

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

+ **CM(M) Nos.1675-76/2006**

% **Date of Decision: 06.05.2011**

Sh.Dhruv Kumar Gupta & Anr. Petitioners

Through Mr.Sheetesh Khanna Advocate.

Versus

Sh.Dwarka Nath @ Mast Ram Respondents
Through his LRs & Anr.

Through Mr. Anuj Gupta Advocate for
Respondent No.2.
Mr.Deepak Kumar, LR of respondent
No.1 in person.
Mr.Mahinder Nath, respondent No.2 in
person.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

ANIL KUMAR, J.

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1. The petitioners Sh. Dhruv Kumar Gupta and Sh. Dushyant Gupta, alleged unauthorized sub-tenants have challenged the order of eviction passed in respect of suit premises No. 1271(Old No. 442), Vakilpura, Bazaar Guliyan, Near Daribakalan, Delhi under Section 14(1)(b) of Delhi Rent Control Act in Eviction Petition bearing E-121/2000 titled as 'Sh. Dwarka Nath and Anr. Vs. Smt. Bimla Gupta

& Ors.,’ under Section 14(1)(b) of the Delhi Rent Control Act and the order dated 21st September, 2006 passed in RCA 480/2004 titled as ‘Sh. Dhruv Kumar Gupta & Ors. Vs. Dwarka Nath & Ors.’, dismissing the appeal of the petitioners with a cost of Rs.10,000/- holding that the petitioners were not inducted as lawful sub-tenants and therefore, they cannot escape the order of eviction passed against the tenant as well as against them.

2. Brief facts to comprehend the disputes are that late Sh. Dwarka Nath and Sh. Mahinder Nath filed an eviction petition under Section 14(1)(b) of Delhi Rent Control Act in respect of demised premises comprising of 1 Dalan, two rooms, four stores, two kitchens and one bathroom on the ground floor; four rooms, three stores, three bathrooms, two kitchens and one pooja room on the first floor and three rooms, one kitchen, one store and one verandah on the second floor and the entire basement.

3. Regarding the basement, it was alleged that the basement was previously in possession of the respondents and was taken over by the deceased tenant’s widow Smt. Angoori Devi and was illegally sub let to the petitioners.

4. The respondents in the eviction petition alleged that Sh.

Kishan Dass, S/o Sh. Jyoti Prasad was a tenant and Smt. Bimla Gupta, widow of late Sh. Sri Bhagwan Gupta; Smt. Veena Gupta, W/o Sh. Raj Kumar, D/o Sh. Sri Kishan Dass; Master Amit Gupta, S/o late Sh. Sri Bhagwan Gupta; Ms. Monica Gupta, D/o late Sh. Ram Bhagwan Gupta; Smt. Daisy Gupta, W/o Sh. Umesh Gupta, D/o late Sh. Sri Bhagwan Gupta; Smt. Usha Gupta, W/o Sh. Ajay Gupta, D/o late Sh. Sri Bhagwan Gupta; Smt. Nisha Gupta, W/o Shri Sudhir Gupta, D/o late Shri Sri Bhagwan Gupta; Smt. Niti Gupta, W/o Sh. Sandeep Gupta, D/o Late Sh. Sri Bhagwan Gupta were the heirs of late Sh. Sri Kishan Dass, who inherited the tenancy rights from him. It was further alleged that the tenancy of Sh. Sri Kishan Das had been terminated during his lifetime, however, a copy of the notice, postal receipt, AD Card, etc., could not be traced and therefore, the above legal heirs of late Sh. Kishan Dass were treated and accepted as tenants. It was further alleged that Smt. Bimla Gupta, Master Amit and Ms. Monica Gupta were residing in a portion of property and the other portion of the demised premises is in the unauthorized possession of Sh. Dhruv Kumar Gupta and Sh. Dushyant Gupta, the petitioners, along with Smt. Vidyawati Jain, Widow of late Sh. Nand Kishore Jain; Sh. Virender Kumar Jain, S/o Sh. Nand Kishore Jain; Sh. Jagdish Narain, S/o late Sh. Firozi Lal; Sh. Girish Mohan, S/o Late Shri Surender Nath; Smt. Nilima, W/o

Sh. Ramesh Chand Jain, D/o Late Sh. Surender Nath as unauthorized sub tenants.

5. The rent of the premises was alleged to be Rs.202/- per month including house tax and excluding all other charges. It was asserted that earlier the rent was Rs.168 per month, which was increased after giving notice w.e.f. 16th May, 1995 to Rs.184.80 and thereafter, after giving another notice, the rent was increased w.e.f. 1st June, 1998 @ Rs.202/- per month.

6. Petitioners Dwarka Nath and Mahinder Nath disclosed in the eviction petition that the premises were let out by Smt. Sona Devi, their mother, to late Sh. Sri Kishan on a monthly rent of Rs.115/- and a rent note dated 29th November, 1943 was executed, stipulating that the premises was let out for residential purposes only.

7. The respondents pleaded that the tenant had sub-let, assigned or otherwise parted with possession of different portions of the tenanted premises to different sub tenants whose names are detailed hereinabove without the permission in writing of the owners/landlords after 9th June, 1952.

8. The respondents contended that Sh. Dhruv Kumar Gupta and Sh. Dushyant Gupta (petitioners in the present petition) are illegal and unauthorized sub-tenants and are in possession of the portion of ground floor of the said property comprising of one room, three stores, one dalan, one kitchen, one bathroom and they are using the common latrine on the ground floor.

9. The respondents also detailed the respective portions with regard to the other sub-tenants, the details of which are not detailed in the present petition as the eviction order passed against the tenants and sub-tenants are only challenged by the petitioners, who were respondent Nos. 9 & 10 in the eviction petition. The respondents also detailed the premises, which was in the tenancy of the tenant on the first floor of the premises. It was asserted that the illegal and unauthorized sub-tenants were also paying rent to the tenants.

10. The respondents also disclosed that permission under Section 19 of the Slum Areas (Improvement and Clearance) Act 1956 was granted by order dated 5th July, 1999 in Petition No. 8341/1994, titled as 'Dwarka Nath & Ors. Vs. Angoori & Ors.' It was averred that Smt. Angoori, Widow of late Sh. Sri Kishan Dass, had died during the pendency of the petition for permission under Slums Act and her

name was deleted as her legal heirs were already on record. The respondents/landlords also disclosed that they have filed another eviction petition under Section 14(1)(e) r/w Section 25-B of Delhi Rent Control Act.

