

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

% *Date of Judgment: 28.11.2011*

+ **CM (M) No. 125/2007 and Cont. Case. (C) No. 476/2007**

SUDESH KUMAR BAJAJ Petitioner

Through: Mr. Anil Sapra, Sr. Advocate
with Mr. Nishant Nandan,
Advocate..

Versus

P.C. KHANNA & ORS. Respondents

Through: Mr. Deepak Khandari,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 31.10.2006 which was an order passed by the Additional Rent Controller Tribunal (ARCT) endorsing the findings of the Additional Rent Controller (ARC) dated 29.03.2003 whereby eviction petition filed by the landlord namely P.C. Khanna seeking possession of his tenanted premise i.e one godown and one kolki comprised in Municipal No. 5316-18 at plot No. C-358, Regharpur, Khanna building, Hardhian Singh Road, Karol Bagh, New Delhi filed under Section 14(1)(a)(b)(c) and (j) of the DRCA had been decreed in favour of the petitioner.

2. This order shall also dispose of the contempt petition which has been preferred by the tenant seeking a contempt of court proceedings to be initiated against the landlord Rajesh Khanna for having willfully and intentionally violated the status quo order passed by this court on 22.01.2007; contention being that in spite of notice of this order whereby the execution proceedings had been stayed they had obtained warrants of possession qua the suit property and got the tenant forcibly evicted from the suit premises on 10.08.2007.

3. Record shows that the erstwhile landlord of these premises was Ms. Memo Devi; she had vide rent note deed dated 04.08.1969 let out one godown i.e. the part of the disputed premises as aforesaid to the tenant at a monthly rent of Rs. 80/-; in March 1972 one kolki was also added to this godown and rent was also enhanced from Rs. 80/- to Rs. 110/- per month. Contention is that the respondent in order to gain space had demolished the wall bearing structure of the kolki. Rent was also not being paid at the rate of Rs. 121 to the landlord; notice of demand dated 06.09.1995 was served upon the tenant. Further contention of the landlord is that the tenant had also defaulted in payment of rent. Further contention is that the tenant Sudesh

Kumar Bajaj has also willfully and without any consent in writing of the landlord parted with the possession of the suit premises in favour of one Mahesh Kumar who was independently running his business in the disputed premises under the name and style of M/s. B.K. Leather Store; the tenant was charging a sum of Rs. 2,000/- per month from Mahesh Kumar who was the proprietor of M/s. B.K. Leather Store; contention is that the premises had been let out to the tenant only for the purpose of running a godown; they are also being misused. The premises are being used as a shop and ground for eviction under Section 14(1)(c) of the DRCA is thus attracted as in spite of notice dated 06.09.1995; this mis-user has not stopped; there is also a substantial damage to the suit premises as the walls of the kolki have been broken to make the godown into a bigger space. Eviction has been prayed on all the aforementioned grounds.

4. The tenant had disputed these contentions; his submission was that the premises had been let out to M/s. B.K. Leather Store through its partner Mr.Sudesh Kumar Bajaj who is still running this business; there has been no sub-letting or parting with possession as has been alleged by the landlord. Contention of the tenant was that the premises which had been let out to him

comprised of one room and one store which had been tenanted out for a commercial purpose at a monthly rent of Rs. 110/- which rent was payable in advance. The rent has since been paid and there are no arrears of rent; ground under Section 14(1)(a) of the DRCA has been negatived. The notice of demand dated 06.09.1995 had also been refuted. Further contention was that there was no misuser of the premises; neither has any damage been caused to the suit premises.

5. Oral and documentary evidence was led by the respective parties; one witness on behalf of the landlord and correspondingly one witness on behalf of the tenant were led in respect of respective contentions of the parties. Oral and documentary evidence have been appreciated by the two courts below.

6. At the outset, it would be necessary to state that this petition is a petition filed under Article 227 of the Constitution of India; this court is also conscious of the fact that the right of second appeal has been abrogated under Section 39(2) of the DRCA; the powers of superintendence under Article 227 of the Constitution of India are not equivalent to the powers of an appellate forum; unless and until there is a manifest error or illegality which has occurred to one party interference is not

called for.

