

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

% *Date of Judgment: 06.01.2012.*

+ CM(M) No. 128/2007 & CM No.1091/2007 (for stay)

M/S DHOOTAPAPESHWAR INDUSTRIES LTD.

.....Petitioner
Through: Mr. Y.P. Ahuja, Advocate.

Versus

SH. ATMA RAM & ANOTHER

.....Respondents
Through: Mr. Satya Prakash Gupta,
Advocate.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Order impugned before this Court is the order dated 16.11.2006 passed by learned ARCT (Additional Rent Control Tribunal) which had reversed the findings of the ARC (Additional Rent Controller) dated 12.07.2001.

2. Record shows that the present eviction petition has been filed by Atma Ram & others under Section 14 (1)(b) of the Delhi Rent Control Act (hereinafter referred to as the 'DRCA'). The premises in dispute is property No.6517, Chand Bhawan, Plot No. 34-D, Ward No. XII, Kamla Nagar, Subzi Mandi, Delhi; tenancy was qua two rooms, one kitchen, one verandah, and balcony on
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the second floor of the said property as depicted in red colour in the site plan. Eviction petition had been preferred under Section 14 (1)(a)(b) and (j) of the DRCA but for the purposes of decision of this petition, ground under Section 14 (1)(b) is only relevant.

3. The case of the landlord was that respondent No. 1 M/s Dhootpapeshar Industries Ltd. (duly registered company) had sublet these premises to Ghandsham Das Chabra and this being a subletting/assignment/parting with possession of whole of the premises without the consent in writing of the landlord amounts to a valid ground for eviction under Section 14 (1)(b) of the DRCA.

4. Written statement has been filed by both the respondents separately. Respondent No. 1 had filed an initial written statement which was subsequently permitted to be amended. In this written statement the plea of resignation of respondent No. 1 from the company or that the premises have since been handed back by respondent No. 1 to the company had not been set up. In the amended written statement (relevant for the purposes of decision of the present eviction petition) it has been stated that the premises had been taken on rent by respondent No. 1 for the residence of its employees and respondent No. 2 being only an employee of respondent No. 1 had been permitted to occupy the

said premises; prior to respondent No. 2, other employees were also occupying these premises. Respondent No. 2 has resigned from the services of the company and handed over the vacant and peaceful possession of the tenanted premises to respondent No. 1 who is in occupation of the said premises; contention being that there has been no subletting or parting with possession of the said premises. This amended written statement was filed on 04.05.2001.

5. Written statement filed by respondent No. 2 has also been perused. This is dated 12.08.1994. His contention is that respondent No. 2 being an employee of respondent No. 1 had been allotted this residence; respondent No. 2 had resigned from the services of respondent No. 1 on 08.06.1993 and he had surrendered the premises back to respondent No. 1; further contention being that his wife Santosh Chabra was also an employee of respondent No. 1 and after the resignation of respondent No. 2, it was mutually agreed that since the premises had been taken on rent by the company for its employees and since Santosh Chabara (wife of respondent No. 2) was also an employee of respondent No. 1, she could continue to occupy these

premises in terms of the spirit of agreement dated 10.04.1967 and as such no case of subletting is made out.

6. Oral and documentary evidence was led by the respective parties. The landlord had produced one witness on his behalf namely AW-1. He had on oath deposed that respondent No. 1 was his tenant and rent receipts/counter foils had been proved on record as Ex. AW-1/2 and Ex. AW-1/3. This witness had come into the witness box on 20.02.1996. He had deposed that respondent No. 1 had since the last 3-4 years (i.e. 1992-1993) sublet these premises to respondent No. 2 who is in occupation of the same. In his cross-examination, he has admitted that respondent No. 1 was a tenant in the suit premises which had been let out in the year 1965-70 but he does not know the name of the person who was occupying the premises during the period 1965-70 to 1992; he did not know whether respondent No. 2 was an employee of the company or not; he did not know the status of respondent No. 2 in the respondent company; he has further admitted in his cross-examination that as on date respondent No. 1 company is in possession of the suit premises; he did not know the date, month or year of subletting by respondent No. 2 to respondent No. 1 but may be it was 5-10 years back.