11. The Eviction Petition was contested by the tenants, *inter-alia*, on the ground that the respondents were neither the owners nor the landlords of the premises demised to them and there is no relationship of landlords and tenants between the parties. Regarding the sub-tenants, it was asserted that they are lawful sub-tenants as the premises were demised to the sub-tenants before 1952 within the knowledge of the landlords.

12. The tenants also asserted that the premises comprising of the entire property was let out to Sh. Sri Kishan Dass Gupta as Thekedar/tenant, for residential-cum-commercial purposes, and he was also authorized to let out various portions of the premises. Sh. Sri Kishan Dass Gupta expired on 11th September, 1976 and after his death, his widow Smt. Angoori Devi and his other legal heirs became the tenants.

13. Regarding the slum permission granted by the Competent Authority, Slum, it was pleaded that Master Amit Gupta, S/o Sh.

Bhagwan Dass Gupta was a minor at the time the permission was granted and the competent authority had not considered the status of the other persons and that the slum permission is bad in law and thus eviction petition is liable to be rejected.

14. All the sub-tenants including the present petitioners filed a joint written statement dated 7th February, 2000 contending that they are lawful sub-tenants in their respective portion of the properties. It was reiterated that the whole property was let out by Smt. Sona Devi to Sh. Sri Kishan Dass during the period 1944-1949, who further sublet different portions to different sub-tenants including the petitioners and therefore, they are lawful sub-tenants in respect of their respective portions in the property. It was alleged that the landlords have deliberately not mentioned the date, month and year when the different portions of property were sub-let to the sub-tenants prior to 9th June, 1952.

15. During the Trial on behalf of the landlords Sh. Dwarka Nath appeared as AW-1. The landlords also examined Sh. A. Rahman, a UDC from Registration Officer and on behalf of tenant and sub-tenants Sh. D.K. Gupta appeared as RW-1. During the pendency of the eviction petition, the LRs of deceased Sh. Sri Kishan Dass surrendered their tenancy rights in respect of the premises demised

to the landlords and filed an application incorporating the terms of compromise. Sub-tenant Sh. Jagdish Narain also compromised with the respondents/landlords and handed over the possession of portion of the property comprising of one kotha, one room, one small room, one kitchen and one bathroom (near latrine) and one chhajja in courtyard and one chhajja towards gali and the rights of common latrine on the first floor and common room on the second floor to the respondent/landlords. The sub-tenants Smt.Vidyawati Jain widow of Sh.Nand Kishore Jain and Sh.Virender Kumar Jain who was in possession of one room, one store room and one kitchen on the ground floor of property No.1271(Old No.442), Vakilpura, Delhi also settled with the respondents and handed over the peaceful vacant possession of the property in their possession to the respondents/landlords. An application dated 28th October, 2005 was filed by these sub tenants regarding the handing over of possession and compromising the matter with the respondents. Other sub-tenants namely Sh.Girish Mohan and Smt.Nilima who were in possession of second floor of the said property having one room, covered tin shed, store behind combined bathroom, kotha, latrine behind kotha, kitchen, front verandah on the second floor had also settled with the respondents and the peaceful vacant possession of the premises in their occupation was handed over to the respondents. An application for compromise dated 26th May, 2006 was filed incorporating the

compromise and handing over the possession by the said sub-tenants.

16. The Rent Controller after considering the pleas and contentions of the parties and considering the depositions of Dwarka Nath as AW1 and Sh.D.K.Gupta as RW1, Sh.Virender Kumar Jain as RW2, held that Sh.Dhruv Kumar Gupta, Sh.Dushyant Gupta, Smt.Vidyawati Jain, Sh.Virender Kumar Jain, Sh.Jagdish Narain, Sh.Girish Mohan and Smt.Nilima were the sub tenants. The pleas of the parties were that the above noted persons were unauthorized sub-tenants whereas the sub-tenant's plea was that they are the lawful sub-tenants as the original tenant Sh.Kishan Dass was having power and authority to sub let the premises which were demised to him.

17. Reliance was placed on the rent agreement which was exhibited as AW1/1. The said rent note, however, did not stipulate any term authorizing Sh.Kishan Dass to let out the suit premises or any portion of the property to any other tenant. The statement of Sh.Kishan Dass which was exhibited as RW1/1 made in suit No.536/1968 filed by Sh. Radhey Shyam against Sh. Nand Kishore Jain and the statement of deceased respondent No.1 Dwarka Nath which was exhibited as RW1/2 were also referred to. In suit

No.536/1968 the then Additional Rent Controller by its order dated 28th March, 1964 had held that the premises was rented out before 2nd June, 1944. The Rent Controller also referred to the statement exhibit RW1/1 of Late Sh.Kishan Dass where he had admitted that the abovenoted persons were his sub-tenants.

18. Considering the statements made in the earlier petitions, the Controller held that onus to prove that the premises were let out on 1st November, 1939 or before 2nd June, 1944 was on the tenant Radhey Shyam but he miserably failed to prove the same. According to the Controller the fact that the sub-tenants Radhey Shyam and Nand Kishore Jain were inducted as sub-tenants in the property in dispute, before 1944 also could not be established.

19. Considering the evidence on record and the precedents relied on by the parties the Rent Controller held that the property in dispute was let out to Sh.Kishan Dass only for residential purposes as per rent note exhibit AW1/A and he was not authorized to let out the portion of the property to any other person and that Radhey Shyam was inducted as sub-tenant in the property in or about 1958 and that Sh.Nand Kishore Jain was inducted as sub-tenant in or about 1954-55.

20. Since no arguments were advanced regarding slum permission granted in favour of the respondents being bad ab initio it was held that the objection of the sub-tenants and tenants in this regard was not tenable. The Tribunal also concluded that no notice under Section 17(2) of DRC Act was given by the sub-tenants to the respondents nor the respondents received any letter from the sub-tenants and, therefore, the sub-tenants did not become direct tenants under the landlords. To be authorized sub-tenants, according to the Rent Controller, written consent in writing was required and as no written consent had been established nor it had been established that the sub-tenants were inducted prior to 9th June, 1952 nor the fact that respondents/landlords had received the rent from the sub-tenants at any time, therefore, there was no implied consent and thus by order dated 21st September, 2004 the Additional Rent Controller had allowed the eviction petition of the respondents under Section 14(1)(b) of Delhi Rent Control Act and had passed an eviction order in respect of suit premises No.1271 (Old No.442), Vakilpura, Bazaar Guliyan Near Daribakalan, Delhi as shown in yellow on the ground floor and basement and as shown in green at the ground floor and as shown in pink colour on the second floor in the site plan exhibit AW1/5.

