

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

% *Date of Judgment: 25.01.2012*

+ **CM(M) 104/2011**

RAJIV RAI JAIN Petitioner
Through Ms. Anju Lal, Adv.

Versus

PANDIT BROTHERS & ORS Respondents
Through Mr. Sanjeev Mahajan, Adv. for R-1.
Ms. Kiran Dharam, Adv. for R-2 to 4.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The orders impugned before this court are the orders dated 30.08.2010 and 01.08.2008 passed by the Additional Rent Control Tribunal (ARCT) whereby the eviction petition filed by the landlord-Rajiv Rai Jain under Section 14(1)(b) of the Delhi Rent Control Act (DRCA) had been dismissed. The ARC had decreed the petition under Section 14(1)(b) of the DRCA which had been reversed by the impugned orders.

2. Record shows that the present eviction petition has been filed by the landlord against his tenant M/s Pandit Brothers stated to be tenant in the disputed premises i.e. a part of the premises bearing No. 4596/5A/XI, Manoranjan Bhawan, Ansari Road, Daryaganj, New Delhi which comprise of two basements with lavatory situated in the aforementioned property. The eviction petition was filed under Section 14(1)(a) as also 14(1)(b) of the DRCA. On the ground of Section 14(1)(a), the ARC had given the benefit of Section 14(2) of the DRCA to the tenant which finding was endorsed by the RCT. This is not the subject matter of the present petition.

3 This petition is only concerned with the ground 14(1) (b). The ground of sub-letting as detailed in the eviction petition was that the original tenant has sub-let, assigned or parted with the possession of this premises to some other person but the details of the said person are not known to the petitioner; a petition had accordingly been filed.

4 A written statement had been filed by the respondent through Ms. Archana Haksar claiming herself to be the Managing partner of M/s Pandit Brothers. It was denied that any subletting has been effected; contention was that the premises continued to

be under the lock and key of the respondent No. 1 whose goods
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are lying stored in the said premises; premises are opened and closed by the employees of the respondent No. 1; no ground of sub-letting is made out.

5 Oral and documentary evidence was led; one witness was examined on behalf of the landlord and correspondingly one witness had come into the witness box on behalf of the respondent. AW1/the landlord had reiterated the averments made in the petition; he had on oath deposed that the premises have been parted to some third person whose details are not know and the premises are not in physical control of the respondent No.1. In his cross-examination, he has stated that he does not have any knowledge about the control and possession of the suit premises whether it is with respondent No. 1 or not; further statement being that he was informed by someone that respondent No. 1 was not using the premises; the said person was a labourer; further admission in his cross-examination being to the effect that it was not within his knowledge even the premises were being used by the respondent No.1. AW1 has also admitted that he has not seen the keys of the said premises with any other person.

6. RW1/Archana Haksar was the witness produced on behalf of the tenant who had vehemently denied the statement that the premises had been sub-let or parted with; in her cross-

examination, she has stated that she is the partner in the respondent No. 1 firm since the year 1998; at the time of letting, which was probably in the year 1962, R.L. Haksar and Urmila Kaksar were the original partners; she had joined as a partner in the firm in the year 1998; she has admitted that "none of the partner who constituted the respondent No. 1 Firm are alive at present". This line of the cross-examination of RW1 has vehemently relied upon by the learned counsel for the petitioner to support his submission that the original partnership firm of M/s. Pandit Brothers stood dissolved and thus the presence of Archana Haksar in this partnership firm clearly shows that she is new entrant; the original partnership having being dissolved; sub-letting has been proved.

7 It has also come in the evidence of RW-1 that various partnership deeds had been executed which were registered but the said documents have not been brought on record. Learned ARC on the basis of evidence adduced had held that a ground of sub-letting has been made out; this was in the order dated 16.10.2006; he had returned a finding that the premises had originally been let out to M/s Pandit Brothers but since the partners of M/s. Pandit Brothers had all died and although admittedly certain partnership deeds had been executed after the

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demise of the original partners but the said partnership deeds not having been brought on record clearly evidenced the fact that the respondent played a hide and seek with the court and as such the presence of RW1/Archana Haksar in the disputed premises by itself established a case of sub-letting; petition under Section 14(1)(b) had been decreed by the ARC.

8 Impugned judgment had reversed this finding. The RCT on 01.08.2008 had after examining the testimony of two witnesses held that a case of sub-letting/assigning/parting with possession is not made out; RCT was of the view that the testimony of PW1 had established that it was only on a hearsay that he had filed this present petition; he was not aware of the fact; he had no knowledge whether respondent No. 1 was occupying the premises or not. The petition was accordingly dismissed.

