

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 15.07.2010*
Judgment Delivered on: 21.07.2010

+ **R.S.A. No.96/2006**

PREM NATH AGGARWALAppellant
Through: Mr.Anil Sapra, Sr.Adv. with
Mr.B.P.Gupta and Ms.Vrinda
Kapoor, Advocates.

Versus

MUNSHI RAMRespondent
Through LRs
Through: Mr.R.K.Shukla, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. Prem Nath Aggarwal, the owner of shop bearing no.702, Gali Kundewalan, Ajmeri Gate, Delhi (hereinafter referred to as 'suit property') filed a suit for possession and mesne profits against Munshi Ram. Case of the plaintiff was that Net Ram who was a tenant with the plaintiff at a monthly rental of Rs.11.12 paisa had expired one year before the filing of the said suit. He was not survived by any legal heir. Defendant was an unauthorized occupant of the suit property and even presuming that Net Ram had permitted the defendant use of the suit property, this permission/license ended with the life of Net Ram; decree for possession and mesne profits at the rate of Rs.1000/- per month was claimed.

2. Defendant had contested the suit. Ex.PW-1/DX had been proved on record. This was a judgment dated 25.7.1968 passed in an eviction petition which was a dispute inter se between Dr.Viswanath against Net Ram qua the same property. In this judgment it had been held that Munshi Ram was in possession of the shop in question much before 9.6.1952; he was a lawful sub-tenant; as such the petition for eviction on the ground of sub-letting filed by Dr.Viswanath against Net Ram had been dismissed. Defence of the defendant is that since he was recognized as a lawful sub-tenant by the judgment Ex.PW-1/DX, the suit for possession and recovery of mesne profit was barred under Section 50 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the said Act').

3. The trial judge had framed five issues. While disposing of issue no.2 it had been held that in view of the judgment Ex.PW-1/DX, the status of Munshi Ram had been finally settled by a court of competent jurisdiction; he having been declared as a sub-tenant by the Additional Rent Controller in this judgment, his status could not be re-agitated. Reliance upon the definition of 'tenant' as contained under Section 2 (1) of the said Act which also includes a 'sub-tenant' had been made. It was held that the bar of Section 50 would operate and the civil suit was barred. Suit was dismissed.

4. The first appellate court decided the appeal on 26.10.2005. Findings of the trial judge had been endorsed. While interpreting Section 2 (1) of the said Act it was held that it confers a protection to the sub-tenant Munshi Ram and his legal possession stands protected. This was irrespective of the fact that admittedly notice under Section 17 of the said Act had not been

given by Munshi Ram to the landlord. It was held that the implication of non-issuance of the notice by the sub-tenant i.e. Munshi Ram within six months from the date of the commencement of the said Act was an issue which was to be decided by the Rent Controller under Section 17 (3) and not by a civil court. The observations of the Apex Court reported in 55 (1994) DLT 506 (SC) Manphul Singh Sharma vs. Smt.Ahmedi Begum & Anr. were considered; it was held that the respondent Munshi Ram a lawful sub-tenant had now become a statutory tenant and thus entitled to the protection of Section 20 of the Delhi and Ajmer Rent Control Act, 1952 and in such an eventuality neither Section 17 and nor Section 18 of the said Act would have any application. The appeal was dismissed.

5. This is the second appeal before this court. On 20.3.2006, the following substantial question of law had been framed:

“What is the status of a sub-tenant under the provisions of Delhi Rent Control Act in the event a tenant dying without any legal heirs, when the mandatory notice as required under section 17 of the Delhi Rent Control Act has not been served on the landlord?”

6. On behalf of the appellant it is submitted that the judgment of the court below is perverse; the correct appreciation of the provisions of Sections 16, 17 & 18 of the said Act have not been considered; the mandate of Section 17 (2) of the said Act which was a notice required to be given by the sub-tenant to the landlord within six months of the commencement of the said Act even if he was declared to be a lawful sub-tenant in terms of his possession prior to 9.6.1952 has not been complied with; Munshi Ram did not acquire the status of a tenant; after the death of Net Ram, Munshi Ram had in fact become an unauthorized occupant and there being no relationship of landlord and tenant between Prem Nath

Aggarwal (plaintiff) and Munshi Ram (defendant), the landlord has no other efficacious remedy but to approach a civil court. In these circumstances, provisions of Section 50 of the said Act are clearly inapplicable. The courts below without going into the legal propositions as laid down by the Supreme Court in 93 (2001) DLT 65 (SC) Mrs. Kapil Bhargava & Ors. vs. Subhash Chand Aggarwal & Ors. had brushed them aside. Reliance upon the judgment of Manphul Singh Sharma's case (supra) was misplaced. Judgments of the courts below dismissing the suit of the plaintiff for possession and mesne profit are liable to be set aside; suit be decreed.

