

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

% *Date of Judgment: 25.05.2012*

+CM(M) 79/2007 & CM No.588/2007 & CM No.2166/2011 (for additional evidence)

ABHILASH JAIN & ANR Petitioner
Through: Mr.Sudhir Nandrajog, Sr. Adv.
with Mr.P.K.Rawal, Adv.

versus

SURENDER KUMAR KALRA Respondent
Through: Mr.Ravi Gupta, Sr. Adv. with
Mr.Ankit Jain, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Impugned order is dated 20.4.2006. Additional Rent Control Tribunal (ARCT) had endorsed the finding of the Additional Rent Controller (ARC) dated 13.5.2003 whereby the eviction petition filed by the landlord Surender Kumar Kalra under Section 14(1)(a) and (b) of the Delhi Rent Control Act (hereinafter referred to as the DRCA) had been disposed of; petition under Section 14(1)(b) of the DRCA had been

decreed and qua the provisions under Section 14(1)(a) DRCA this being a case of first default benefit of Section 14(2) of the DRCA had been granted to the tenant. This judgment is the subject of the present petitioner.

2. Record shows that an eviction petition had been filed by the landlord against his two tenants Abhilash Jain and Manoj Jain; ground under Section 14(1)(a) and (b) of the DRCA had been pleaded. This Court in this petition is concerned with the grounds only under Section 14(1)(b) of the DRCA; disputed premises have been described as H-7A, Model Town, Delhi. Contention was that the premises had been sublet by the original tenant in favour of M/s Auto Den and S.K.Jain & Company comprising of Sunil Kumar Jain and Pankaj Jain; petitioner is the owner of the said premises; he has not granted any permission to the tenant to sublet these premises either in writing or orally. Eviction petition under the aforementioned provision was accordingly filed.

3. Written statement was filed. It was denied that the premises had been sublet, assigned or parted with possession in favour of M/s Auto Den comprising of Sunil Kumar Jain and Pankaj Jain; contention was that M/s Auto Den is the trade mark of Abhilash and Manoj Jain who

are both tenants and this firm does not exist; qua M/s S.K.Jain & Company it was stated that this is a firm comprising of Sunil Kumar jain, Pankaj Jain and Kanta Jain in respect of the adjoining building H-7, Model Town, Delhi in their own independent right; eviction petition is liable to be dismissed.

4. Oral and documentary evidence was led. Two witnesses were examined on behalf of the landlord; AW-1 was the landlord Surender Kumar Kalra. He had reiterated the averments made in the eviction petition and had deposed that the premises had been sublet by the original tenant namely Abhilash Jain and Manoj Jain to M/s Auto Den and M/s S.K.Jain and Company. In his cross-examination he has stated that sign board of M/s Auto Den had been displayed over the suit premises and Sunil Kumar and Pankaj Jain are in possession thereof. He had admitted that he had no documentary evidence showing that M/s Auto Den is doing activity from the aforementioned premises. Relevant would be to state that no suggestion has been given to this witness that M/s Auto Den is the trade name of Abhilash Jain and Manoj Jain. The second witness of the landlord was Charanjeet Singh; he was a neighbour. His deposition is largely to the same effect as that of PW-1.

In his cross-examination he admitted that S.K.Jain and Pankaj Jain have their own company which is being run from H-7, Model Town which is adjoining to the suit premises; he has admitted that he has seen the business of M/s Auto Den which is dealing in car seat cover which they manufacture and sell and they are using the premises H-8 as godown also and he has seen the sign board of M/s Auto Den outside H-7A, Model Town i.e. the suit premises. Per contra the evidence adduced by the tenant included S.K.Jain who was the first witness. He had admitted that he is a partner of M/s S.K.Jain & Co and apart from him Sanjay Jain and Santosh Jain were the partners; he was never a partner in the M/s S.K.Jain Trade Corporation and he does not know as to who is the partner of M/s S.K.Jain Trade Corporation. He admitted that he had opened a saving account on 21.1.1997 being account No.3229 where his address is shown as that of disputed premises; he had admitted that water bills of the disputed premises has been received in the name of M/s S.K.Jain Trade Corporation. Vehement submission of the learned counsel for the petitioner/tenant on this score is that M/s S.K.Jain Sales Corporation is an entity distinct from M/s S.K.Jain & Company; even presuming that the water bills were received in the name of M/s S.K.Jain