21. Aggrieved by the order of eviction passed in respect of demised premises by the Rent Controller in the eviction petition No.E-121/2000, Sh.Dhruv Kumar Gupta, Sh.Dushyant Gupta, Smt.Vidyawati Jain, Sh.Virender Kumar Jain, Sh.Girish Mohan, Smt.Nilima filed an appeal before the Rent Control Tribunal against the respondents. Before the Rent Control Tribunal only those persons who were in occupation of the portion of the property, filed the appeal and other sub-tenants and tenants who had vacated the suit property were not impleaded as parties. Before the Tribunal the contention of the sub-tenants was that Sh.Radhey Shyam was an authorized sub-tenant and, therefore, against the legal representatives of late Sh.Radhey Shyam, namely Sh.Dhruv Kumar Gupta and Sh.Dushyant Gupta, eviction order could not be passed on the ground that they are unauthorized sub-tenants. It was also held that the eviction petition was filed by the respondents in collusion with the tenants, legal representatives of late Sh.Kishan Dass. The appellant also contended that the tenants had not produced the intimation sent to the respondent/landlord about induction of Sh.Radhey Shyam as sub-tenant in the suit property. The emphasis was also made on the fact that the premises was sub-let prior to 1944 and, therefore, there was no occasion for the respondents to file the eviction petition under Section 14(1) (b) of Delhi Rent Control Act, either against the tenants or against the sub-

tenants including the appellants before the Rent Controller. The appellants before the Tribunal also pleaded that the document of settlement arrived at between the legal heirs of the landlords stipulating the presence of Sh.Radhey Shyam as tenant had not been considered. Reliance was also placed on survey report prepared in 1947 where Radhey Shyam was shown as a tenant.

22. The Rent Control Tribunal by order dated 21st September, 2006 dismissed the first appeal holding that the appellants were unable to show that late Sh.Radhey Shyam was inducted in the suit property prior to 1944. It was also held that the appellant were obliged to inform the respondents/landlords if the sub tenancy was created prior to 9th June, 1952 to seek protection of the provisions of Delhi Rent Control Act as a tenant under Section 18 of Delhi Rent Control Act. The Tribunal also noted that the appellants and their predecessors did not inform the landlords about induction of Sh.Radhey Shyam as sub-tenant after the provisions of Delhi Rent Control Act came into force, which was necessary under Section 17 of the Act, if they were inducted as sub-tenants prior to 9th June, 1952. The Tribunal also held that the sub-tenants inducted prior to 1944 were protected without there being any written consent of the landlord, however, if the property was sub-let after 1944 but before 1952 then the intimation as required under Section 17 of Delhi Rent

Control Act had to be given on the coming into force of Delhi Rent Control Act, 1958. It was contended that the protection of Sections 18 & 25 shall not be available to sub-tenant since the notice under Section 17(2) of Delhi Rent Control Act, 1958 was not given by the sub-tenants. Also since it had not been established that no intimation was given by the sub-tenants either by themselves or through the tenants to the landlord, about the creation of sub-tenancy, it was held that they are not entitled to protection of Section 18. Reliance was placed by the Tribunal on AIR 1988 SC 145, M/s.Shalimar Tar Products Ltd v. H.C.Sharma & Ors; 1995 (32) DRJ, M/s.Curewell (India) Ltd v. Inderjit Singh & Ors and AIR 1989 SC 1806, M/s.Bajaj Auto Limited v. Behari Lal Kohli to hold that the appellants could not escape the order of eviction passed against the tenant on the ground of the premises being sub let illegally and unauthorisedly under Section 14(1)(b) of Delhi Rent Control Act, 1958.

23. Aggrieved by the order of eviction dated 21st September, 2004 passed in eviction petition No.E-121/2000 titled as 'Sh.Dwarka Nath Gupta and Anr v. Smt.Bimla Gupta & Ors' and dismissal of their appeal by the Rent Control Tribunal in appeal No.480/2004 titled as 'Sh.Dhruv Kumar & Ors v. Sh.Dwarka Nath & Ors' dated 21st September, 2006, the present petitioners have filed the present

petition under Article 227 of the Constitution of India. The petitioners categorically asserted that while filing the petition under Article 227 of the Constitution of India, the legal heirs of the tenants and other sub-tenants, except for the petitioners, who have already vacated the portion of premises in question, have not been made the parties.

24. The order of eviction passed by the Rent Controller and affirmed by the Rent Control Tribunal is assailed on the ground that Section 17 of the Rent Control Act is neither applicable in the case of the petitioners nor is it otherwise mandatory. It has been contended that the documents and the evidence adduced by the petitioners and on their behalf were not considered or looked into by the Tribunal while passing the impugned order and reliance was placed on the certified copies of the judgments and orders passed in the case titled as 'Radhey Shyam v. Sri.Kishan Dass' Suit No. 536/1968, for fixing the standard rent, where the Additional Rent Controller by his order dated 28th March, 1964 had held that the demised premises were rented out before the 2nd day of week in 1944. The testimonies of respondent No.1 could not be relied on as he was 8 years of age when the premises was demised and consequently the testimony of late Sh.Dwarka Nath in respect of rent note exhibit AW1/1 could not

be relied on especially since he deposed that he could not read Urdu and the rent note exhibit AW1/1 is in Urdu.

25. The petitioners have emphatically contended that the documents which are the certified copies of the survey reports of the Municipal Corporation of Delhi, were not considered which showed unequivocally that the petitioners and other sub-tenants were inducted prior to 1952. Municipal Corporation of Delhi, according to petitioners is an agency, which carried out an independent survey which was conducted 60 years ago and the name of the sub-tenants appeared in the survey report which documents were produced before the Tribunal, however, the Tribunal did not consider them at all. The petitioners also pleaded that the respondents did not cross-examine any of the witnesses of petitioners regarding the survey reports of the Municipal Corporation of Delhi stipulating that the petitioners and their predecessors and other sub-tenants were in occupation prior to 1952. In the circumstances it is contended that the petitioners are lawful sub-tenants and were inducted as tenants in the premises vide separate tenancy, therefore, separate permission was necessary to be obtained from the competent authority/slum against the present petitioners.

26. The petitioners while relying on the copy of order dated 28th March, 1964 titled as 'Sh.Radhey Shyam v. Lala Sri Krishan' contended that the Additional Rent Controller had categorically held that Sh.Radhey Shyam, the petitioner in that petition, for fixation of standard rent, did not produce any convincing evidence to show what was the provisional rent of the demised premises in the year 1939. It was also held that even Sh. Sri Krishan, the respondent in the matter, had failed to produce any satisfactory evidence regarding the rate of rent prevailing in the year 1939. Paragraphs 7 & 8 of the order dated 28th March, 1964 are as under:-

“7. Quite obviously, therefore, the petitioner has not been able to produce any convincing evidence on record to show as to what was the prevailing rent of the demised premises in the year 1939.

