

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

% *Date of Judgment: 03.08.2011*

+ **CM (M) No. 503/2004 & CM No.4833/2004**

SMT. ISHWARI DEVI Petitioner

Through: Mr. K. Sunil, Advocate.

Versus

SHRI MADAN LAL CHOPRA & OTHERS Respondents

Through: Mr.K.R. Chawla, 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 before this Court is the order dated 24.01.2004 which had reversed the finding of the Additional Rent Controller dated 01.03.2002. The Rent Controller vide his order dated 01.03.2002 had passed an eviction order in favour of the landlord; the Additional Rent Control Tribunal had reversed this finding; petition of the landlord stood dismissed.

2 The present eviction petition has been filed by the landlord under Section 14 (1)(b) of the Delhi Rent Control Act
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(DRCA). His contention is that this premises comprising of One room and a verandah bearing No. 28/8, Shakti Nagar, Delhi had been let out in the year 1965 to Jai Kishan Dass, father of the respondent; it was for the purpose of selling milk and ghee. In 1986, Jai Kishan Dass died leaving behind his legal heirs. Contention is that the Madan Lal Chopra (son of Jai Kishan DAss) had illegally and unauthorizedly sub-let and parted with the possession of the premises to one Ram Lubhaya. This was in the year 1988. In 1990 Ram Lubhaya had parted with the possession of the premises to Gobind Singh Gharwal who was running the business of 'Gol Gappe' and 'Tikkis'. Present petition for eviction under Section 14 (1)(b) of the DRCA was accordingly filed.

3 Issues were framed and oral and documentary evidence was led by the respective parties. Three witnesses were examined on behalf of the petitioner. AW-2 was the son in law of the petitioner; he had proved on record the photograph Ex. AW-2/1 depicting the presence of the alleged Gobind Singh Gharwal was using these premises i.e. premises bearing No. 28/8; he was selling 'Gol Gappe' and 'Tikkis' from the said shop. Learned counsel for the landlord has pointed out that the order of ARCT reversing the finding of the ARC is an illegality; contention being

that the petitioner/landlord has in a case of subletting only to show that a stranger has been inducted into the premises by the original tenant; thereupon the onus shifts upon the tenant to show as to how and in what circumstances this stranger was found in the premises; this onus was not discharged by the tenant; ARC had correctly noted these facts; order of the RCT reversing the finding of the ARC suffers from a patent illegality. For this proposition, reliance has been placed upon a judgment of the Apex Court 1990 RLR (SC) 13 Duli Chand (D) by LRs. Vs. Jagmender Dass as also 1996 RLR Hari Ram Vs. Rukmani Devi and 1998 RLR (SC) 592 Mohd. Kasam Vs. Bakar Ali to support this submission. It is pointed out that under Section 14 (1)(b) of the DRCA where the landlord has shown the presence of a person other than that of a tenant; it is for the tenant to show the capacity of the alleged sub-tenant.

4 Arguments have been countered. It is submitted that the order of ARCT suffers from no infirmity. It is submitted that the RCT had rightly noted that Ram Lubhaya is a fictitious person; his parental address was not known to the petitioner; Gobind Singh Gharwal is also a person who was not known to the respondent and this has been his defence all along even in his written

statement. Subletting was not proved. Learned counsel for the respondent has further submitted that it is not in dispute that the respondent was served at the same address i.e. 28/8, Shakti Nagar, Delhi and as such the contention of the landlord that he has parted with the possession of the suit premises is negatived.

5 Record has been perused. Present eviction petition has been filed under Section 14 (1)(b) of the DRCA. Initially in the petition it had been averred that the premises had been let out to the father of the respondent i.e. Jai Kishan Dass who was a tenant and carrying on the work of Ghee on the said shop. Contention was that he had sublet these premises in 1988 to Ram Lubhaya. Thereafter the petition had been amended and in the amended petition, it had been averred that in 1990 Ram Lubhaya had thereafter sublet these premises to Gobind Singh Gharwal. In the written statement, the defence of the tenant all along had been that Ram Lubhaya has been set up as a stooge; he is a no person; he has no identity; same was the defence qua Gobind Singh Gharwal.

6 Record shows that the initial tenant i.e. Jai Kishan Dass had expired in 1986. He was initially doing the business of selling ghee but thereafter he had started a restaurant under the name of

J.K. Restaurant and was selling tea. Thereafter the contention of the defendant was that since the legal heirs comprised of Madan Lal Chopra, his brother and sisters and since he himself was in Government service and his sisters were also carrying on their own private work, nobody was running the shop and the shop remained closed for about 2-3 months after the death of their father. Thereafter his sister and brother in law started the work of restaurant and they were selling tea. These facts are not in dispute.