7. In this background, the respective contentions of the parties are being appreciated.

8. Testimony of PW1 is relevant; he has reiterated the averment made on oath; the rent deed dated 04.08.1969 has been proved as Ex.PW1/1. This document has been executed between Memo Devi (mother of the petitioner) and Sudesh Kumar Bajaj where Sudesh Kumar Bajaj has been described as the tenant to whom a godown had been let out at a monthly rent of Rs. 80/- per month. This document specifically states that the tenant shall not sublet or part with possession of the godown to any person without the written consent of the owner and shall use the premises for a godown only and for no other purpose; no additions or alterations or damage to the godown is permissible in any manner; in para 7 reference has been made to these premises as a shop; in other preceding paras it has been described as a godown and the vehement contention of the learned counsel for the petitioner on this score is that the premises had in fact been let out for running a shop i.e. the business of M/s. B.K. Leather Store; this submission has little force as the document has to be read in its entirety; no one word can be extracted from it to read

in any manner which suits one party; a reading of entire document shows that what has been let out to the tenant was a godown and the specific purpose of letting states that it had to be used as a godown alone and for no other purpose. This document also specifically postulates that the rent agreement has been made with Sudesh Kumar Bajaj. The courts below i.e. the court of the ARC and the ARCT had also examined the rent receipts Ex. PW1/2 to Ex. PW1/7 to hold that these rent receipts have been issued in the name of Sudesh Kumar Bajaj; he alone was the tenant; contention that M/s. B.K. Leather Store was the tenant is clearly negated. Admittedly, there was no document on record to show that M/s. B.K. Leather Store was a partnership of whom Sudesh Kumar Bajaj was a tenant. Vide order 29.05.2002 the application of the tenant seeking to place on record certain documents whereby the alleged partnership deed 01.01.1993 had been rejected; court had correctly noted that this alleged partnership deed did not bear any date on its rear side to indicate when these stamp papers were purchased. This order has since attained a finality. The assessment order dated 22.09.1977 is a document as is evident from its date of 1977. Eviction petition was filed in the year 1995 and admittedly case set up in the eviction petition was

that these premises had been sublet by Sudesh Kumar Bajaj to M/s. B.K. Leather Store about six years back. This document was also clearly thus of no help to the tenant.

10. In a judgment of the Bench of Punjab and Haryana High Court reported in 1978(1) R.C.R. 475 Kaur Sen alias Kaur Chand vs. Shri Tej Ram and Ors. in similar circumstances the plea of the tenant in a case of sub letting under Section 14(1)(b) of the DRCA was that there was a partnership, and the document sought to have been filed on the appellate stage was rejected holding that since it did not find mention either in the written statement nor was its copy produced for a long time. This document could not be looked into. In this case also the so called partnership relied upon by the tenant did not find mention by the tenant in his written statement; this document had also surfaced after six long years.

11. The contention of the landlord that the rent note deed dated 04.08.1969 had initially let out only the godown and thereafter one kolki was added to the rented premises only in the year 1972 is also fortified by the Ex.PW1/4 to Ex. PW1/7 which show that after 1972 the rent receipts mentioned one garage plus one kolki; amount of rent was also enhanced. The earlier rent receipts Ex.PW1/2 to Ex.PW1/3 which were prior to March 1972 have

described the premises only as a garage and the rent has also been mentioned as Rs. 80/- per month. Contention of the tenant that M/s. B.K. Leather Store is a partnership firm comprising of Mr. Mahesh Kumar and Sudesh Kumar Bajaj had not been substantiated by any document; per contra, documentary evidence filed by the landlord clearly shows that Sudesh Kumar Bajaj was a tenant in his individual capacity.

12. Reliance by the learned counsel for the petitioner on the judgment reported in AIR 1987 SC 1782 Ghirdharbhai v. Saiyed Mohmad Mirasaheb Kadri in this factual scenario is misplaced. There was no evidence before the courts below to hold that M/s. B.K. Leather Store was a partnership firm.

13. In this factual scenario, provisions of Section 14(1)(b) of DRCA have to be appreciated; the terminology used in Section 14(1)(b) is either of a case of “sublet”, “assign” or “otherwise parted with possession of the whole or any part of the premises without obtaining consent in writing of the landlord”. A Bench of this court had expanded these three expressions in the following words:-

“These three expressions deal with different concepts and apply to different circumstances. In subletting there exists the relationship of landlord and tenant as between the tenant and his sub-tenant

and all the incidents of letting or tenancy have to be found, namely the transfer of an interest in the estate, payment of rent and the right to possession as against the testament in respect of the premises sublet. In assignment the tenant has to divest himself of all the rights that he has as a tenant. The expression "parted with possession" undoubtedly postulates parting with legal possession. Parting with possession means giving possession to persons other than those to whom possession has been given by lease and "parting with possession" must have been by the tenant. The mere user by other person is no parting with possession so long as the tenant retains the legal possession himself or in other words, there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. The divestment or abandonment of the right to possession is necessary in order to invoke the clause of parting with possession".

