

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

% *Judgment delivered on : 16.08.2011*

+ **CM(M) No. 486/2003 & CM Nos.14983/2011 & 997/2003**

ANIL KUMAR KALRA

..... Petitioner
Through: Mr.J.C.Mahindro, Advocate.

Versus

SHRI SAT NARAIN GUPTA & OTHERS

.....Respondents
Through: Dr. Naipal Singh, 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. (Oral)

1 The order impugned is the order dated 03.07.2003 which order was passed by the Additional Rent Control Tribunal (ARCT) dismissing the review petition filed by the tenant against the order dated 23.05.2003. Vide judgment and decree dated 23.05.2003 the ARCT had dismissed the appeal of the tenant upholding the

order of the Additional Rent Controller (ARC) dated 08.05.2003 whereby an eviction order had been passed in favour of the landlord namely Sat Narain Gupta and against the tenant Anil Kumar Kalra under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA).

2 Record shows that the landlord had filed the present eviction petition under Section 14 (1)(b) of the DRCA; tenanted shop is premises bearing No. ER-20, Inderpuri, New Delhi; it had been let out to respondent No. 1 (Anil Kumar Kalra) vide rent deed dated 20.03.1985. This tenancy had been created by Bidhi Singh in favour of respondent No. 1; Bidhi Singh was the erstwhile owner of this property; thereafter this property had been purchased by the present petitioners Sat Narain Gupta and Anil Kumar Goel. Eviction petition had been filed on the ground of sub-letting; contention was that respondent No. 1 had sublet these premises to Pradeep Kalra (respondent No. 2), it is not in dispute that respondent No. 2 is the brother of respondent No. 1; contention of the petitioners was that respondent No. 2 was in exclusive and complete possession and control of the premises and he was running a business of tents and decorators under the name and style of 'Payal Tent and Decorators'; this subletting being without the consent of the landlord, petition under Section CM(M) No. 486/2003

14 (1)(b) had been preferred. Further contention was that respondent No. 1 is now running his business either at the Patel Nagar or Narayana Ring Road for the last few years; i.e. he has an independent business.

3 In the written statement these contentions had been denied. The stand of respondent No. 1 was that respondent No. 2 is his younger brother; he was working as helping hand in the joint family business and the shop is in fact being run by respondent No. 1 under the name and style of 'Payal Tent and Decorators' with the help and assistance of his brother respondent No. 2.

4 Issues were framed; oral and documentary evidence was led. The landlord had examined three witnesses. Petitioner No. 1 had come into the witnesses as PW-1; he had reiterated the averments made in his eviction petition; he had reiterated that respondent No. 1 is now not sitting in this shop and the shop is being managed by respondent No. 2 who is carrying on the business under the name and style of 'Payal Tent and Decorators'. In his cross-examination he had admitted that he has seen respondent No. 2 and he can identify him; he had further stated that man present in Court is Anil Kumar Kalra; however on verification, it was found that the said man was respondent No. 2

Pradeep Kalra. This variance in the cross-examination of PW-1 has
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been vehemently highlighted by learned counsel for the petitioner to substantiate his submission that the landlord could not even recognize his sub-tenant and as such this whole story is concocted and fictitious. Petitioner No. 2 was examined as PW-2. He had also reiterated that respondent No. 2 is exclusively sitting in the shop and is managing business of the tent and decorators being run from the said shop. PW-3 was the son of the erstwhile owner of shop i.e. Bidhi Singh; he had produced the rent receipt Ex.PW-1/4-A to Ex. PW-1/4-C evidencing the fact that the earlier rent receipts used to be issued by respondent No. 1 but thereafter Pradeep Kalra i.e. respondent No. 2 had started signing the counter-foils of the said receipts; he had deposed that earlier the business was being run by respondent No. 1 under the name and style of 'Payal Tent House' but thereafter respondent No. 2 had affixed the board of 'Payal Tent and Decorators'.

