or a lodging house shall not amount to sub-letting. ”*

2. BEFORE COMMENCEMENT OF ACT AND DISCONTINUANCE:

Even if sub letting takes place before commencement of the current or old Rent Control Act, still it is a ground of eviction under the Act, as 'has sublet' do not mean that sub letting shall take place after the commencement of the Act vide *Gappulal*³.

However, the words, "has sublet" (used in Section 20 (2)(e) of U.P. Rent Control Act) do not mean that sub-letting shall continue until filing of the suit. Even if it has discontinued by then still it remains a ground for eviction vide *Gajanan*⁵ and *Gurbachan Singh*⁵⁸. In *Gappulal*³ it was observed in the passing that the verb has means that the thing must have relation with the present. In *Gajanan*⁵ it was clarified that as in *Gappulal*³ the sub tenancy was continuing till the end hence the effect of its discontinuance before filing of the suit was not in issue accordingly it could not be said that it was laid down therein that in case sub tenancy discontinued before filing of the suit, it ceased to be a ground of eviction. It is provided under H.P. Rent Control Act [Section 14(3) (iv)] that under the following contingency tenant may be evicted:-

“The tenant has, whether before or after the commencement of this Act, built or acquired vacant possession of or been allotted a residence reasonably sufficient for his requirements.”

Supreme Court in *Dewan Chand*²⁸ has held that surrender of allotted residence cannot save the tenant from eviction.

In *Siddharth Vijas*⁶⁸, over ruling a five judges Full Bench of

Allahabad High Court reported in *Mangi Lal v. ADJ, 1980 ARC 55*, it has been held that the words 'has built' or 'has otherwise acquired' used in Explanation (i) to section 21 (1) and the words 'builds' or 'otherwise acquires' used in Section 12(3) of U.P.R.C. Act are retrospective and will include acquisition (or building) of another accommodation by the tenant before the applicability of the Act on the tenanted building and it will become vacant. Accordingly even if sub-letting in any form as defined under the Act takes place before the Act applied on the tenanted building (during continuance of exemption period), the tenant would be liable to eviction on the ground of sub-letting after the Act applies to the building. (See also synopsis 4, 'Inception and Continuance of vacancy' of the chapter 'Vacancy, Release and Allotment.)

4. CONSENT, WRITTEN PERMISSION AND WAIVER:

As most of the Rent Control Acts including section 25 of U.P. Rent Control Act use the words *consent (or permission) in writing* for sub-letting hence oral permission even if it is proved is of no help to the tenant. Similarly, inaction of the landlord to initiate eviction proceedings for a long time even after coming to know about the sub-letting is not fatal.

In *Shalimar*¹³ under Delhi Rent Control Act it has been held that the provision of written permission is mandatory and based upon public policy, hence, landlord cannot waive it. Accordingly, no amount of knowledge, inaction or even oral consent can save the tenant from eviction on the ground of sub-letting (or parting

with possession) in the absence of written permission of the landlord. Same view has been taken in *Duli Chand*²⁵ and *Vaishakhi Ram*⁶¹ under Delhi Rent Control Act. In *Hiralal Kapoor*¹⁴, also under Delhi R.C. Act, part of rent had been paid through cheque by a registered society of which tenant was secretary, still it was held that such acceptance of rent did not mean that tenancy was created in favour of society with the concurrence of landlord. In this case tenant had argued that after few years of tenancy in his favour, a fresh tenancy of part of the tenanted accommodation had been created in favour of the society with the concurrence of landlord. However in *Hem Chand*⁴⁶, also under Delhi R.C. Act, relief of possession was denied to the landlord on the ground that he had admitted that some sub tenants had been inducted with his consent. It is only a half page judgment. It does not say written consent but by reading the whole judgment it appears that for 6 out of 8 sub-tenants there was written consent hence those 6 sub-tenants were not directed to be evicted. (For further discussion of this judgment see Synopsis 7C)

In *Shanti Lal*²³,(under West Bengal R.C. Act) landlord had permitted in writing (through lease deed) to sublet, still it was held that written permission of the landlord before sub-letting of each portion of the tenanted accommodation to different subtenants indicating their names was essential and in the absence of such specific written permission, general written permission was meaningless and tenant was liable to eviction on the ground of sub-letting. In *Shalimar*¹³, under Delhi R.C. Act, also it has been held in para 7 that the consent must be to

the specific sub-letting. In *Pulin Bihari*²⁶, *Silver Line*³⁷ and *Biswanath Poddar*⁴⁵ (under West Bengal Rent Control Act) also it has been held that written permission of landlord is essential and landlord shall also be notified and in the absence of either of these, mere acceptance of rent and knowledge of sub-letting by the landlord does not amount to waiver. In *Biswanath Poddar*⁴⁵ it has also been held that written deed between tenant and sub tenant recording that landlord had permitted sub-letting is not binding upon landlord and is meaningless. West Bengal Rent Control Act, unlike R.C. Acts of other State, is subject to the contract to the contrary. Still in *Biswanath Poddar*⁴⁵ relying upon *Shanti Lal*²³ and *Silverline*³⁷ it was held that even if there is some oral permission of landlord for sub-letting it is meaningless (paras 14 and 15).

