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

% *Date of Judgment: 08.02.2012*

+ **CM (M) No. 1428/2007**

DHARAMVIR KATARIA THROUGH L.RS.

..... Petitioners

Through: Mr.J.P.Sengh, Senior Adv. with
Ms.Jyotika Kalra, Advocate.

versus

SHYAM SUNDER TALWAR & ORS. Respondents

Through : Mr.S.K.Taneja, Sr. Adv. with
Mr.Puneet Taneja, Advocate.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. Impugned judgment is the order passed by the Rent Control Tribunal (RCT) dated 02.07.2007 which has reversed the finding of the Additional Rent Controller (ARC) dated 16.11.2005. Vide order dated 16.11.2005, the petition filed by the landlord namely Dharamvir Kataria

(Dead) through his legal representatives seeking eviction of his tenant Shyam Sunder Talwar & Others on the grounds under Section 14 (1)(a)(b) & (c) of the Delhi Rent Control Act (DRCA) had been decreed on the ground under Section 14 (1)(b) of the DRCA; on other grounds, the eviction petition had been dismissed. The RCT had however reversed the finding of the ARC and had dismissed the eviction petition of the landlord on the ground under Section 14 (1)(b) of the DRCA as well.

2. Record shows that the present eviction petition has been filed by the landlord under Section 14 (1)(a)(b) & (c) of the DRCA; premises which had been let out to Shiv Narain is suit property bearing Municipal No. 1978, ground floor, Bank Street, Karol Bagh, New Delhi. The ground under Section 14 (1)(b) of the DRCA i.e. the ground of subletting had found favour with the ARC and he had decreed the eviction petition. This was after examination of oral and documentary evidence led by the respective parties which included one witness on behalf of the landlord and correspondingly one witness on behalf of the tenant.

3. The averments in the eviction petition disclose that the suit

property is in possession of unauthorized occupants and M/s Chander Bhan Shiv Narain Jeweller Private Ltd (arrayed as respondent No. 3) (hereinafter referred to as respondent No. 3) is a private limited company having a separate legal entity distinct and different from the original tenant namely Shiv Narain; this has amounted to an unauthorized subletting/parting with possession in favour of the third respondent.

4. Needless to state that the averments made in the eviction petition had been disputed. Contention of respondent No. 3 (M/s Chander Bhan Shiv Narain Talwar Jeweller Private Ltd) is that the premises are being used only its registered address but it has never functioned from the suit premises and Shyam Sunder Talwar (legal representatives of the original tenant Shiv Narain) has always been in physical control and possession of the premises and they are in fact carrying out their business from the said property; they along with the original tenant Shiv Narain admittedly have a shareholding in the company i.e. respondent No. 3; ground of subletting is clearly not made out.

5. Before the Rent Controller, the application filed by the tenant seeking permission to lead additional evidence had been permitted.

Affidavit dated 14.05.2003 Ex. 'X' had been filed by Rajinder Talwar, the son of the original tenant Shiv Narain; he had deposed that respondent no.3 had been incorporated in the year 1993 having two directors namely their father Shiv Narain and Shyam Sunder Talwar his elder brother; after the death of Shiv Narain; Rajinder Talwar and Neeraj Talwar (the son of Shyam Sunder Talwar) were also included as directors; they are registered at the tenanted shop but the business of the company is being carried out from 1981-84, Chapper Walan, Karol Bagh, New Delhi and the company (respondent No. 3) has in fact never used the suit premises; income tax returns, sales tax returns, license of respondent No. 3, invoices, telephone and electricity bills are also at the address at Chapper Walan, Karol Bagh. In the deposition of RW-1 the name of another company namely M/s Talwar Jewellers (P) Ltd (hereinafter referred to as the 'Company') had also surfaced as also being registered at the address of the tenanted premises. The RCT in this scenario had directed the tenant to file shareholding pattern of respondent no.3 (M/s Chander Bhan Shiv Narain Jeweller Private Ltd.) as also the shareholding pattern of the other company (i.e. Talwar Jewellers Pvt. Ltd.) as on 31.3.2000. The list of directors and

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shareholding pattern of two companies i.e. respondent no.3 and of the Company evidenced that the two companies were in fact the family companies of Shiv Narain who was the original tenant. This evidence filed before the RCT of the shareholding of the two companies had in fact not been rebutted by the landlord.

6. It is in this background that the ground of Section 14(1)(b) has to be viewed.

7. Section 14 (1) (b) of the DRCA; 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;

8. It clearly notes that if after 09.06.1952, the tenant has either sublet or assigned or otherwise parted with possession of the whole or any part of the premises, he is liable for eviction; the applicability of this Section

depends upon the facts of each case.

