

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

% *Judgment reserved on:24.04.2012*
Judgment delivered on:30.04.2012.

+ CM(M) 567/2002

ATMA RAM PROPERTIES P. LTD. Petitioner
Through Mr. Sandeep Sethi, Sr. Adv. with
Mr.Amit Sethi, Adv.

versus

M/S ESCORTS LTD. Respondent
Through Ms.Deepika, V.Marwaha, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 Impugned judgment is dated 10.07.2002; it was an order passed by the Rent Control Tribunal (RCT) endorsing the findings returned by the Additional Rent Controller (ARC) dated 01.03.2002 whereby the eviction petition filed by the landlord M/s. Atma Ram Properties seeking eviction of his tenant M/s. Escorts Ltd. on the ground of sub-letting as contained in Section 14(1)(b) of the Delhi Rent Control Act (DRCA) had been dismissed. These are the two concurrent findings of

fact recorded by the two courts below.

2 At the outset, this court is conscious of the fact that it is sitting in its powers of superintendence under Article 227 of the Constitution of India. The right of second appeal has since been abrogated; Section 39 of the DRCA stands deleted; until and unless a patent illegality or a perversity is pointed out in the judgment of the court below, interference by the High Court in its powers of superintendence is not called for.

3 It is in this context that the arguments of the respective parties have been considered.

4 Record shows that the landlord had tenanted out show room No. 11 and a garage bearing No. 2, 7 and 8 situated at Atma Ram Mansion (formerly known as 'Scindia House') to the tenant-M/s. Escorts Limited Rate of rent was Rs.820/- per month; contention was that the respondent had been inducted as tenant by the previous owners and landlords, namely, Khushwant Singh and Brig.Gurbux Singh sons of Sardar Bhadur Sir Sobha Singh vide a lease deed 30.03.1973, the respondent tenant namely, M/s. Escorts Ltd. has unauthorisedly assigned, sub-let and parted with the possession of a portion of the demised premises to M/s. Escorts Financial Services Limited. (hereinafter referred to as

‘EFSL) which is in violation of the provisions of Section 14(1)(b) of the DRCA. Eviction petition had accordingly been filed.

5 Written statement was filed; the petition was contested; it was denied that there has been any sub-letting; reliance was placed on Clauses 4 and 8 of the aforementioned lease deed dated 30.03.1973 (Ex.AW1/R1); contention was that a reading of the aforementioned clauses gave a right to the tenant to sub lease the premises to its subsidiary company and EFSL was a subsidiary company of M/s Escorts Limited and as such there was no sub-letting.

6 Oral and documentary evidence was led by the respective parties. One witness was examined on behalf of the landlord namely AW1. In his cross-examination this witness has stated that he is not aware whether EFSL is a 100% subsidiary company of the respondent; he has admitted that he has gone to the disputed premises only on one occasion and thereafter he has never gone to the said premises. Two witnesses were examined on behalf of the tenant; RW1 was the manager of M/s. Escorts Limited. He had reiterated the averments made in his written statement which was to the effect that EFSL was a 100% subsidiary of M/S Escorts Ltd.; there has been no sub-letting; only one table/counter

had been give to EFSL from where the said company was distributing their application forms and one employee used to sit there; the premises remained under the lock and key of the respondent and is continued to be maintained by the respondent. There has been no sub-letting. Attention has been drawn to the cross-examination of RW1 wherein he has stated that the company i.e. EFSL was operating its head office at the tenanted premises i.e. at 11 Scindia House; RW-1 had admitted that in the year 1992 EFSL discontinued to be the subsidiary of the respondent Company. To advance this argument, attention has been drawn to various documents including Ex. RW1/P1 and Ex. RW2/P5 to substantiate the submission that even after September 1992 (i.e. the date when EFSL ceased to be a subsidiary company which was in September 1992) EFSL continued to distribute its application forms from the aforementioned disputed premises; contention being that this admission of RW1 in his cross-examination clearly makes out a case of sub-letting. Attention has also been drawn to that part of the testimony of RW1 wherein he has stated that there may be 40 to 45 persons in the head office; EFSL had no control over the employees who used to sit in the tenanted premises. Attention has also been drawn to the definition of the

Section 2(9) of the Companies Act; contention being that as per the commentary of 'Ramaiya' the term 'head office' is usually the place where the substantial business of the company is carried on and its negotiations are conducted; the admission of RW-1 that 40 to 45 persons were functioning from the head office also substantiates the stand of the landlord/petitioner that EFSL was in fact carrying on a substantial business activities from the disputed premises; grounds of sub-letting has clearly been made out. RW2 was the Manager of the EFSL; he has on oath stated that the EFSL was the subsidiary of M/s. Escorts Limited from 20.09.1990 to 26.09.1992.