In *Gurdial Singh*⁴⁸ (under *Panjab R.C. Act*) also it has been held that oral permission for sub-letting is of no value (Para 12). Under Kerala R.C. Act 'Consent of the landlord' is not required to be in writing. However in *P. John Chandy*⁴⁹ interpreting the said provision it has been held that "*But inaction in every case does not necessarily lead to an inference of implied consent or acquiescence*" (para 9). In that case sub-tenancies of different portions were continuing for 8 to 11 years before initiation of eviction proceeding still eviction was ordered.

5. HOW TO BE PROVED

A. Exclusive possession, proof of sub-tenancy:

Sub-letting (or letting) is not defined under Rent Control Acts of different States, hence, general definition of lease given under Section 105 of Transfer of Property Act can be adopted vide *Dipak Banerjee*¹² (para 9), *Mahendra Sarees*⁵³ *Emporium* and *Celina Coelko*⁶⁴. (For position under U.P.R.C. Act see sub synopsis F)

By virtue of Section 107 of Transfer of Property Act, tenancy (or sub-tenancy) from month to month may be made by oral agreement (or written agreement in U.P.) accompanied by delivery of possession.

Accordingly, in order to prove sub-letting three things are required to be proved – agreement, delivery of possession and valuable consideration / rent. (Executing registered instrument for illegal sub-letting is unthinkable.) However, as sub-letting is prohibited under Rent Control Acts and is a ground for eviction, hence, the agreement/ transaction is entered into in a clandestine manner and rent is also paid by the subtenant to the tenant secretly, so that, landlord may not know it. Accordingly, it has been held that in most of the cases it is only exclusive possession of the subtenant which is required to be proved by the landlord and neither it is necessary nor it is possible for the landlord to prove by direct affirmative evidence the agreement of sub-letting and payment of rent, vide *Associated Hotels*² (Paras 5 and 6), *Dipak Banerji*¹² (paras 6 and 7), *Shalimar*¹³ (paras 16 and 18), *Rajbir Kaur*¹⁷ (para 23), *Gopal Saran*¹⁹ (para 16), *Roop Chand*²⁰ (para 8), *Duli Chand*²⁵ (paras 2 to 4), *United Bank of India*²⁹ (paras 6 to 10), *S.A. Vengadamma*³⁵ (para 3), *Bharat Sales*³⁶ (para 4), *Shama Prashant*⁴⁴ (para 5 towards end), *M/s*

*Mahendra Saree*⁵³ (Para 16), *Joginder Singh*⁵⁵ (paras 13 to 23), *Vaishakhi Ram*⁶¹ (para 11) *Nirmal Kanta*⁶² (para 12), *Shashi Jain*⁶³ (para 19) *Celina Coelho*⁶⁴ [(para 28(i)(v)(vi)] *Vinay Kishore*⁶⁵ (paras 17 to 19) and *S.F. Engineer*⁶⁶ (paras 16 to 22). In the last two authorities most of the earlier authorities have been considered.

In *Vinay Kishore*⁶⁵, it has been held that it would not be possible for the landlord to prove payment of monetary consideration by direct evidence rather it would be impossible (paras 17 and 19).

In *Mahendra Saree*⁵³ it has been held in para 16 as follows:

“.....The exact nature of transaction entered into or arrangement or understanding arrived at between the tenant and alleged sub-tenant may not be in the knowledge of the landlord and such a transaction being unlawful would obviously be entered into in secrecy depriving the owner-landlord of the means of ascertaining the facts about the same. However still, the Rent Control Legislation being protective for the tenant and eviction being not permissible except on the availability of ground, therefore, having been made out to the satisfaction of the Court or the Controller the burden of proving the availability of the ground is cast on the landlord, i.e. the one who seeks eviction.....Thus, in the case of sub-letting, the onus lying on the landlord would stand discharged by adducing prima facie proof of the fact that the alleged sub-tenant was in exclusive possession of the premises or, to borrow the language of Section 105 of the Transfer of Property Act, was holding right to enjoy such property. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.....”

In *Bharat Sales*³⁶, the leading authority on the point, it was mentioned in para 3 that the only point argued was that payment of rent by subtenant to the tenant had not been proved. Thereafter in para 4 it was held as follows:-

“Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the subtenant. 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. Payment of rent, undoubtedly, is an essential element of lease or sub-lease..... 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 fact of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.”

In the said case, it was argued that in *United Bank of India*²⁹ it had been held that payment of rent must be proved by direct affirmative evidence, however, the contention was rejected holding that in the said authority no such thing had been held (para 9). In *United Bank of India*²⁹, para 23 of *Rajbir Kaur*¹⁷ was quoted in para 6 holding that sub-tenancy is created in clandestine manner and in most of the cases, exclusive possession of someone else gives rise to the presumption of monetary consideration and sub-letting.

In some cases, question of payment of rent was also considered but it was only with a view to find out as to whether exclusive possession had been given to the subtenant or not. In some cases, payment of consideration was proved/ admitted but it was argued on behalf of tenants/subtenants that it was not rent but only license fees.

