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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.172 of 2010 & C.M. Appl. Nos.2248-2249 of 2010

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24.02.2010

M/S. UDHEY BHAN ASHOK KUMAR & CO. & ORS. Petitioners
Through: Mr. Sunil Malhotra & Ms. Sonali
Malhotra, Advocates.

Versus

NEELAM KUMARI Respondent

Date of Reserve: 9th February, 2010

Date of Order: February 24, 2010

JUSTICE SHIV NARAYAN DHINGRA

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.

J U D G M E N T

1. By this petition, the petitioner has assailed an order of Rent Control Tribunal whereby an appeal of the petitioner against an order of the learned Rent Controller was dismissed.

2. The respondent filed an eviction petition in respect of premises in question on the ground of sub-letting and non-payment of rent. In the eviction petition, the landlord categorically stated that the shop was let out to M/s. Udhey Bhan Ashok Kumar & Company, a partnership firm having partners Mr. Udhay Bhan, Mrs. Kanta Rani, Mr. Ashok Kumar and Mr. Vinod Kumar. Letting was done initially for a period of eleven months from 1st May, 1981 to 31st March, 1982 and thereafter, it became a month to month tenancy. It was alleged that the premises had been for about four years before filing petition in exclusive use and occupation of M/s. Udhey Bhan Ashok Kumar &

Company a proprietorship firm of Mr. Rakesh Kumar and it was sub-let by the tenants to Mr. Rakesh Kumar. The other ground on which eviction petition was filed was non-payment of rent. In the written statement, it was admitted that the tenancy was created by landlord in favour of M/s. Udhey Bhan Ashok Kumar & Company, a partnership firm having partners as stated by the landlord. However, it was denied that the shop was sub-let to Mr. Rakesh Kumar. It was stated that Mr. Rakesh Kumar was son of Mr. Arjun Dev and grandson of Mr. Udhay Bhan. He was inducted as a partner in place of Mr. Udhay Bhan on death of Mr. Udhay Bhan and later on partnership was dissolved on 31st March, 1996 and Mr. Rakesh Kumar became the sole proprietor of M/s. Udhey Bhan Ashok Kumar & Company. It is submitted that in this process only status of the person in business has changed from partnership to proprietorship and since Mr. Rakesh Kumar was inducted as a partner on death of Mr. Udhay Bhan, even if he had become sole proprietor of the firm, it would not amount to sub-letting.

3. In view of these undisputed facts, the two courts below gave a finding that it was a clear cut case of parting with possession and sub-letting and the landlord was entitled for possession. An eviction order passed by Rent Controller was confirmed by Rent Control Tribunal. Similarly, the case of non-payment of rent by the tenant was also upheld since the tender of rent by sub-tenant Mr. Rakesh Kumar was not considered a legal tender.

4. Learned counsel for the petitioners has argued that mere change of the constitution of firm from partnership to proprietorship would not amount to sub-tenancy. I consider that this argument is not tenable. A partnership firm is not a legal entity. It is a conglomeration of partners. A tenancy in the name of partnership firm is a joint tenancy of the partners. If none of the partners in whose favour the tenancy was created is in possession of the shop and another person, who was later on inducted as a partner and

then becomes sole proprietor of the firm is in possession of the tenanted premises then it is a clear cut case of sub-letting and parting with possession through the device of first inducting a stranger as a partner and then dissolving the partnership firm and handing over the premises to him. It makes no difference that he continues the business in the same name or that he was related to an erstwhile partner. I find no force in this petition. The petition is hereby dismissed.

SHIV NARAYAN DHINGRA J.

FEBRUARY 24, 2010
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