7 Eviction petition has been filed on 24.09.1998. It is not in dispute and in fact, it is an admitted position that on the date of filing of eviction petition the premises were in occupation of the M/s. Escorts Limited. Learned counsel for the petitioner has placed reliance upon the judgment of Madhya Pradesh High Court reported in 2005(2) RCR 67 titled as Shanti Devi vs. Dwarka Das to support his submission that even if sub-letting did not subsist when the suit was filed the tenant is liable to be evicted under Section 14(1)(b) of the DRCA as a case under Section 14(1)(b) of the DRCA was made out prior to the filing of the eviction

petition. Learned counsel for the petitioner has also placed upon the judgments reported in 1989(2) RCR (SC) 320 titled as M/s. Bajaj Auto Ltd. vs. Behari Lal Kohli, AIR 1988 SC 145 titled as M/s. Shalimar Tar Products Ltd. vs. H.C. Sharma, AIR 1989 SC 1819 titled as Shantilal Rampuria vs. M/s. Vega Trading Corporation and AIR 1994 CAL 170 titled as Chic International vs. Naintara; submission being that the Clauses 4 and 8 relied upon by the tenant in the lease deed Ex.AW1/R1 do not in any manner come to his aid as in a case of sub-letting the clause in the lease deed permitting a sub-lease must specify the name of sub-lessee who is occupying the premises; a general term contained in a lease deed allowing the tenant to sub-let the premises without giving details of the sub-lessee would be a redundant clause. The two courts below returning a finding otherwise have committed an illegality which illegality sought to be rectified by this court. Arguments of the petitioner on the provisions of Section 17 of the DRCA have also been highlighted; submission being that the sub-tenant had not served any notice of his sub-tenancy to the landlord.

8 These arguments have been countered.

9 Section 14 (1) (b) of the DRCA; it reads as under:-

14. Protection of tenant against eviction.

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

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

(a) XXXXXXXXXXXXXXXX

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

10. It clearly notes that if after 09.06.1952, the tenant has either sublet or assigned or otherwise parted with possession of the whole or any part of the premises, he is liable for eviction; the applicability of this Section depends upon the facts of each case.

11 The moot question thus which has to be answered is to whether the tenant had sublet, assigned or otherwise parted with the possession of the whole or part of the premises. It is well settled that to make out a case for sub-letting or parting with possession, it means giving of possession to persons other than those to whom the possession had been given by the original lessor and that parted with possession must have

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

12 Thus what has to be answered by this court is as to whether even presuming that EFSL was functioning from the aforementioned premises, did the tenant i.e. Escorts India Ltd have a vested right to do so in terms of Clauses 4 and 8 of the lease deed (Ex.AW1/R1); whether the tenant namely M/s. Escorts Limited had divested himself of the complete control and supervision of the disputed premises by allowing EFSL to function from the aforementioned premises. If the question is answered in the negative, a case of sub-letting would not be made out; conversely, if it is answered in the positive the ground of eviction under Section 14(1)(b) of the DRCA would be made out in favour of the landlord.

13 Ex. RW1/P1 is an advertisement issued by EFSL where its address has been shown as that of the disputed premises i.e. 11 Scindia House; Ex.RW2/P5 is an advertisement published in the Hindustan Times dated. 13.12.1991; both these documents were created during the period when the EFSL was a subsidiary of M/s Escorts Limited as deposition of RW1 and RW2 are categorical to the effect that EFSL remained a subsidiary of M/s. Escorts Limited w.e.f. September 1990 to September 1992. Even presuming that EFSL had maintained its head office in the aforementioned premises in this period of time, the categorical submission of RW1 cannot be washed away which is to the effect that during this period as also earlier and later M/s. Escorts Limited continued to maintain control over the said premises; it had only permitted the user of a portion of the premises to its subsidiary EFSL; no suggestion had also been given to either RW1 or RW2 on this count that the original tenant i.e. M/s. Escorts Limited had lost its control over the disputed premises or it had divested itself completely from the said premises in the absence of which it cannot be said that a ground of sub-letting is made out in favour of the landlord.

