

* **HIGH COURT OF DELHI : NEW DELHI**
+ **C.M. (M) No.115 of 2007**
% **Date of Decision : 19th February 2008**

Atul Glass Industries (Pvt.) Ltd. Petitioner
Through: Mr. Sunil Malhotra,
Advocate

versus

Smt. Prem Bhargava. Respondent
Through: Mr.R.S. Endlaw with
Mr.Mahfooz Nazni,
Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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

VIPIN SANGHI, J. (Oral)

1. The petitioner impugns the order dated 30th November 2006 passed by the learned Additional Rent Control Tribunal, Delhi in R.C.A. No.416/2005 whereby the appeal filed by the petitioner under Section 38 of the Delhi Rent Control Act (the Act) against the eviction order dated 29th July 2005 passed by the learned Additional Rent Controller, Delhi under Section 14(1)(b) of the Act has been dismissed.

2. The petitioner Atul Glass Industries (P) Ltd. is admittedly the tenant of the respondent in respect of suit premises bearing Showroom No.G-4, Ground Floor, Mansarovar, 90, Nehru Place, New

Delhi. The respondent landlord filed the eviction petition, inter-alia, on the ground contained in section 14(1)(b) of the Act with the plea that the suit premises has been sub-let and/or parted with possession of by the petitioner to three different entities, namely, M/s. Image Glass House, M/s. Galhotra Express Commercial Art and M/s. T.S. Bedi. The eviction petition was contested by the petitioner. After the trial by a detailed judgment, the learned Additional Rent Controller Delhi returned the finding that the petitioner tenant has sub-let the premises to the aforesaid three entities. The Additional Rent Control Tribunal, as aforesaid, has dismissed the first appeal and that is how the matter is before this court.

3. The first submission of learned counsel for the petitioner is that M/s. Image Glass House was merely a trading name of the petitioner and the petitioner was, in fact, carrying on the business under that name from the suit premises. The petitioner is in exclusive possession of the tenanted premises. So far as M/s. Galhotra Express Commercial Art and M/s. T.S. Bedi are concerned, the stand of the petitioner was that they were not operating from within the suit premises and were direct tenants of the landlords. It was secondly contended that while deciding the appeal, the learned Additional Rent Control Tribunal has merely reproduced passages from the findings of the learned ARC and has not applied its own mind to appreciate the evidence and to arrive at a finding of sub-tenancy or parting with possession of the suit premises by the tenant to third

parties. Learned counsel also argues that a perusal of the eviction petition would show that there was a contradiction in the eviction petition itself, inasmuch as, in response to the column "*whether there are any sub-tenants etc.,*", the landlord has answered in the negative whereas in response to column (9) i.e. "*whether the premises are occupied by single tenant or more than one tenant*", the landlord had stated "*Leased to single tenanted respondent has sublet assigned and parted with the possession of the whole of the suit premises to three persons of the tenanted premises without obtaining the consent in writing of the owner/landlord/ petitioner*". Similar averments were made in paragraph 18(a) of the eviction petition. The counsel also drew my attention to written statement filed by the petitioner to the eviction petition and particularly to paragraph 18(a)(ii).

4. Learned Counsel for the Petitioner has also relied on the following decisions:

(i) AIR 1984 SC 1447, Jagdish Prasad vs. Smt. Angoori Devi, wherein the Supreme Court held that merely from the presence of a person other than the tenant in the shop, sub-letting cannot be presumed, as long as control over the premises is kept by the tenant and the business run in the premises is of the tenant.

(ii) AIR 1987 SC 2055, Dipak Banerjee vs. Smt. Lilabati Chakraborty, wherein the Supreme Court has held that in order to prove tenancy or sub-tenancy two ingredients have to be established, firstly the tenant must have exclusive right of possession or interest in the premises or part of the premises in question and secondly that right must be in lieu of payment of some compensation or rent.

(iii) **AIR 1988 SC 162, Jagan Nath (Deceased) through LRs vs. Chander Bhan & Others**, wherein the Supreme Court held that the parting with possession means giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; 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 other 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 clause (b) of Section 14(1) of the Delhi Rent Control Act.

(iv) **(1990) 2 SCC 331, Delhi Stationers and Printers vs. Rajendra Kumar**, wherein the Supreme Court held that subletting means transfer of an exclusive right to enjoy the property in favour of a third party and the said right must be in lieu of payment of some compensation or rent. 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."

5. On the other hand, learned counsel for the Respondent urged that in these proceedings under Article 227 of the Constitution of India, the court is not required to review or weigh the evidence on which the determination of the inferior court or Tribunal purports to be based. In support of this submission, reliance is placed on the decision of this Court in **Dr. (Mrs.) Sushil Puri & Ors. vs. Jai Gopal & Ors.**, 135 (2006) DLT 90. On the same lines is the decision of this court in **Goverdhan Lal Soni vs. Indian Sulphacid Industries Ltd. & Ors.**, 2004 III AD (Delhi) 439. To counter the argument of the

petitioner, that the learned Additional Rent Control Tribunal had merely reproduced the extracts from the order passed by the learned ARC, without itself appreciating the evidence, learned counsel for the respondent argued that it is not necessary for the first appellate court to undertake the complete exercise of reappreciating the evidence on its own, particularly where it agrees with the view of the trial court. In support of this argument he relied on ***Girijanandini Devi & others vs. Bijendra Narain Choudhary***, AIR 1967 SC 1124, wherein the Supreme Court held as follows:

“... It is true that the High Court did not enter upon a reappraisal of the evidence, but it generally approved of the reasons adduced by the Trial Court in support of its conclusion. We are unable to hold that the learned Judges of the High Court did not, as is contended before us, consider the evidence. It is not the duty of the appellate court when it agrees with the view of the trial court on the evidence either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court. Expression of general agreement with reasons given by the Court decision of which is under appeal would ordinarily suffice.”

