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

% *Date of Judgment: 15.05.2012*

+ **CM(M) No. 442/2007**

SAMEER WASON & ANR.

..... Petitioner

Through: Mr. P.K. Rawal, Advocate.

versus

ANOOP KUMAR

..... Respondent

Through: Mr. Ashok Kumar Gupta,
Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

Impugned judgment is dated 22.11.2006. The Rent Control Tribunal (RCT) had endorsed the finding of the Additional Rent Controller (ARC) dated 02.06.2003 qua the finding returned by it on the petition under Section 14(1)(a) of the Delhi Rent Control Act(DRCA); the benefit granted to the tenant under Section 14(2) of the DRCA had been maintained. However, the order passed by the ARC decreeing the eviction petition under Section 14(1)(b) of the DRCA had been set

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aside; eviction petition filed by the landlord under the aforementioned provision of law had been dismissed. The landlord is in appeal against that finding.

2 Record shows that the landlords (Sameer Wason and Another) had filed eviction petition under Section 14(1)(a), (b) & (c) of the DRCA. They claimed to be the landlords/owners of the property bearing No. 53C, Old Rajinder Nagar, Market, New Delhi; respondent-Anoop Kumar was the tenant in one shop on the ground floor at a monthly rent of Rs. 60/- exclusive of electricity charges; he was also in arrears of rent w.e.f. 01.08.1996; rent was enhanced from RS. 60/- to Rs.66/- vide notice dated 08.08.1996; arrears of rent have not been paid. Further contention was that the respondent had sub-let/assigned/parted with possession of the shop in question and the sub-tenant was running a business under the name and style of M/s. Zever Ethenics Jewellers. The original tenant was no longer in possession of the shop; further contention being that the shop had been let out for a tailoring business which was being run by the tenant under the name and style of M/s. Fine Tailors; there is no longer such business being run; it is the sub-

tenant/M/s. Zeven Ethnic Jewellers Jewellery which has been carrying its business from the aforementioned premises.

3 Written statement was filed contesting the submissions; it was denied that the tenant was in arrears of rent; it was denied that there has been any sub-letting; the user of the premises has not been changed.

4 Oral and documentary evidence was led. The ARC on the basis of this oral and documentary evidence had returned a finding that the tenant is in arrears of rent; since it was a case of first default, the benefit of Section 14(2) of the DRCA had been granted to the tenant; this finding had been endorsed in impugned judgment by the RCT. This finding is not in challenge. The only ground which is in challenge before this court is the finding returned by the RCT under Section 14(1)(b) of the DRCA. Two witnesses were examined by the landlord and two witnesses had come into the witness box on behalf of the tenant. The ARC on the basis of the oral and documentary evidence had returned a finding that the ground of sub-letting has been made out qua the tenant and the landlord was entitled to a decree under Section 14(1)(b) of the DRCA which was accordingly decreed.

5 Impugned judgment had reversed the finding on this count.

6 Record shows that the present eviction petition had been filed by the landlord Sameer Wason under Section 14(1)(a), (b) and (c) of the Delhi Rent Control Act. As noted supra ground under Section 14(1)(b) is only matter in the controversy before this Court. Contention of the landlord is that the premises in question had been let out to the tenant namely Anoop Kumar who has otherwise sub let it to his sub-tenant who is running business in the name and style of 'Zavar Ethenics Jewellers'; the respondent /tenant Anoop Kumar is no longer in possession of the suit premises. Ground for eviction accordingly made out under Section 14(1)(b).

7 Needless to state that this eviction petition was hotly contested. Contention of the tenant was that he has never parted with the possession of the tenanted premises and there is no sub-tenant running business under the name and style of 'Zavar Ethenics Jewellers' as alleged. Contention was that Anoop Kumar, the tenant, himself has been running this business of Zavar Ethenics Jewellers besides a tailoring business; there is no sub-tenancy.

8 Oral and documentary evidence was led.

9 AW-1 was the landlord himself. He has on oath deposed that the
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tenant was given these premises for tailoring; he is now running a jewellery business under the name and style of 'Zavar Ethenics Jewellers'; this shop is being used for running a jewellery business and the sign board of the shop has been proved in the photographs Ex. PW-1/24. Deposition on oath of the landlord was that no consent has been given to assign these premises to Zavar Ethenics Jewellers. In his cross-examination he has denied the suggestion that the tenant Anoop Singh himself was carrying out the business of Zavar Ethenics Jewellers. Vehement contention being that Anoop Singh, the original tenant, had sub-let the premises to Zavar Ethenics Jewellers which is being run by a person namely Shoky who is running the shop; he opens and shuts the shop. He denied the suggestion that there is no person by the name of Shoky; further deposition on oath being that he learnt about the name of Shoky from neighbours who call him by that name; he does not know where Shoky resides.