Sales Corporation in the suit premises it would not establish the averment of the landlord that M/s S.K.Jain & Company was functioning from the demised premises. RW-4 and RW-5 were Abhilash Jain and Manoj Jain the original tenants. In her cross-examination RW-4 has stated that a partnership had been entered into between herself, Manoj Jain and Surinder Kumar Jain on 01.10.1996; she does not know about investment and the name of the said firm. In fact on each and every question on the partnership dated 01.10.1996 put to the witness she was evasive she had no comments. Ex.RW-4/1 was the aforementioned partnership deed dated 01.10.1996 which was dissolved on 31.3.2000 vide document Ex.RW-4/2 and a new partnership was created on 01.4.2000 (Ex. RW-4/3). The RCT had endorsed the finding of the ARC on the aforementioned document and had returned categorical fact finding noting that the aforementioned documents Exs.RW-4/1, RW-4/2 and RW-4/3 are forged. Reasons being as follows:

“36. The partnership deed between the appellants on the one hand and Surender Kumar Jain and Sunil Kumar (HUF) on the other hand is dated 1.10.1996. It has been exhibited as Ex. RW4/1. The two appellants have testified about the partnership deed. Before dealing with their statements, I may refer that on the back of the stamp papers of the partnership deed, the date of purchase of the

stamp papers is 2.8.1996. The stamp papers were sold in favour of Abhilash Jain and Manoj Jain. However, the details of the purchaser of the stamp paper and the signature of the seller with date, are in different ink. Neither the two appellants, nor Sunil Kumar Jain have testified the circumstances under which the stamp papers of the partnership deed were purchased on 2.8.1996 for the partnership, which came into existence on 1.10.1996. Similarly, the stamp papers of the dissolution deed of the partnership (dated 31.3.2000), Ex.RW4/2, were not purchased at the time of dissolution deed, further the same were purchased on 31.7.1999. The dissolution deed was executed after nine months of the purchase of the stamp papers. A new partnership deed was executed between the two appellants on 1.4.2000. The photocopy of the said deed is Ex. RW4/3. The photocopies of the stamp papers do not bear the date of their purchase. However, another set of photocopy of the stamp papers of the partnership deed dated 1.4.2000, is also lying attached with the judicial file. The photocopy of those stamp papers show that the same were purchased on 31.7.1999. The partnership deed came into existence on 1.4.2000, its dissolution deed and of a new partnership dated 1.4.2000 were purchased much earlier to the execution of the documents. There is nothing on the record to suggest that the parties had any talk of the partnership or dissolution much prior to the execution of the documents and, therefore, the stamp papers were purchased.

37. RW3 Shri Chrajit Lal Grover has witnesses all the three documents i.e. Ex.RW4/1 to Ex. RW4/3. He used to look after the account of Sunil Kumar Jain and M/s S.K.Jain and Company. He has testified that he never maintained or prepared the accounts books of M/s Abhilash Jain and Manoj Jain. He recollected that he

put his signatures as a witness on the partnership deed of M/sAbhilash Jain and Manoj Jain. However, he cannot say whether Sunil Kumar Jain, Surender Kumar Jain, Abhilash Jain, and Manoj Jain were partners. Firstly the witness did not state in examination-in-chief about the partnership deed in which two appellants and Sunil Kumar Jain and Surender Kumar Jain were partners. Secondly, the appellants did not show that the partnership deed to witnesses to get his signature identified. Thirdly, the witness has not said a single word about the dissolution deed of the partnership and a new partnership dated 1.4.2000.

