

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

+ **RFA Nos.381/2003, 383/2003, 416/2003 & 417/2003**

% **14th December, 2011**

1. **RFA No.381/2003**

SHARAD INDU BHATNAGAR Appellant
Through: Mr. Vinay Kumar Garg, Advocate
with Mr. Fazal Ahmad, Advocate.

versus

JITENDER MALIK Respondent
Through: None.

2. **RFA No.383/2003**

SHARAD INDU BHATNAGAR Appellant
Through: Mr. Vinay Kumar Garg, Advocate
with Mr. Fazal Ahmad, Advocate.

versus

SH. VIJAY LOCHAV Respondent
Through: None.

3. **RFA No.416/2003**

SHARAD INDU BHATNAGAR Appellant
Through: Mr. Vinay Kumar Garg, Advocate
with Mr. Fazal Ahmad, Advocate.

versus

SMT. INDU LOCHAV Respondent
Through: None.

4. **RFA No.417/2003**

SHARAD INDU BHATNAGAR Appellant
Through: Mr. Vinay Kumar Garg, Advocate
with Mr. Fazal Ahmad, Advocate.

versus

HAR KAUR Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this judgment, four appeals are being disposed of as they involve identical facts and issues, and have been disposed of by identical impugned judgments. For the sake of convenience, reference is being made to the facts in RFA No.381/2003.

2. The facts of the case are that the appellant/plaintiff filed the subject suit for recovery of ₹ 3,12,321/- against the respondent/defendant. The suit is for recovery of the amount which was given to the respondent/landlord as security deposit at the time of entering into the

tenancy. The recovery is claimed inasmuch as tenancy had come to an end and since there were no dues of the appellant/plaintiff towards the respondent/defendant/landlord the security deposit was to be paid back by the respondent/defendant.

3. The subject suit has been dismissed by holding that the plaintiff has no locus standi to seek recovery of deposit inasmuch as the plaintiff was not the tenant in his individual capacity in the premises, and, the tenant was M/s. Hollywood Grills, a unit of Wendy Restaurant Pvt. Ltd. The trial Court has therefore held that the amount of security deposit can only be claimed back by the tenant which is a company and not by the plaintiff who was the Director in the said company.

4. The relevant issue which was framed in this regard by the trial Court was issue No.1.

5. Learned counsel for appellant argued that the findings of the trial Court, in this regard, are illegal and are bound to be set aside for the following reasons:-

(i) The lease agreement has been signed by the plaintiff, and in the cross-examination of the respondent/defendant, it was admitted that the lease

agreement was executed by the appellant/plaintiff with the
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respondent/defendant.

(ii) It is argued that the company-M/s. Wendy Restaurant Pvt. Ltd. was not in existence on the date when the lease agreement, Ex. P/1 dated 1.7.1995 was entered into and thus only the plaintiff can get back the security deposit which was paid by him.

(iii) The contents of the plaint making averment of the plaintiff being the tenant were not denied in the written statement and therefore the plaintiff was the tenant and not the company-M/s. Wendy Restaurant Pvt. Ltd.

(iv) Finally, it is argued that a legal notice dated 19.5.1999, Ex.PW1/59 was served upon the respondent, as proved by the postal receipt attached with the same, and which notice was issued on behalf of the appellant/plaintiff personally.

6. The issue, in this case, therefore is that whether the appellant/plaintiff was the tenant in the premises or was the tenant in the premises a company, M/s. Wendy Restaurant Pvt. Ltd.

7. The relevant portion of the lease deed in question by which the tenancy was brought into existence states the parties to the same, and the parties are the respondent/defendant as the first party and M/s. Hollywood

Grill (a unit of M/s. Wendy Restaurant Pvt. Ltd.) as a second party. Clearly therefore as per the lease agreement, the tenant is not the appellant/plaintiff but M/s. Hollywood Grill (a unit of M/s. Wendy Restaurant Pvt. Ltd.). Even where the signatures have been put by the appellant/plaintiff on the second page of the lease agreement it is signed for M/s. Hollywood Grills (a unit of M/s. Wendy Restaurant Pvt. Ltd.). So far as the lease agreement is concerned therefore there can be no manner of doubt that the lessee was M/s. Hollywood Grill (a unit of M/s. Wendy Restaurant Pvt. Ltd.), a company. The respondent in the cross-examination admits that the lease was executed by the plaintiff, and which is correct, but the execution i.e. the signatures of the plaintiff are only on behalf of M/s. Hollywood Grill, a unit of M/s. Wendy Restaurant Pvt. Ltd.-a company.