10 The second witness of the landlord AW-2 Suresh Chand was a neighbour living in the same vicinity. His contention was that Anoop the original tenant, was carrying out a business of tailoring in the name and style of 'Fine Tailors'; he knew him personally as he used to stitch

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his clothes and now a jewellery business is being run in the same premises. Anoop Ji was not present at that time when he visited that shop and on personal inquiry he learnt that Anoop Ji is no longer running the business.

11 The deposition of the tenant RW-1 is also relevant. His version is to the effect that he started his tailoring unit in 1969; he admitted that he had started jewellery business in the year 1998-1999; sign board of the Fine Tailoring was never removed. He ran this jewellery business in the name of Zevar Ethenics Jewellers only from April 1998 to February 1999; his wife was helping him in this business; business of tailoring was thereafter continued as his wife who was assisting him in this business died in November, 1998; there upon he closed the jewellery business; his deposition is categorical that he opens and closes the shop everyday and he daily goes to the shop; he is a member of Rajinder Nagar Market Association and he casts his votes in the election of the Association. He denied the suggestion that he knew any person by the name of Suresh Chand/Shoky. The documentary evidence proved on record by the tenant evidenced his income tax returns filed for the year 1999-2000 and 2000-2001 which were proved as Ex. RW-1/1 to Ex.

RW-1/2; telephones bills in his name were proved as Ex. RW-1/3 and Ex. RW-1/4 also show the address of the disputed premises; his bill book of the tenanted shop showing the business transactions in the regular course of business were proved as Ex. RW-1/5 to Ex. PW-1/16 again substantiates his submission that he was carrying on his business from the aforementioned premises even in the intervening period from April, 1998 to February, 1999 when the alleged jewellery business was being run.

12 The second witness on behalf of the tenant was RW-2 who corroborated this version of the tenant substantiating his submission that the business of tailoring is still being run from the aforementioned shop; further submission being that in the intervening period for about 8-9 months he started jewellery business on the side but he even then continued the tailoring business.

13 RW-3 was the Secretary of the Rajinder Nagar Shopkeepers' Association.

14 The law on sub-tenancy is 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;

15 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. There is no dispute that in the instant case, there is no written consent of the landlady. 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 parting 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

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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 fact.

16 The whole case as set up by the landlord is that there is one Shoky who was the sub-lessee in the premises and the business of jewellery was being run by him; the original tenant Anoop Kumar had lost all control over the aforementioned premises. The evidence collected in the trial court, however, is to the contrary. The version of the tenant has clearly substantiated that he was all along carrying on tailoring business which business he has been carrying on from 1969 to which factum there is no dispute; his contention was that in April 1998 to February 1999 he had started jewellery business along with the tailoring business that is why the name board of Fine Tailors continued to remain outside the shop; his wife had died in November 1998; thereafter he closed the jewellery business as his wife was primarily helping him in the business. The documentary evidence which are bill books, income tax returns and

telephone bills all evidenced his presence in the suit premises in this continuous period. It was for the landlord to show that the tenant had sub-let these premises to Shoky. The landlord himself does not know who is this person Shoky; this is in spite of the fact the landlord is running a shop in the vicinity and the parties having worked together in the same vicinity for so many years; and he is not knowing who is this person Shoky clearly shows that this is nothing but a figment of the imagination of the landlord. Oral and documentary evidence adduced by the tenant establishes that Anoop Kumar continued to retain the possession of the premises and no subletting was made out.

17 Reliance by the learned counsel for the petitioner upon the judgment reported as 72 (1998) DLT 50 Bharat Sales Ltd. Vs. Life Insurance Corporation of India is misplaced. Para 4 which has been highlighted has in fact laid down the law which is clear to the effect that to make out a case of sub-letting it must be shown by the landlord that the tenant has lost complete control of the disputed premises; possession has been transferred clandestinely to a person who is an utter stranger to the landlord in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering

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into possession over the demised property; it is the actual, physical and exclusive possession of that person instead of the tenant. This factual scenario in view of the aforementioned evidence discussed supra is not made out.

18 This court is sitting in its powers of superintendence; it is conscious of the fact that right of second appeal has since been abrogated. The powers of superintendent are not a substitute for an appellate forum. Unless and until a grave perversity and manifest injustice has occurred interference in fact findings which are based on cogent and coherent evidence are not called for. In these circumstances impugned judgment having dismissed the petition under Section 14(1)(b) of the DRCA calls for no interference.

19 Petition is without any merit. Dismissed.



INDERMEET KAUR, J

MAY 15, 2012
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