8. Similarly, the respondent, also, I must say, has failed to produce any satisfactory evidence regarding the rate of rent prevailing in the year 1939. He examined the Mukhtiar of Smt.Sona Devi namely Shri Hari Ram RW4 but he also did not make any attempt to call from him any rent deed which may be in his possession with respect to the demised premises pertaining to the year 1939. In short, it must be said that none of the parties could lead any evidence on record to prove the prevailing rent of the premises in the year 1939 and as a result, therefore, it must be held that it is not possible to fix the standard rent of the premises in dispute under Section 6 of the Delhi Rent Control Act.”

27. On account of this it has been contended that the premises were demised to Sh.Radhey Shyam in 1939 prior to 1944 as it was for this purpose only, that the Additional Rent Controller in order to

decide the standard rent wanted to consider the evidence of the rent prevailing in the year of 1939. If that be so, according to the petitioners the inevitable inference is that the premises were demised to Sh.Radhey Shyam in 1939 prior to 1944. An appeal against the order of the Additional Rent Controller dated 28th March, 1964 in the standard rent petition titled as 'Sh.Radhey Shyam v. Lala Sri Krishan' was also filed being Rent Control Appeal No.463/1964 titled as 'Radhey Shyam v. Lala Sri Krishan Dass' which was also disposed of by order dated 14th August, 1964 by Sh.Pritam Singh, Rent Control Tribunal. The Rent Control Tribunal had also noted that the case of Sh.Radhey Shyam was that the premises were let out prior to 2nd June, 1944 and on 1st November, 1939 the rent of the premises was Rs.8.25/- per month. The Rent Control Tribunal, however, had fixed the standard rent of the premises at Rs.23/- per month with effect from 1st February, 1961.

28. Along with the petition the petitioners also produced a photocopy of the certified copy of the inspection report of the MCD for house tax assessment in the year 1947, showing Sh. Radhey Shyam as one of the occupants and his monthly rent being Rs.20/-. Another photocopy of the certified copy of inspection report for the year 1950, which was carried on 4th May, 1949 was also produced, showing Sh. Radhey Shyam as an occupant paying monthly rent of

Rs.30/-. The petitioners also produced the photocopies of certified copies of the inspection reports for the years 1956, 1958-59 and 1970-71 showing Sh. Radhey Shyam, their predecessor, as the occupant paying monthly rent of Rs. 28.50/- and Rs.23.50/- in the different years.

29. According to the petitioners an application dated 28th January, 2005 was filed on their behalf under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure for taking on record the additional evidence and additional documents. The petitioners had also sought production of documents pertaining to the suit for partition between the respondents which was decided by a compromise decree. The grievance of the petitioners is that though the documents produced by the petitioners were relevant and there was sufficient cause for their non production prior to filing of the application for additional evidence, the application for additional evidence and additional documents under Order 41 Rule 27 of the Code of Civil Procedure was not even considered by the Rent Control Tribunal in the appeal. In fact the petitioners have contended that that the Rent Control Tribunal had committed a grave error in not deciding their application for additional evidence and additional documents and dismissing their appeal mechanically by merely

noting various paras of the order passed by the Additional Rent Controller and reproducing the major contents.

30. During the pendency of the present petition the petitioners filed an application being CM No.255/2008 under Section 151 of the Code of Civil Procedure for bringing on record the alleged subsequent facts. The petitioners had contended that all the tenants and sub-tenants have vacated the premises and have also handed over the possession of the portions of the demised premises to the respondents at different times. The petitioners contended that the suit property was partitioned on 7th April, 1993, much before filing of the eviction petition, as the partition deed dated 7th April, 1993 was duly executed and registered. The respondents had not disclosed these facts. The petitioners also referred to a will dated 15th November, 2002 executed by Late Sh.Dwarka Nath, respondent No.1, now represented through his legal representatives, bequeathing his share in the property in favour of his younger son Sh.Rajneesh Kumar. According to the petitioners these facts were concealed by the respondents. The petitioners also asserted that the son of deceased Sh. Dwarka Nath namely Sh.Deepak Kumar had also filed a suit for partition against the other legal heirs alleging that the property in dispute was an ancestral property of Sh.Dwarka Nath and, therefore, he had a right in the suit property. According to the

petitioners since these facts were not disclosed which are material to the present matter, the respondents are liable for concealing the material information and therefore, the eviction petition on the ground of unauthorized sub letting and parting with possession by the tenant to the sub-tenants, is liable to be dismissed.

31. The petitioners along with the application for taking on record the subsequent facts filed an additional affidavit dated 15th September, 2007 by Sh.Dhruv Kumar Gupta. Along with the affidavit, a copy of the partition deed dated 7th April, 1993 between the respondents, deceased Sh.Dwarka Nath and Sh.Mahendra Nath and a copy of order dated 5th July, 1999 passed by the competent authority,(Slum) Tis Hazari Court in the case No.8341/1994 titled as 'Sh.Dwarka Nath and Anr v. Smt.Angoori Devi wife of Sh. Sri Kishan Dass and Ors', along with a copy of the will dated 15th November, 2002 allegedly executed by Sh.Dwarka Nath was also filed. An affidavit dated 5th March, 2011 of Sh.Mahendra Nath was filed along with a copy of the site plan showing the portion which is in possession of the petitioners in red as annexure R2/A.

32. Though the petitioners had sought time to file response to the additional affidavit dated 5th March, 2011, however, no reply to the

affidavit was filed nor it was contended that the copy of the plan does not show correctly the portion in possession of the petitioners.

33. This Court has heard the learned counsel for the parties in detail on various dates and has perused the orders of the Additional Rent Controller and the Rent Control Tribunal, as well as the documents filed along with the petition. There is no doubt that the subsequent events can be taken into consideration by this Court. This fact has not been denied that during the pendency of the eviction petition all the tenants and other sub-tenants except the petitioners had vacated the respective portions in their occupation. The respondents have filed a site plan marked as R2/A showing in red, the premises which are in occupation of the petitioners. The plan bears the signatures of Sh.Mahendra Nath and also bears the signatures of B.B.Associates, Architects and Engineers who have prepared the plan. Despite the ample opportunity given, the petitioners did not rebut the additional affidavit dated 5th March, 2011 and the site plan, annexure R2/A. Therefore, in the facts and circumstances the plan is exhibited as Exhibit X.