7. Two witnesses had been produced on behalf of the respondents. RW-1 was the Manager of the respondent company; he had deposed that the respondent company is still in possession of the suit premises and there has been no subletting; respondent No. 2 was the Manager in the company but he has since resigned. This witness had come into the witness box on 31.10.2000. In his cross-examination he has stated that the company might be maintaining the employment register of its employees but he has not seen the employment letter of respondent No. 2 and nor has he seen any appointment letter of wife of respondent No. 2 with respondent No. 1 company; he cannot say whether wife of respondent No. 2 ever remained in the service of respondent No. 1. He has admitted that there was a dispute between respondent No. 2 and the company but he cannot say for how long this dispute continued.

8. RW-2 was the Chief Executive Officer of respondent No. 1; he had brought the appointment letter of respondent No. 2; he had admitted that respondent No. 2 had resigned from the service on 08.06.1993; he had deposed that a suit had been filed by respondent No. 1 against respondent No. 2 restraining respondent No. 2 from parting with the possession of the suit premises which

suit was compromised and after the settlement arrived at between the parties in 1997, the suit premises had been handed back to the company. He had deposed that the premises had been taken for the employees of respondent No. 1; the company has not parted with or sublet these premises to any person; he had proved on record Ex. RW-2/1 and Ex. RW-2/2 which were the two settlements arrived at between respondent No. 1 and respondent No. 2 dated 02.12.1994 and 17.10.1997 in interse suits preferred between the parties showing that there was a dispute between the parties i.e. respondent No. 1 company and his employee/Ex-employee (respondent No. 2) and vide settlement dated 17.10.1997, the premises in dispute had been handed back by respondent No. 2 to respondent No. 1. In his cross-examination, RW-2 had stated that respondent No. 2 was occupying the suit premises from 1992 to 1997 as an Ex-employee pending a settlement but he did not vacate the suit premises after his resignation inspite of requests; he had stated that he would do so once the matter is fully and finally settled between respondent No. 2 and respondent No. 1; this witness has further admitted that the request of respondent No. 2 in his resignation letter for extension of time for a period of six months to vacate the suit premises was in fact being considered; he has further admitted that Santosh

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Chabra (wife of respondent No. 2) was an employee of respondent No. 1.

9. This was the sum total evidence both oral and documentary which was adduced before the ARC. The ARC had returned a finding that the factual context does not make out a case of subletting and the eviction petition filed by the landlord had been dismissed.

10. In appeal, the judgment of the ARC was reversed; the RCT was of the view that he continued retention of the premises by respondent No. 2 even after his resignation amounted to a subletting; eviction petition of the landlord stood decreed.

11. On behalf of the petitioner, vehement arguments had been addressed. It is submitted that the order of the RCT suffers from a manifest illegality and the RCT delving into the facts when it can only hear an appeal under Section 38 of the DRCA on a substantial question of law has committed a grave fallacy and by upsetting the findings of the ARC which were reasoned findings, he has committed an illegality which is liable to be set aside. To support his submission, learned counsel for the petitioner has placed reliance upon a judgment of the Apex Court reported as

AIR 1987 SC 2055 Dipak Banerjee Vs. Smt. Lilabati Chakraborty as also another judgment of this Court reported as AIR 1995 SC 380 United Bank of India Vs. Cooks and Kelvey Properties (P) Ltd. Submission is that to attract the ingredients of subletting/parting with possession/assignment under Section 14 (1)(b) of the DRCA; it must be shown that the landlord has divested himself completely from the suit premises which is not so in the instant case.

12. Arguments have been countered. Learned counsel for the respondents per contra has submitted that the impugned judgment in no manner suffers from any infirmity. The impugned judgment had correctly noted that the two suits which had been compromised vide orders of compromise dated 02.12.1994 and 17.10.1997 Ex. RW-2/1 and Ex. RW-2/2 were filed during the pendency of the eviction petition and these were only to create and build up an evidence in their favour; impugned finding in no manner calls for any interference. Learned counsel for the respondents has placed reliance upon a judgment of this Court reported as 1986 RLR 370 Gill & Co. Vs. Bimla Kumari as also another judgment of this Court reported as 1997 (2) RCR K.K. Dhawan Vs. Dr. Promila Suri; submission being that in the latter

case where the premises had been taken on rent by a company for the residence of its employees and the employee had left the services but did not vacate the premises even on the asking of the company, it amounted to a case of subletting by the company and the employee was liable for ejectment under Section 14 (1)(b) of the DRCA; the said section being fully applicable in the instant case.

