20

LANDLORD – TENANT RELATIONS LAW

*D N Jauhar**

I INTRODUCTION

THE LEGISLATIVE inaction in not replacing the old rent Acts, based on the philosophy of "control," predominantly for consideration of vote banks, has persisted since the writing of the survey. In the face of total wisest pity of the elected representatives in balancing the landlord-tenant relations through updated legislative measures, the judiciary has been grappling with the crisis in its endeavour to strike the required balance.

In the year under survey, the provisions of the Punjab Act relating to NRI have now been extended to the union territory of Chandigarh through a notification in 2009. However, it is likely to increase litigation in the Punjab and Haryana High Court.

Despite several developments during previous years eviction on the ground of *bona fide* requirement, non-payment of rent and sub-letting in the garb of partnership continued to occupy the attention of the court in the year under review. Likewise, the problems relating to revisional power of the High Court in rent matters also continued for want of any clear parameters laid down by the apex court.

II AMENDMENT

Amendment in Pleadings

In *Revajeetu Builders & Developers* v. *Narayanaswamy & Sons*,[1] and *Sushil Kumar Jain* v. *Manoj Kumar*,[2] the Supreme Court reiterated the following principles relating to amendment of pleadings laid down in *Baldev Singh* v. *Manohar Singh*:[3]

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1 2009 (2) RCR 569 (SC).

2 2009 (2) RCR 180 (SC).

3 2006 (2) RCR 265.

(1) Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side.
(2) Wide power and unfettered discretion has been conferred on the court to allow the amendment of the pleadings to a party in such a manner or on such terms as it appears to the court to be just and proper.
(3) Court shall allow amendment of pleadings if it finds that delay in the disposal of suit can be avoided and that the suit can be disposed of expeditiously.
(4) Plea of limitation can be allowed to be raised by way of amendment in written statement.
(5) Powers of the court are wide enough to permit amendment of the statement by incorporating an alternative plea of ownership in the application for amendment of the written statement.
(6) Even if there were admissions in the evidence as well as in the written statement, it was still open to the parties to explain the same by way of filing an application for amendment of the written statement.
(7) It will be a ground for rejection of the objection when no serious prejudice is shown to have been caused to the plaintiff.
(8) Courts are inclined to be more liberal in allowing amendments of the written statement than that of the plaint and the question of prejudice is less likely to operate with the same rigour in the former than in the latter case.
(9) Inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of a plaint.

The aforesaid view will go a long way in removing any possible doubts in future.

III BONA FIDE REQUIREMENT

One of the grounds available to the landlord for seeking eviction of the tenant is that he requires the rented premises for his own use and occupation. After a chequered history of litigation for more than five decades, now the settled position is that a landlord can evict his tenant from any kind of rented premises, *i.e.* residential, non-residential, rented land on the ground of his own requirement. Although the term 'requires' has been used in the Act, the prefix *bona fide* has been incorporated through court decisions. This has been done to emphasize that the requirement of the landlord should be genuine, reasonable, honest and not to get rid of the tenant. Thus, *bona fide* requirement is something between the two extremes of wish, desire, fanciful thinking of the landlord on one end and necessity or dire need of the landlord at the other.

Need to augment income

In *Ishwar Chander* v. *Saroj Karwal,*[4] the landlady was seeking eviction from her SCF in Manimajra to do business in ready-made garments at the age of 68 years. The tenant argued that the landlady was getting pension and had rental income which would suffice her living requirements. Rejecting the contention, the court ruled that she was entitled to use her own premises to improve her standard of living and keep herself busy. Likewise, the plea of the tenant that the landlord has income of more than two lacs per year and need not indulge in transport business has been reflected in *Jasjit Singh* v. *Jallandhar Ex. Servicemen M/T co-operative Ltd.*[5]

Need to expand business

The court deviated from its earlier approach that if his landlord had premises for doing business, he could not ask for the eviction of the tenant from a shop. It has now been ruled that the landlord has every right to glow, flourish and expand his business by evicting the tenant from his premises. The approach got cemented during the period under review.

The above line of approach was adopted in *Magan Lal* v. *Nana Saheb.*[6] in this case, the landlord was doing cloth business in Gondia. He required his premises in Nagpur to expand his business in sales of oxalic acid with the help of his son who had M.Tech. degree in chemical engineering. Rejecting the plea of the tenant that the landlord need not shift from Gondia to Nagpur, the apex court held the need of the landlord to expand business, although in a different trade, has to be *bona fide*. Likewise, the plea of two brothers, doing joint business in one shop, to part ways amicably to do independent business, has to be genuine for ordering eviction of the tenant from the shop.[7]

Need for better comforts/amenities

The landlord should not be told to put up with the conditions in which he had lived earlier. He has a right to live/work with comforts and better amenities which he can afford.