38. *RW1 Shri Sunil Kumar Jain did not state a single word in his examination-in-chief about his being partner with Surender Kumar Jain and the two appellants in M/s Abhilash Jain and Manoj Jain. In the Cross-examination, initially he stated that he was partner in M/s S.K.Jain and Manoj Jain Company. Earlier, he was partner in M/.K.Jain Enterprises. His father Surender Kumar Jain, Sunil Jain and Santosh Jain were other partners. He categorically testified that “ I have never remained partner of any firm earlier”. In the second breathe, he denied that he was still partner in M/s Abhilash Jain and Manoj Jain in the suit shop. First,y, he did not know whether he opened account in the bank from the address of the suit shop. However, then he admitted that he was having account NO.3329, a current account at Indian Overseas Bank, Model Town. M/s S.K.Jain (HUF) was shown as partner in the bank for opening of that account. Abhilash Jain and Manoj Jain were also partners. He himself opened that account on 21.1.1997, though photographs of all the four partners were affixed on the account opening form. There is nothing on the record to suggest that besides Sunil Kumar Jain, other partners also signed the opening form of the bank account.*

Smt. Abhilash Jain and Shri Manoj jJain (appellants) have appeared into the witness box, but have not said that they also signed the account opening form. When Sunil Kumar Jain again entered into the witness box on 4.3.2003, then he stated that he entered into a partnership deed with Abhilash Jain and Manoj Jain in the name of Sunil Kumar Jain on 1.10.1996 and the name of the partnership firm was M/s Abhilash Jain and Manoj Jain. The business continued up to 1998-99. According to the case of the appellants, the business of that partnership continued till 31.3.2000.

39. *RW4 Smt. Abhilash Jain has testified in her examination-in-chief in the form of affidavit Ex. RW4/9, that she is aware of the facts and circumstances of the case and as such, she is competent to swear the affidavit. She referred the documents Ex.RW4/1 to Ex.RW4/3. However, in the cross-examination, she has testified that "I do not anything about this case." She has even stated categorically that she has not filed any written statement in the case. A partnership had taken place on 1.10.1996, but she does not know the name of the partnership firm. She does not know as to what was the capital invested by the partners and what were their shares of profits. She does not know how many transactions have taken place after the constitution of the partnership firm. She has no knowledge about the balance sheet of the aforesaid firm in the first year, second year or third year. She does not know whether all the transactions of the firm were carried on only by Sunil Kumar. She has no knowledge of the business in the suit premises. She does not know in whose name, the water connection has been installed in the suit premises. She has no knowledge as to who prepared the documents Ex.RW4/1 to Ex. RW4/3. She cannot say why the dissolution deed Ex. RW4/2 was prepared and why the partnership deed Ex. RW4/3 came into*

existence. She even does not know if Shri Charanjit Lal Grover (AW2) is the same person who witnesses the documents Ex. RW4/1 to Ex. RW4/3.

40. It has been argued by the appellants that Smt. Abhilash Jain is a house lady and does not take much interest in the business and, therefore, her statement shall not be read against the appellants. Her son Shri Manoj is aware of the business and the facts of the case. It may be true. However, in the examination-in-chief itself, she categorically testified that "I am aware of the facts and circumstances of the case and as such, competent to swear the present affidavit." The affidavit must have been prepared with the help of the counsel. If she was not aware of the facts of the case, then she should not have stated on oath in her affidavit that she was aware of the case and the facts of the case. Since, the witness positively asserted in the examination-in-chief that she was aware of the facts, therefore, her ignorance of the facts of the case and the business in the suit shop as testified by her in the cross-examination, cannot be used by the appellant in their favour on the ground that she is a house lady and does not take part in the affairs of the business in the suit shop, or in the matter of the suit in hand."

5. The aforementioned documents were discarded for cogent and coherent reason; these were the fact findings returned by the two courts below. Unless and until a perversity is pointed out in the reasons given by the trial court on this issue the powers of superintendence do not permit this Court to interfere. In this background no interference is

called for on this fact finding. RW-5 was Pankaj Jain and he had taken up the same stand as that of RW-4.