One or two sentences in para 6 of *Associated Hotels*² and para 13 of *Rajbir Kumar*¹⁷ give an impression that it has been held by the Supreme Court that exclusive possession is not conclusive proof of sub-letting. However the correct interpretation is that appearance of exclusive possession may not be conclusive and tenant /alleged sub-tenant may show that the arrangement is only for permissive use and licence in true sense. (See also next sub-synopsis)

B. Exclusive Possession or Permissive user:

Every sort of occupation of or user by a third person of the tenanted accommodation or part thereof is not exclusive possession amounting to sub-letting. The possession of someone else in order to warrant inference of sub-letting must be exclusive and legal with a right to include and exclude anyone else; and the tenant must have ceased to retain any legal possession thereof or control thereupon, vide *Jagdish Prasad*⁷, *Jagan Nath*¹⁶, *Gopal Saran*¹⁹, *Delhi Stationers*²⁴, *United Bank of India*²⁹, (in these authorities, user and occupation was held not to be exclusive possession), *Shalimar*¹³ and *Janki Devi*²⁷ (in both these authorities it was held that the arrangement amounted to parting with exclusive possession and it was not mere permissive user and occupation). In *M/s Delhi Stationers*²⁴ it was held that, “*Parting of the legal possession means possession with the right to include and also a right to exclude others. Mere occupation is not sufficient to infer either sub-tenancy or parting with possession*” (quoted in para 9 of *United Bank of India*²⁹). In *Shalimar*¹³, it was held that physical possession of someone else was not sufficient, there must be legal possession (para 12). In *Gopal Saran*¹⁹, para 20, it was held that much depends upon the quality of occupation given to the alleged sub-tenant. In *Jagdish Prasad*⁷ it was held that mere presence of some stranger in the tenanted shop could not lead to inference of sub-letting as he could be customer, agent, friend etc. It was specifically held in para 2 “*As long as control over the business is kept by the tenant and the business run in the premises is of the tenant sub-letting flowing from the presence of a person other than the tenant in the shop cannot be assumed.*”

Sometimes, in order to disguise and camouflage sub-letting outward appearance of licence is given to the sub-letting and the rent is

described as licence fees. The deed if executed is obviously drafted in a claver manner. The landlord not being a party to the deed is not bound by its recitals. In such cases also nature and quality of possession of the alleged sub-tenant is decisive vide *Associated Hotels*² and *Rajbir Kaur*¹⁷ (Paras 10 to 13) (See also sub-synopsis D)

C. Whether Parting with possession and assignment different from sub-letting:

Under Delhi Rent Control Act, 1958, one of the grounds for eviction of tenant is provided under Section 14(1)(b) in the following manner.

“That the tenant has on or after 9th day of June, 1952 sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord.”

Interpreting the above provision it was held in para 6 of *Jagan Nath*¹⁶ as follows:-

“There is also no evidence that there has been any sub-letting or assignment. The only ground perhaps upon which the landlord was seeking eviction was parting with possession”.

Same view was taken in *Duli Chand*²⁵ (para 2), relying upon *Jagan Nath*¹⁶ in para 3.

Section 13 (1) (e) of Rajasthan Rent Control Act and section 13(1)(a) of West Bengal Rent Control Act are almost *pari materia* with Section 14(1)(b) of Delhi Rent Control Act. Similar view has also been taken in

respect of Rajasthan Rent Control Act in *Roop Chand* holding in para 8 as follows:-

“Consequently even if a tenant parts with possession of the whole or any part of the premises without assigning or sub-letting the premises, he would still be liable to be evicted from the premises under the Act.”

In these authorities clear distinction has been drawn between sub-letting and parting with possession or assignment. It is submitted that correct interpretation is that the Legislature has treated parting with possession or assignment as a facet of sub-letting; rather a mode of proving the same. Keeping in view the difficulty of proving agreement and settlement/ payment of rent in between tenant and sub-tenant, two of the three essential requirements of letting /sub-letting, (as mentioned under sub synopsis A), the Legislature equated parting with possession or assignment with sub – letting. In *Vaishakhi Ram*⁶¹ under Delhi R.C. Act parting with possession has been equated with sub-letting.

(*Jagan Nath*¹⁶ and *Dulichand*²⁵ have also been discussed in the next sub-synopsis-D and E and *Roop Chand* in Synopsis 6D)

D. Possession of Family members and other Relations:

As far as spouse and children are concerned in *Krishnawati*⁴ and *Jagan Nath*¹⁶ it has been held that their exclusive possession of the tenanted shops did not amount to parting with possession / sub-letting. However, contrary view has been taken in *Duli Chand*²⁵, *Joginder Singh*⁵⁵ and *M. Kasam*⁴⁰. (These three authorities also relate to shops).

It is submitted that in case of possession of spouse and children there is no question of any sub-letting. To hold otherwise will be against common sense. In *Krishnawati*⁴, a judgment by three judges, under Delhi Rent Control Act, it was found that a lady had taken the shop on rent and the man who was residing with her as husband was, since inception of tenancy, running the business from the tenanted shop with occasional help of the lady tenant. The Supreme Court reversing the judgment of the High Court firstly held that whether both were legally married or not could not be decided in eviction proceedings. Regarding sub-letting it was held in para 5 as follows:

“If two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence a rash inference to draw that the owner has let out that part of the premises and that is what the learned single judge has done in the present case.”

Thereafter it was more emphatically held in para 8 as follows:

“The basic facts in the present case were (1) the appellant and Sohan Singh were living as husband and wife to the knowledge of the respondent; (2) the appellant took the lease of the shop premises from the respondent in 1959; (3) from the time of the letting a Chemist’s business was carried on in the shop by Sohan Singh with the occasional help of the appellant. The question to be determined was whether in the above circumstances it was likely that the appellant had sub-let the premises to Sohan Singh. The negative answer given to it by the

Rent Courts is merely the factual commonsense inference which did not call for the application of any principle of law.”