34. The learned counsel for the respondent has contended that the petition against the order of eviction passed by the Rent Controller and the dismissal of the appeal by the Rent Control Tribunal is not

maintainable under Article 227 of the Constitution of India as the power under Article 227 is to be used sparingly only, in cases occasioning grave injustice or failure of justice, such as, when the Court or Tribunal has assumed jurisdiction which it does not have; has failed to exercise jurisdiction which it does have and the jurisdiction though available is being exercised in a manner which tantamount to overstepping the limits of jurisdiction. According to learned counsel for the respondents the petition is against the concurrent findings of the Additional Rent Controller and the Rent Control Tribunal, and in the circumstances the petitioner is not entitled for reconsideration of all the pleas and contentions which have already been considered in detail. According to him the landlords were not under an obligation to implead the sub-tenants as party to the eviction petition, however, they acted bonafide by impleading them as a party in order to avoid any future controversies. Since the sub-tenants have been given ample opportunity to prove their defense and even though the petitioners had sufficient time to bring the relevant documents on record and prove the same in accordance with law, however the needful was not done by them. Therefore, it cannot be held that the Courts below failed to exercise the jurisdiction which vests with them, so as to entail any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India. Relying on

Mohd.Yunus v. Mohd.Mustaqim and Ors, (1983) 4 SCC 566 it was contended that a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India, as the supervisory jurisdiction conferred on the High Court is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority, and not to correct an error apparent on the face of the record, much less the error of law. Reliance was also placed on Surya Dev Rai v. Ram Chander Rai and Ors, (2003) 6 SCC 675. In Mohd Yunus (supra) the Supreme Court had held that the petition under Article 227 before the High Court was not maintainable as alternative remedies in the shape of appeal and review were open to the petitioner. The Supreme Court also held that in exercising supervisory power under Article 227 of the Constitution of India, the High Court does not act as an Appellate Court or Tribunal. The case relied on by the respondents is apparently distinguishable. In Surya Dev Rai (supra) the Supreme Court had held that amendment to the Civil Procedure Code 1908, section 115 by Act 46 of 1999 w.e.f 1.7.2002 does not in any manner affect the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India. It was held that the said Articles being part of the basic structure, cannot be tampered with, not even by a Constitutional amendment, much less by an Act of the Legislature. The powers of the High Court under Article 226 and 227 of the

Constitution, is always in addition to the revisional jurisdiction conferred on it. On the basis of these precedents, it cannot be held that the petition under Article 227 of the Constitution, of the petitioners is ex-facie not maintainable.

35. Perusal of the record reveals that certified copies of the inspection reports of the MCD for house tax assessment showing the predecessors of the petitioners as the occupants prior to the year 1952 that is for the years 1947, 1950 and 1956 were produced before the Rent Controller. The certified copies of the survey reports are public documents. The said certified copies of survey reports were also put to the landlord Mr.Dwarka Nath, deceased respondent No.1 when he appeared as PW-1. This is also not disputed by the parties that the Rent Controller by his order dated 25th February, 2004 had directed the petitioners to place on record the certified copies. However, neither the said documents were exhibited, nor were they even considered by the Rent Controller though they stood proved in the facts and circumstances.

36. In (2003) 8 SCC 745, *Narbada Devi Gupta v. Birendra Kumar Jaiswal & Anr.*, the Supreme Court had held that mere production and marking of a document as exhibit is not enough, as execution of a document has to be proved by admissible evidence, however, where

documents produced are admitted by the signatories thereto and thereafter they are marked as exhibits, no further burden to lead additional evidence to prove the writing and its execution survives. In this case, the plaintiff-landlord had averred that signed blank stamp papers were given to the tenant to conduct pending litigation in his absence, however, no evidence was led in proof thereof. The tenant, however, had taken a specific plea of tenancy based on rent receipts signed by the landlord. The landlord had not disputed his signatures nor had he made any consequential amendment to the plaint nor had he taken the plea of fraud and forgery and in such circumstances it was held by the Apex court that no further burden of proof was on defendant to lead evidence to prove the writing on the rent receipts and their execution. In AIR 1971 SC 1865, Sait Tarajee Khimchand & Others v. Yelamarti Satyam & Others while referring to Order XIII Rule 4 of the Code of Civil Procedure, it was held that mere marking of a document as an exhibit does not dispense with its proof. A single Judge of this Court in (1995) Rajdhani Law Report 286, Sudhir Engineering Co. v. Nitco Roadways Ltd. had held in reference to the Original Side Practice Direction 3/74 that when a document is produced in evidence and is marked as an exhibit, then it is only for identifying the documents and is not its proof, as proof of the contents of the documents must be proved and established by independent evidence. Therefore, for the same reasoning if there is

sufficient evidence about documents, mere non exhibition of documents would not mean that the documents have not been proved. The documents were put to the respondents in their cross examination. The documents are certified copies of the public records as contemplated under section 74 of the Evidence Act. The documents are also more than 30 years old and hence, there is a presumption about their genuineness under section 90 of the Indian Evidence Act, 1872. In the circumstances, the Additional Rent Controller and the Rent Control Tribunal ought to have considered these documents.

37. Regarding the orders passed for fixing of standard rent in the petition filed by Sh.Radhey Shyam against Sh.Sri Kishan which was decided by the Additional Rent Controller by order dated 28th March, 1964 and by the Rent Control Tribunal by order dated 4th August, 1964, though the Additional Rent Controller in the present eviction petition of E-121/00 has noted about them as the plea of the petitioners, but it has not given any reasons as to why on the basis of those orders it cannot be held that the premises in dispute was let out prior to 1944 or prior to 1952. The Additional Rent Controller has merely held on the basis of the rent note, Ex. AW1/A that Sh. Radhey Shyam was inducted as sub-tenant in 1958. The findings of the Additional Rent Controller in paragraph 38 of the order passed in

the Standard Rent Petition filed by Shri Radhey Shyam predecessor of the petitioners is as under:-

“38. Accordingly, it is held that property in question was let out to Sh.Kishan Dass only for residential purposes as per rent note Ex.AW1/A. It is also held that he was not authorized to let out the portions of property in question further to any other person. It is also held that late Sh.Radhey Sham was inducted as a sub-tenant in the property in question in or about 1958 and Sh.Nand Kishore Jain was inducted as a sub-tenant in the portion of property in question in or about 1954-55.”

