

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

% *Date of Judgment: 16.01.2012*

+ **CM(M) 615/2004**

VINOD KUMAR JAIN & SONS HUF ..... Petitioner  
Through Mr. K. Sunil, Adv.  
versus

M/S SARIKA ENTERPRISES & ORS. .... Respondents  
Through Mr. P.D. Gupta, Adv.

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

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

1 Order impugned before this Court is the order of the Additional Rent Control Tribunal (ARCT) dated 02.04.2003 which has reversed the finding of the Additional Rent Controller (ARC) dated 30.10.2002. Vide order dated 30.10.2002, the ARC had decreed the eviction petition filed by the landlord under Section 14 (1)(b) of the Delhi Rent Control Act (hereinafter referred to as the 'DRCA'). The impugned judgment had reversed this finding; eviction petition of the landlord stood dismissed.

2 Record shows that the present eviction petition has been filed by the landlord under Section 14 (1)(a) & (b) of the DRCA. Section 14 (1)(b) is relevant for the controversy in dispute before this Court. Contention in the eviction petition was that respondent No. 1 M/s Sarika Enterprises (a partnership firm) has since been

dissolved of whom the partners were respondent No. 2 (Suman) and respondent No. 3 (Om Prakash); they have sublet the premises to Lalit Kumar, resident of 145-D, Kamla Nagar, Delhi.

3 The disputed premises comprise of one hall on the first floor measuring 387 square feet of property No. 218, Gulabi Bagh, Delhi as depicted in red colour in the site plan; the rent was Rs.1,487.42 per month excluding other charges; contention was that after the subletting respondent No. 4 is in complete control of the disputed premises; further contention being that M/s ASLV Marketing is also functioning from the disputed premises.

4 In the written statement, these contentions were denied; contention was that M/s ASLV Marketing is the proprietorship concern of Lalit Kumar which has an adjoining premises on rent and he is not in occupation of the premises in dispute. Further contention was that there a partnership deed dated 01.05.1991 of whom Suman, Om Prakash and Lalit Kumar besides Gajanand Aggarwal and Sanjiv Kumar were partners in the said firm and this partnership deed is a duly registered document and having been entered into in the year 1991 i.e. eight years prior to the date of filing of eviction petition (eviction petition filed in 1999), question of subletting does not arise; contention being that Lalit

Kumar is a partner of the said firm.

5 Oral and documentary evidence was led before the trial Court. One witness i.e. landlord himself was examined as AW-1; he had reiterated the averments made in the petition; his deposition on oath was that respondent No. 4 and the firm M/s ASLV are in occupation of the tenanted premises and they are not his tenants; they are sub-lessees. In his cross-examination AW-1 has admitted that M/s ASLV might have taken some premises on rent from his brother Anil Kumar but there is no lease deed between himself and Lalit Kumar. Two witnesses examined on behalf of the tenant were Lalit Kumar himself examined as RW-1 and RW-2 was the UDC from the Sales Tax Department who had produced the summoned record proving Ex. RW-1/4 and Ex. RW-1/5 i.e. the certificate of registration issued by their department qua the partnership firms M/s Sarika Enterprises and M/s ASLV Marketing. The original certificate of registration of M/s ASLV Marketing endorsed that it comprised of two partners Lalit Kumar and Sadhna Jain; the partnership deed of firm M/s Sarika Enterprise was also proved; this first deed of partnership of this firm evidenced that there were two partners originally; thereafter three more names were added in the partnership deed dated 01.04.1991; RW-2 in his cross-examination has admitted that the names of three partners in the registration certificate as per the CM (M) No. 615/2004

file brought by him were added on 01.04.1991; thus substantiating the finding returned by the ARC that M/s Sarika Enterprises w.e.f. 01.05.1991 comprised of five partners of whom Lalit Kumar was also admittedly a partner.

6 The vehement contention of learned counsel for the petitioner is that the ARCT reversing the finding of the ARC which was a cogent and reasoned view was an illegality; this fact finding could not have been reversed.

7 Before the ARC, the partnership Ex. RW-1/2 had been proved; there is no dispute that this document was registered with the Registrar of Firms as also with the Sales Tax Department i.e. the contents of the said documents were examined by the ARC to return a finding that this document was not acted upon and thus this document was a sham document. This finding was reversed by the RCT and rightly so. The impugned order had correctly noted that the evidence on record had established that this firm was registered in 1991 i.e. eight years prior to filing of the eviction petition and at that time, the firm could not have imagined that it will have to face litigation for eviction on the ground of subletting and in these circumstances, the finding of the ARC that this partnership deed of 1991 is a sham document had rightly been set aside. This was an error of law committed by the

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ARC ignoring the fact that this document dated 01.05.1991 was registered with the Sub-Registrar as also with the Sales Tax Department; RW-2 had proved the worth of this document; the ARC holding that this document was a sham document had resulted in a manifest injustice to the non-applicant party which the RCT had corrected in its appellate jurisdiction under Section 38 of the DRCA. This finding returned by the RCT in no manner calls for any interference as it is borne out from the evidence as discussed supra.

8 The RCT had also noted that the evidence on record had established that M/s ASLV Marketing is occupying an adjoining premises; in fact the ARC had also recorded this fact finding; relevant extract of the order of the ARC in this regard reads as follows:-

“It has been admitted by petitioner that his brother Anand Kumar Jain also owns a portion of same property No. 218, Gulabi Bagh, Delhi-7. He did not deny that M/s ASLV Marketing has taken the said premises on rent from his brother. Rent receipts Ex. RW-1/8 NOC issued by the said landlord to M/s ASLV Marketing Ex. RW-1/10 and the registration certificate with Sales Tax Authority Ex. RW-1/9 show the existence of said concern in property No. 218, Sanjay Nagar, Gulabi Bagh, Delhi. Rent Agreement Ex. RW-1/6 being insufficiently stamped and un-registered document could not have been proved legally. Hence it is de-exhibited. No cogent material has been proved on record by the petitioner showing the occupation of M/s ASLV Marketing of the suit premises.”

9 This was affirmed by the RCT.

10 This Court is sitting in its powers of superintendence under Article 227 of the Constitution of India and unless and until there is manifest illegality or an error of such a nature which had led to perversity, interference by the High Court with the order of the RCT is limited. There is no perversity which is noted by this Court in the impugned order.

11 Reliance by learned counsel for the petitioner upon the judgment reported as AIR (38) 1951 Punjab 441 Hiral Lal Vs. Gian Singh and Co. and others is misplaced; this was a case where the partnership had not been proved which is not so in the instant case. Reliance upon by learned counsel for the petitioner upon AIR 1959 Allahabad 440 Haji Abdul Shakoor Vs. The Rent Control and Eviction Officer, Kanpur and others is also misplaced; this was a case where the clauses in the partnership deed were inconsistent and contradictory to the intention of the parties which is again not so in the factual scenario of the instant case.

12 The impugned order thus suffers from no infirmity. Petition is without any merit. Dismissed.

**INDERMEET KAUR, J**

**JANUARY 16, 2012**

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