

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Judgment reserved on : 10.01.2012

Judgment delivered on: 12.01.2012

CM (M) No.1612/2010 & CM No.8004/2005

MUNSHI RAM Petitioner
Through Mr. Ajay Kohli, Adv.

versus

BHOJ RAM THRU L.R'S Respondent
Through Mr. Vijay Kishan & Mr. Vikram Jaitely, Advs.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1. This petition has impugned the order dated 21.03.2005 passed by the Additional Rent Control Tribunal (ARCT) which had reversed the finding of the Additional Rent Controller (ARC) dated 01.07.1994.

2. Record shows that the present eviction petition has been filed by the landlord Bhoj Raj against his tenant Munshi Ram on the ground available to him under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA); contention being that Munshi Ram had sub-let the premises to respondents No. 2 & 3 Om Prakash & Sri Niwas; premises in dispute is a shop bearing No. E-46/3, Hauz Khas, New Delhi. Oral and documentary evidence had been led. 13 witnesses had been examined on behalf of the landlord and five RWs had been recorded on behalf of the tenant. On the basis of oral and documentary evidence adduced before the ARC, the ARC vide his judgment and decree dated 01.07.1994 dismissed the petition of the landlord.

3. The matter went up in appeal before the ARCT who had endorsed this finding of the ARC vide judgment and decree dated 28.02.2002.

4. Before the High Court, a Bench of this Court vide its order dated 20.07.2008 had remanded the matter back to the trial Court as the contention of the learned counsel for the landlord that certain important and relevant oral and documentary evidence had not been considered by the first appellate Court had found favour and accordingly the matter was remanded back to the ARCT to consider the evidence afresh.

5. The ARCT vide impugned judgment and decree dated 21.03.2005 decreed the petition of the landlord under Section 14 (1)(b) of the DRCA which judgment is the subject matter of the present petition.

6. At the outset, learned counsel for the respondent has contended that this Court is sitting in its power of superintendence and not being an appeal forum, it cannot reappreciate the evidence; reliance has been placed upon JT 2003 (4) SC 605 State through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and others as also another judgment reported as JT 2001 (9) SC 517 Ouseph Mathai & Others Vs. M. Abdul Khadir to support this submission. It is not in dispute that the Court while sitting in its powers of superintendence under Article 227 of the Constitution of India is not an appellate court forum and this power has to be exercised sparingly and only in those cases where there has been a patent illegality or injustice committed by the court below bordering on the point of perversity.

7. It is in this background that the contentions of the learned counsel for the parties has to be appreciated.

8. Exhaustive evidence has been led in the court below. AW-1 was the attorney holder of the landlord; testimony of AW-6 is relevant; this witness who appeared in support of the landlord has deposed that Sri Niwas was mostly seen in the shop. AW-9, a witness from the Oriental Bank of Commerce had produced Ex.AW-9/1 which was a loan form dated 05.04.1977 wherein Om Prakash has applied for a loan for the business of 'Munshi Ram Om Prakash' from the said Bank in his individual name; this document Ex.AW-9/1 which is a document prior in time to the filing of the eviction petition (eviction petition was filed on 13.02.1978) shows that Om Prakash had applied for loan from the disputed premises for the business of 'Munshi Ram Om Prakash' who as per the testimony of AW-12 was the proprietor of Om Prakash. AW-12 was a Lower Division Clerk from the

Income Tax department; he had produced the assessment record for the years 1979-1980 (Ex.PW-12/1) which was in the name of Om Prakash and as per PW-12 Om Prakash was the proprietor of 'M/s Munshi Ram Om Prakash'; assessment orders for the later years i.e. 1980-1983 had also been filed which were proved as Ex.AW-12/3 to Ex. AW-12/15. RW-1 was the respondent Munshi Ram; in his cross-examination he has admitted that he used to keep account books and record of his business but admittedly no such record or account books were produced by him. He has further in his cross-examination admitted that he did not have any partnership with Om Prakash; testimony of AW12 that 'Munshi Ram Om Prakash' was the sole proprietorship firm of Om Prakash thus stood confirmed. All this evidence had weighed in the mind of the first appellate Court while returning a finding that the necessary ingredients of Section 14 (1)(b) of the DRCA stood proved.

Section 14 (1)(b) of the DRCA reads as follows:-

“14. Protection of tenant against eviction. -

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenet:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) XXXXXXXXXXXXXXXXXXXXX

(b) That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise without obtaining the consent in writing of the landlord”

9. It is well settled that to make out a case for sub-letting or parting with possession, it means giving of possession to persons other than those to whom the possession had been given by the original lessor and that parted with possession must have been made by the tenant. The word 'sub-letting' necessarily means transfer of an exclusive right to enjoy the property in favour of the third party. In (1988) 1 SCC 70 Shalimar Tar Products Ltd. Vs. H.C. Sharma, the Apex Court had noted that to constitute a sub-letting, there must be a parting of legal possession i.e. possession with the right to include

and also right to exclude other and whether in a particular case, there was sub-letting or not was a question of act.

10. To establish the aforementioned ingredients, the landlord must establish that the original tenant who in this case is Munshi Ram had completely divested himself from the suit premises and parted with possession of the premises of the whole or part of the premises i.e. property bearing No. E-46/3, Hauz Khas, New Delhi to the sub-tenants Om Prakash and Sri Niwas. This has substantiated by the evidence. The evidence as discussed supra shows that Om Prakash was the proprietor of 'M/s Munshi Ram Om Prakash' and Om Prakash in his individual capacity had applied for the loan for the business of this firm as has been affirmed by AW-12 as also the assessment orders of the years 1979-1980 which also confirm this finding, further at all times Sri Niwas was found sitting in the ration shop doing the work. Relevant would it be to also state that a combined written statement had been filed by the respondents namely Munshi Ram, Om Prakash and Sri Niwas; their stand being that Om Prakash had no concern with Munshi Ram who was running this ration shop; evidence has however established to the contrary; credibility and version set up by the tenant Munshi Ram was thus falsified. It is also relevant to note that the respondent in his capacity as RW-1 has admitted that he was maintaining his account books and record of his business but no such record or account books has been furnished which in this case would have probably been the best evidence to establish his submission that he was a tenant in his individual capacity in the suit premises; in fact the assessment orders of 'Munshi Ram Om Prakash' show income tax returns had been filed by Om Prakash as proprietor of the firm thus negating this contention. The necessary corollary that flows is that Munshi Ram had divested himself from the suit premises and the suit premises were wholly in occupation and in possession of Om Prakash and Sri Niwas. Ingredients of Section 14 (1)(b) of the DRCA stood established.

11. Reliance by learned counsel for the petitioner upon the judgment reported as (1992) 1 SCC 143 Sri Chand Gupta Vs. Gulzar Singh and Another is misplaced; this was a case where an affidavit has been given by the sub-tenant wherein he had stated that he was in exclusive possession of the suit premises was held to be not binding under Section 18 of the Evidence Act qua the tenant and the landlord and rightly so; the facts of this case had disclosed that the stand of Gulzar Singh was that he was a tenant but Avtar Singh has set up a stand that he was a tenant in his individual capacity and as such the defence set up by the sub tenant was not admissible

as the Court had rightly noted that Avtar Singh was not an agent of Gulzar Singh and his submission was not binding upon Gulzar Singh. Ratio of the said case is wholly inapplicable. Petition is without any merit.

12. Dismissed.

Sd/-
INDERMEET KAUR, J