6. Having considered the rival contentions of the parties, I am inclined to agree with the submissions of the respondent. The submission of the petitioner based on the averments made in the eviction petition merely needs to be stated to be rejected. The entire eviction petition has to be read and understood as a whole. In answer to the query as to whether there are any sub-tenants etc., the respondent landlord had answered in the negative while it was clearly stated that the premises has been sublet/possession parted with by

the tenant and names of the sub-tenants/occupants were also disclosed. It is obvious that the landlord while answering the query at S. No.16, understood it to mean: whether there are any legal and recognised sub tenants in the premises ?

7. The submissions of the petitioner that M/s. Image Glass House was merely a trading style of the petitioner and that the other two entities, M/s. Galhotra Express Commercial Art and M/s. T.S. Bedi were either encroacher or direct tenants of the landlord have been considered and rejected by the two courts below and it is not for this court to reappraise the evidence to come to a different conclusion. Moreover, for succeeding in the eviction petition, it was sufficient for the respondent landlord to establish the subletting or parting with the possession of the premises or a part thereof to even a single entity. So far as M/s. Image Glass House is concerned, the finding recorded by the learned Additional Rent Controller is very clear and categorical and the same reads as follows:

“Moreover, here in the present case, the petitioner has alleged that in fact the premises has been sub-let by the respondent to M/s. Image Glass House, while it is the respondent who has taken plea that Image Glass House is the trade name of the respondent by which it has been carrying its business. But the respondent failed to produce any documents on record stating that respondent was carrying out their business in the name and style of M/s. Image Glass which in a retain show room, nor the respondent has produced any list of retail showroom by which he has been carrying the business as partnership firm. He has deposited the documents of partnership in the sales tax

department and sales tax registration of Image Glass House. The respondent company has not produced any document to the effect that the sales proceed of Image Glass House has been reflected in the accounts of the respondent. Nor any account of rent paid has been produced on record. Even the power of attorney has been executed by RW2 in favour of RW1 in his personal capacity and no other record has been placed on record by which it has been proved that Atul Gulati, Managing Director is authorized to appoint Shri S.C. Bhutani. The counsel for the respondent has challenged the reliability of PW1 when in his cross-examination he has denied the identity by Shri S.C. Bhutani, while she has written several letters to him. But that does not have any merit, particularly when such evidence are on record that in fact it is the respondent who has sublet, assigned or parted with the possession of the suit premises to three persons, i.e, Image Glass House, T.S. Bedi and Galhotra Express Commercial Art. The respondent Company has not produced on record anything where it has been carrying the business in the name of Image Glass House. Ex. PW1/18 were the bills book also do not reflects that it is the Company show room where the business has been carried out by M/s. Atul Glass Company tenant in the suit premises.

Here the presence of three persons has been established on record. It is only the respondent who can tell how they come into existence in the suit premises. The respondent has no answer nor they produced any document to prove the fact except verbal deposition that they are direct tenants of the petitioner or they are encroacher which does not have any meaning.

In view of the above discussions in hand, I am of the view that the petitioner has proved her case that the respondent has sublet, assigned or otherwise parted with the possession of the suit premises to M/s. Image Glass House without obtaining the consent in writing of the petitioner. Therefore, I pass an eviction order under Section 14(1)(b) of the Act in favour of

the petitioner and against the Respondents with respect to the suit premises i.e. Show Room No.G-4, Ground Floor, Mansarovar, 90, Nehru Place, New Delhi-110019, as shown red in the site plan Ex. AW1/1."

8. The argument of the petitioner that the landlord had been dealing with Mr. Bhutani of Image Glass House over the years is neither here nor there. It is not the petitioners case that the premises was let out to Mr. Bhutani or Image Glass House. It is the petitioners case that it was and is the tenant in the premises. Merely because Mr. Bhutani might have interacted with the landlord, holding himself out as a representative of the petitioner-tenant, that does not lead to the inference that Image Glass House is an outfit of the tenant. On a closer scrutiny, the cat has come out of the bag and it is clearly established that Image Glass House has no nexus with the petitioner-tenant. I also find that in the facts of this case, the reliance placed on the aforesaid decisions of the Supreme Court is of no avail. It is not the case of the petitioner that M/s. Image Glass House was not in the exclusive possession of the suit premises. In fact, the case of the petitioner is that M/s. Image Glass House is a trade name of the petitioner M/s. Atul Glass Industries Pvt. Ltd. and that business is being done in the premises in the name of Image Glass House. The exclusive possession of Image Glass House is not even disputed. Therefore, once it is found as a matter of fact that Image Glass House is not an outfit of the petitioner tenant, the only conclusion that follows is that the tenant has parted with the possession of the suit premises to Image Glass House.

9. The later decision of the Hon'ble Supreme Court do not support the case of the petitioner. Reference be made to: **M/s Bharat Sales Ltd. v/s Life Insurance Corporation Of India** , AIR 1998 SC 1240, wherein it was held that:

“Sub-tenancy or subletting 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 of 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 overacts 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 sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sublet had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump-sum in advance covering the period for which the premises is let out or sublet or it may have been paid or promised to be paid periodically. 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 facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sublet.”

10. I find that the learned Tribunal has generally agreed that the findings of the learned Additional Rent Controller and it was not necessary for the Tribunal to have gone into the complete analysis and re-appraisal of the evidence on its own. It is sufficient if the order of the Tribunal discloses application of mind and consideration of the arguments raised before it by the parties.

11. For the aforesaid reasons, I dismiss this petition leaving the parties to bear their own respective costs.

12. Lower court record be sent back to the Trial Court.

February 19, 2008
P.K. BABBAR

VIPIN SANGHI, J.