

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

% *Judgment reserved on:20.4.2012*
Judgment delivered on:27.4.2012

+ CM(M) 83/2011 and CM Nos. 20717/2010 & 20505/2011

M/S RATTAN LAL RAM KUMAR & ANR Petitioners
Through Mr. Rajiv Bahl, Adv.

versus

MAMAN CHAND Respondent
Through Mr. Atul Kumar, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The impugned order is dated 16.08.2003. It has reversed the finding of the Additional Rent Controller (ARC) dated 18.08.1992.

2 The ARC on 18.08.1992 had dismissed the eviction petition filed by the landlord Maman Chand (hereinafter referred to as the 'landlord') against the tenant Rattan Lal Ram Kumar (hereinafter referred to as the tenant) which was on the grounds under sections 14(1)(a) and 14(1)(b) of the Delhi Rent Control Act (DRCA); the ARC was of the view that

there is no relationship of landlord and tenant between Maman Chand and Rattan Lal Ram Kumar who were jointly arrayed as tenants in their individual capacity; the ARC had returned a fact finding that the tenancy was in the individual names of Rattan Lal and Ram Kumar; since there was no relationship of landlord and tenant between the parties neither the ground under Section 14(1)(a) the grounds under Section 14(1)(b) of the DRCA were not made out; thus the ARC was not vested with jurisdiction to try the petition.

3 The impugned order i.e. the order of the Rent Control Tribunal (RCT) had reversed this finding. RCT was of the view that the premises has been let out to two individuals i.e. to two brothers Rattan Lal and Ram Kumar; they having passed on this tenancy to M/s. Rattan Lal Ram Kumar(a newly constituted partnership firm) had committed the act of sub-letting. The RCT relying upon the legal notice dated 09.03.1983 had returned another finding in favour of the landlord which was to the effect that the tenant was in default of arrears of rent; however since this was a case of first default, order under Section 15(1) was passed and the benefit of Section 14(1)(2) of the DRCA was granted to the tenant.

4 This judgment is the subject matter of the present petition.

5 At the outset, learned counsel for the petitioner has submitted that this petition had been filed as a RCSA (Regular Second Appeal); on 11.1.2011, it had been re-numbered as a CM (M) petition under Article 227 of the Constitution of India; submission being that the powers of the as second appellate court are wider than the powers of the court in its power in superintendence under Article 227 of the Constitution of India; the judgment of the Supreme Court reported MCD vs. Harish Chander & Ors. reported in JT 2002 (Supl. 2) 205 has no doubt directed that second appeals should be converted into CM (M) petition; submission of the petitioner on this count being that the rights of the parties had crystallized on the date of the filing of the eviction petition which in this case was 10.10.1983 and the amendment (abrogation of Section 39 which is a right of second appeal) was made effective in the DRCA w.e.f. 1.12.1988 but all eviction petitions filed prior in time thereto have to be treated as second appeals; the rights of the parties have to be governed as if it is a second appeal. For this proposition reliance has been place upon a judgment of this court reported in AIRCJ XII 1990(2) 690 titled as Mohinder Nath and ors. vs. Pankaj Bhargava and Ors., 2008 (8) SCC 397 titled as Ambalal

Sarabhai Enterprises Ltd. vs. Amrit Lal & Co. & Anr. Reliance has also been placed upon 2011 (6) SCC 739 titled as Thirumalai Chemicals Limited vs. Union of India & ors. Submission being that under Section 6 of the General Clauses Act, when a statutory provision is repealed the rights of the parties have to be governed as on the date of the filing of the petition.

6 Arguments have been countered.

7 On 11.01.2011, the presence of the counsel for the parties has been recorded and on the submission made by the learned counsel for the appellant/petitioner the present proceedings i.e. RCSA had been directed to be converted into a CM(M) petition; this was after the parties had brought to the notice of the court the judgment of Harish Chander (supra).