The above principle has been laid down in *Rani* v. *Kaushalaya Devi.*[8] Here the landlady was working at Amritsar, living in Raja Janshi and had to commute 18 Km. every day. At the age of 54, she wanted her house in Amritsar to live and stop daily commuting. It was ruled that she had every right to live in her own house. Likewise, when the landlady, living with her brother in the house jointly owned by them, wanted to shift to her own flat

4 2009 (2) RCR 657 (P&H); see also *Surinder Kumar Sharma* v. *Jasjit Singh,* 2009 (1) RCR 359 (P&H).
5 2009 (2) RCR 152 (P&H).
6 2009 (1) RCR 16 (SC).
7 *Somnath* v. *Pankaj,* 2009 (1) RCR 423 (P&H); *Jasbir Singh Jawanda* v. *M/S Sidhu Sons,* 2009 (1) RCR 476 (P&H).
8 2007 (1) RCR 425 (P&H).

to live separately, it was ruled by the apex court that her requirement was *bona fide*.[9]

In *Om Prakash* v. *Inder Kaur*,[10] the landlady, a class IV (Group D) employee, was residing on the first floor with her two children. After the death of her husband, she wanted the tenant on the ground floor to be evicted to meet the needs of her growing children and her parents who had come to stay with them to take care of the children. The tenant argued that a class IV employee did not require that much accommodation. Rejecting his plea, the High Court ruled that even a class IV employee had a right to live with comforts. Similarly, the plea of a landlady that she wants to shift from Panchkula (a satellite town of Chandigarh) to Chandigarh to avail of better medical facilities was accepted in *Anil Sinha* v. *Hardayal Dhillon.*[11]

In *Santokh Singh* v. *Smt. Gian Kaur*,[12] the court held that 85 years old lady cannot be asked to live miserably with her son and daughter-in-law with strained relations. She had every right to live in her own tenanted house with respect and dignity.

Need of son of the landlord

The requirement of the landlord includes the requirement of his family members. In *Yamunabai Kalan Gauda Patil* v. *Fatimali Hasanbhai Sheikh*,[13] the married daughter of the landlady was deserted by her husband. The landlady, who brought her grandchildren and her daughter, required her tenanted shop for business by her grandchild. It was held that the requirement of the grandson was the requirement of the landlady. It was further observed by the High Court that the need of widowed, deserted, divorced daughter or her children must be deemed to be the need of the landlord.

In *Ram Babu Aggarwal* v. *Jay Krishan Das*,[14] the landlord was seeking eviction of the tenant from his shop for his son to start footwear business. The tenant argued that the son had no experience in footwear business and thus the need was not genuine. Rejecting his plea, the apex court rightly held that eviction petition cannot be dismissed for lack of experience. Similarly, in *Ram Gopal* v. *Bahu Singh*,[15] the requirement of young grandson of the landlord to do business in the rented shop at Barnala, without any experience, had been held to be the requirement of landlord.

Need of married daughter

Although, the rent Acts specify only the need of landlord's son as his requirement, the requirement of married daughter has also been

9 *Julieta Antnieta Tarcato* v. *Sulaiman Ismail*, 2007 (1) RCR 265 (SC).
10 2009 (1) RCR 148 (Del).
11 2009 (1) RCR 4 (P&H).
12 2009 (2) RCR 97 (P&H).
13 2007 (1) RCR 539 (Bom).
14 2009 (2) RCR 455 (SC).
15 2009 (2) RCR 671 (P&H).

accommodated to be his *bona-fide* need through judicial pronouncements. This proposition has been cemented in *Subhash Chander Gupta* v. *Vasudev Kumar*.[16] In this case the landlord, an eminent scholar of repute, was living on the first floor with his wife and daughter. He wanted tenanted ground floor to accommodate his married daughter and parking for increased number of vehicles. Reversing the decisions of lower courts, the High Court ruled that the requirement of married daughter was *bona fide* need of the landlord. Likewise, in *Raju* v. *Chaudhry Ram*,[17] the requirement of the 92 years old landlady of the tenanted shop for her daughter-in-law for running beauty parlour was held to be *bona fide*.

Family of landlord

The rent Acts prescribe that the landlord can seek eviction of the tenant from the rented premises if he requires the same *for his own use*. His own use has been held to include the requirement of his family. Who will be part of the landlord's family? This question was raised in *M/s. Bata India Ltd.* v. *Ashok Kumar Chopra.*[18] Here, the landlady was seeking eviction from her tenanted shop for her married son who had separated from the family. It was rightly ruled that the separated son continued to be part of the landlady's family. On the other hand, in Smt. *Krishna Devi* v. *Shakuntala Devi*,[19] the landlady had no child of her own. She wanted eviction of the tenant for another person and his family to assist her in old age. The court held that the said person was neither a family member nor related to the landlady and, therefore her requirement was not *bona fide*.