Similarly in *Jagan Nath*¹⁶ the tenant had retired from business and the same was thereafter run by his sons. It was held after referring to *Krishnawati*⁴ that it did not amount to sub-letting. However, in para 6 it was held as follows:-

“.....user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of Cl. (b) of S. 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession.”

It is not clear that on what basis the observations contained in the last two sentences were made. In the earlier part of the judgment it was noticed that the other tenant had retired from business and allowed his two sons who constituted a firm to do the business. Moreover, the theory of ‘retaining right to possession’ or ‘legal right to possession’ or ‘right to displace the possession of the occupant’ is concerned it is rather shaky. Every tenant-in-chief has right to dispossess his subtenant, whether such tenancy is valid or not.

As far as *Duli Chand*²⁵ is concerned, in this case the natural son of the tenant was exclusively running the business from the tenanted shop. The son had been given in adoption to another person but the legalities of adoption were not complete. In view of this it was held that sub-letting came into existence.

However, as far as *Joginder Singh*⁵⁵ and *M. Kasam*⁴⁰ are concerned, it is submitted that it is not possible to reconcile these authorities with larger bench authority of *Krishnawati*⁴ and *Jagan Nath*¹⁶. In *Joginder Singh*⁵⁵ son of the tenant was running the business and in *M. Kasam*⁴⁰ father had retired from business and partnership and his sons, the remaining partners, were running the business. In both the cases sub-letting was held to have taken place. In *Joginder Singh*⁵⁵ neither *Krishnawati*⁴ nor *Jagan Nath*¹⁶ was considered. However, in *M. Kasam*⁴⁰ both the authorities were considered. In fact as mentioned in the beginning of its para 7, the High Court had mainly relied upon *Jagan Nath*¹⁶. It is submitted that *Jagan Nath*¹⁶ was not distinguishable on facts in the least. To use the terminology of *Krishnawati*⁴, the inference of sub-letting drawn in *M. Kasam*⁴⁰ is rash and against common sense.

In respect of other relations like brother, sister, brother-in-law etc. the consistent view is that if in the tenanted house they live along with the tenant, there is no parting with possession /sub-tenancy vide *Ganesh Trivedi*⁴⁷ (brother residing with the tenant) and *M/s Delhi Stationers*²⁴ (brother-in-law who was tenant of the adjoining portion of the same landlord was permitted by the tenant to jointly use the kitchen and latrine).

However, if such relation exclusively occupies the tenanted house and the tenant permanently shifts his residence elsewhere then it is

parting with possession /ceasing to occupy/sub-letting, vide *Bhairab*¹⁵ and *S.A. Vengadamma*³⁵ (in each of these cases both of the tenant alone was residing) and *Kailashbhai*⁵⁶ (cousin of tenant's late husband alone was residing). *Ganesh Trivedi*⁴⁷ and *S.A. Vengadamma*³⁵ are under U.P. and Karnataka Rent Control Acts respectively each of which defines family which does not include brother.

In *Vaishakhi Ram*⁶¹ some distant relations of the tenant, other than spouse, children, brother and sister were doing independent business in a part of tenanted shop. It was held to be sub-letting / parting with possession. In *Mahendra Saree Emporium*⁵³ the tenant entered into partnership with brothers, wife of one of the brothers and a cousin. It was held not to be sub-letting. If it had been a case under U.P. Rent Control Act constitution of the firm would have amounted to sub-letting. By virtue of section 12(2) and Explanation (i) to Section 25 of U.P.R.C.Act, partnership with non-family member gives rise to sub-letting of commercial accommodation. Son-in-law is not family member as per definition of family under Section 3(g). Accordingly partnership with son –in-law by one of the tenants in the business run by him in part of the tenanted accommodation amounts to vacancy [under Section 12(4)] and sub-letting, of whole accommodation vide *Harish Tandon*³⁰.

(See also under 'Firm', infra).

*Resham Singh*⁴² had special feature of its own. The tenant of the shop was involved in a criminal case and was absconding. In his absence his brother was looking after the business carried out from the tenanted shop. It was held not to be sub-letting.

E. Specific Instances(Brief Facts)

E. (a) Possession of third party, Sub-letting found proved:

In *Associated Hotels of India*², the first leading authority on sub-letting it was held that ordinarily giving a room of a hotel does not amount to sub-letting but in the said case it was held to amount to sub-letting as the subtenant had been given exclusive possession of the room of the hotel where he was having his showroom. (Similar is the position under U.P. R.C. Act by virtue of Explanation (ii) to its section 25). The argument on behalf of the tenant that it was only a license was not accepted. The tenant had admitted that document was executed regarding the arrangement but the same was not filed by him.

In *Rajbir Kaur*¹⁷, under East Punjab Rent Control Act, part of the tenanted commercial accommodation had been given by the tenant to an ice-cream vendor. It was held that it amounted to sub-letting of the entire premises.

In *Duli Chand*²⁵, under Delhi Rent Control Act, even though son of the tenant was running the business, still it was held that the tenant had parted with the possession to the son, hence, he was liable to eviction under Section 14(1) (b) of Delhi Rent Control Act. In this case some evidence had been adduced to show that the son had been given in adoption to another family. Even though adoption was not fully proved still Supreme Court held that the said evidence was relevant and sufficient to hold that there was no joint Hindu family in between the tenant and his natural son. *Jagan Nath*¹⁶, supra (previous sub-synopsis) was distinguished on the ground that in the said case tenant had a right

to displace the son. In *Duli Chand*²⁵, it was further found that the tenant along with his younger son was working at another shop.