8 This judgment of Harish Chander (supra) settles the controversy; it clearly states that second appeals which have been filed and were pending after the amendment of 1988 be converted into petitions under Article 227 of the Constitution of India and they have to be dealt with in accordance with law. This judgment coupled with the orders passed on 11.01.2011 clearly show that it was with the consent of the petitioner

that this order had been passed. This petition having been re-numbered as petition under Article 227 of the Constitution of India, this court shall deal with it in its powers of superintendence under Article 227 of the Constitution of India.

9 Record shows that the eviction petition has been filed by the landlord Maman Chand against the tenants who have been described as Rattan Lal Ram Kumar; the grounds are under Section 14(1)(a) (non-payment of rent) and 14(1)(b) (sub-letting) of the DRCA; contention in para 5 of the eviction petition is that property Nos. 4559, Arya Samaj Road, Karol Bagh, New Delhi i.e. one kothari on the back of shop No. 4559, Arya Samaj Road, Karol Bagh and property No. 4579/52 Reharpura, Karol Bagh New Delhi (as depicted red colour in the site plan) have been tenanted out to two tenants; Rattan Lal is a tenant in the kothari and Ram Kumar is a tenant in the shop; it was a joint oral tenancy of both the brothers; premises had been let out in the year 1968; the tenant was in arrears of rent w.e.f. 01.08.1968 and in spite of legal notice dated 09.03.1983 (Ex.A2), the arrears of rent have not been paid, ground 14(1)(a) of the DRCA is made out. The second ground for eviction is the ground under Section 14(1)(b) of the DRCA. Contention

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being that the respondent No.1 Rattan Lal Ram Kumar have sub-let these premises to respondent no.2 M/s. Rattan Lal Ram Kumar from (partnership firm) where the sons of Rattan Lal and Ram Kumar who are partners of the said firm are carrying on their business. The ground under Section 14(1)(b) of the DRCA is also made out.

10 Written statement; and thereafter an amended written statement was filed disputing these submissions. The preliminary objection that there are two tenants (as per the landlord) qua two different portions i.e. front portion which is premises bearing No. 4559, Arya Samaj Road, Karol Bagh and the back portion i.e. shop bearing No. 4579/52, Reharpura, tenanted out to two different brothers namely Rattan Lal and Ram Kumar respectively for which one eviction petition was not by itself maintainable. For this proposition reliance has been placed upon AIR 1978 ALL 88 Budh Sen Vs. Sheel Chandra. Submission being that the present is a case of tenants in common and the legal notice dated 9.3.1983 had also called upon Ram Kumar alone. On merits it was stated that the tenancy had been created by the erstwhile landlord which was prior to 1968 i.e. the date of purchase by the present landlord; the respondents were tenants even prior to 1960 and M/s Rattan Lal Ram

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Kumar was the tenant which was a firm registered with the Shop and Establishment Department in the year 1956 itself. It was denied that there has been any sub-letting; Contention was that the notice dated 09.03.1983 is illegal as it has been addressed to Ram Kumar calling upon Ram Kumar alone to pay all arrears of rent; further contention being that even otherwise rent has been deposited in the Court of Rent Controller; ground of non-payment of rent has also been vehemently denied.

11 Replication was filed. It was not denied that the premises were in occupation of the tenants prior to the year 1960; in fact this position stood admitted in the replication.

12 Oral and documentary evidence was led. On behalf of the landlord two witnesses were examined; AW2 proved the sale deed as Ex AW2/1; it was a sale of the disputed premises effected in favour of the landlord on 02.06.1968; this is an admitted document. Perusal of this document shows that the name of the tenant has been mentioned as M/s Rattan Lal Ram Kumar. Contention of the tenant being that the erstwhile owner who had let out these premises was a tenancy to the firm i.e. M/s. Rattan Lal Ram Kumar and this also finds mention in this