It is submitted that the principle enunciated in the later case runs contrary to the settled law. The settled law is that the expression "for his own use" would include the requirement of all those who are dependent on the landlord for shelter. When a landlord seeks accommodation for his permanent driver or servant or medical attendant, it is to be accepted as his requirement. In the light of this, the High Court erred by holding that a person who is not related to the landlord, his requirement will not be the requirement of the landlord.

Landlord's proposal to sell

The earlier judicial approach was that if landlord, while seeking eviction for personal necessity, proposed to sell the tenanted premises, it would mean that the requirement was not *bona fide*. During the last decade, a shift has come in this approach to hold that during prolonged litigation if the landlord entertains the idea of selling the tenanted premises, this will have no effect on his *bona fides*. This view has been taken in *Ganesh Mishra* v.

16 2009 (1) RCR 441 (Del).
17 2009 (2) RCR 96 (P&H).
18 2009 (2) RCR 623 (P&H).
19 2009 (2) RCR 207 (P&H).

Mrs. Savita Devi Sehajpal.[20] In this case, the landlady was seeking eviction of the tenant from the ground floor of her sector-2 house in Chandigarh. The first floor was occupied by another tenant. The tenant produced a letter written by the landlady to her own sister-in-law wherein a proposal for sale of the house was made to her. Relying on the letter, the tenant argued that the requirement of the landlady was not *bona fide*. Rejecting the plea of the tenant, it was rightly held that entertaining the idea of selling the premises during the pendency of prolonged litigation will in no way affect the genuineness of the landlord's requirement.

Need held *bona fide*

Shashi Jain v. *Tarsem Lal*[21] is one of those rare cases where the apex court reversed the decisions of all the three courts below to hold that the requirement of the land lady was *bona fide*. The landlady (a spinster), sought eviction of the tenant from her house in Ludhiana to look after her old mother. She was employed in Chandigarh and wanted to commute to look after her mother and settle there after retirement. Upto the High Court, the plea of the tenant that the landlady was unmarried and living in Chandigarh and need not come to Ludhiana was accepted. Correcting the error of fact committed by the three courts, it was rightly ruled by the apex court that the requirement of the landlady was *bona fide*.

Need held not *bona fide*

The liberal approach of the higher judiciary on the ground of *bona fide* requirement during the last two decades has resulted in raising the success rate of eviction petitions by the landlords. Evictions on the ground of landlords' *bona fide* requirement have been ordered/upheld in more than 95 per cent reported cases during the period under review. In very few cases eviction has not been allowed for landlord's requirement.

In *N. Eswari* v. *K. Swarajayu Lakshmi*,[22] the landlady owned two houses in Hyderabad, and one in Vijaywada. She had been living in Hyderabad for 31 years with her son and daughters. At the age of 70, she sought eviction of the tenant from her house in Vijaywada so as to go and live there. There was nothing on record to justify her decision to shift at this age. On these facts, the apex court ruled that the requirement of the landlady was not *bona fide*.

Need of gurudwara

The need of legal persons is seen at par with the need of human being. However, the nature of the legal entity (landlord), the nature of premises and the purpose for which eviction is required will be vital in such cases.

20 2009 (2) RCR 176 (P&H).
21 2009 (1) RCR 485 (SC).
22 2009 (2) RCR 321 (SC).

The requirement of *Gurudwara* (Sikh Shrine) to make *dharamshala* for pilgrims or to create place for keeping shoes (*Jora Ghar*) in the tenanted premises have been held to be *bona fide*.[23] Likewise, the requirement of the company of its tenanted premises for its chairperson was also held to be *bona fide* in *Satnam Kaur* v. *M/S Ashlar Store P. Ltd*.[24]

IV CHANGE OF USER

A tenant, who starts using the rented premises for a purpose other than the one for which it was let out without the written consent of the landlord, becomes liable for eviction on the ground of change of user.

In *Lajpat Rai Tayal* v. *Maman Ram Dalmia*[25] the house was let out for residential purpose. Written admission by the tenant before the sales tax officer that a part of this building was being used as a godown was accepted as enough to prove the change of user. However, the same High Court in *Raj Rani* v. *Krishan Bhatia*[26] ruled that the use of the backyard of the house for commercial and manufacturing purpose was not change of user. The court seems to be swayed by the argument that it is only part of the house used for commercial purpose whereas the dominant purpose remains residential. It is submitted that this decision deserves to be reversed at the earliest.