38. Even the Rent Control Tribunal in its order dated 21st September, 2006 dismissing the appeal of the petitioners, has merely reproduced the order of the Rent Controller, however, has not given any reasons as to why the relevant documents, the survey reports of Municipal Corporation of Delhi of 1947 and 1950 showing the occupation of late Sh.Radhey Shyam prior to 1952 could not be considered or as to why no inference can be drawn on the basis of the certified copies of the orders dated 4th August, 1964 and 28th March, 1964 passed in the rent petition, with regard to the aspect of “Whether late Sh.Radhey Shyam was inducted as a sub-tenant prior to 1944 or not.”

39. The learned counsel for the respondents has very vehemently contended that this Court in exercise of its jurisdiction under Article 227 of the Constitution of India will not re-appreciate the evidence in

any circumstances. According to him while reversing the judgment of the Additional Rent Controller the Appellate Court must consider and be conscious of two principles, particularly on the finding of facts which are based on conflicting evidence. The plea as raised by the learned counsel for the respondents rather appears to be incomprehensible. The plea raised on behalf of the learned counsel for the respondents in written submission dated 12th April, 2010 is as under:-

“22. It is also no more res integra that while reversing a judgment or order of the trial Court, Appellate court must remain conscious of two principles, particularly on the finding of the facts which are based on conflicting evidence. Firstly the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence. In the instant case, the eviction respondents had not filed the relevant documents with the written statement. The petitioners before this Court have not given any plausible reason as to what prevented them from filing the documents before the trial Court and proving the same as per law.

In the circumstances, it cannot be held that finding of fact arrived at by the Controller needed to be upset by the appellate Tribunal, as the fact of non production of the municipal record is otherwise also of no relevance in the present proceedings in view of the law laid down by the Hon'ble Supreme Court of India in “Kapil Bhargava Vs. Subhash Chand Aggarwal, AIR 2001 SC 3334” wherein it has been held that eviction decree passed against a tenant is also enforceable against the sub-tenant who has not served a notice under Section 17(2) of DRC Act on the landlord. The Apex Court also held that even if the landlord is aware about the sub-tenant residing exclusively in the premises since before 1952 and was accepting the rent from him, that, however, would not absolve the sub-tenant from giving mandatory notice under Section 17(2) of DRC Act. The

Apex Court held that giving notice under Section 17(2) DRC Act by the sub-tenant is not merely a formality.

In the instant case, it has been admitted by the counsel for the petitioners herein that no notice under Section 17(2) of Delhi Rent Control Act was served upon the landlord by the petitioners or their father. Hence, reliance on the municipal record pertaining to year 1947 does not help the petitioners as admittedly they had not served the requisite notice upon the landlord. The petitioners have also not been able to prove that they paid rent to the landlords or were direct tenant under the landlord. On the contrary, as per them, their father Shri Radhey Shyam was inducted in the portion under their possession by one Shri Sri Kishan. And it is admitted case that Shri Sri Kishan Dass was tenant without any authority to sub-let the suit premises. Therefore, the finding of the appellate Tribunal cannot be impugned on the ground as has been alleged by the petitioner.

23. This is also no more *res integra* that to be amenable to correction by the High Court, the error committed by the Court or authority on whose judgment the High Court was exercising jurisdiction, should be an error which is self-evident. The error which needs to be established by lengthy and complicated arguments or by indulging into a long drawn process of reasoning cannot possibly be an error available for correction by writ of certiorari or Article 227 of the Constitution of India. If it is reasonably possible to form two opinions on the same material, the finding arrived at one way or other way cannot be called a patent error. In *Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675, it was held by the Apex Court that the jurisdiction under Article 226 was not available to be exercised for indulging into re-appreciation or evaluation of finding or correcting errors in drawing inference like a court of appeal.”

40. The pleas raised by the learned counsel for the respondents cannot be accepted. The question in the present circumstances is as to why the certified copies of the survey reports which have a

relevant bearing on the fact 'Whether late Sh.Radhey Shyam, predecessors of the petitioners was in occupation prior to 9th June, 1952 or not' were not considered by the Additional Rent Controller and the Rent Control Tribunal and if so on what ground this Court will still be prevented in considering them in exercise of its jurisdiction under Article 227 of the Constitution of India. Similarly, if some findings have been arrived at by the Additional Rent Controller and the Rent Control Tribunal in the standard rent petition filed by the predecessors of the petitioners, late Sh.Radhey Shyam, whether the same are not to be considered because this Court is exercising its jurisdiction under Article 227 of the Constitution of India.

41. If the relevant documents are not considered by the Additional Rent Controller and the Rent Control Tribunal, then this Court cannot be prevented nor can any embargo be placed upon its jurisdiction to consider the same in exercise of its jurisdiction under Article 227 of the Constitution of India, so that the justice is done between the parties, on account of any of the pleas, as detailed hereinabove, raised by the learned counsel for the petitioners.

42. From the perusal of the order dated 28th March, 1964 of the Additional Rent Controller it is apparent that the question for

consideration was as to what was the rent of the demised premises on 1st November, 1939 as per the schedule annexed to the Delhi Rent Control Act, 1958. The common point raised by Sh.Radhey Shyam and Sh.Sri Kishan in the said standard rent petition was that the demised premises were rented out before 2nd day of June, 1944. Paragraph 4 of the order dated 28th March, 1964 is as under:-

“4. This is common point of the parties that the building of which the demised premises form apart is an old construction. This also is undisputed that the demised premises were rented out before the 2nd day of June 1944. In other words, it is agreed between the parties that the present case is covered by Sec.6(1) (A) of the Act. This clearly means that in order to fix the standard rent the only thing to be seen is as to what was the rent of the demised premises on the 1st November, 1939, as per IInd Schedule annexed to Delhi Rent Control Act, 1958.”

43. The inevitable conclusion in the facts and circumstances is that the premises were let out to the deceased tenant, Sh.Sri Kishan prior to 1944 and the said deceased tenant also sub let the premises to the predecessor of the petitioners, late Sh.Radhey Shyam prior to 1944 in 1939. This cannot be disputed that before the Delhi Rent Control Act, 1958 came into force, a sub tenancy created prior to 9th June, 1952 could be validly created with the oral consent of the landlords and it was not necessary to obtain a written consent. While enacting Section 16 of the Delhi Rent Control Act, 1958 it was noticed that often it was very difficult to ascertain whether a sub

tenancy was lawfully created or not pursuant to oral consent and to remove this difficulty in sub section (1) of Section 16 it was provided that where any time before 9th June, 1952 a tenant had sub-let the whole or any part of the premises and the sub-tenant was, at the commencement of the Act in occupation of such premises, then, notwithstanding that the consent of the landlord was not obtained for such sub-letting, the concerned premises would be deemed to have been lawfully sub-let.