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sale deed where the name of the firm itself has been mentioned. AW1 was the landlord himself. He had reiterated the averments made in his petition; in his cross-examination he has denied the suggestion that the premises had been let out to the M/s. Rattan Lal Ram Kumar; however, he was not aware of the names of the partners of the firm; his contention was that he had purchased this property vide sale deed which was in the year 1968. Per contra, the respondent/tenant had produced 11 witnesses. RW1 had proved certificate issued by the Delhi Shop and Establishment Department showing registration of M/s. Rattan Lal Ram Kumar on 02.06.1956; application for registration was proved as Ex. RW1/1; the electricity bills RW2/1-RW2/4 were of the year 1965 and 1975 showing the existence of this firm even in that year at the disputed premises; so also were documents Ex.RW9/1 as RW7/12 which was a letter issued by the MCD showing occupation of these premises by the firm even in the year 1978. Rattan Lal had come into the witness box RW7 and had reiterated that the premises had been let out to the M/s. Rattan Lal Ram Kumar and Rajender and Subhash both sons of Rattan Lal were partners in the said firm. He had denied the suggestion that this premises had been let out to two individual brothers. The site plan

had proved as Ex.RW-4/P9 there was no demarcation of the portion which had been tenanted out to the Rattan Lal and Ram Lal separately as was contended by the landlord.

13 It was on the basis of this oral and documentary evidence, that the ARC drew the conclusion that the relationship of landlord and tenant between Maman Chand and Rattan Lal Ram Kumar was not proved; Rattan Lal and Ram Kumar were not the tenants as per the averments made by the landlord; since there was no relationship of landlord and tenant, the question of sub-letting the premises by respondent no.1 to the firm respondent no.2 did not arise. Eviction petition under Section 14(1)(b) stood dismissed on this premise. On the same premise since the relationship of landlord and tenant was not established ground under Section 14(1)(a) of the DRCA also not made out.

14 The RCT vide its judgment dated 16.08.2003 had reversed this finding; it had drawn a conclusion contrary to that arrived at by the ARC; it was of the view that the tenants were the two individual brothers Rattan Lal and Ram Kumar. The firm having no other entity apart from its partners; Rajinder Kumar being in possession of the premises who is admittedly a partner in M/s Rattan Lal Ram Kumar in

which neither of the two original partners namely Rattan Lal and Ram Kumar have any interest; ground of subletting under Section 14 (1)(b) has been made out; ground as contended by the landlord under Section 14 (1)(a) of the DRCA had also been accepted; the Court was of the view that the legally recoverable rent in terms of the notice of demand except Ex. A-2 had not been paid; there was no valid tender of rent; however this being a case of first default, benefit of Section 14 (2) of the DRCA had been granted to the tenant.

15 This judgment is the subject matter of the present petition. On behalf of the petitioner it is vehemently argued that the RCT has only to address on a substantial question of law; this is contained in Section 38 of the DRCA; the RCT returned a finding dwelling upon the nitty-grities of the evidence wherein it had re-examined the evidence in detail; it had to confine itself only on a substantial question of law; it has accordingly committed an illegality. On this ground alone the judgment is liable to be reversed.

16 Before this Court, the petitioner/tenant is mainly aggrieved by the finding returned under Section 14 (1)(b) of the DRCA. He has not challenged the finding returned by the RCT under Section 14 (1)(a) of

the DRCA and in fact no argument has been addressed on this point.

17 The ground under Section 14 (1)(b) of the DRCA is the ground of sub-letting. 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 the other and whether in a particular case, there was sub-letting or not was a question of fact.

18 Section 14(b) and Section 14(4) of the DRCA read as follows:

“14. Protection of tenant against eviction

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:

.....

(b) That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise without obtaining the consent in writing of the landlord;

.....

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 purpose 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 is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to the person.”

19 A conjoint reading of Section 14 (1)(b) read with Section 14 (4) of the DRCA shows that if the tenant inducts a partner in his business or profession and if this partnership is genuine, he may be permitted to do so; however if the purpose of such a partnership is only ostensibly to carry on a business or profession in partnership but the real purpose is of sub-letting of the premises to such other person who is inducted ostensibly as a partner then the same shall be deemed to be an act of sub-letting attracting the applicability of Section 14 (1)(b) of the DRCA. This test had been laid down by the Apex Court in (2002) 9 SCC 516

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Parvinder Singh (Supra) had also noted that a device in any time adopted by tenant to create partnership which is actually a camouflage to circumvent the provisions of Rent Control Act; the rent control legislation being beneficial for the benefit of the tenant and not a means to subvert the true intent of the statute.