9 A review petition had been preferred against the said judgment which had been disposed of vide order dated 30.08.2010; the court was of the view that a review petition is not maintainable as powers to review are not available to the court under the DRCA.

10. This court is sitting in its powers of superintendence under Article 227 of the Constitution of India; unless and until there is a manifest error or illegality committed by the courts below

interference is not called for; this court is not a third fact finding court; it is not a substitute for the appellate forum. This Court is also conscious of the fact the right of second appeal has since been abrogated as the Section 39 of the DRCA has been deleted. It is in this background that the respective contentions of the parties have to be appreciated.

11 Law on sub-letting is also clear. The ingredients necessarily to be established by the landlord to make out a ground of sub-letting have been reiterated time and again. Section 14 (1) (b) is relevant; 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;”

12 Section 14 (4) is also relevant; it reads as under:-

“Section 14 (4):- For the purpose of clause (b) of the proviso to

sub-section (1), any premises which have been let for being used for the purposes of business or profession shall be deemed to have been sub-let by the tenant, if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to that person.”

13. The moot question 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 other and whether in a particular case,

there was sub-letting or not was a question of act.

14. The RCT had in the correct perspective examined the testimony of two witnesses. A mere admission of RW1/Archana Haksar in her cross-examination that the original partners of Respondent No. 1 firm have died did not lead to a conclusion that the subsequent partnership deeds are not in continuation of the earlier partnership firm of M/s. Pandit Brothers; testimony to RW1 has to be read in its entirety. It has come on record that there was several partnership deeds which were created after the demise of original partners in the first partnership of 1962 (who was admittedly the tenant in the disputes premises) The said documents were registered documents; RW1/Archana Haksar is a partner in this firm since the year 1998; she had filed her written statement in the same capacity i.e. as a managing partner of respondent No. 1 firm. Relevant would it be to state that at no stage either in the pleadings or even in the cross-examination of RW1, capacity of RW1 to depose as a managing partner of respondent No. 1 firm has been questioned; not a single suggestion has been given to RW1 that she was not a partner of respondent No. 1-M/s Pandit Brothers; she had held herself out to be the partner of this firm right from the date of the filing of her written statement up to her depositing in court on oath. This

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authority of RW1 not having been put to the question, it would be an argument in futile before this court at this stage to state that a case of sub-letting has been made out on the ground that since RW1 was not one of the original partners of M/s. Pandit Brothers as all original partners of M/s Pandit Brothers having since died; a new partnership firm has been created which in turn amounts to a sub-letting. This argument as noted above is a futile argument in view of the deposition of RW1 that several partnership deeds have been created after the original firm which were all by registered documents; RW1 had always described herself to be the managing partner of respondent No. 1 and deposed in that capacity. This is an admitted factual position. In these circumstances, RCT reversing the finding of the ARC had given reasoned reasons that no subletting is made out.

15. AW1 in his cross-examination has also admitted that he has no knowledge whether respondent No. 1 is in possession of the disputed premises or not; he has never seen the keys of the premises with any person; he was informed by some labourer that some other person has been inducted. All these facts were in the correct perspective appreciated by the RCT to return a finding that the ingredients of 14(1)(b) of the DRCA are not made out;

impugned judgment dismissing the eviction petitioner under
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Section 14(1)(b) of the DRCA thus calls for no interference.

16. The judgments relied upon by the learned counsel for the petitioner on this core are misplaced. In 168(2010) DLT 162 titled as Udhey Bhan Ashok Kumar & Co. & Ors. vs. Neelam Kumari, a stranger had been inducted into the premises; he was admittedly not a partner of the original firm; ground of sub-letting was made out. In 2001 RLR 129 titled as Chanderbhan vs. Munnalal Ramdhan, one partnership firm had parted with possession in favour of another law firm where the partners of the original firm were not partners in the second firm, a grounds of sub-letting were held to be made out. These judgments were delivered on their own factual matrix and have no bearing on the present facts.

17 Impugned order dated 01.08.2008 calls for no interference.

18. Review petition was dismissed vide the next impugned order dated 30.08.2010. Court had correctly held that the powers of review is not available under the DRCA. A Bench of this court in its judgment reported in 2009(1)RCT 296 titled Nand Kishore & Anr. vs. Vikaj Kumar Gupta held as under;

“Power of review is not an inherent power and can be exercised by an Additional Rent Controller or Additional Rent Control Tribunal only it is provided in the Rent Control Act. No power of review has been conferred on the Additional Rent Controller or on the Additional Rent Control Tribunal under Delhi Rent Control Act and

Rent Controller or Rent Control Tribunal cannot exercise this power.”

19. Petition is without any merit; it is dismissed.

INDERMEET KAUR, J.

January 25, 2012
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