7. In opposition, the learned counsel for the respondent has submitted that the judgment of the trial judge calls for no interference as the requirement of a notice under Section 17 (2) of the said Act does not apply to the facts of the instant case; status of Munshi Ram is adequately protected as he being in possession prior to 9.6.1952 he was a lawful sub-tenant who had thus acquired a statutory tenancy and the only recourse available to the landlord was to file a petition for eviction under the DRCA. Jurisdiction of the civil court is rightly barred. It is further submitted that there is no finding by either of the courts below that Net Ram had died issueless; in fact, the question as to whether he had left any legal heir or not was still open and DW-4 in his cross-examination, in fact, had categorically stated that Net Ram had died leaving behind two sons.

8. The legal proposition and substantial question of law as formulated by this court are to be answered by reading the relevant provisions of the said Act.

Section 2 (l) reads as follows:

“2 (l) “tenant” means any person by whom or on whose account or behalf of the rent of any premises is, or but for a special contract, would be, payable, and includes—
(i) a sub-tenant;
.....”

9. The Supreme Court in the Kapil Bhargava's case (supra) had held that a sub-tenant is included within the definition of ‘tenant’ for a purpose i.e. for the conferment of rights and obligations on such a sub-tenant, wherever the statute requires under the various provisions of the Act, of that which is conferred on a tenant. However, this would not apply when the Act itself treats both as separate entities as in Section 14 (1) (b) and Sections 16-17-18; otherwise these provisions would be rendered meaningless. Therefore, where those provisions which specifically deal with an inter se relationship between the tenant and sub-tenant, the two cannot be equated with one another.

10. Section 16 lays down the restrictions on sub-letting. Sub-Section 1 makes sub tenancies created before 9.6.1952 valid provided the sub-tenant continues to be in occupation of the suit property before the commencement of this Act whether with or without the consent of the landlord. It is a deeming provision.

11. Section 17 deals with a notice of creation and termination of a sub-tenancy. Sub-clause 2 of Section 17 speaks of a sub-tenancy which has been created before the commencement of the Act which is the applicable provision in this case. Ex.PW-1/DX had categorically held that Munshi Ram was in possession of the suit premises prior to 9.6.1952 and as such was a lawful sub-tenant. There is, however, a condition stipulated under Section 17 (2); this condition is that where after the commencement of this Act even if any premises have been lawfully sub-let, the tenant or sub-tenant

to whom the premises have been sub-let will give a notice to the landlord of the creation of such a sub-tenancy within six months of the commencement of this Act. This provision applies to a lawful sub-tenancy existing on the date of the commencement of the Act; the further stipulation being that the notice will be given by the sub-tenant within six months of the date of the commencement of the Act.

12. In the judgment of Kapil Bhargava's (supra) the Supreme Court has held that Section 17 is not a mere formality; it in fact gives a substantive right to a sub-tenant to become a tenant under section 18; even if a sub-tenant is a lawful sub-tenant by virtue of Section 16 (1) an obligation is cast upon him to serve a notice to his landlord under section 17 (2) for gaining a right under Section 18; otherwise he would be liable to be evicted in the execution of an eviction decree against the tenant.

13. Section 17 (2) speaks of three conditions which have to be complied with before the said sub-section can be invoked, namely,

- (i) the premises have been lawfully sub-let by the tenant,
- (ii) the subletting shall have been before the commencement of the Act, and
- (iii) such tenant or sub-tenant has given a notice to the landlord of the creation of the sub-tenancy within six months of the commencement of the Act and notified the termination of such sub-tenancy within one month of such termination.

All these conditions have to co-exist.

Sub-section (3), therefore, refers to a dispute regarding such a sub-tenancy as has been mentioned in sub-clause (2). Sub-section 3 of Section 17 of the said Act would however be attracted only in a case where a dispute has been raised and an application is made either by the landlord or a sub-tenant within two months of the date of receipt of notice of sub-letting by the landlord or the

issue of the notice by the tenant or the sub-tenant, in which case such a dispute shall be decided by the Controller. This sub-section presupposes that there is a dispute about the notice and the issue about this dispute has to be raised.

14. Section 18 makes a sub-tenant a tenant in certain cases. Sub-section 1 makes the sub-tenant a direct tenant from date of order of eviction while sub-section 2 makes him a direct tenant on the date of commencement of the Act. Sub-section 2 refers to sub-tenants inducted prior to the commencement of the Act. This sub-section no doubt does not make any reference to any notice. It applies to a case where the interest of a tenant has been determined before the commencement of the Act but the interest of the sub-tenant was allowed to subsist. This situation could arise where before the commencement of the Act either because of a statute, a contract or a decree, the interest of the tenant has been determined. A dispute raised by such a sub-tenant would not fall under sub-section (3) of Section 17 of the said Act as this sub-section would apply only to a case where the dispute has arisen during the subsistence of the main tenancy. There is no other provision in the Act under which a dispute in respect of such a sub-tenancy can be decided by the Controller. Provisions of Section 17 (2) in fact have to be reconciled with the provisions of Section 18 (2). In *Kapil Bhargava's* case (supra) the Supreme Court has categorically held that the right of the sub-tenant to become a tenant under Section 18 is conditional on the service of a notice under Section 17 (2) which is not procedural but confers a substantive right to the tenant to obtain the benefit of Section 18. Section 50 would not have a bearing on the maintainability of a suit

filed in respect of such a sub-tenancy. These observations also hold good in view of the judgment of the Apex Court reported in AIR 1967 SC 1196 Nand Kishore vs. Ram Kishan.