9. The moot question thus 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 fact.

10. On behalf of the petitioner, it has vehemently been urged that the impugned judgment holding that Shiv Narain, the original tenant had a controlling interest in respondent No.3 and the Company is not based

on a correct appreciation of the evidence; in fact the share holding pattern and the Memorandum of Association and the Articles of Association of the company (M/s Talwar Jewellers Pvt Ltd.) shows that Shiv Narain was never a Director of this company; his share holding was also only to the tune of 5 shares and thus the RCT returning a finding that there has been no sub-letting by Shiv Narain in favour of respondent No.3 and Talwar Jewellers, suffers from a infirmity.

11. Arguments have been refuted. Learned counsel for the respondent has pointed out that the impugned judgment in no manner calls for any interference. Reliance has been placed on **Jagan Nath vs. Chander Bhan and Ors.** AIR 1988 SC 1362; submission being that where the family of the original tenant is carrying out business from the demised premises, even if there is a change in the name of the business, the identity of the original tenant and the alleged sub-tenant being the same, a case of subletting is not made out.

12. Perusal of the record shows that the impugned judgment in this background does not suffer from any infirmity. The whole case set up by the petitioner is that respondent No.3 was the sub tenant and Shiv Narain the original tenant had completely divested himself of the control

of the disputed premises. There is no dispute to the proposition that respondent No.3 is a distinct legal entity; it is also an admitted fact that the respondent No.3 was incorporated on 5.4.1993 which was an incorporation in the life time of Shiv Narain, Shiv Narain having expired on 1.3.1994. The documents of incorporation of respondent No.3 and the share holding pattern of respondent No.3 shows that at the inception and incorporation of said company, there were only two share holders; the company had two shares of which one was held by Shiv Narain; he was 50% share holder and a director of respondent No.3. These are the admitted facts. The case of the petitioner is in fact bordered on a subletting made by Shiv Narain to respondent No.3. The evidence on record has established that the controlling interest of respondent No.3 was Shiv Narain; thus, the question of Shiv Narain having divested himself from the control and management of respondent No.3 did not arise. In fact, this has not even been seriously disputed by the learned counsel for the petitioner. The case of the learned counsel for the petitioner is the ground of subletting in favour of Talwar Jewellers Pvt Ltd. Admittedly, this was never a plea set up by the petitioner in his pleadings; this was elicited for the first time only in the statement of

RW-1 wherein he had stated that Talwar Jewellers Pvt. Ltd. had its registered office at the disputed premises but it did not carry out any business from the said premises.

13. The order of the ARC dated 25.7.2002 is also relevant in this context. ARC had declined the prayer made by the landlord seeking permission of the Court to place on record the certificate of incorporation of M/s Talwar Jewellers. This was vide an application filed by the landlord dated 15.7.2002. In terms of this application, the landlord had wanted to file the certificate of incorporation of Talwar Jewellers Pvt. Ltd. stating that pursuant to the examination of RW-1, it has now been known that the possession of the premises have in fact been parted with to Talwar Jewellers who which is carrying out its business from the said premises and additional evidence was sought to be led on this score to prove this certificate of incorporation. This application and the prayer made in the application was declined on 25.7.2002. The ARC had noted that the whole case of the petitioner is bordered on the factum hat respondent No.3 is the sublettee/sub tenant of Shiv Narain; there is no utterance in the entire pleadings about Talwar Jewellers; by permitting this evidence to be brought on record, it would

be going beyond pleadings and permitting the plaintiff to take a somersault which is not permitted. This application was accordingly dismissed on 25.7.2002. Admittedly, this order has since attained finality. It has not been challenged before any court. Final judgment of ARC was delivered on 16.11.2005; the eviction petition had been decreed in favour of the landlord. Obviously, the aggrieved party was the tenant and he had filed an appeal before the RCT. The contention of the petitioner/tenant before this Court is that this order dated 25.7.2002 can still be recalled by this Court in its superintending powers. This submission of learned counsel for the petitioner is not only misplaced; it is also misconceived.

14. Be that as it may, record shows that before RCT and even before this Court, the parties had been directed to file the share holding pattern of both the companies, not only of respondent no.3 but also of Talwar Jewellers Pvt Ltd.. As noted supra, share holding pattern of respondent No.3 shows that Shiv Narain had a controlling interest in respondent No.3; he was 50% share holder and director of respondent No.3; the question of subletting by Shiv Narain in favour of a company where he himself had the controlling interest thus did not arise. Thus, a case of

subletting qua respondent no.3 does not arise.