13. Record has been perused. Even as per the case of the petitioner the respondent No. 2 had resigned from the service of respondent No. 1 on 08.06.1993; eviction petition was filed on 01.07.1993. It is an admitted case of the parties that the premises had been let out by the petitioner/landlord to respondent No. 1 who is a Company which premises were to be used by the employees of the Company. AW-1 was the landlord; in his cross-examination, he has admitted that he does not know if the person in occupation of the premises is an employee of the Company or not; he had admitted that as on date the Company i.e. respondent No., 1 (“original tenant”) is in occupation of the suit premises. RW1 the Regional Manager of the respondent No. 1/Company has admitted that the Company is in possession of the suit premises; on the date of the deposition which was on 31.10.2000, there was

no dispute about this factum. RW2 the Chief Executive Officer of the respondent No. 1/Company has stated that respondent No. 2 did not vacate the suit premises as his contention was that his dues are yet to be cleared and his request in his resignation letter for the grant of six months time to vacate the suit premises was under consideration; RW2 has further admitted that the Company was confident that respondent No. 2 would hand over the possession of the suit premises as soon as the matter was settled with him. He has further admitted that Smt. Santosh Chhabra the wife of the respondent No. 2 was also an employee of their Company. In view of the aforeneotd evidence which has come on record, the ARC had correctly noted that the ground of sub-letting qua the suit property has not been made out by the landlord; sub-letting necessarily meaning that the owner has completely divested himself of the suit property and is in no manner connected with the same; this evidence as discussed supra was clearly to the contrary. The evidence adduced has in fact established that there was an inter se dispute between respondent No. 1(Company) and respondent No. 2 who was the employee of respondent No. 1 and since this dispute related to the dues of the respondent No. 2 which he had to take from the Company; he had asked for clearance of his dues as also extension of time up to six

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months for vacating the suit premises; his request was being actively considered by the Company which request was contained in his resignation letter.

14. The ingredients necessary 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) XXXXXXXXXXXXX

(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;"

15. This is clearly not a case where respondent No. 1 had lost control over the tenanted premises; Santosh Chhabra the wife of the respondent No. 2 was also admittedly an employee of the respondent No. 1. Tenanted premises were for the use of residence of the employees of respondent No. 1.

16. Even assuming that the respondent No. 2 had resigned from the services, the fact that his dues not having been paid to him he had not vacated the premises which dispute was pending before respondent No. 1; moreover his wife was also an employee of respondent No.1. It is not as if the respondent No. 2 was claiming any independent title or claim qua the suit property. The mischief of Section 14(1)(b) of the DRCA was not clearly attracted. The ARCT reversing these fact findings which were based on a cogent reasoning given by the Trial Court suffers from an infirmity. It is liable to be set aside.

17. The Apex Court in the case of AIR 1987 Supreme Court 2055 titled as Dipak Banerjee vs. Lilabati Chgakraborty had inter alia noted as under:

“But in order to prove tenancy or sub-tenancy two ingredients had to be established, firstly the tenant must have exclusive right of possession or interest in the premises or part of the premises in question and secondly that right must be in lieu of payment of some compensation or rent.”

18. This is clearly not so in the instant case. Evidence is to the contrary.

19. In this scenario reliance placed by the learned counsel for the respondent upon the judgment reported in 1986 RLR 370 titled as GiLL & Co. Vs. Bimla Kumari is misplaced. This was a case where the court had noted that where an ex employee even after his termination retained the premises which have been given to him by his employer, the landlord may set up his claim under Section 14(1)(b) of the DRCA which then has to be proved as per evidence. As noted supra, the evidence adduced in this case clearly shows that the mischief of Section 14(1)(b) of the DRCA was not attracted. The impugned order is accordingly set aside. Petition filed by the landlord under Section 14(1)(b) of the DRCA is dismissed.

INDERMEET KAUR, J

JANUARY 06, 2012
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