In *Shama Prashant*⁴⁴, subtenant was found in exclusive possession and giving rent to the tenant under an agreement, hence, it was held that it amounted to sub-letting.

For brief facts of *Bhairab*¹⁵, *S.A. Vengadamma*³⁵, *Kailashbai*⁵⁶, *Vaishakhi Ram*⁶¹, *Harish Tandon*³⁰, *M. Kasam*⁴⁰ and *Joginder Singh*⁵⁵ see previous sub-synopsis D; of *Celina Coelho*⁶⁴ and *Parvinder*⁵² synopsis 6B; of *Janki Devi*²⁷ and *Ram Saran*³³ synopsis 6C and of *Shalimar*¹³ and *Roop Chand*²⁰ synopsis 6D.

E. (b) Occupation of third party, Sub-letting not found proved:

In *Jagdish Prasad*⁷, under U.P. Rent Control Act, it was held that mere presence of another person at the shop did not amount to sub-letting as the said person could be customer, agent, friend etc. In this case the landlord had taken photograph of a stranger at the tenanted shop and the photograph was main rather sole evidence of sub-letting adduced by the landlord.

In *Deepak Banarjee*¹², under West Bengal Rent Control Act, it was found that another person was doing work on sewing machine in a part of the tenanted shop. It was held that it did not amount to sub-letting. Exactly, similar was the position in *Nirmala Kanta*⁶², under East Punjab Rent Control Act. Here also another person was operating sewing machine inside a part of the tenanted shop, it was held that there was no sub-letting.

In *Gopal Saran*¹⁹, under Rajasthan Rent Control Act, the tenant had permitted another person / concern to place its signboard at the roof

of the tenanted accommodation. After considering 13 authorities, 9 Indian and 4 foreign, it was held that this arrangement was neither grant of exclusive right nor parting of legal possession, hence, it did not amount to sub-letting.

In *United Bank of India*²⁹, under West Bengal Rent Control Act, the bank was tenant and its management had given a portion of the tenanted accommodation to its union. It was held that the bank retained control over the same, hence, it could not be said that exclusive possession had been given to the union.

In *Dev Kumar*³², under East Punjab Rent Control Act, it was found that in the tenanted accommodation, the tenant was carrying on his business and the alleged subtenant firm was also carrying its business, hence, it was not sub-letting.

In *Kala*³⁹, under Himachal Pradesh Rent Control Act, it was found that the alleged subtenant was assisting the widow of the deceased tenant in the business as well as in the house and orchard. Even though business had also been changed after the death of the original tenant, still it was held that the arrangement did not amount to sub-letting.

For brief facts of *Ganesh Trivedi*⁴⁷, *Krishnawati*⁴, *Delhi Stationers*²⁴, *Resham Singh*⁴², see previous sub-synopsis D and of *Helper Girdhari Bhai*¹¹, *P.A. Thomas*²², *G.K. Bhatnagar*⁵⁰, *Amar Nath*⁵⁹ and *Dev Kumar*³² synopsis 6B.

F. Position under U.P.R.C. Act less complicated:

Keeping in view the difficulties in proving illegal sub-letting the U.P. Legislature has adopted a pragmatic approach which avoids invoking and applying the principles evolved by the Supreme Court in

this regard (see earlier sub synopsis A to E and next synopsis 6B). In view of sections 12(1)(b), 25 Explanation (i) of U.P.R.C. Act occupation by a person who is not family member of tenant amounts to sub-letting. Nothing else i.e. agreement and payment of rent is required to be proved. However the word 'occupy' used in section 12(1)(b) means exclusive possession and not permissive user vide *Jagdish*⁷ and *Ganesh Trivedi*⁴⁷ (see earlier sub-synopsis A, B, D & E). Similarly admitting a non-family member (even son in law) as partner in business ipso facto amounts to sub-letting in view of Section 12(2) & Explanation (i) to Section 25 vide *Harish Tandon*³⁰. In this regard not even actual possession is required to be shown.

6. COMPANY, FIRM, SOCIETY AND BLUB

A. Company:

If a company is wound up by the High Court and the official liquidator auctions the company's assets including lease hold right in a tenanted accommodation, it amounts to sub-letting vide *Paras Ram*⁶.

If two companies merge together in amalgamation proceedings by the High Court under Sections 391 and 394 of Companies Act and the newly constituted company carries on the business from the premises of which one of the constituent companies was tenant then it amounts to sub-letting as the new company which comes into existence after amalgamation of two companies is distinct and separate from its constituent companies vide *General Radio and Appliances*⁸ and *Singer India*⁵⁴.

If all the partners of a firm constitute a company and the business carried out from a tenanted accommodation earlier by the firm is done by the company from the same premises then it does not amount to sub-letting as the company is only an alter ego of the firm vide *M/s Madras Bangalore Transport Company*⁹ (3 judges). However, in case of conversion of partnership into company if all the directors of the company were not partners of the firm then it amounts to sub-letting vide *Sait Nagjee*⁵⁷.

