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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Reserve: February 11, 2010

Date of Order: 11th March, 2010

+ CM(M) 12/2010

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Subhash Khanna

Through: Mr. Dhruv Kumar, Advocate

Versus

Chatar Lal

Through: nemo

11.03.2010

...Petitioner

...Respondent

JUSTICE SHIV NARAYAN DHINGRA

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

JUDGMENT

1. By this petition under Article 227 of the Constitution of India, the petitioner assailed an order dated 4th November 2009 passed by learned Additional Rent Control Tribunal (ARCT), Delhi dismissing an appeal of petitioner against order dated 3rd March, 2008 of the learned Additional Rent Controller (ARC).

2. Brief facts relevant for the purpose of deciding this petition are that the respondent (landlord) filed an eviction petition against the petitioner/tenant under Section 14(1)(a) and (b) of Delhi Rent Control Act (DRC) on account of non-payment of rent and subletting. Non-payment of rent was established and an order under Section 15(1) was passed by learned ARC directing respondent to pay arrears of rent. There is no challenge to the order passed by learned ARCT in appeal concerning Section 14(1) (a) and Section 15(1) of the DRC Act. The eviction of the petitioner was upheld by learned ARCT on the ground of subletting of the premises to one Shri Hari. The challenge by this petition is to order of eviction on the ground of subletting.

3. The premises in question is a shop which was let out to the petitioner herein. The contention of the respondent was that the petitioner has sublet this shop to Hari

(respondent no.2 before the trial court) who was carrying his business of *golgappas*, *alloo chat*, *bhallas* etc in the shop. This subletting was done without the consent of the respondent (landlord). The petitioner took the stand that Shri Hari was an employee of the petitioner and it was not a case of subletting.

4. It is not in dispute that the petitioner himself was not carrying business of *golgappas*, *alloo chat*, *bhallas* etc and was carrying a business of 'speakers' etc at the premises bearing number A-719, Shastri Nagar, Delhi-110052, a premises just behind the shop in question. The evidence about subletting led before learned ARC by the parties was analyzed by the learned ARC. It was proved by the landlord that the shop was opened and closed by Shri Hari and MCD had visited the shop and challaned owner of shop. The name of owner mentioned in the challan of MCD was that of respondent no.2 Shri Hari @ Harish Chand Gupta. It was brought on record that the entire material etc required for running the shop used to be purchased by Mr. Hari himself.

5. The petitioner who examined himself to substantiate his contention that Hari was his employee stated that he was paying a salary of Rs.4,500/- per month while Mr. Hari in his testimony stated that he was an employee of the petitioner at a salary of Rs.4,000/- per month. In his testimony the petitioner stated that he himself used to visit the shop during day time to supervise the business while Mr. Hari on the other hand stated that it was petitioner's mother who used to visit the shop for supervision. The petitioner before the trial court had taken a stand that he was maintaining accounts of the business of shop. However, he failed to produce account books before the trial court to show payment of salary to Hari or other accounts being maintained or what was being purchased by Hari or what was the source of his purchase, how much money was being spent on purchasing goods, how much was the profit.

6. After re-appreciating the entire evidence led by the parties, the learned ARCT came to conclusion that the landlord had discharged his onus that Hari was in

exclusive possession of the shop and the tenant had failed to discharge his onus that Hari was an employee. The learned ARCT upheld that it was a case of subletting.

7. By way of present petition, the petitioner has assailed the order on the ground that mere presence of Shri Hari in the shop would not mean that it was a case of sub-tenancy. He submitted that the sub-tenancy cannot to be presumed but is to be proved and mere user by other person does not amount to parting with possession of the premises so long as the tenant retains the legal possession himself.

8. In case of a sub-tenancy there is an agreement between the subtenant and the tenant which is entered into without the knowledge of landlord and in secrecy. Thus the landlord cannot be expected to prove the sub-tenancy by proving an agreement between the subtenant and the tenant. The onus of landlord is to prove that the shop was in exclusive possession of someone, other than the tenant. Once the landlord proves this, the onus shifts on the tenant to show that the person in occupation of shop was not a subtenant. The trial court in this case had considered the evidence produced by the tenant. The tenant had taken the plea that respondent no.2 Mr. Hari was an employee and accounts were being maintained but he failed to produce the account books nor proved attendance register or salary register in the Court. There were contradictions on the quantum of salary in statements of witnesses. There were contradictions about supervision of shop/ business in the statements of two witnesses. In view of the testimony led before the trial court and the fact that the tenant did not lead any cogent evidence to show that the respondent no.2 Hari was his employee, both the courts below come to a concurrent finding that Mr. Hari was a subtenant.

9. I consider that this Court in a petition under Article 227 of the Constitution of India cannot disturb the concurrent findings of fact given by the two courts below. The petition has no force and is hereby dismissed. No orders as to costs.

March 11, 2010
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SHIV NARAYAN DHINGRA J.