6. It was in this background that the petitioner under Section 14(b) of the DRCA had been decreed. This judgment suffers from no infirmity.

7. Section 14(1)(b) 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 favor 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:-*

.....

(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;”

8. Section 14(4) is also relevant which reads as under:

“(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.”

9. Law of subletting is clear. Initially the burden is on the landlord to show that a stranger has entered into the premises; a person other than the tenant is in occupation of the said premises; once this initial burden has been discharged the onus shifts upon the tenant to show that he is still occupying the premises or he has not divested himself of the disputed premises. Categorical averment of the landlord in the present case is that the original tenants namely Abhilash Jain and Manoj Jain had sublet these premises to M/s Auto Den and M/s S.K.Jain & Company comprising of S.K.Jain and Pankaj Jain. S.K.Jain has come into witness box as RW-1. He has admitted that he was a partner of M/s S.K.Jain and Company; he could not dispute the submission that the board of M/s S.K.Jain & Company as also M/s Auto Den was found fixed in the disputed premises which is house No.H-7A. Even

presuming that M/s S.K.Jain was using the adjoining premises i.e. House No.7 the non-explanation of PW1 (S.K. Jain-partner of M/s S.K. Jain & Co.) tenant on this score about its presence in the suit premises was not answered. The partnership document sought to be set up by the tenant showing that a partnership deed had been created on 01.10.1996 which was subsequently dissolved on 31.3.2000; thereafter re-created on 01.4.2000 comprising of Abhilash Jain, Manoj Jain and S.K. Jain and Pankaj Jain were discarded for the reasons as aforementioned. Those documents rightly were not adverted to. It is thus clear that the landlord has been able to show that the original tenants namely Abhilash Jain and Manoj Jain had divested themselves completely from the suit property and the suit property was in the hands third person. Even as per the case of the tenant it is an admitted fact that the water bills of S.K. Jain Sales Corporation was being issued from the suit premises; M/s S.K.Jain Sales Corporation also being an entity different and distinct from Abhilash Jain and Manoj Jain its presence also stood established in the aforementioned premises. Tenant has also failed to give any suggestion to PW-1 or to PW-2 that M/s Auto Den was in fact the trade name of Abhilash Jain and Manoj Jain as was the defence set up by them in the

trial court. In this background eviction petitioner having been decreed under Section 14(1)(b) of the DRCA in no manner suffers from any infirmity.

10. Submission of the learned counsel for the petitioner that the name of M/s S.K.Jain Sales Corporation has erupted for the first time in the proceedings before the RCT; this is wrong; M/s S.K.Jain Sales Corporation was a name which found mention in the testimony of the witnesses in the trial court i.e. before the ARC. The application filed by the tenant under Order 41 Rule 27 of the Code of Civil Procedure before the RCT was also filed to place on record certain documents i.e. documents which do not form a part of the present application which has now been filed before this Court. The averments made in this application have been perused. Contention of the petitioner/applicant is that he has come across certain documents showing that M/s S.K.Jain Sales Corporation was a tenant in the year 1983 and has since vacated it; this was a proprietorship firm of Gulshan Jain; these documents would throw light in the controversy in question; details of these documents find mention in para 6; no justifiable explanation has been furnished how and when these documents came into possession of the applicant;

necessary ingredients of Order 41 Rule 27 of the Code not having even been averred in the aforementioned application; that apart this application being pressed in a petition under Article 227 of the Constitution of India which is not an appellate forum; this application is not worthy of any merit. A bench of this Court in 2011(7)AD (Delhi) Anil Kumar Kalra Vs. Sat Narain Gupta has held that an application under Order 41 Rule 27 of the Code is not maintainable in the proceedings under Article 227 of the Constitution of India.

11. Impugned order in this background calls for no interference.
Dismissed.

INDERMEET KAUR, J

MAY 25, 2012
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