If under a statute a company merges into a corporation and it is provided under the statute that the corporation would be the tenant of the premises of which the company was tenant then it does not amount to sub-letting vide *Hindustan Petroleum*¹⁸ and *G. Sridharamurti*³¹ (3 judges) (the earlier authority of *Paras Ram*⁶ distinguished.) In both these cases Esso was tenant which merged into Hindustan Petroleum Corporation under Esso (Acquisition of undertaking in India) Act 1974.

If a proprietorship is converted into private company, unless it is shown that the tenant is actually controlling and managing business of the company, it will amount to sub-letting irrespective of the fact that the tenant is majority shareholder and theory of lifting of veil will not be applicable vide *Santosh Ajit*⁶⁰.

Transfer of business and lease hold interest in the accommodation in which the business is carried on by a foreign company to Indian company amounts to sub-letting of the accommodation even though it may have been done under compulsion, due to the restrictions imposed by FERA vide *Cox & Kings*³⁴. See also *Roop Chand*²⁰ under last sub-synopsis 'Club'.

If a company occupies a building which was earlier in occupation of an unregistered society as licensee/tenant then unless it is shown that all the members of the unregistered body became members of the company, the company cannot claim to be successor of the former in respect of licence / tenancy of the building vide *Electrical Cables*³⁸.

B. Firm:

In order to conceal and camouflage sub-letting of business premises more often than not fake partnership is created. Accordingly in such situation it has to be seen as to whether partnership is genuine or not and whether alleged subtenant firm has been handed over exclusive possession of the accommodation or part thereof or not, vide *Helper Girdhar Bhai*¹¹, *Parvinder Singh*⁵² and *Mahendra Saree*⁵³ (para 16 latter part, noticing both the earlier authorities).

Following cases deal with **genuine partnerships**:

In *Helper Girdhar Bhai*¹¹ under Bombay Rent Control Act, it was found that the tenant was partner in the firm which had been created after the start of the tenancy and the firm was genuine, hence, it was not a case of sub-letting. Similarly, in *P.A. Thomas*²², where tenant had erected a structure over the leased land with the permission of the landlord and a firm was carrying on business from a part of the said accommodation, it was held that there was no sub-letting. In *G.K. Bhatnagar*⁵⁰ the partnership entered into after creation of the tenancy, was found to be genuine, hence, it was held that it was not a case of sub-letting. In *Amar Nath*⁵⁹ partnership firm was tenant which was afterwards dissolved and a new firm was created. It was found that legal possession was retained by one partner of the new firm who was also one

of the partners of the original firm which took the premises on rent, hence, it was not a case of sub-letting. In *Dev Kumar*³², it was found that the tenant was carrying on his own business from the accommodation in dispute and along with that the alleged subtenant firm was also carrying on its business, hence, it did not amount to sub-letting.

Following are the cases where **partnerships** were found to be **fake** and device to conceal sub-letting:

In *Celina Coelho*⁶⁴, it was found that the partnership was not genuine and it was a case of sub-letting. Similarly, in *Parvinder Singh*⁵², it was held that creation of partnership amounted to sub-letting. In *Vinai Kishor*⁶⁵, partnership was altogether changed even though the name of the new firm was slightly changed but it was quite deceptive. The name of the earlier firm was Bhumi Kalpatru and the name of the new firm was Shri Bhumi Kalpatru, partners of both the firms were altogether different. It was held that it amounted to sub-letting.

As far as the question of **partnership with family members** is concerned, in *Jagannath*¹⁶ a partnership firm consisting of members of joint Hindu family was tenant. Father retired from the partnership leaving the business in the hands of the sons. It was held that still father retained legal possession, hence, it was not a case of sub-letting. However, this authority was distinguished in *M. Kasam*⁴⁰ and it was held that if father retires from the firm which was the tenant then it amounts to sub-letting. In *Mahendra Saree*⁵³ it was held that family of the tenant consisting of 16 members including cousin was joint and dependent upon the income from the business carried out from the tenanted accommodation as sole proprietorship of the tenant which was later on converted into partnership in which the tenant, his brothers,

wife of one of the brothers and a cousin were partners which did not amount to sub-letting as tenant had not disassociated with new business and no stranger was partner in the newly created firm.

As far as position under **U.P. Rent Control Act** is concerned, it is provided under section 12(2) read with Section 25 of U.P. Rent Control Act that if a tenant admits a person who is not a member of his family, as a partner or a new partner it amounts to cessation of occupation and sub-letting. In *Harish Tandon*³⁰, one of the tenants (being one of the sons of the deceased tenant) who was also carrying on business from a part of the tenanted accommodation (while his other brothers were carrying on business from other parts of the tenanted accommodation) admitted his son-in-law as partner in the firm constituted for doing the said business. Supreme Court held that son-in-law not being a family member under the Act, the arrangement amounted to sub-letting and the entire body of the tenants, even though other sons of the original tenant had not done anything prohibited under the Act, was liable to eviction.

C. Society:

In *Janki Devi*²⁷ building was let out to the appellant Janki Devi to run school. The school which was established there was run by a registered society of which Janki Devi the tenant was secretary. It was argued on behalf of the tenant that she retained juridical possession of the premises. The Supreme Court rejected the contention and held the sub-letting to be proved. It found that under the Rules and Regulations of the Society managing body, consisting of seven members, was to be elected by the general body every year and managing body elected Secretary from amongst its members. Accordingly it was held that legal

possession did not remain with the tenant. *Shalimar*¹³, *Madras Bangalore Transport Co*⁹. and *Helper Girdhar Bhai*¹¹ were distinguished.