What emerges from the above cases is that as long as a tenant uses the premises for a business which is allied or on the same lines as the purpose of letting, he will not be caught by the mischief of change of user. However, a complete shift in the nature of business from the purpose for which premises was let out will make him liable for eviction on the ground of change of user.

V LEASE AND LICENSE

The distinction between lease and license assumes significance both for the landlord and the tenant. In cases of alleged sub-letting by the tenant, the landlord can be left high and dry if the tenant establishes (which is not very difficult to prove) that the alleged sub-tenant is a licensee under him. The tenant, on the other hand, can be deprived of the protection of rent Act if landlord creates only a license to use the premises. The tests for distinguishing a lease from license have crystalised through judicial pronouncements.[27]

23 *Jai Prakash Goyal* v. *Shri Gurudwara Singh Sabha,* 2009 (2) RCR 211 (P&H) and *Ashok Kumar* v. *Gurudwara Cinema Road Batala,* 2009 (2) RCR 105 (P&H).

24 2009 (1) RCR 577 (Del).

25 2009 (2) RCR 366 (P&H).

26 2009 (2) RCR 663 (P&H).

27 See *C. M. Beena* v. *P.N. Ram Chandra Rao,* 2004 (1) RCR 520 (SC) and *Achint Kumar Saha* v. *M/s. Nanee Printers,* 2004 (1) RCR 280 (SC) and *Hyco Products (Pvt.) Ltd.* v. *Shashi Hasija,* 2009 (2) RCR 297 (Del).

In *Dass Kumar* v. *Tilak Raj*,[28] it has been clarified that the Transfer of Property Act, 1882 (TP Act) is not totally abrogated by the rent Act. It stands eclipsed only to the extent to which specific provisions are made under the rent Act. Thus, 'lease' which is not defined under the rent Act has to be understood as provided under section 105 of the TP Act.

VI *MESNE* PROFITS

Mesne profits are profits which a person would have earned out of his property in the ordinary course of management thereof. In case of contractual tenancy, the landlord can claim *mesne* profits from the tenant if after determination of the lease, the tenant remained in possession of the leased premises. However, the position of a statutory tenant under rent Acts stands on a different footing. He is not liable to pay *mesne* profits during the period of litigation as his tenancy can be terminated only under the statute. Thus, tenants under the rent Act will prolong the litigation because their liability is only to pay agreed/fair rent and not *mesne* profits during litigation for their eviction.

In *State of Maharashtra* v. *M/s Super Max International Pvt. Ltd.*,[29] the question as to whether there is any conflict between *Atma Ram Properties*[30] and *Niyas Ahmed* was referred to a larger branch. The three judges bench rightly ruled that there was no conflict between the two decisions. *Atma Ram Properties* entitles a landlord to seek *mesne* profits when order of eviction against the tenant is stayed. *Niyas* Ahmed,[31] on the other hand, denies the claim of *mesne* profits to the landlord when his eviction petition is dismissed and the tenancy continues. In the present case, the grant of *mesne* profits @ Rs. 5,40,000/- p.m. against the agreed rent of less than Rs. 6,000/- p.m. for 9000 square feet carpet area in posh area of Mumbai was upheld by the Supreme Court. The three judges bench further ruled that the judicial approach to balance the landlord-tenant relations has undergone a significant change during the last two decades. The change, the bench observed, is the need of the hour.

As already mentioned, the concept of awarding *mesne* profits to the landlord during the period of stay on the eviction order would go a long way in discouraging the tenants from perpetuating the litigation for long years.

VII NRI LANDLORD

Special provisions providing for the right to evict tenants in a summary manner were incorporated in the Punjab Rent Act for the non-resident Indian (NRI) landlords in 2001. Under this Act, a NRI landlord could seek eviction

28 2009 (2) RCR 229 (P&H).
29 2009 (2) RCR 246 (SC).
30 *Atma Ram Properties (P) Ltd.* v. *Federal Motors (P) Ltd.*, 2005 (1) RCR 1 (SC).
31 *Niya Ahmed Khan* v. *Mahmood Rahmat Ullah*, 2008 (1) RCR 246 (SC).

of the tenant from residential and commercial premises in a speedy manner if he required the same for his use and occupation. The Punjab Rent Act is the only statute which identifies NRI as a classified landlord. These provisions of the Punjab Rent Act have now been made applicable to the Union Territory of Chandigarh through a notification dated October 9, 2009. Under other rent Acts, NRIs will have to take recourse to the ground of personal necessity. Some new features were introduced in case of NRIs as specified landlords. These were:

(i) NRI could seek eviction both from residential and commercial premises for his *bona fide* requirement;
(ii) NRI must be the owner of the premises for five years prior to the filing of eviction petition;
(iii) NRI could avail of these special provisions only once in his lifetime;
(iv) After eviction, NRI cannot sell or assign or let out the vacated premises for five years;
(v) Non-occupancy/violation of any mandatory provision by the NRI will be visited by penal consequences and the evicted tenant will have the right to be re-inducted.