44. From the documents as detailed hereinabove which were neither considered by the Additional Rent Controller nor by the Rent Control Tribunal it is apparent that the sub-tenant, predecessor of petitioners namely, Sh.Radhey Shyam was in occupation since 1939 and in any case since 1947 as the Municipal inspection report categorically details that he is an occupant in the premises. Since late Sh.Sri Kishan has also been shown as an occupant during the same period and it is not the case of the parties that late Sh.Radhey Shyam was an independent tenant, this is established that he was in occupation of the premises concerned and not a trespasser, and therefore a sub-tenant of late Sh.Sri Kishan in 1947. If that be so even if the rent note executed by the landlords of the premises in favour of late Sh.Sri Kishan does not specifically grant written consent to sub-let the premises, under Section 16(1) of Delhi Rent

Control Act, 1958 the sub-tenancy of the premises by the deceased tenant Sh.Sri Kishan to deceased sub-tenant Sh.Radhey Shyam shall be deemed to be lawful.

45. The learned counsel for the respondents has also contended that presumption of genuineness of a document which is 30 years old is not applicable to the certified copy of a 30 year old document unless the same is proved by secondary evidence under Section 63 of the Indian Evidence Act, 1872 by proof of loss by destruction of the original or production of the original from the proper custody. Reliance was placed on *Shri Lakhi Baruah & Ors v. Sri Padma Kanta Kalita & Ors*, AIR 1996 SC 1253. Reliance was also placed on *Gangamma v. Shivalingaiah*, 2005 (9) SCC 359. The learned counsel also contended that these documents were produced at a belated stage and have not been proved in accordance with law and, therefore, the presumption under Section 90 of the Indian Evidence Act, 1872 is not attracted. The plea of the respondents' counsel has to be rejected for the reason that the certified copy of the inspection report by the Municipal Corporation of Delhi is a public document and under the provisions of the Municipal Corporation Act, the original survey report is not to be produced unless so directed by the Court for the proof of the certified copy. The certified copies have come from the proper custody of the original record with the

Municipal Corporation of Delhi. The copies of the inspection report are public documents and are admissible as proof of original under Section 65(e) of the Indian Evidence Act, 1872. The joint reading of Sections 74 & 75 would show that Section 74 is an exception to the provision requiring proof under the Evidence Act. Therefore, the plea of the learned counsel for the respondents, that these documents have not been proved, cannot be accepted and on consideration the inevitable conclusion is that late Sh.Radhey Shyam, predecessor of the petitioners was not an unlawful sub-tenant. If late Sh.Radhey Shyam was not an unlawful sub-tenant, even the ground as contemplated under Section 14(1) (b) of Delhi Rent Control Act, 1958 that late Sh.Sri Kishan had on or after 9th 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 is not made out.

46. In the present facts and circumstances, the Additional Rent Controller and Rent Control Tribunal have failed to exercise the jurisdiction which vests with them and non consideration of inspections reports of the MCD has resulted in the failure of justice and, therefore, this Court would be justified in interfering with the orders of the Additional Rent Controller and the Rent Control Tribunal under Article 227 of the Constitution of India and the plea

of the respondents that there are no grounds to interfere with the orders of the Additional Rent Controller and the Rent Control Tribunal cannot be accepted and this plea is repelled.

47. The learned counsel for the petitioners have also contended that no eviction decree has been passed against the tenant late Sh.Sri Kishan and his legal representatives and eviction decree was passed only against the sub-tenants. This plea of the petitioners cannot be accepted as the eviction petition was filed against all the legal representatives of the deceased tenant and the sub-tenants. During the pendency of the petition on the ground of sub-letting the premises in occupation of the tenant was handed over to the respondents/landlords and eviction orders were passed on the ground of unauthorized sub-letting against those sub-tenants who continued in occupation of their respective portions of the demised premises. In such circumstances, it cannot be held that the eviction order was passed only against the sub-tenants and not against the tenants. The eviction order against the sub-tenants could be passed only if it had been established that the tenant had illegally and unauthorisedly sublet, assigned or parted with the possession of the premises. In the circumstances, this plea of the petitioners counsel cannot be accepted. However, in view of the finding by this Court that the premises were not illegally and unauthorisedly sublet by late

Sh.Sri Kishan to the predecessor of the petitioners, late Sh.Radhey Shyam this plea becomes infructuous.

48. The learned counsel for the petitioners had also contended that the eviction petition was filed in respect of a part of the tenancy premises and thus the decree for eviction could not be passed for a portion of the premises in the property which was not let out to late Sh.Sri Kishan tenant. According to the learned counsel for the petitioners, the basement was not a part of the tenancy premises. The plea of the learned counsel for the petitioners, however, in the facts and circumstances has to be rejected as it was categorically stipulated in the written statements filed by the tenant and the sub-tenants that the basement was part of the tenancy premises. Consequently, now the petitioners cannot raise the plea that the eviction petition was in respect of a part of the tenancy premises and therefore could not be passed against the petitioners. In any case on account of subsequent events, as except for the petitioners, everyone i.e. the legal representatives of deceased tenant Sh.Sri Kishan and the other sub-tenants had been evicted from the premises pursuant to their compromise with the respondents, and a plan showing the premises in possession of the petitioners was filed along with an affidavit showing the premises under their occupation, which specifies the basement and the dalan portion of the premises which

has been exhibited as Exhibit X. Despite the ample opportunity given to the petitioners, reply to the additional affidavit was not filed nor was the correctness of the plan showing the demised premises under the occupation of the petitioners denied. The plan showing the premises under the tenancy of the petitioners was exhibited as exhibit X. In the circumstances it cannot be held that the eviction petition was filed in respect of a part of the demised premises and hence was not maintainable. In 150 (2008) DLT 339, Suman Sodhi & Ors v. Yogender Sharma, it was held that merely because a tenant/sub-tenant or unauthorized occupant without express consent or authority of landlord/owner raises construction in a portion of the tenanted premises, he cannot object to delivery of possession on the ground that such portion did not form part of the eviction order. It was further held that if such an argument is accepted it would be putting premium on the illegality of tenant/sub-tenant and they cannot be allowed to take advantage of their own wrong. Consequently, the plea of the petitioner that the eviction petition was in respect of the part of the tenancy premises and the portion of the premises in occupation of the petitioners did not form part of the tenancy premises cannot be accepted. This plea has to be rejected as it is not the case of the petitioners that the portion in their possession except the basement was given on sub-tenancy by Sh.Sri Kishan to their predecessor, Sh.Radhey Shyam and

Sh.Radhey Shyam later on illegally and unauthorisedly occupied the basement. The property in fact was let out to Sh.Sri Kishan who had inducted the sub-tenant including late Sh.Radhey Shyam. Therefore, in the totality of facts and circumstances this plea has to be rejected. In any case this plea has also become irrelevant as this Court has already held that the ground of eviction under Section 14(1)(b) of Delhi Rent Control Act, 1958 on the ground that the tenant had illegally and unauthorisedly sub-let, assigned or parted with possession of the premises has not been made out.

