

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

% *Date of Judgment: 05.12.2011*

+ **CM(M) No.1574/2010**

MUNSHI LAL Petitioner
Through: Mr.C.Hari Shanker, Advocate.

Versus

SUMITRA DEVI & ORS. Respondent
Through: Mr.V.Shekhear with Mr.Vishal
Saxena, Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned is the order dated 05.7.2000 passed by the Additional Rent Control Tribunal (ARCT) reversing the finding of the Additional Rent Controller (ARC) which had decreed the petition of the landlord i.e. Anand Saroop filed under Section 14(1)(b) of the Delhi Rent Control Act (hereinafter referred to as "the DRCA"). The impugned judgment had reversed this finding noting that a ground of subletting under Section 14(1)(b) of the DRCA has not been made out.

2. Record shows that the present eviction petition has been

filed by the landlord under Sections 14(1)(a) and 14(1)(b) of the DRCA. The case of the petitioner was that a shop on the ground floor of property bearing no.95, Main Bazar, Najafgarh, Delhi which had been let out to the original tenant Hakim Rai and which had since been sublet by him in favour of his son-in-law Raj Kumar; Hakim Rai had divested himself completely from the suit property. Case under section 14(1)(b) of the DRCA is made out; relief had accordingly been sought under the said provision; claim for eviction from the tenanted premises under Section 14(1)(a) had also been prayed for.

3. The defence set up by Hakim Rai (tenant) was that he was old, aged, ailing and had lost his eyesight. In the last part of the year 1983 he had requested his son-in-law to assist him in his business; his daughter and son-in-law had got married in 1983 and on his asking had come to Najafgarh to assist him in his business which he was doing from the aforementioned premises. A partnership deed dated 20.11.1983 (Ex.AW-3/13) has been executed between the father-in-law, Hakim Rai and his son-in-law, Raj Kumar to the aforementioned effect wherein the parties had agreed that the business under the said partnership would be conducted from the suit premises. These facts are not in dispute; contention

of the landlord, however, is that this partnership deed was a fake

and forged document and had been created only as a sham defence to the present eviction petition under Section 14(1)(b) of the DRCA; further contention of the landlord being that the ARC had correctly appreciated the covenants attached to this document and drawn a correct fact finding that this document is forged and fabricated as paras no.4 and 5 of the partnership deed (Ex.AW-3/13) had stated that the parties would maintain accounts and books of the company which was admittedly not being carried out by the parties and this fact had been admitted by the widow of the tenant namely Sumitra Devi who has been examined as RW-1. In this background the eviction petition having been decreed in favour of the landlord by the ARC was the correct appreciation of the evidence and the impugned order by the RCT dismissing the eviction petition thus calls for an interference. Learned counsel for the petitioner to support his case has placed reliance upon a judgment of the Apex Court in Ms.Celina Coelho Pereira & Ors.Vs. Ulhas Mahbaleshwar Kholkar & Ors. in Civil Appeal No.7258/2009 decided on 30.10.2009 as also another judgment of the Apex Court reported in (2005) 1 SCC 31 Joginder Singh Sodhi Vs. Amar Kaur ; contention being that on similar facts where defence of a partnership deed had been set up; the ARC had examined its covenants and had correctly drawn a conclusion that this

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document is a sham document; interference by the High Court was uncalled for. Submission of the petitioner being that an eviction petition filed under the ground of subletting of the premises by the tenant to his son-in-law and where the landlord has prima facie shown that the property is no longer in exclusive possession of the tenant which has been let out for a valuable consideration it will then be for the tenant to rebut this contention; no such rebuttal evidence has been advanced by the tenant. Impugned order is thus liable to be set aside.

4. Arguments have been refuted. It is pointed out that the test of exclusive possession has correctly been appreciated by the ARCT and his finding in no manner calls for any interference.

5. Record has been perused. The ARCT in appeal under Section 38 of the DRCA had reversed the finding of the ARC. The impugned judgment had correctly appreciated the law which has to be applied to the factual matrix of each case. The testimony of the witnesses had been adverted to. RW-1 Sumitra Devi was the widow of Hakim Rai, the original tenant. Her testimony is to the effect that her husband was initially running the business from the demised shop; she also used to sit in the shop and was running the business from the shop; her son-in-law was a partner in the business of the shop; she denied the

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suggestion that her husband was no longer in possession or in the business after the induction of Raj Kumar; she admitted that she was not aware as to whether her husband had deposited the rent; she had also admitted that Raj Kumar was partner in the business of her husband in the demised shop; she had also admitted that her husband lost his sight about one and half years prior to his death and had become blind. RW-2 is the so-called sub tenant Raj Kumar; from his testimony it is borne out that Raj Kumar and his wife (i.e. the daughter of Hakim Rai) had been married in May, 1983; Hakim Rai fell down from the roof in later 1983 and as such Raj Kumar came to assist his father-in-law in his business for which a partnership deed had been executed. All these facts are undisputed. It is also not in dispute that the parties i.e. the son-in-law (Raj Kumar) and father-in-law (Hakim Rai) are residing in the same premises and ration card of Raj Kumar has been obtained at the same address. The partnership deed Ex.AW-3/13 had been executed between the parties in November, 1983 which would be approximately the same time when Raj Kumar came to Najafgarh to assist his father-in-law in the business. RW-2 has categorically deposed that he along with his mother-in-law used to open and close the shop after business hours. RW-3 was a neighbor in the vicinity who was also known to both the parties; he has also

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deposed to the same effect supporting the case of the tenant that Raj Kumar is merely assisting his father in law in the business; this was after Hakim Rai has become unwell. The attorney of the landlord PW-3 has also admitted that the respondent Hakim Rai is an old man; he has very poor eyesight and cannot even walk properly.

