

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

Date of Reserve: 03.02.2010
Date of Order: 26th March, 2010

CM(M) No.1418/2004

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26.03.2010

ATMA RAM PROPERTIES(P) LTD.

... Petitioner

Through: Mr. Amit Sethi & Mr. Mukesh
Ranjan, Advocates

Versus

M/S. ALLIED MOTORS (P) LTD.

..... Respondent

Through: Mr. Neeraj Kishan Kaul, Sr.
Advocate with Ms. Diya Kapoor, Advocate.

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner has assailed the order of Additional Rent Control Tribunal (ARCT) dated 28.2.2004 whereby the learned Tribunal upheld the decision of the learned Additional Rent Controller (ARC) of dismissing eviction petition filed by the petitioner.

2. Brief facts relevant for the purpose of deciding this petition are that the petitioner filed an eviction petition against the respondent on the ground of subletting under Section 14 (1) (b) of Delhi Rent Control (DRC) Act

(hereinafter referred to as “the Act”), wherein it was alleged that servant quarter No. 45, attached to the shop/showroom at Atma Ram Mansion, Scindia House, Connaught Circus, New Delhi, under the tenancy of the respondent, was sublet, assigned or otherwise parted with possession to one Kanshi Ram, in violation of provisions of DRC Act, i.e. without the permission and consent in writing of the petitioner. This contention was made because the respondent had filed an eviction petition against Kanshi Ram alleging Kanshi Ram to be a service tenant of the respondent in respect of Quarter No. 45 falling within the tenanted premises. In this petition against Kanshi Ram, the respondent had taken the stand that Kanshi Ram was given this servant quarter during his employment in 1943.

3. Since this subletting was prior to DRC coming into force, no written consent of the landlord was required in terms of Section 16 of DRC Act. The two Courts below had given a finding that Kanshi Ram was sub-tenant prior to the DRC Act coming into force. He was, therefore, a lawful sub-tenant and issue of written consent would not arise and the premises could not be got vacated from the respondent on the ground of subletting a servant room to Kanshi Ram.

4. At the time of admission of this petition, the petitioner raised a question that even if sub tenancy was granted prior to DRC Act coming into force, a reading of provisions of Section 16(1) and 17(2) of the Act made it mandatory on the part of the respondent to prove that a notice was served on the erstwhile landlord within a period of six months of commencement of the Act (admission order dated 28.8.2006).

5. Section 16 of the DRC Act deals with subletting. Section 16(1) of the Act provides that where a premises or any part of the premises had been sub let by a tenant prior to 9th June, 1952, and was in occupation of the sub tenant, then notwithstanding that consent of landlord was not obtained for such subletting, the premises would deem to have been lawfully sub-let. Sections 16(2) and (3) deal with the sub-letting by a tenant after 9th June, 1952. Section 17(2) of the DRC Act, relied upon by the petitioner, is in respect of service of notice upon landlord where subletting was prior to 9th June, 1952 and reads as under:

“Where, before the commencement of this Act, any premises have been lawfully sub-let either in whole or in part by the tenant, the tenant or the sub-tenant to whom the premises have been sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within six months of the commencement of this Act, and notify the termination of such sub-tenancy within one month of such termination.”

6. A perusal of Section 17(2) and Section 16(1) would make it clear that it was not mandatory for the sub-tenant or for the respondent (tenant) to serve a notice on the landlord within a period of six months of the Act coming into the force. The legislature used word “may” instead of “shall” and therefore it was discretionary on the tenant/sub-tenant to serve a notice on the landlord about the sub-tenancy. However, Section 18 of the DRC Act confers certain benefits on sub tenant and these benefits are available to sub-tenant only where a notice under Section 17(2) of the Act had been served on the landlord. Thus, if no notice under Section 17(2) of the Act has been served by the sub-tenant/tenant on the landlord, within six months of the commencement of the Act, then sub-tenant cannot take benefit of Section 18

of DRC Act, and cannot claim that he would become a tenant directly under the landlord in respect to the premises in his occupation. If a sub-tenant/tenant has not served a notice as envisaged under Section 17(2) of the Act, that does not mean that sub-tenancy, as envisaged under Section 16 (1) of the Act, would become unlawful or illegal sub-tenancy. Irrespective of the fact whether a notice under Section 17 of the Act is served or not, the sub-tenancy would be a lawful sub-tenancy.

7. The petitioner relied on *Kapil Bhargava (Mrs) and others vs. Subhash Chand Aggarwal and others*, **(2001) 6 SCC 645**. In this case also, the Hon'ble Supreme Court observed that Section 17(2) of the Act was inducted for the purpose so that on performance of this obligation under Section 17(2) of the Act, a right is conferred on sub-tenant to become a tenant under Section 18 of the Act and service of notice saves a tenant from eviction, even if a decree is passed against the tenant under Section 14 of the Act. Section 18 of the Act confers on such sub-tenant (who has served a notice), an independent right as that of a tenant. The Hon'ble Supreme Court observed that a lawful sub-tenant under Section 16(1) of the Act has an obligation to serve a notice on the landlord for gaining a right under Section 18 of the Act and unless a notice under Section 17(2) of the Act is not served, he cannot take benefit of Section 18 of the Act. Thus, if a sub-tenant has not served a notice claiming a under Section 17(2) of the Act that would not make him an unlawful sub-tenant, and would not give an advantage to the landlord to seek eviction of tenant on the ground of sub tenancy.

8. The other judgment relied upon by the petitioner - *Subhash Chand Aggarwal vs. Murli Manohar Lal*, **(2000) 1 RCR 644**, is also to the

same effect. I, therefore, consider that merely because service of notice, as envisaged under Section 17(2) of the Act, was not effected by the respondent/tenant in this case, would not entitle the petitioner to claim that the sub-tenancy of Kanshi Ram was an unlawful sub-tenancy despite the fact that Kanshi Ram's sub-tenancy was created in the year 1943, much prior to the Act coming into the force.

I find no force in this petition. The petition is dismissed.

March 26, 2010
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SHIV NARAYAN DHINGRA, J.