14 In this context, the ARC had returned the following finding:

“I have seen the evidence on record and also the documents which have been proved by both the sides and from the perusal of the same, I can only come to the conclusion that M/s EFSL was having its head office at Showroom No.11, Scindia House between September 1990 and September 1992. But this is not the end of the matter. It is also to be seen whether any particular transaction to the exclusion of all others was going on at such premises while M/s EFSL was running its head office from there. Testimony of petitioner is very sketchy in this regard for the reason that he has visited the premises only once. No doubt, that there was notices inviting AGM at the suit premises and such notice was issued by M/s EFSL. Let me assume that such AGM was in fact held at the tenanted premises but that does not mean that the entire control was with M/s EFSL only and M/s Escorts Limited and nothing to do or could not do anything. Only evidence which is available before the court suggests that M/s EFSL was using the premises. Sh. Singhla, ld. Counsel for the petitioner has argued that at least respondent company was not doing any activity at that moment at the suit premises and this clearly suggests that the entire control was with M/s EFSL only. In this regard, I must say that petitioner had not brought any material on record which may show that M/s Escorts Ltd. had withdrawn itself or had removed itself completely from the suit premises and had no control over M/s EFSL or over suit premises. RWI Sh. G.S.Bhardwaj has very specifically and in an un-equivocal fashion deposed that the entire tenanted premises was maintained by the respondent and the tenanted premises always remained under the lock and key of the respondent company. No necessity was felt by the petitioner to put any suggestion to him to contradict these facts. Thus from the testimony on record, I feel that petitioner has only been able to show that M/s EFSL was using the premises and had failed to show a clear case of parting with legal possession. To me, parting with legal possession takes place when such tenant cannot oust his alleged sub-tenant without taking due process of law. Here, M/s EFSL was using the premises at the mercy of M/s Escorts Limited. It was also 100% subsidiary of the respondent company. Various documents which have been placed

on record also clearly show that M/s EFSL was 100% subsidiary of respondent company. Petitioner's witness is blissfully ignorant about this fact and rather in his cross examination, he claimed that he was not aware whether M/s EFSL was 100% subsidiary of respondent company. Moreover, the documents on which petitioner itself is relying i.e. the advertisement and application form also clearly show that M/s EFSL was wholly owned subsidiary of M/s Escorts Limited. "

15 The relevant clauses of the lease deed Ex.AW1/R1 i.e. Clauses 4 and 8 read herein as under:-

"Clause No.4:- That it has been expressly agreed between the parties hereto that the Tenant shall be entitled to use the demised premises only for business or non-residential purposes except the two servant quarters comprising therein, which shall be used at all times by the employees of the Tenant including therein the caretaker, if any, appointed by the Tenant with regard to the demised premises. It is also agreed and declared between the parties that the tenant shall be authorized to use the demised premises either for its own business or for the business of any other limited company or other association of persons wherein the said Tenant holds more than fifty percent shares, or capital. Similarly the Tenant shall also be entitled to use the demised premises for any other limited companies which may be a subsidiary company of the tenant as defined in the Companies Act, 1956 or in any statutory, modifications therein. However, the liability to pay the rent as fixed herein shall always remain as that of the Tenant herein.....

Clause No. 8:- That the Tenant shall not sublet assign or otherwise part with the possession of any part or the whole of the demised premises without the consent of the landlords. However, the use of any part of the demised premises by the other persons as authorized herein before shall not ever be deemed to be subletting, assigning or parting with possession of any part of the demised premises. "

The aforesaid two clauses very clearly lay down that tenant could have either used this premises for itself or for any other limited company which was its subsidiary company or wherein it was holding more than 50% shares. There was specific bar on the tenant and it was enjoined that tenant would not sub-let, assign or otherwise part with the possession. Simultaneously, it was also clarified that use of any part of the demised premises by such subsidiary company would not be deemed to sub-letting, assigning, assigning or parting with possession. Thus, both the sides were very conscious while entering into lease and the tenant company had been fully allowed to use the premises either for itself or for its subsidiary company or for its any other company in which it was holding more than 50% shares. It was also very specifically agreed that user by such other company would not be deemed to be sub-letting, assigning or parting with possession. Here, even if it is assumed that there is parting with possession and that the entire premises i.e. show room no. 11, Scindhia House is with M/s EFSL, it cannot be deemed to be a case of sub-letting at all as the landlord had allowed the tenant to use the premises either for itself or for its subsidiary companies and if such subsidiary company is found in possession of the tenanted premises or part of the tenanted premises and even if it is assumed that such tenant i.e. M/s Escorts Limited has no control over the premises, even in that eventuality a case of sub-letting or parting with possession is not made out as both the parties had knowingly and consciously agreed that the premises could have been used by tenant or by subsidiary company.

16 They have been appreciated in the correct perspective by the trial Court. In fact the entire oral and documentary evidence was appreciated in the correct perspective by the ARC which is the first fact finding court. RCT had endorsed this finding. It had noted that there was no change of position and as long as the control of the premises continued

to vest with M/s Escorts Limited there was no scope of parting with possession making out a ground of eviction under Section 14(1)(b) in favour of the landlord.

17 The impugned order in this back ground calls for no interference. No perversity or illegality has been pointed by the learned counsel for the petitioner which is in any manner calls for any interference by this court. The findings returned by the two courts below were based on cogent and coherent evidence adduced before it.

18 Petition is without any merit; it is dismissed.

INDERMEET KAUR, J

APRIL 30, 2012

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