5 The tenant had examined three witnesses to support his case. The tenant had himself come into the witness box as RW-1; he had stated that the rent receipts Ex. PW-1/4-A to Ex. PW-/4-C although admittedly signed by his brother Pradeep Kalra but were signed in his capacity as his General Manager; he had admitted that he has a shop at Narayana which was earlier under the tenancy of his father but now under his tenancy; RW-1 had

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admitted that whatever profits are earned from the tent house business are kept by Pradeep Kalra only; he had admitted that he was an income tax assessee; he had further admitted that he had a bank account for his Narayana shop and the name of the business of Narayana Shop is 'Payal Tent House'; he had stated that there is a joint account of both the shops i.e. shop at Narayana and shop at Inderpuri as the business is the same; he had also admitted that he was maintaining the balance-sheets of the firm. In his cross-examination, he had admitted that he had not brought the balance-sheet for the years 1995 to 1998 as the same had not been prepared because of low business; balance-sheets for the year 1999-2000 had admittedly been filed; this balance-sheet admittedly pertains to the period after the filing of the eviction petition; this has been noted while drawing a conclusion that the tenant had deliberately chosen neither to file his balance-sheets and nor the income tax returns for the period from 1995 to 1998 which was the period when he had allegedly sublet these premises exclusively to his brother Pradeep Kalra; in these circumstances, the concurrent findings of RCT as also of ARCT had noted that adverse inference on this count has to be drawn against the tenant. RW-2 had produced the record of the

years 1993 to 1999 were not on record as the same had not been filed; RW-3 a witness from the MCD Department had admitted that he had not brought the file of the tenant as he was not asked to do so; the license last renewed from the Department was in the name of 'Payal Tent and Decorators' and not 'Payal Tent House' which was the original name of the business which was being carried out by respondent No. 1; 'Payal Tent and Decorators' was the business allegedly being carried out by respondent No. 2.

6 Both the courts below i.e. ARC as also the RCT had given concurrent findings of fact against the tenant; the Courts below had noted that a case under Section 14 (1)(b) of DRCA has been established by the landlord; this was after a correct appreciation of the evidence discussed supra. The stand of respondent No. 1 all along was that respondent No. 2 was his brother and was helping him in the joint family business; he had however failed to produce any books of account of this joint family business; the income tax returns for the alleged period when he had sublet these premises to his brother had also not been filed i.e. for the period from 1993 to 1999; Ex.RW-2/3 which was the returns filed for the years 1999 to 2003 was admittedly after the date of filing of this petition; both the Courts below had correctly noted that this evidence has been created by the tenant.

7 ARCT had endorsed the finding of the ARC vide his judgment and decree dated 23.05.2003. Thereafter a review petition had been filed seeking a review of the judgment and decree dated 23.05.2003. Vide order dated 03.07.2003, the review petition had been dismissed. The Court had noted that there is no pleading in the written statement qua the alleged partnership deed which is sought to be now pleaded; the court had also noted that there is a variance in the written statement wherein the tenant had stated that his brother Pradeep Kalra was helping him in the joint family business; question of a partnership deed between them was a total variance with this initial defence; taking note of all these contentions, the review petition had been dismissed. The Court had also noted that if in fact there was a partnership deed in existence between respondent No. 1 and respondent No. 2, there was no explanation as to why this document did not see the light of the day earlier; this fact was well within the knowledge of the appellant at that time, there being no "due diligence" on the part of the petitioner; if there was such a partnership deed, why it was not filed earlier was not explained; review petition had accordingly been dismissed. The concurrent findings of fact by the two courts below do not warrant any interference by this Court.

8 This Court is sitting under Article 227 of the Constitution of India in a supervisory jurisdiction; until and unless, any patent illegality or manifest error is found on the record, no interference is warranted. This is not one such case. The Court had rightly and correctly appreciated the oral and documentary evidence and arrived at the finding that the landlord is entitled to a decree of eviction under Section 14 (1)(b) of the DRCA.

9 An application under Order 41 Rule 27 of the Code seeking production of additional evidence (which is a partnership deed dated 01.04.1993 purportedly executed between respondent No. 1 and respondent No. 2) has also been sought to be placed on record. Apart from the fact that averments in this application were the subject matter of the review petition which had been dismissed vide order dated 03.07.2003, even otherwise an application under Order 41 Rule 27 of the Code is not maintainable in proceedings under Article 227 of the Constitution which is not an appellate forum. The judgments relied upon by learned counsel for the petitioner reported in AIR 1963 Supreme Court 1526 K. Venkataramiah Vs. A. Seethrama Reddy and others and JT 2000 (Suppl.3) SC 90 State of Rajasthan Vs. T.N. Sahani & others thus do not come to the aid of the petitioner. Petition is

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without merit.

10 Dismissed.

AUGUST 16, 2011

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INDERMEET KAUR, J.