Leave to contest

In all cases filed by a specified/classified landlords, the tenant cannot contest the case as a matter of right. For contesting the claim of a classified landlord, the landlord has to seek the leave of the controller which, in turn, can be granted only if the tenant in his application discloses such facts which could disentitle the landlord from seeking eviction. Thus, the normal rule is that leave to contest is not to be granted, which in turn would mean the order of the eviction. This stage of obtaining the leave to contest is very crucial for the tenant. Leave to contest has to be requested within 15 days of the service of summons in the prescribed performa.

In *Tejinder Singh* v. *Raj Pal*,[32] the tenant sought leave to contest because (i) landlord was not NRI as he did not produce passport (ii) landlord was not owner for 5 years (iii) shop was let out by his father (iv) the petition had been filed by the power of attorney holder and not by the landlord himself. In view of this, leave to contest was rightly granted. The court held that leave to contest could also be granted when landlord seeks eviction from commercial premises for residential purpose.[33]

Who is NRI?

An interesting question about status of NRI arose in *Mohinder Singh* v. *Sohan Singh*.[34] The landlord herein, was born in Rawalpindi (now in

32 2009 (2) RCR 361 (P&H).
33 *S. Tarlochan Singh* v. *Smt. Harbhajan Kaur*, 2009 (1) RCR 553 (P&H).
34 2009 (1) RCR 603 (P&H).

Pakistan) and had shifted to the United Kingdom before partition of the country. It was rightly ruled that he was NRI as at the time of his birth, Rawalpindi was a part of India. In *Rajnish Jain* v. *Krishan Kant*,[35] it was ruled that NRI even as co-owner could seek eviction under section 13-B of the Act.

NRI has the choice

In *Ram Pal Thukral* v. *Jagjit Singh*,[36] a NRI wanting to return to India had properties in NOIDA and Amritsar. He was seeking eviction of tenants from his Amritsar property. The tenant contested by arguing that the landlord was living in Delhi before going out of the country and was thereafter staying in NOIDA during his visits to India. Thus, his requirement of Amritsar property was not *bona fide*. Rejecting his contention, it was ruled that the choice lay with the landlord and the tenant or the court had no right to tell him as to where he should live.

How a landlord should live was again to be decided by him. This was echoed in *Baghel Singh* v. *Kotu Kumar Phull*.[37] In this case, the landlord wanted to demolish his 42 years old tenanted house and reconstruct it with modern amenities for his own use. The court ruled that the landlord was the best judge of his requirement. Neither the tenant nor the court hade any right to tell him as to how he should live or where he should live.

VIII NUISANCE

The rent Acts prohibit the tenant from indulging in such acts which would cause annoyance to others. Those activities of the tenant, which will make others in the building or neighbourhood miserable, would constitute nuisance. Inconveniences, which are inbuilt in the agreed user of the premises or small family quarters, may not fall in the mischief of nuisance.

The plea of nuisance to order eviction has also been accepted in *Khajan Singh* v. *Prithvi Singh Sharma*.[38] In this case, one front side room (*baithak*) was let out for residence. The tenant was using it to do his business of *band master*. Playing of musical instruments by his group in the premises annoyed and disturbed the residents of the locality. It was rightly construed to be a nuisance on the part of the tenant.

IX NON-PAYMENT OF RENT

Landlord-tenant relationship is governed by the rule of *pay* and *stay*. It is the reciprocal duty of the tenant to pay the rent regularly in lieu of the

35 2009 (2) RCR 609 (P&H).
36 2009 (2) RCR 313 (P&H).
37 2009 (2) RCR 502 (P&H).
38 2009 (1) RCR 173 (P&H).

peaceful user of the premises. A tenant committing breach of this duty in the form of default in payment of rent becomes liable for eviction from the rented premises. Many a time, such default is fabricated by the landlord by not accepting the rent. For this reason, it is not the default *simpliciter* but willful default of the tenant which will make him liable for eviction. The ground of non-payment of rent has also a safeguard for the tenant in the form of a proviso under which if tenant makes a first hearing tender of the arrears of rent, the eviction petition of the landlord shall be dismissed on this count.

First hearing

The tenant is required to deposit the arrears of rent, assessed by the controller, at the first hearing of the case. Non-compliance with the assessment order would result in eviction order. The date of first hearing is the date following the assessment order passed by the controller.

In *S.S. Mann* v. *A.K.* Sharma,[39] the tenant was ordered to pay provisional rent before 13.9.2006. The tenant tendered by way of cheque which was dishonoured. In view of this, it was rightly ruled that the controller had no option but to pass eviction order against the tenant even if he wanted to pay later through a bank draft.