7 Learned counsel for the petitioner has placed heavy reliance upon the photograph (Ex. AW-2/1) which has been exhibited in the testimony of AW-2 Brij Mohan wherein the premises i.e. shop No. 28/7, Shakti Nagar had been depicted in the photograph. Name board shows the name of J.K. Restaurant; there is an advertisement of refreshing Cola and a logo of 'Thums- Up' has been depicted. Admittedly the father of the respondent was running a restaurant and thereafter his sister was carrying on his tea business. Learned counsel for the petitioner has pointed out that this photograph has also depicted a 'Gol Gappe' stall; two persons are shown in the photograph of whom one is Gobind Singh Gharwal and this has

not been specifically denied by the tenant; contention being that all that the tenant has to show in a petition under Section 14 (1)(b) of the DRCA is that a stranger i.e. a person other than the tenant has entered into the premises and thereafter the onus shifts upon the tenant to show and establish who that stranger is; in this case the landlady petitioner has discharged this initial onus.

8 The explanation tendered by the respondent on this count was that the photograph shows that the shop is lying closed and it has a verandah in which two persons sitting in front of 'Kadai' have been depicted; contention being that the respondent was working in a Government job; he used to visit the said shop premises only on Sunday; it was in his absence that on one day this photograph was clicked trying to build up a case that a stranger is using premises.

9 Record shows that the contention of the petitioner that the premises had been sub-let in 1988 to Ram Lubhaya and thereafter 2 years later in 1990 to Gobind Singh Gharwal without there being any further detail of the aforementioned sub-tenants; either their addresses or parentage etc. had led RCT to hold that this appears to be a sham story set up by the landlord. The premises which are

the subject matter of dispute comprise of one shop and a verandah in front of the shop. The photograph shows that the shop is lying locked; it is the only the open verandah in which two persons have been depicted. Admittedly the father of the respondent was running a restaurant and thereafter his sister and brother in law were carrying on their tea business for some time i.e. 2-3 months whereafter it was closed. It is also not in dispute that the respondent is a Government servant; he was not putting this shop to any use except for this short span when his sister was carrying on the business of tea stall for some time. Defence of the tenant all along has been that there is no person by the name of Ram Lubhaya or Gobind Singh Gharwal.

10 At this stage, it is also relevant to state that this eviction petition had been filed in the year 1988. Immediately after the service of notice of this petition, a suit for perpetual injunction had been filed by the tenant against the defendant; he had sought a prayer that the landlord should be restrained from forcibly dispossessing him from the suit premises. In this suit also, he had categorically denied that there was any person by the name of Ram Lubhaya who was known to him. It is also relevant to state

that a Local Commissioner had been appointed in these court proceedings who had visited the spot on 26.11.1992. The Local Commissioner had gone unexpectedly; it was an ex-parte order which had been passed on the application made by the landlord; the Local Commissioner had found that Madan Lal Chopra was present there; Madan Lal Chopra had the keys of the premises. The Local Commissioner had opined that these premises are lying closed and although entry into the premises had not been permitted to him by the petitioner as his counsel was not there but the Local Commissioner had noted that the ventilator at the back of the shop is open and the premises were in a slab by condition; badly eaten by the white-ants meaning thereby that the premises were not in an unusable condition. This is also the stand taken up by the respondent; stand being that the premises were lying unused and were in his possession.

11 Three witnesses had been examined on behalf of the landlady of whom AW-2 was the son in law of the landlady who had produced this photograph depicting the persons of whom one was Gobind Singh Gharwal in the photograph. In his cross-examination, AW-2 had admitted that he knows both Ram Lubhaya and Gobind Singh Gharwal yet inspite of that no further details

could be furnished by the landlady of the aforementioned premises; this was especially incumbent in view of the categorical and unequivocal stand taken by the tenant all along that both Ram Lubhaya and Gobind Singh Gharwal are fictitious persons. AW-3 a neighbor had also deposed in favour of the petitioner landlady; in his cross-examination he had admitted that this fact had been told to him by the petitioner. RW-1 was the tenant himself; he has deposed that in the year 1989 relations between his father and husband of the petitioner had become strained on the joint usage of a Latrine on the back side of the premises. He had deposed that for about 4-5 months his sister and brother-in-law were using the shop for the purpose of running a tea stall but after that it was closed and even since it has remained in his possession. It is also not in dispute that initially the shop premises were being used by the father of the respondent for selling ghee but after that his father had started the business of tea and running of a restaurant. The RCT had noted all these facts in the correct perspective and held that the story of Ram Lubhaya and Gobind Singh Gharwal as set up by the petitioner does not appear to be trust worthy. In these circumstances the judgments relied upon by learned counsel for the petitioner would not apply as the landlord himself as failed to discharge the initial onus that a stranger apart from tenant was

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in the use of the premises. Even in the photograph it is only the open verandah which has been depicted; in the photograph the shop has clearly been shown to be locked; the alleged 'golgappa' stall is even otherwise outside the verandah. Moreover it has also come on record and it is not in dispute that the summons of the eviction petition had been served upon the respondent on this very address which was in the year 1988; thereafter even when the amended eviction petition had been filed summons had been sent in the year 1990 also at the same address.

12 Section 39 of the DRCA has not been abrogated; Article 226 of the Constitution of India is not an substitute for an appellate forum. Right of Second Appeal has now been taken away from the Statute. There is no patent illegality or clear injustice which has been suffered by the petitioner. Interference under Article 227 of the Constitution of India is not warranted.

13 Dismissed.

AUGUST 03, 2011
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INDERMEET KAUR, J.