15. Qua the plea of the petitioner that subletting has arisen qua Talwar Jewellers, is also misplaced; also a plea which is misdirected. The share holding pattern of Talwar Jewellers Pvt. Ltd. shows that this is also a family concern of the original tenant i.e. Shiv Narain, his sons, daughters-in-law and grandsons are the share holders; admittedly, out of the original share holding of 25 shares, the petitioner had only five shares and although he is not a majority share holder, but this court cannot overlook the fact that the rest of the shares were being held by his sons and daughters-in-law. Essentially, the company was a family concern. The contention of Rajender Talwar (son of Shiv Narain) in his affidavit dated 14.5.2003 was clearly to the effect that M/s Talwar Jewellers has only its registered office at the tenanted premises but it has not been carrying out any business from the tenanted premises. As noted by the RCT, this averment made in this affidavit was never disputed by the landlord. Shiv Narain, the original tenant was an integral part of M/s Talwar Jewellers Pvt. Ltd. as well. He continued to retain control and possession of the suit premises from where Talwar Jewellers Pvt. Ltd. only had its registered office. The question of Shiv Narain having

divested himself from the suit premises and having parted with its possession either in whole or in part to M/s Talwar Jewellers also did not arise.

16. The judgments relied upon by the learned counsel for the petitioner reported in **(2004) 7 SCC 1 in Singer India Ltd. vs. Chander Mohan Chandha and Ors.** and **(2005) 8 SCC 252 in Sait Nagjee Purushotham & Co. Ltd. vs. Vimalabai Prabhulal and Ors.** are inapplicable. The first was a case of amalgamation of two companies and in this context Sec. 14(1)(b) of the Delhi Rent Control Act, 1958 had been the subject matter of a discussion; the facts of the said case are wholly distinct. In the second case the allegation was that there was a voluntary transfer by one company to the newly incorporated company; the court had held that this averment has to be pleaded and proved that the members of the old firm continued and the identity of the two companies is the same. In the present case the evidence both oral and documentary which includes pleadings as well as documents placed on record had been considered by the RCT to return a finding that the two companies i.e., respondent No.3 and Talwar Jeweller Pvt. Ltd are in fact the family companies of Shiv Narain

himself; this was after a scrutiny of the share holding pattern of the two companies which had been done by the RCT which fact finding as noted by this Court is completely in conformity with the documents placed on record. Shiv Narain was an integral part of respondent No.3.

17. Even otherwise as noted supra, Talwar Jewellers was never pleaded to be the sublessee or the sublettee. The RCT, however, as the first appellate forum had directed the parties to file the share holding pattern of both the companies on a scrutiny of documents placed on record before the RCT; it had returned the finding that Talwar Jewellers Pvt Ltd was also a family concern of Shiv Narain only. This fact finding returned is based on cogent and coherent evidence and does not in any manner calls for any interference.

18. In **1975 RCJ 514 Vishwa Nath and another vs. Chaman Lal Khanna and Ors.**, a Bench of this Court has noted inter alia as follows:

“If the company is a façade concealing the true facts, it may be necessary for the Court to pierce the corporate veil. No doubt he (Vishwa Nath the appellant) has let the company into possession but he has not parted with the possession himself and so long as it is true Vishwa Nath has not parted with the possession himself and so long as it is true Vishwa Nath has not contravened the law. If he has allowed the company to use the premises while he himself has remained in possession of them as Managing Director and Chief executive of the company the argument cannot be acceded to that he has

parted with the possession. He has not assigned nor he has sublet. A tenant cannot be said to part with the possession of any part of the premises unless his agreement with the licence wholly ousts him from the legal possession of that part. If there is anything in the nature of a right to concurrent user there is no parting with the possession.”

The judgment relied upon by the learned counsel for the respondent reported as Jagan Nath (Supra) has also dealt with this contention, the relevant extract of which reads as under:

“The question for consideration is whether the mischief contemplated under section 14(1)(b) of the Act has been committed as the tenant had sublet, assigned, or otherwise parted with the possession of the whole or part of the premises without obtaining the consent in writing of the landlord. There is no dispute that there was no consent in writing of the landlord in this case. There is also no evidence that there has been any subletting or assignment. The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well-settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of clause (b) of section 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in

possession. It the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession. This Court in Smt. Krishnawati v. Shri Hans Raj, [1974] 1 SCC 289 had occasion to discuss the same aspect of the matter. There two persons lived in a house as husband and wife and one of them who rented the premises, allowed the other to carry on business in a part of it. The question was whether it amounted to sub-letting and attracted the provisions of sub-section (4) of section 14 of the Delhi Rent Control Act. This Court held that if two persons live together in a house as husband and wife and one of them who owns the house allows the other to carry on business in a part of it, it will be in the absence of any other evidence, a rash inference to draw that the owner has let out that part of the premises. In this case if the father was carrying on the business with his sons and the family was a joint Hindu family, it is difficult to presume that the father had parted with possession legally to attract the mischief of section 14(1)(b) of the Act.”

19. In view of the aforementioned discussion, it is clear that the impugned order does not suffer in any manner from any infirmity. The petition is without any merit.

20. Dismissed.

INDERMEET KAUR, J

FEBRUARY 08, 2012
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