14. Both the courts below have appreciated this in the correct perspective and have before adverting to the facts dealt with the law on the said subject. Two categorical fact findings have been returned that Sudesh Kumar Bajaj who was the original tenant was no longer using the premises; the premises were under the admitted occupation of M/s. B.K. Leather Store who was in no manner connected with the tenant; submission of Sudesh Kumar Bajaj that he was a partner of M/s. B.K. Leather Store had not been substantiated by any evidence. Thus this was a clear case where the original tenant had completely divested himself from the suit property not only of the physical possession but also of

the right to possession which had fulfilled the requirement of Section 14(1)(b) of the DRCA entitling the landlord to an eviction on this ground. The concurrent findings of facts under Section 14(1)(b) of the DRCA evicting the tenant from the suit property on this ground suffers from no infirmity.

15. Both the courts below i.e. the courts of ARC and ARCT have also returned concurrent findings on the misuser of the premises as also a case of substantial damage.

16. Rent deed dated 04.08.1969 (Ex. PW1/1) has defined the purpose for which the premises had been let out i.e. the purpose being for a godown and for no other purpose; Clause 2 is clear and categorical on this count so also is Clause 4 which states that if any addition, alteration or damage will be made to the godown, tenant shall be liable to make good the loss or damage arising thereby to the owner. Contention of the tenant that the premises had been let out for a commercial purpose i.e. for running the business of M/s. B.K. Leather Store is clearly negated. Premises had been let out for the purpose of godown having been proved, the running of a shop i.e. M/s. B.K. Leather Store which was a commercial venture was thus a misuse of the premises.

17. In 159(2009) DLT 282 Asha Rani & Ors. Vs. Satinder Kumar

while dealing with a case under Section 14(1)(c) & (j) of the DRCA, a Bench of this court had noted that where there was a change of user i.e. from a Halwai shop to a fruit juice or sugar cane shop and the user having been converted from a commercial use to an industrial use, the large vibration in the building because of the installation of large crusher disturbing the sleep of the landlord; a case of misuse was made out.

18. In the instant case AW1 has categorically deposed that the premises had been let out for a godown purpose whereas it was being used for an office cum shop; this was detrimental to the interest of the landlord; in spite of notice exhibit AW1/9 misuser has not stopped. Ex. AW1/1 confirms the fact (as noted supra) that the premises had in fact been let out for a godown but were now admittedly being used as a shop. User of the premises as a godown is distinct from the user of a shop; godown is only for a storage purpose whereas in a shop there is bound to be an influx and efflux of persons coming and going to the shop which as reiterated by the landlord in his eviction petition and on oath was to the effect that this was detrimental to his interest. The premises in terms of AW1/1 had been rented out for a specific purpose; the purpose being a godown. The terms of the lease

specifically postulate that it should be used for the purpose of godown and for no other purpose. The covenant attached in Ex.AW1/1 has clearly specified the user; this user from a godown having been converted into a shop a case under Section 14(1)(c) of the DRCA also stands established.

19. The reply of notice dated 06.09.1995 was initially denied by the landlord. This notice has been proved as Ex. PW1/9; the postal receipt and the AD cards had been proved as Ex. PW1/10 and Ex. PW1/11. The presumption of service of notice has been drawn by the two courts below in view of the documentary evidence. In fact in the cross-examination of RW1, he has admitted that the notice Ex. PW1/9 and the AD Card Ex. PW1/11 have been correctly addressed at his address. Section 27 of the General Clauses Act comes to the aid of the landlord. Receipt of the notice has thus been validly proved. In spite of Ex.PW1/9 having been served upon the tenant asking him to stop misuser, he had failed to do so. Ground of eviction under Section 14(1)(c) of the DRCA is thus stood proved. The two concurrent findings of fact on this score calls for no interference.

20. Substantial damage as contemplated under Section 14(1)(j) has also been proved; there are two concurrent findings of fact on

this score also. It is not in dispute that after February 1972 a kolki was added to the premises; rent receipts Ex. PW1/2 to Ex. PW1/7 referred to clearly show that rent receipts were initially being issued only for the garage and thereafter the disputed premises were shown as of being comprised not only of one garage but one kolki as well. As on date, it is an admitted fact that the kolki does not exist; the kolki has ceased to exist. AW1 in his deposition on oath stated that the kolki which had been let out alongwith the godown has since been demolished; the wall of the kolki which was load bearing has been removed; the entire building has become weak and damaged because of this act of the tenant. Ex. AW1/8 was the plan proved by the landlord (AW1) showing the entire structure without the kolki i.e. the godown having been extended and depicted as a single unit. The credibility of this witness was not shattered on this count.