In *Ram Saran*³³ the tenant had sub-let the shop to a registered society of which he was also a member. Sub-letting was found proved and it was held that as per memorandum of Association of the Society any member including the tenant could be removed. Apart from the authorities distinguished in the above case of *Janki Devi*²⁷, the authorities reported in *Roop Chand*²⁰ (see under next sub-synopsis, Club) and *Dipak Banerjee*¹², were also distinguished.

In *Hira Lal*¹⁴ the tenant had allowed part of the accommodation to be used by a trust Bal Kunj which was a registered society of which the tenant was secretary. Part of rent was paid through cheque by the society. Still it was held that it did not mean that tenancy was created in favour of Bal Kunj with the concurrence of landlord. It was further held that tenancy was one. Eviction from the portion in occupation of Bal Kunj was also ordered. (Eviction from the rest of the portion in actual occupation of the tenant had already been ordered by the High Court on the ground of bonafide need of the landlord). However in this case question of sub-letting was not directly involved.

D. Club:

If a club, which is a registered company is allowed to function by the tenant in the tenanted premises, it amounts to parting with possession and tenant is liable to eviction vide *Roop Chand*²⁰. In this case registered office of the company running the club was also in the premises in dispute and sign board of the club was also there.

In para 13 of *Ram Saran*³³ it was mentioned that in *Shalimar*¹³ “tenant allowed a club registered under the Companies Act to carry on its activities in a major portion of the tenanted premises. The tenant himself was also a member of the said club.....”. The statement is not correct as in *Shalimar*¹³ no club was sub-tenant. In fact club which was a company was sub tenant in *Roop Chand*²⁰ which had been noticed in para 12 of *Ram Saran*³³.

7. MISCELLANEOUS

A. Service as Rent:

In *Dipak Banerji*¹² it was held that under common law or Transfer of Property Act service can be equivalent to rent but under Rent Control Acts it cannot be treated to be rent paid by tenant to landlord or by subtenant to chief tenant. In Utter Pradesh also the position will be the same in spite of Section 20(2)(g), quoted below:-

‘That the tenant was allowed to occupy the building as part of his contract of employment under the landlord, and his employment has ceased’.

The reason is that under the above clause occupation of tenanted building is only part of contract of employment and not the entire consideration for service / employment.

B. Rights and liabilities inheritable:

In *A.S. Sulochana*¹⁰ it had been observed that heir of the tenant cannot be punished for guilt or sin of his predecessor, original tenant and thereafter it was held that if the tenant who sub let had died then

his son could not be evicted on the said ground. This general observation was disapproved and overruled in *Imdad Ali*⁵¹ (para 16) (3 judges), which was a case relating to default in payment of rent. In *Parvinder Singh*⁵²(3 judges) it was held that tenant's heirs inherit tenancy as well as liability of the deceased tenant, if any. It was specifically held that if original tenant had sublet, his heirs would be liable to ejection. Regarding *A.S. Sulochana*¹⁰ which had been relied upon by the Courts below it was observed in para 4 that the contrary view of the said authority had been overruled in *Imdad Ali*⁵¹.

It is submitted that the view taken in *A.S. Sulochana*¹⁰ is only partially correct. If under a Rent Control Act sub-letting (or any other action of the tenant) is ground of eviction as well as punishable then after the death of the tenant who had sub-let, (or done the other offending action) his heirs would be liable to eviction but they would not be punished. Civil liability is inherited by the heirs (to the extent of the inherited property) but not the criminal liability. If a driver of a motor vehicle causes an accident and is prosecuted for rash and negligent driving and case for compensation under Motor Vehicle Act is also filed then on his death criminal case abates but compensation case is continued against his heirs.

C. Sub-letting of part of accommodation, and its effect:

Under Transfer of Property Act there cannot be splitting of tenancy. However various States Rent Control Acts (including U.P. Rent Control Act) permit eviction of tenant from part of accommodation in case of bonafide need of landlord. In *T.S. Subramainam*²¹ it was held that as Tamil Nadu Rent Control Act did not permit splitting of tenancy hence on proof of bonafide need of landlord for part of accommodation, tenant

had to be evicted from the whole building. (See also synopsis 5D of Bonafide need chapter). Similarly in *Habibun Nisa*⁴³, under the same Act (Tamil Nadu) it was held (after placing reliance upon *S. Sanyal*¹) that in case of denial of title of landlord in respect of part of tenanted accommodation, tenant is to be evicted from the entire tenanted accommodation not only the part, as under Tamil Nadu Rent Control Act splitting of tenancy is not permissible. Accordingly in case of sub-letting of part of accommodation, eviction is to be ordered of the tenant (including sub-tenant) from the whole building vide *Associated Hotels*², *Rajbir Kaur*¹⁷, *Harish Tandon*³⁰ and *Vaishakhi Ram*⁶¹.

However, in *Hem Chand*⁴⁶, a half page judgment it was in para 3 as follows:

“....It appears from the pleadings that in the eviction petition the landlord stated that out of 8 sub-tenants, six sub-tenants were inducted into possession of different portions with his consent. If that be so, neither the tenants nor the sub-tenants could have been ordered to be evicted merely because one of the sub-tenants was inducted into possession of a portion of tenanted premises without the consent of the landlord.....”