20 Applying the said test to the facts of the instant case, it can safely be said that the Court below had returned a correct finding in view of the evidence adduced before it; a case of the sub-letting was made out.

21 Averments made in the eviction petition have to be read as a whole; they clearly show that the premises had been let out to Rattan Lal Ram Kumar; Rattan Lal was in occupation of the kothri and Ram Kumar was in occupation of the shop; there was no demarcation of the suit premises and this is also evident from the site plan Ex RW-4/P9; had it been a case of two individual tenancies i.e. in favour of Rattan Lal and Ram Kumar in their individual capacity, the site plan would have earmarked the portion tenanted out to each of the two individual tenants. This has not been done. The body of the eviction petition discloses that it was a joint tenancy of Rattan Lal and Ram Kumar; defence of the defendant/tenant on this count was that this was a tenancy created in

favour of the firm M/s Rattan Lal Ram Kumar.

22 Testimony of RW-7 and RW-11 is relevant. RW-7 is Rattan Lal; he had deposed that the premises had been let out in the year 1949 by Asa Ram to M/s Rattan Lal Ram Kumar which is a partnership firm and since then the rent has been paid by the firm. Ex RW-7/3 is an application for deposit of rent made by M/s Rattan Lal Ram Kumar; so also are the documents Ex. RW-7/4, Ex. RW-7/5, Ex. RW-7/6, Ex. RW-7/7, Ex. RW-7/13 to Ex. RW-7/18. Ex. RW-7/12 is dated 13.05.1971 which is also a document tendered by M/s Rattan Lal Ram Kumar. Ex. RW-2/1 to Ex. RW-2/4 was the electricity connection in the premises which is in the name of M/s Rattan Lal Ram Kumar dating back to August, 1965; mark 'X' is the evidence of the registration of the firm under the Shop and Establishment Act in June, 1956. Contention of the tenant all along was that he is in possession of the premises right from 1948 which factum had been disputed; contention in the eviction petition being to the effect that the premises was under the tenancy of the tenant w.e.f. 1968. However AW-1 (Maman Chand) in his cross-examination has admitted that the tenant was occupying the premises even prior to the year 1968. This is also evident from the documentary

evidence produced by RW-7 and as noted supra.

23 RW-11 is Rajender Kumar; he is son of Rattan Lal and was admittedly a partner in the firm M/s Rattan Lal Ram Kumar when it was first constituted. RW-11 had deposed that the premises were under the tenancy of M/s Rattan Lal Ram Kumar since the year 1949 and had been taken on rent from the previous owner Asa Ram; there was no individual tenant in the said premises; it was always the tenancy of the firm which firm was constituted by Rattan Lal of whom Ram Kumar and their grandfather Kedar Nath were the partners; this was in the year 1949; deposition on oath being to the effect that the possession of M/s Rattan Lal Ram Kumar i.e. the partnership firm continues and there is no question of subletting. In the cross-examination it has come on record that new partnership comprises of Rattan Lal, Ram Kumar, Subhash Chand and Rajinder Kumar which was constituted in the year 1969; there being no dispute to the fact that Subhash Chand and Rajinder Kumar are the sons of Rattan Lal.

24 This documentary evidence was appreciated by the RCT in the correct perspective; the Court had recorded a fact finding that the tenancy was created in the name of the firm i.e. M/s Rattan Lal Ram

Kumar; legal position is not in dispute; a partnership firm has no distinct or separate entity; a partnership firm is nothing but a compendious term for all its partners; it is not distinct from its members; electricity bills Ex. RW-2/1 to Ex. RW-2/4 as also the documents Ex. RW-7/3, Ex. RW-7/6, Ex. RW-7/11 and Ex. RW-7/12 show that the firm M/s Rattan Lal Ram Kumar had made communications in the name of the firm. The fact finding returned that the premises had been let out to the firm M/s Rattan Lal Ram Kumar suffers from no perversity which in no manner calls for any interference by this Court in its powers of superintendence under Article 227 of the Constitution of India.