21. Vide order dated 29.03.2003, in terms of the mandate of Section 14 (10) of the DRCA, the Controller had been directed to restore the suit property to its original position as it existed on the date of letting within a period of 30 days failing which eviction order under Section 14(1)(j) of the DRCA would follow. Admittedly, this has not been done. The Appellate Court upholding

the eviction order under Section 14(1)(j) also suffers from no infirmity.

22. Learned counsel for the petitioner is not pressing his ground under Section 14(1)(a) of the DRCA.

23. Counsel for the parties have also addressed their submissions on the contempt petition wherein certain dates are relevant. It is not in dispute that the impugned judgment and decree dated 31.10.2006 was stayed by the order of this court dated 22.01.2007 and copy of this order had been directed to be given dasti to the petitioner/tenant. It is also not disputed that warrants of possession of the suit premises have been obtained by the landlord on 10.08.2007 i.e. after a gap of almost seven months.

24. Record shows that what has transpired in this intervening period is that the stay order dated 22.01.2007 was not served upon the landlord or sent to the Trial Court. This is clear from the orders passed by the Trial Court on 02.03.2007; application had been filed by the landlord for police aid; the same was granted; subsequent dates of 30.03.2007, 27.04.2007 and 17.07.2007 as also 03.08.2007 have been noted; on 03.08.2007, police aid had been sanctioned. Attention has been drawn to the document

(page 133 of the execution file) wherein the Ahlmad has noted that warrants of possession have been issued as there is no stay in this case. The execution petition was finally disposed of on 05.10.2007 on the statement made by the decree holder that he has received the possession of the suit property.

25. Contempt petition had been preferred in the High Court averring that the orders of stay granted on 22.01.2007 have been flouted as the landlord in spite of order dated 22.01.2007 had obtained warrants of attachment and even got them executed. Record of the courts below had been requisitioned. The reply filed by the bailiff in the proceedings before this court states that he had gone to execute the decree alongwith the decree holder on 11.08.2007 whereupon they were met by one Mr. Mahesh Kumar but he did not have any stay order in his hand; he had sought time to produce the stay order stating that there was a stay in the suit. In this reply bailiff has stated that they had reached the premises at 4.30 pm and as no order of stay was produced the execution was effected; Mr. Mahesh was present and the original tenant Sudesh Kumar Bajaj was not present at the site; thereafter the record of the concerned police station had also been summoned showing that the tenant had at 9.20 pm in the evening got a PCR

call recorded to the effect that somebody was taking forcible possession of his shop i.e. the suit premises. This DD Entry was recorded at 9.20 pm. The bailiff had reached the shop at 4.30 pm for execution of the decree. Submission of the respondent is that this DD complaint has been filed belatedly only to build up a case in his favour cannot thus be negatived.

26. Record shows that in spite of dasti order dated 22.01.2007 having been obtained by the tenant staying the execution; there is no record to show that this dasti order had been served upon the landlord or that the same had been communicated to the Trial Court. It was in these circumstances that the warrants of possession had been granted by the executing court; record also shows that there was a span of almost seven months i.e. the proceedings remained pending in the executing court from 19.01.2007 up to 05.10.2007 on which date the execution proceedings were noted as satisfied. In this entire intervening period the tenant did not make any effort to appear before the executing court to inform him that there was a stay of the execution. In these circumstances, it cannot be said that there has been any willful disobedience of the order of the court by the respondent.

27. In this context, it would be useful to extract the following extract i.e. observation of the Supreme Court in the case of Devinder Gupta Debabarata bandopadhyaya & ors. vs. The State of West Bengal reported in AIR 1969 SC 189

“A question whether there is Contempt of Court or not is a serious one. The Court is both the accuser as well as the judge of the accusation. It behoves the Court to act with as great circumspection as possible making all allowance for errors of judgment and difficulties arising from inveterate practices in Court and Tribunals. It is only when a case of contumacious conduct, not explainable otherwise, arises that the contemner must be punished.”

28. Record in the instant case shows that the matter was listed before High Court for the first time on 22.01.2007 when the caveat notice was discharged but none had appeared for the respondent on that date. At the cost of repetition there was no record to show that this order of stay was communicated either to the respondent or to the Trial Court and this has also been fairly conceded by the learned counsel for the petitioner. Two dates of appearance of the junior counsel for the respondent had been noted by this court i.e. on 24.04.2007 and 18.07.2007 but the order of stay granted on 22.01.2007 had not been reiterated. In this factual scenario there is no reason to disbelieve the statement of the counsel for the respondent that they were not aware of the

stay order dated 22.01.2007. In this scenario it cannot be said that there has been a willful disobedience of the orders of the court. No contempt is made out.

29. Petition is dismissed.

NOVEMBER 28, 2011
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INDERMEET KAUR, J