49. The learned counsel for the petitioners has also sought rejection of the petition on the ground that the facts pertaining to the partition of property between Sh.Mahender Nath and Sh.Dwarka Nath, the landlords had not been disclosed by the respondents, though the partition was effected prior to the institution of the eviction petition. This is true that the fact that there had been a partition between Sh.Mahender Nath and Sh.Dwarka Nath had not been disclosed, but had been admitted to by the respondents only when they were confronted with the photocopy of the partition deed produced by the petitioners. Rather the plea raised by the respondents was that though there was a partition by virtue of a registered partition deed, however, it was not acted upon. Considering the facts and circumstances, however, the eviction

petition cannot be dismissed on the ground of suppression of partition between Sh.Mahender Nath and Sh.Dwarka Nath, because of the fact that even after partition portions of the premises demised to late Sh.Sri Kishan continued under both the landlords as this cannot be disputed in law that tenancy of Late Sh. Sri Kishan could not be divided pursuant to partition between the co-owners. A copy of the plan along with the partition deed was filed, which shows that a portion of the tenanted premises remained in the ownership of late Sh.Dwarka Nath whereas another portion had fallen into the share of Sh.Mahender Nath. Therefore, on the ground that there had been partition between Sh.Mahender Nath and Sh.Dwarka Nath the eviction petition cannot be dismissed. In any case since this Court has held that the ground for eviction under Section 14(1) (b) of the Delhi Rent Control Act, 1958 for illegally and unauthorisedly sub-letting, assigning or parting with the possession of the tenancy premises by late Sh.Sri Kishan to the predecessor of the petitioners, late Sh.Radhey Shyam has not been made out, therefore, this plea has also become infructuous.

50. The learned counsel for the respondents has very emphatically contended that since the petitioners and their predecessor had not been given a notice under Section 17(2) of the DRC Act within 6 months from the commencement of Delhi Rent Control Act, 1958,

therefore, the petitioners are liable for eviction. In support of this submission the learned counsel for the respondents has relied on Mrs.Kapil Bhargava & Ors v. Subhash Chand Aggarwal & Ors, 6 (2001) SLT 1; Chanderwati v. Gianwati, 2004 (6) AD (Delhi) 88 and M/s.Girdhari Lal & Sons v. Balbir Nath Mathur and Ors., AIR 1986 SC 1499. The plea of the learned counsel for the respondents cannot be accepted as it is without any legal basis. Rather in Mrs.Kapil Bhargava (Supra) the Supreme Court had held that service of notice under Section 17(2) saves a sub-tenant from eviction even if a decree is passed against a tenant under Section 14 and further confers on such sub-tenant an independent right as that of tenant. It confers a substantive right on the sub-tenant as unless notice under sub section (2) of Section 17 is served by the sub-tenant on the landlord he cannot take the benefit of Section 18 and any decree passed under Section 14 of Delhi Rent Control Act, 1958 against the tenant is executable against a sub-tenant. The Supreme Court in the said judgment in para 17 had held as under:-

“Para 17: The next and the last submission is that the landlord was not only aware of the fact that it is not the tenant but the sub-tenant is residing exclusively in whole of the premises, since before 9th June 1952 and landlord was accepting the rent from this sub-tenant, hence compliance of Section 17(2) could at best be said to be a mere formality. This submission has also no merit. Neither there is any such finding by any courts nor any evidence pointed out that after the tenant left, the rent was paid by the sub-tenant on his own behalf and not on behalf of the tenant. A person in possession may continue to live and continue to pay rent which

would be payment on behalf of the tenant, unless specific evidence led that the incumbent in possession started paying rent as sub-tenant, receipt issued as sub-tenant or there exist any document of this nature. We have not been shown any such plea, evidence or any finding by any of the courts below in this regard”

51. However, in the present facts and circumstances it has been held that the ground of eviction under Section 14 (1)(b) of Delhi Rent Control Act, 1958 is not made out as the sub-letting was prior to 9th June, 1952 and, therefore, under Section 16(1) of Delhi Rent Control Act, 1958 the premises shall be deemed to have been lawfully sub-let. If the eviction decree is not passed against the tenant, the sub-tenant also cannot be evicted. However, if an eviction order is passed against the tenant on any other ground, as another eviction petition between the parties on the ground of Section 14(1)(e) of Delhi Rent Control Act is also pending and as it is an admitted case of the respondents that no notice under Section 17(2) of Delhi Rent Control Act was given, then the same shall be binding on the petitioners and they would also be liable to be evicted and they will not be able to get the benefit under Section 18 of Delhi Rent Control Act. However, in the present petition an eviction order under Section 14(1)(b) of Delhi Rent Control Act is not passed. Merely on the ground that a notice under Section 17(2) of Delhi Rent Control Act has not been given, the petitioners shall not be liable for eviction from the portion which is in their possession as they are lawful sub-tenant. This plea of the

respondents counsel is, therefore, also rejected in the facts and circumstances.

52. No other ground has been raised by the counsel for the parties before this Court except those which have been considered hereinbefore. Therefore, in the totality of facts and circumstances the ground of eviction under Section 14(1)(b) of Delhi Rent Control Act in the present petition has not been made out and the eviction petition on the said ground is dismissed. Therefore, the petition filed by the petitioners under Article 227 of the Constitution of India, is allowed and eviction petition filed by the respondents being E-121/2000 titled as 'Sh. Dwarka Nath and Anr. Vs. Smt. Bimla Gupta & Ors' is dismissed and the order of eviction dated 21st September, 2004 under Section 14(1)(b) of Delhi Rent Control Act passed by the Rent Controller and order dated 21st September, 2006 passed by the Rent Control Tribunal affirming the order of Rent Controller are set aside. The present petition is disposed of with these observations and directions. The parties are, however, left to bear their own cost.

ANIL KUMAR, J.

MAY 6th, 2011
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