Onus of proof

Under the rule of *pay* and *stay,* governing landlord-tenant relations, it is the duty of the tenant to pay the rent regularly. When tenant claims that he is not a defaulter, the burden of proving the payment of rent is on him. In *Yash Pal* v. *Baba Kashmir Gir*,[40] the tenant produced a balance-sheet of his account, showing payment of rent as proof of the same. Rejecting his plea, it was rightly ruled that it was a self-serving document of the tenant and payment of rent cannot be believed. Likewise, when the tenant of one room who claimed to be president of *shiv sena*, failed to prove payment of rent, his eviction was upheld by the High Court.[41]

Willful default

The tenant becomes liable for eviction if he is found guilty of willful default. Normally, the conclusion of default being willful or *bona fide* is ascertained from the conduct of the tenant in the facts and circumstances of each case. The question rose for consideration before the apex court in *Shanti Parshad Jain* v. *Parkash Narain Mathu*.[42] In this case, the tenant was directed by the controller to pay rent to the landlord which he did not. Later on, the tenant took up the plea that he had paid the money to his advocate for deposit and he did not deposit. In view of the fact that the tenant did not lodge any complaint against the advocate to the bar council,

39 2009 (1) RCR 117.
40 2008 (1) RCR 262 (P&H).
41 *Pawan Kumar Gupta* v. *Surinder Kaur,* 2009 (2) RCR 585 (P&H).
42 2009 (2) RCR 138 (SC).

the defense of the tenant was not seen as credible. While dismissing the plea of the tenant by holding him to be a willful defaulter, the apex court also rejected the plea of the legal representatives that they had not committed the default.

A full bench of the Andhra Pradesh High Court has clarified the concept of willful default in *Mohammed Izhar Ali* v. *Smt. Olivia Founseca*.[43] The Andhra Pradesh Rent Act requires that when landlord refuses to accept the rent, the tenant has to deposit the rent with permission of the controller. The tenant deposited the rent after obtaining permission of the controller but failed to submit a copy of the *challan* to the controller. It is only after the copy of the *challan* is received that the controller will notify the person to collect the rent. The question before the court was whether tenant is guilty of willful default when he did not deliver copy of the *challan* to the controller. Explaining the law and the rules, the court held that the tenant will be seen as willful defaulter. As per the decision, the tenant is duty bound to deliver the copy of *challan* to the controller in order to escape eviction.

X SPECIFIED/CLASSIFIED LANDLORD

The trend to add a class of landlord as specified/classified landlord, which started under the Delhi Rent Control Act in 1976, has gained momentum in the recent past. Consequently, not only the retiring/retired government employees are identified as a class but also senior citizens, widow, NRI and serving government employee have been added to this class under different Acts. This, in turn, has led to an increase in eviction cases instituted by the specified landlord. The judiciary has contributed significantly in enlarging the scope of specified landlord by bringing the employees of semi-government organizations and autonomous public service institutions within the ambit of "instrumentalities of the state." The success rate for evictions at the behest of a specified landlord has been very high.

In *Om Kumar Jain* v. *Raj Kumar Saini*,[44] the landlord retired from military service, being a law graduate, got enrolled as an advocate. He required the tenanted house to set up his office as an advocate. It was rightly ruled that his claim was *bona fide*.

Landlord *qua* the tenant

In order to be entitled to seek eviction of the tenant, a specified landlord must be his landlord at the time of his retirement. In *Dharam Singh* v. *Smt. Veena*,[45] the landlord purchased the tenanted house after his

43 2009 (1) RCR 84 (AP).
44 2009 (1) RCR 613 (P&H).
45 2009 (2) RCR 587 (P&H).

retirement from government service and in *Lt. Col. Suraj Parkash (Retd.)* v. *Bhoop Singh Choudhry*,[46] the landlord inherited the tenanted house after retirement. In these cases, it has been rightly ruled that the special provisions relating to specified landlord are not available to them. The settled law is that the specified landlord must be the tenant's landlord at the time of his retirement.

When a landlord reaches the age of superannuation in his service and is given re-employment in his service or other form of continuation in service, what will be the date of his retirement? This question arose in *Balwinder Singh Minhas* v. *Rakeh Budhiraja*.[47] In this case, the landlord having his house in sector-36, Chandigarh retired as an IAS officer. Thereafter, he was appointed to a statutory committee of the central government in Delhi. Upon his appointment in Delhi, he let out his house to the tenant. The tenant argued that after the retirement from IAS, the landlord was specified landlord for one year. Now after the completion of his term in the central government committee, he is not a specified landlord. Rejecting his contention, it was rightly ruled that his retirement for this purpose would be the date of completion of his term on the central government committee.