It is submitted that the view is not correct as splitting of tenancy is not permissible.

Most of the Rent Control acts provide that tenant is liable to eviction in case of sub-letting of the tenanted accommodation whether it of the whole or part of the accommodation. However even if only sub-letting is provided as ground of eviction, position will be the same and sub-letting of part of accommodation will be sufficient for eviction, and

that also from the whole building. In *Dev Kumar*³², under East Punjab Rent Control Act it was found that the tenant, in the tenanted shop, was carrying on his own independent business as well as transacting the business of another firm, the alleged sub-tenant, as commission agent. The Supreme Court after placing reliance upon interalia *Rajbir Kaur*¹⁷, under the same R.C. Act held that lit did not amount to parting with exclusive possession and sub-letting. However thereafter in para 11 it was observed as follows:

“At the most, the conclusion can be that while the tenant was continuing his own business as well as a business of Commission Agent of M/s Ram Saran Bhola Nath, the respondents nos. 2 to 4 have also been permitted to continue their business in the name of Ram Saran Rattan Chand. But that does not establish either the exclusive possession of respondents 2 to 4 or that the tenant has parted with his possession. The exclusive possession of the premises being the first criteria for establishing subletting and the same not being established, the conclusion of the High Court about subletting is vitiated.”

It is submitted that the above observation is not correct and is directly in conflict with *Rajbir Kaur*¹⁷ where on the finding that a third person, an ice cream vendor was also doing business in the tenanted accommodation along with the tenant sub-letting was found proved.

D. Pleading:

In *Virendra Kashinath*⁴¹ through amendment following para was added in the plaint by the land lord.

“The plaintiffs say that pending the suit the defendants have or any one of them has inducted in the suit premises defendants no. 4 and 5 unlawfully”

The High Court held the pleading to be insufficient for sub-letting. The Supreme Court reversed the finding and held the pleading to be sufficient (para 14 and 16)

Para 29 of *Celina Coelho*⁶⁴ is quoted below:

“29. The main question that falls to be determined in the present case is: is High Court justified in non-suiting the landlord on the ground that he has not pleaded that business of the firm M/s. Mandovi Tours and Travels is not conducted by its partners, but by Balaji Lawande and Netravalkar and that tenant has parted with the premises by sub-letting the same to these two persons under the garb of deed of partnership by constituting a bogus firm ? In our judgment, the answer have to be in negative. In the plaint, the landlord averred that the tenant has sub-let the premises to M/s. Mandovi Tours and Travels, a partnership concern, without his permission and that the sub-lessee has been exclusively running the business in the rented premises although he has not pleaded specifically that the premises have been sublet to Balaji Lawande and Netravalkar but such lack of pleading cannot be held to be fatal. It has to be kept in mind that a transaction such as sub-letting by tenant which is not permissible under lease may be outwardly a deceptive arrangement and landlord may not come to know of true facts. The pleadings in such matters ought not to be construed too

technically. The true test, as has been repeatedly said, is to see whether the other side has been taken by surprise or prejudiced.”

It is obvious that as for proving sub-letting only exclusive possession of alleged sub-tenant is to be shown (See synopsis 5A) hence there is also no need to plead anything else like agreement or monetary consideration. In *Rajbir Kaur*¹⁷ para 22 it has been held that bald pleading of sub-letting is sufficient and it is not necessary to plead monetary consideration.

E. Sub-tenant necessary party?

In *Silver Line*³⁷ and *Bishwanath Poddar*⁴⁵ (both under W.B. Rent Control Act) it has also been held that sub-tenant is not a necessary party in the suit and decree of eviction is binding on him. It has further been elaborated that under West Bengal Rent Control Act only a valid sub-tenant (inducted with previous consent in writing of the landlord and thereafter notified to the landlord) is necessary party in eviction suit.

F. Mixed question of law and fact:

Sub-letting is a mixed question of law and fact. Facts found by Courts of fact (trial court/authority and first appellate court/authority/tribunal) cannot be interfered with in revision, second appeal, appeal to the Supreme Court or by the High Court in exercise of writ jurisdiction under Articles 226 or 227 of Constitution of India vide *Hindustan Petroleum*⁶⁷ (CB), *Boorugu*⁶⁹ and *Kasthuri*⁷⁰. However the inference of sub letting or no sub-letting from proved facts is a question of law and a wrong decision on this point can be corrected in revision, writ petition etc. vide *Dev Kumar*³², *Resham Singh*⁴², *Shama Prashant*⁴⁴, *P. John*⁴⁹ and *S.F. Engineer*⁶⁶. Part of para 28 of *S.F. Engineer*⁶⁶ is quoted below:-

“.....As has been held by this Court, the issue of sub-letting 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, AIR 2002 SC 2057 : (2002) 5 SCC 90, 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 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.....”

G. West Bengal Rent Control Act provision applies to non - residential building also:

Under Section 13(1)(a) of West Bengal Premises Tenancy Act 1956 the following is provided as a ground of eviction:

“Where the tenant or any person residing in the premises let to the tenant without the previous consent in writing of the landlord transfers, assigns or sub-lets in whole or in part the premises held by him.”

The Supreme Court in *United Bank*²⁹ (paras 4 &5) has held that the provision applies to the residential as well as non-residential premises.

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55. Joginder Singh Sodhi v. Amar Kaur 2005 (1) SCC 31
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