6. In this scenario the RCT had correctly appreciated the evidence adduced; it is clear that the son-in-law has come to Delhi to assist his father-in-law in his business in the shop; both were residing in the same premises; because the father-in-law has become very old and because of his old age and weak eyesight he could not come regularly to his shop; his wife Sumitra Devi was opening and closing the shop with her son-in-law; she was also sitting in the shop; Ex.AW-3/13 was in fact not a sham document; RW-2 had categorically stated that this document was written pertaining to the demised shop. No suggestion had in fact been given to any witness on this count that the document was sham or bogus.

7. The ingredients necessarily to be established by the landlord to make out a ground of sub-letting have been reiterated time and again. Section 14 (1) (b) is relevant; it reads as under:-

14. Protection of tenant against eviction.
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(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

(a) XXXXXXXXXXXXXXXX

(b) That the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

Section 14 (4) is also relevant; it reads as under:-

Section 14 (4):- For the purpose of clause (b) of the proviso to sub-section (1), any premises which have been let for being used for the purposes of business or profession shall be deemed to have been sub-let by the tenant, if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to that person.

8. The moot question which is thus answered is that the tenant had neither sublet, assigned or otherwise parted with possession of the whole or part of the premises. The partnership between the father-in-law and son-in-law is a genuine transaction; it was not a camouflage to cover the real aspect of subletting; as noted supra, in fact no such suggestion has been given to any witness that this document is in fact a bogus document. It is well

settled that to make out a case for sub-letting or parting with possession, it means giving of possession to persons other than those to whom the possession had been given by the original lessor and that parted with possession must have been made by the tenant; as long as the tenant retains the legal possession himself, there is no parting with possession in terms of Section 14 (1)(b) of the Act. The word 'sub-letting' necessarily means transfer of an exclusive right to enjoy the property in favour of the third party. In (1988) 1 SCC 70 Shalimar Tar Products Ltd. Vs. H.C. Sharma, the Apex Court had noted that to constitute a sub-letting, there must be a parting of legal possession i.e. possession with the right to include and also right to exclude other and whether in a particular case, there was sub-letting or not was a question of fact.

9. A conjoint reading of Section 14 (1)(e) read with Section 14 (4) of the DRCA shows that if the tenant inducts a partner in his business or profession and if this partnership is genuine, he may be permitted to do so; however if the purpose of such a partnership is only ostensibly to carry on a business or profession in partnership but the real purpose is of sub-letting of the premises to such other person who is inducted ostensibly as a partner then the same shall be deemed to be an act of sub-letting

attracting the applicability of Section 14 (1)(b) of the DRCA. This test had been laid down by the Apex Court in (2002) 9 SCC 516 G.K. Bhatnagar (Dead) by Lrs.Vs. Abdul Alim. The Apex Court in (2004) 4 SCC 794 Parvinder Singh Vs. Renu Gautam & Ors. had also noted that a device in any time adopted by tenant to create partnership which is actually a camouflage to circumvent the provisions of Rent Control Act; the rent control legislation being beneficial for the benefit of the tenant and not a means to subvert the true intent of the statute.

10. Applying the said test to the facts of the instant case, it can safely be said that both the Courts below had returned correct findings in view of the evidence adduced before them ; that a case of sub-letting was not made out.

11. The judgments relied upon by the learned counsel for the petitioner are both distinct on their own facts. In Celina Coelho (supra) both the courts below i.e. the court of the Rent Controller and the court of RCT had examined the partnership deed in its factual context along with other evidence which had emanated; both the fact findings courts having rejected the partnership deed the Apex Court had noted that the High Court reversing these two concurrent finding of fact had committed a folly. The judgment of Joginder Singh Sodhi (supra) is also distinct as the court had

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correctly concluded that there was evidence to show that the (tenant) S had parted possession in favour of J(son); who was in exclusive possession of the demised premises.

12. There was no such evidence in the instant case. In fact from the evidence on record, it is clear that Hakim Rai has in no manner had given the possession of the shop in question exclusively to Raj Kumar thereby divesting himself; mere occupation of Raj Kumar in the suit premises was not sufficient to establish a case of subletting as has rightly been noted in the impugned order. The impugned order on no count suffers from any infirmity. Petition is without any merit. Dismissed.

INDERMEET KAUR,J

DECEMBER 05, 2011
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