8. A reading of the plaint also shows that there is no categorical averment that it is the appellant/plaintiff who was the lessee of the premises. There are general averments in the plaint of the appellant/plaintiff having come to India and wanting a commercial space for opening of a restaurant, however, there is no specific averment in the plaint that the appellant/plaintiff was a tenant/lessee in his individual capacity and the

tenancy was not of the company-M/s. Wendy Restaurant Pvt. Ltd. through
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its unit M/s. Hollywood Grill. Not only the plaint is silent of as to the categorical averment of the appellant/plaintiff being a tenant in his individual capacity, a reference to the written statement shows that in the very first preliminary objection thereof the respondent/defendant challenged the locus standi of the appellant/plaintiff to file the suit because the lease agreement was not with the appellant/plaintiff but was with M/s. Wendy Restaurant Pvt. Ltd. Subsequently, in the written statement also it has been repeated that the tenancy is of M/s. Wendy Restaurant Pvt. Ltd. and the cheques which were issued to the respondent/defendant were on behalf of M/s. Wendy Restaurant Pvt. Ltd. Even the security which is agreed to be paid was said to be payable by the company, though however I may note that by a typographical mistake instead of writing M/s. Wendy Restaurant Pvt. Ltd. it has been written as M/s. Pepper Restaurant Pvt. Ltd. In various paras of the written statement reference to the tenant is mentioned as the tenant company, and two such paras are paras 8 and 9 of the written statement. Therefore, once again it is clear that the respondent/defendant categorically in the pleadings/written statement denied the tenancy in the name of the appellant/plaintiff, and pleaded the tenancy in favour of M/s. Wendy Restaurant Pvt. Ltd. and admittedly it is in this company's name M/s. RFA Nos. 381/03 & conn. matters

Wendy Restaurant Pvt. Ltd. through its unit M/s. Hollywood Grill that the lease deed dated 1.7.1995, Ex.P/1 was entered into.

9. I also do not find any substance in the arguments raised on behalf of the appellant/plaintiff that it must be held that the appellant/plaintiff is the tenant because a legal notice dated 19.5.1999 was sent personally on behalf of the appellant/plaintiff. Firstly, there is no proof that this legal notice had been served, and which has been disbelieved by the trial Court. But, even if I accept this notice as proved, that cannot change the documented fact of the lease deed being with M/s. Wendy Restaurant Pvt. Ltd. A wishful and self serving statement in a legal notice after disputes have arisen, and after the tenancy was acted upon by M/s. Wendy Restaurant Pvt. Ltd., cannot change the tenancy from M/s. Wendy Restaurant Pvt. Ltd. as the lessee to the appellant/plaintiff. In fact, the appellant/plaintiff had earlier sent a notice dated 17.10.1998, Ex.PW1/52, and which notice specifically states that the notice was sent as Director of M/s. Hollywood Grill. I therefore hold that nothing would turn on the notice Ex.PW1/59 dated 19.5.1999 and the aforesaid facts including of the factum of the lease deed and the earlier legal notice dated 17.10.1998, Ex.PW1/52 clearly establishes that the appellant/plaintiff was not a tenant in his individual

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capacity.

10. The last argument on behalf of the appellant/plaintiff was that M/s. Wendy Restaurant Pvt. Ltd. was not in existence as a company on the date when the lease agreement dated 1.7.1995, Ex.P/1 was entered into and therefore it must be held that the appellant/plaintiff was a tenant in his individual capacity. I have already referred to the fact that the lease agreement has been entered into for and on behalf of M/s. Hollywood Grills (a unit of M/s. Wendy Restaurant Pvt. Ltd.), and to which aspect the further fact to be noted is that the company-M/s. Wendy Restaurant Pvt. Ltd. was in fact subsequently incorporated and there is an incorporation certificate with respect to the company-M/s. Wendy Restaurant Pvt. Ltd. on record of the trial Court. This certificate of incorporation is dated 6.9.1995 and was filed on behalf of the appellant/plaintiff himself in the trial Court. Therefore the company-M/s. Wendy Restaurant Pvt. Ltd. did come into existence, and therefore it cannot be said, (since it is not proved otherwise) that the lease agreement was not entered into for the benefit of and on behalf of M/s. Wendy Restaurant Pvt. Ltd. (which was incorporated subsequently on 6.9.1995). In fact, during the entire period when the lease was acted upon for about two years, at no point of time a stand was ever taken up either by the

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appellant/plaintiff or by M/s. Wendy Restaurant Pvt. Ltd. that it was not M/s. Wendy Restaurant Pvt. Ltd. which was the tenant, but it was the appellant/plaintiff who was the tenant in his individual capacity establishing that it was the company which was the tenant.

Learned counsel for the appellant sought to rely upon a judgment of the Supreme Court reported as *Commissioner of Income Tax, T.N. Vs. City Mills Distributors (P) Ltd. (1996) 2 SCC 375* to argue that a company cannot come into existence before it is incorporated and business carried on by the company before its incorporation cannot be the business of the company. Reference is invited to the paras 8 and 9 of the judgment. In my opinion, the judgment is quite clearly distinguishable on facts inasmuch as the judgment was dealing with the issue of taxation and the alleged income of a company prior to incorporation. The issue however in the present case is not with respect to income of a company and taxation provisions, but the issue is whether the contract in question being the lease was for and on behalf of, and for the benefit of company-M/s. Wendy Restaurant Pvt. Ltd which has been established on record. The judgment therefore cited on behalf of the appellant/plaintiff cannot change the result of the present appeals.

11. In view of the above, I do not find any error in the impugned judgments which calls for interference by this Court. The appeals being without any merit, are accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

DECEMBER 14, 2011

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