25 Rajinder Kumar was found to be in possession of the premises. The question is whether this possession of Rajinder amounted to a subletting; Rajinder was admittedly a partner in the firm M/s Rattan Lal Ram Kumar; Rajinder is also undisputedly the son of Rattan Lal who was the original partner in the original firm M/s Rattan Lal Ram Kumar.

26 The law on the question of subletting is well settled. The user of the premises by any person or party does not amount to a subletting; the test to be applied is whether the tenant has given up or lost all rights and divested himself completely of all control in the disputed premises; if he

retains the right to possess the premises a case of subletting is not made out; as long as the tenant retains the right of possession, there is no question of any subletting within the meaning of section 14 (1)(b) of the DRCA.

27 The partnership deed Ex. RW-7/19 dated 06.12.1999 is a partnership deed executed between four persons namely Rattan Lal, Rajinder Kumar, Subhash Chand and Anil Kumar. Both Rajinder Kumar and Subhash Chand are the sons of Rattan Lal; this aforementioned document (Ex. RW-7/19) shows that the firm M/s Rattan Lal Ram Kumar was carrying on the business w.e.f. 01.07.1977 till 01.12.1979; this business was being run by Rajinder Kumar and Subhash Chand both sons of Rattan Lal. Admittedly Rattan Lal was not a partner at this time. It is also relevant to state that Ram Kumar was not examined in the court below. Be that as it may, the evidence which has come on record which is evident from the cross-examination of RW-7 (Rattan Lal) who has categorically deposed that after 1973, he had gone to Calcutta and after 1973, he was never a partner in this partnership firm; he was carrying on his business at Calcutta. It is thus clear that after 1973, Rattan Lal had no concern with this partnership firm as he was working at Calcutta.

Ram Kumar is also not a partner of the newly constituted firm which is evident from the partnership deed Ex. RW-7/19. The partnership deed was a partnership of four persons of whom Rattan Lal was not a partner in the said firm and after 1973, in fact he was doing his business from Calcutta. Ram Kumar is also not in the picture. He is neither a partner in the newly constituted firm and nor had he been brought into the witness box to substantiate or answer the defence set up by the defendant that the original tenant i.e. M/s Rattan Lal Ram Kumar had not divested itself of the control of the disputed premises. Rattan Lal's categorical deposition is to the effect that after 1973 he was never a partner in the newly constituted firm. As noted supra, Ram Kumar was also not in the picture; partnership deed of 1979 (Ex. RW-7/19) although constitutes Rattan Lal as a partner but it clearly indicates that during this intervening period from 1973 to 1979 Rattan Lal was never in the picture and so also Ram Kumar who had lost control over the disputed premises, making out a ground for eviction in favour of the landlord under Section 14 (1)(b); this has been appreciated in the correct perspective by the RCT. This fact finding calls for no interference.

28 This Court is sitting in its power of superintendence. Under
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Article 227 of the Constitution of India and unless and until a flagrant injustice or manifest illegality has been committed by the two courts below, powers of interference are limited. The Apex Court in Waryam Singh Vs. Amarnath AIR 1954 SC 215 a judgment of the Constitution Bench has laid down the guidelines which were to be followed by the High Courts in exercise of its powers of superintendence. This Court is not an appellate forum. No patent illegality has also been pointed out by learned counsel for the petitioner. In this background, the impugned judgment does not call for any interference.

29 Eviction petition having been decreed in favour of the landlord under Section 14 (1)(b) of the DRCA calls for no interference.

30 As noted supra, benefit of Section 14 (2) of the DRCA has been given in the proceedings under Section 14 (1)(a) which finding has not been challenged as no argument has been addressed on this issue.

Petition is clearly without any merit. Dismissed.

INDERMEET KAUR, J

APRIL 27, 2012

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