15. The Supreme Court in the Kapil Bhargava case (supra) had also held that the creation of sub-tenancy before 9.6.1952 is not a ground for eviction under Section 14 (1) (b). Nevertheless, a notice is still necessary under Section 17 (2) and even a lawful sub-tenant would be entitled to the benefit of Section 18 only if such a notice had been given by him.

16. Section 16, 17 & 18 of the said Act had in fact come up for a detailed interpretation before the Supreme Court in Kapil Bhargava' (supra). This was a case where the tenant had become a deemed sub-tenant by virtue of Section 16 (1) prior to period 9.6.1952. On a reconciliation of the aforementioned provisions the Apex Court had held that in the absence of a notice having been served by the sub-tenant upon his landlord under Section 17 (2) within six months of the commencement of the said Act, the said notice being not a procedural or an empty formality no substantive right accrued upon the sub-tenant to get the benefit of Section 18 and in such an eventuality a decree passed against a tenant would be executable against the sub-tenant as well.

17. In 113 (2004) DLT 445 Chanderwati & Ors. vs. Gianwati & Ors. this question again came up for decision before a single bench of this court. In this case, the respondent nos.2 to 4 had been inducted as sub-tenants prior to 1952 and they had contended that in this view thereof even in the absence of notice under Section 17 (2) of the DRCA, they had become direct tenants under the landlord by the operation of law. Relying upon the judgment of the

Supreme Court in Kapil Bhargava (supra), the High Court had endorsed the finding that in the absence of the mandatory notice under Section 17 (2) not having been served by the sub-tenant upon the landlord, the sub-tenant could not claim to be a direct tenant of the landlord; accordingly, the order of the Tribunal was upheld.

18. Reliance by the appellate court on the judgment of Manphul Singh (supra) is misplaced. In that case during the pendency of the petition which had been instituted under the Delhi & Ajmer Rent Control Act, 1952, the Delhi Rent Control Act, 1958 had come into force; as such in view of Section 57 (2) of the DRCA, 1958 the pending proceedings were held to be governed by the earlier Act. This is clearly not so in the instant case.

19. From the aforementioned propositions of law discussed supra, it is clear that Munshi Ram does not become a tenant of the landlord. He had admittedly not served a notice under Section 17 (2) to the landlord; benefit of Section 18 does not accrue in his favour. In these circumstances, if Munshi Ram did not qualify as a tenant and there is no relationship of landlord and tenant between Prem Nath Aggarwal and Munshi Ram, question that arises is as to what is the remedy of the landlord? The answer being that the only recourse available to the owner of these premises is to file a suit for a decree of possession against the unauthorized occupant Munshi Ram who does not have the status of a tenant. It is clear that the DRCA would not be applicable; provisions of which are attracted only when the parties are governed by a landlord-tenant relationship. Section 50 of the said Act is thus not attracted. There is no bar to the filing of the present suit.

20. A plain reading of Section 50 of the DRCA in fact makes it evident that existence of a landlord-tenant relationship is a must to attract the jurisdiction of the Rent Controller in respect of the particular premises; jurisdiction of the Rent Controller being barred if it relates to the eviction of a tenant from the said premises; which again has to be determined from the averments made in the plaint and not on the defence as set up by the defendant. This has been held in AIR 2002 Delhi 81 Krishna Prakash and Another vs. Dilip Harel Mitra Chenoy. Plaintiff in this case has described the defendant as an unauthorised occupant.

21. Counsel for the appellant also has drawn attention of this court to the internal page 6 of the judgment dated 11.9.2001 of the trial court wherein the court had observed that the contention of the defendant that Net Ram had died leaving behind legal heirs is beyond the pleading of the defendant and as such has no evidentiary value; natural corollary being that the contention of the plaintiff that Net Ram had died issueless having implicitly been accepted. Question of an inheritable tenancy was even otherwise not raised.

22. The result of the aforementioned discussion is that the judgments of the courts below are liable to be set aside. The judgment and decree dated 11.9.2001 of the civil judge and the judgment and decree dated 26.10.2005 of the first appellate court are set aside. Suit of the plaintiff i.e. Prem Nath Aggarwal for possession of the suit property i.e. shop no. 702, Gali Kundewala, Ajmeri Gate (as shown in the site plan Ex.PW-1/1) stands decreed. The suit had been filed for mesne profits as well. DW-1 in his cross-examination has admitted that use and occupation charges for the suit property

would be about Rs.400=500 per month and not Rs.1000 per month as was contended by the plaintiff. In the written submissions filed, the counsel for the plaintiff has prayed that if this suit is allowed, decree for mense profits at the admitted rate of Rs.500/- also be passed. In view of this admission of DW-1 decree for mesne profits is also passed at the rate of Rs.500/- per month with effect from March 1994 till the date of handing over possession of the suit property on the appellant/plaintiff paying the required court fee.

23. Substantial question of law is answered accordingly. Appeal is allowed and disposed of in the above terms. File be consigned to Record Room.

INDERMEET KAUR, J.

JULY 21, 2010

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