

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

% *Date of Judgment: 07.12.2011.*

+ **CM (M) No. 184/2007**

SH. RAMESH KUMAR SETH ..... Petitioner  
Through: Mr.Anand Prakash and  
Ms.Babita Seth, Advocate.

Versus

SH. MAKHAN LAL HALWAI & OTHERS ..... Respondents  
Through: Mr.Satya Prakash Gupta,  
Advocate.

**CORAM:**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

**INDERMEET KAUR, J.** (Oral)

1. Order impugned before this Court is the order passed by the Additional Rent Control Tribunal (ARCT) dated 11.09.2006 which has endorsed the findings of the trial Judge dated 16.04.2005 wherein the eviction petition filed by the landlord Ramesh Kumar Seth under Section 14 (1)(b) of the Delhi Rent Control Act (DRCA) had been dismissed. These are two concurrent findings of fact against the petitioner.

2. This petition has been filed under Article 227 of the

Constitution of India and at the outset the submission of learned counsel for the respondent that this Court cannot go into the nitty-gritties of the case and unless and until a manifest error or a grave injustice which has accrued to the applicant party, interference is not called for, is an argument having force.

3. The eviction petition had been filed by the landlord under Section 14 (1)(b) of the DRCA. His contention was that his father Dina Nath Seth had let out the demised premises i.e. one room measuring 12'X10' on the ground floor of house No. 3/42, Roop Nagar, Delhi-110007 to Makhan Lal Halwai on 05.07.1956 who had been running a halwai shop under the name and style of M/s Ram Swarup Makhan Lal. Rate of rent was Rs.66.55/- per month excluding water and electricity charges. After the death of Shri Dina Nath Seth, his wife Smt. Vidya Wati Seth had become the owner/landlord; she had been collecting rent from Makhan Lal as her tenant. She died on 22.08.1984 and by virtue of a Will the petitioner Ramesh Kumar Seth had become the owner/landlord of the said premises and Ram Swarup Makhan Lal has been paying rent to the petitioner after the death of Vidya Wati Seth. Further contention of the petitioner being that the respondent has sublet, assigned/ parted with possession of the suit premises in favour of

legal representatives of Ram Swarup without either the written  
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consent or oral permission of the landlord as is required under Section 14 (1)(b) of the DRCA.

4 Oral and documentary evidence was led which included 7 PWs examined on behalf of the landlord and 2 witnesses have come into the witness box on behalf of the respondent of whom RW-2 was Ashok Kumar, attorney holder of Makhan Lal and son of deceased Ram Swarup.

5. The fact findings by the courts below was on the basis of the appreciation of the evidence adduced before it to arrive at a conclusion that no case under Section 14 (1)(b) of the DRCA is made out. Admittedly a petition under Section 14 (C) read with Section 25-B of the DRCA had been filed by the landlord which had been proved in the trial Court as Ex. PW-1/R41; this was qua the same property. Para 14 clearly states that the premises had been let out by Dina Nath Seth to M/s Ram Swarup Makhan Lal and Makhan Lal was paying the rent for the said premises; no rent note or lease deed had been executed; after the death of Ram Swarup by rule of survivorship the tenancy devolved solely upon Makhan Lal; legal heirs of Ram Swarup had been impleaded only by way of abundant precaution. This portion of the eviction petition (Ex. PW-1/R41) had clearly recited that Makhan Lal Ram

Swarup were both the co-tenants in the suit property; after the  
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death of Ram Swarup, by the rule of survivorship Makhan Lal had alone become the tenant; this clear admission cannot be lost sight of. Today before this Court also it has been urged that under a mistaken legal advice this petition had been drafted; contention before this Court being that all along the stand of the petitioner is that Makhan Lal had been carrying on the business of halwai under the name and style of M/s Ram Swarup Makhan Lal and he also is the tenant. Learned counsel for the petitioner has vehemently argued that the documentary evidence which included the rent receipts Ex. PW-1/4 and Ex. PW-1/5 show that these rent receipts have been signed by Makhan Lal alone. These documents have been appreciated by the court below. The aforementioned two documents i.e. Ex.PW-1/4 and Ex. PW-1/5 show that the receipts have been issued in the name of 'Ram Swarup Makhan Lal' who has been described as the tenant although both these documents have been signed by Makhan Lal alone. Ex. PW-1/4 is in fact dated 08.07.1965; it is also not in dispute that Ram Swarup had died on 15.06.1965; obviously in this factual scenario, Ex.PW-1/4 which is after the date of 15.06.1965 could not have been signed by Ram Swarup. PW-1 the petitioner in his cross-examination has clearly and categorically admitted that the rent receipts are in the name of Ram Swaropp and Makhan Lal. PW-1 has also admitted that

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Ex.PW-1/R-41 is the certified copy of the petition filed by him which bears his signatures; this document as noted supra has clearly described both Makhan Lal and Ram Swarup as co-tenants in the said property and as such the submission of the petitioner that Makhan Lal had sub-let these premises to Ram Swarup is clearly an averment without any merit and in this factual scenario findings of both the two courts below holding that no case of sub-letting has been made out under Section 14 (1)(b) of the DRCA in favour of the landlord suffers from no infirmity.

6. Contention of the petitioner that the testimony of RW-2 should further not to be read as he was a hear-say witness and was rightly noted by the ARC is also an argument without any merit. RW-2 was the general attorney of Makhan Lal and son of Ram Swarup. The general power of attorney executed in his favour by Makhan Lal is Ex. RW-1/8. In his examination in chief he has deposed that he has personal knowledge of the controversy in dispute; Makhan Lal has become very old and is of weak health; this witness had deposed on 27.08.2002; his father Ram Swarup was not alive at that time. In his cross-examination, it has been revealed that the tenancy was created prior to his birth and his one line statement in the cross-examination that he has no personal knowledge about the case is not sufficient to return a

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finding that his version has to be discarded as whole. The testimony of a witness has to be read in its entirety and no one single line can be extracted from the rest of the whole to read it in a manner which suits one party or the other. In this part of the cross-examination, he has deposed that his knowledge of the details of the tenancy had been derived from his father and also being the general power of attorney of Makhan Lal. The submission of the petitioner that his testimony should be rejected is thus of no merit. This contention was however not dealt with by the RCT obviously for the reason that this was not even taken as a ground of appeal before the RCT. These fact findings by the two courts below call for no interference. Since the landlord himself has admitted that both Makhan Lal and Ram Swarup were his tenants (Ex.PW-1/R41) and an admission being the best form of evidence which even till today remains unassailed, the courts below affirming the fact that Makhan Lal and Ram Swarup both being the co-tenants of the landlord, the ground set up by the landlord that Makhan Lal had sublet these premises/assigned them in favour of Ram Swarup suffers from no infirmity. After the death of Ram Swarup in 1965, his legal heirs had become the co-tenants with Makhan Lal and their possession being joint, the question of sub-letting did not arise.

7. Impugned judgment calls for no interference; petition is without any merit. Dismissed.

**DECEMBER 07, 2011**  
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**INDERMEET KAUR,J**