XI SUB-LETTING

Under section 108 of the Transfer of Property Act, unless there is a contract to the contrary, a lessee has a right to sub-let the rented premises to any one. Under the rent Acts, on the other hand, sub-letting is prohibited except when it is done with the written consent of the landlord. The status of the tenant under the T.P. Act is that of a 'contractual tenant' but under rent law, he is a 'statutory tenant.'

Sub-letting is commonly done in tenancies of commercial properties. In these cases, either the tenant walks out of the shop after receiving *key money* or sub-lets a part of the shop and then tries to show the stranger as his partner or a licensee. The onus to prove the *factum* of sub-letting is on the landlord who alleges it for the eviction of the tenant. Since sub-letting is done secretly where the tenant and sub-tenant are hand in glove with each other, it becomes very difficult for the landlord to prove it. Sub-letting done to family members like father, son, wife or brother of tenant poses problems of its own kind. Thus, the task of the court becomes cumbersome in lifting the veil of secrecy to dig out the truth about sub-letting as would be noticed from the following case.

Sub-letting not established

The tenant is liable for eviction if he sublets the premises after the applicability of the rent Act. Sub-letting done before the applicability of the

46 2009 (2) RCR 471 (P&H): *Manoj Kumar Aggarwal* v. *Vijay Kumar*, 2009 (2) RCR 292 (P&H).
47 2009 (2) RCR 601 (P&H).

rent Act will not be a ground for the landlord to seek eviction of his tenant. This view has been taken in *M/s Bombay Motors* v. *Smt. Bhagwanti*.[48] In this case, commercial premises occupied by the tenant in Chandigarh were alleged to be sub-let in the years 1964-67. The Punjab Rent Act was extended to the Union Territory of Chandigarh in 1972. In view of the settled law, the plea of the landlady was rejected.

In *B.Chikkanna* v. *N. Narsinga Rao*,[49] the tenant was unable to carry on his business in the tenanted premises because of his old age. Instead, his son was doing the business. It has been ruled herein that the help of the son in business would not mean that the tenant has lost control over the premises.

Written consent of the landlord

In *Dass Kumar* v. *Tilak Raj*,[50] the tenant inducted another person as his partner in business. The landlord started issuing rent receipts in favour of the partnership firm. Later on, the original tenant walked out of the partnership. The landlord sought eviction of the other partner on the ground of sub-letting. Rejecting his plea, it has been ruled that issuance of rent receipts in the name of partnership firm would constitute written consent for inducting others into the premises.

Sub-letting through partnership

In case of alleged sub-letting when the tenant is pushed to a corner and cannot deny the occupation of a stranger, it comes very handy for him to claim that the alleged sub-tenant is a partner in his business. To establish partnership, a document can be fabricated while sitting at home because this is permissible under the partnership law. The task of the court, therefore, becomes very difficult to dig out the truth. In the following cases, the court, happily, succeeded in piercing the veil of secrecy and find that the alleged partnership was a sham transaction.

Piercing the veil

Of late, the judicial approach has been to dig out the truth by removing the veil of secrecy fabricated by the tenant and the alleged sub-tenant in the garb of partnership. The success rate of this judicial effort has considerably increased during the period under review. Some of these success stories are given below.

In *Ms. Celina Ceolho Periera* v. *Ulthas Mahabaleshwar Kholkar*,[51] the tenant claimed partnership with the alleged sub-tenant and produced the partnership deed. In its effort to dig out the truth, the apex court relied on several factors so as to conclude that the partnership was a camouflage for subletting. These are: (i) No account books were maintained; (ii) Original

48 2009 (1) RCR 275 (P&H).
49 2007 (1) RCR 269 (Karn). See also *Sham Sunder Dania* v. *T.D. Kapoor*, 2007(1) RCR 328 (Del).
50 2009 (2) RCR 229 (P&H).
51 2009 (2) RCR 457 (SC).

tenant had only 10 per cent share in the partnership; (iii) The tenant did not hold any control over the premises; and (iv) None of the partners was examined.

In *Rajan* v. *Mohammad*,[52] the tenant created partnership with two others. The factors which helped to conclude that the partnership was sham and had been fabricated to escape eviction were: (i) Business was managed by the partners; (ii) Tenant was only a sleeping partner; (iii) Tenant made nominal contribution to the business capital; and (iv) Tenant's share in profit being very minimal.

XII SUBSEQUENT EVENTS

The shift in the judicial trend as pointed out in the previous survey regarding taking cognizance of subsequent events in the matters of *bona fide* requirement of the landlord got reiterated during the period under review.

In *Jai Pakash Gupta (deceased)* v. *Riyaj Ahmed*,[53] the landlord sought eviction of the tenant for his son's office as chartered accountant (CA) in 1990. Against the order of eviction, the High Court remanded the case to the appellate authority in view of the subsequent events, namely (i) the landlord had died (ii) all his properties were inherited by his son (iii) the CA son claimed that his two sons and one daughter were now grown up and his wife was running an educational center. In the special leave petition filed by the deceased landlord's son, the apex court did not approved of the approach of the High Court in remanding the case in totality but sent the case back to the High Court to decide in six months.

It is submitted that the remand of the case could be seen as justified when the landlady was seeking eviction of the tenant from premises required for her son. The appellate authority confirmed eviction in favour of the legal heirs. In view of this, the appellate authority was rightly directed to evaluate the need of the legal heirs.[54]

Cognizance of subsequent events

Subsequent events were taken into account to dismiss the claim of requirement in *State of Himachal Pradesh* v. *Ram Piari*.[55] In this case, the landlady who was seeking eviction of her tenant for her *bona fide* requirement died during the pendency of the appeal. The legal heirs sold the premises to another person. The buyer wanted to pursue the eviction petition. Taking cognizance of the subsequent events, the eviction petition was dismissed.

52 2009 (1) RCR 425 Ker (DB)
53 2009 (2) RCR 475 (SC).
54 *Chander Shekhar* v. *Bishan Devi* through LRS, 2009 (1) RCR 286 (P&H).
55 2009 (1) RCR 68 (P&H).

XIII UNFIT AND UNSAFE BUILDING

When the rented building decays and becomes unfit and unsafe for human habitation, the landlord can seek eviction of the tenant therefrom. Such cases of eviction are mainly from the old parts of the cities. The total absence of such cases from planned cities, developed during the last five decades, is noticeable.

The distinction between repairs, replacements and renovation is vital in cases under this ground for eviction. The tenant can carry out minor repairs but not replacements/renovations which, in turn, could defeat this ground for eviction. Further, the condition of a building should be seen in its totality and not of the rented part only. The age of the building and quality of construction would be relevant factors to arrive at a conclusion.

The Supreme Court corrected the mistake of the High Court in *Kusum Devi* v. *Mohan Lal*.[56] In this case, the landlord was seeking eviction of his tenant on the grounds of his *bona fide* requirement and that the building had become unfit and unsafe for human habitation. The High Court ruled that the two grounds were contradictory and dismissed the case of the landlord. Reversing the decision of the High Court, the apex court rightly pointed out that both the grounds were mutually exclusive and not destructive of each other.

In *Jai Dev Singh* v. *M.L. Kapoor*,[57] the premises let out in 1948 had five rooms. Four rooms collapsed during the floods of 1978. The fifth room was also in dilapidated condition when eviction was sought by the landlord on this ground. The tenant reconstructed the premises by putting tiled roof. Upholding the eviction of the tenant, it was ruled that the tenant cannot defeat this ground, available to the landlord, by reconstructing the building.

XIV CONCLUSION

The task of enacting, revising and amending the statutory law is entrusted to the legislative wing of the state under the Constitution which, in turn, is based on the theory of separation of powers. The responsibility of implementing these laws is entrusted to the executive wing. Adjudication of disputes, according to the law provided by the legislature, is the function of the third wing, *i.e*. the judiciary.

The rent Acts, with the exception of Maharashtra, Karnataka, West Bengal, Tripura and Rajasthan, operative in the country were enacted almost six decades ago as a welfare measure. These Acts had served the desired purpose for a short term for which they were enacted. The perpetual continuity of these short term legislative measures on the statute book has

56 2009 (1) RCR 524 (SC).

57 2007 (1) RCR 367 (P&H); *Sadu Singh* v. *Jatinder Mohan*, 2007 (1) RCR 79 (P&H); *Surta* v. *Kailash Chand*, 2007 (2) RCR 624 (P&H).

proved to be not only counter-productive but negatively hit the very social fabric of the society. So much of water has flown through the Ganges that it has started drying up. These rent Acts have become totally irrelevant in the context of changed socio-economic scenario in the society. The sole reason for the legislative inaction can be attributed to the consideration of vote banks.

In this gloomy scenario of legislative inaction, the silver line has been the role of the judiciary. Within the limits of its powers, the judiciary has tried its lust to read/interpret these outdated laws in a manner so as to strike a balance between the landlord-tenant relations. Happily, this endeavour of the judiciary persisted during the period under review. One can only hope against hope that the legislative wing would act to replace the existing rent Acts with new ones which will be relevant to the present times. Some indications in this direction have become available. The reality, of course, is that these indicators are not for any newly acquired love for the civic society but because of the arm-twisting by the multinational corporates who are keen to invest in real estates in a big way.