

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

+ CM(M) 1158/2012, Cav. 1075/2012 & CM 18100/2012

Date of Decision: 17.10.2012

RAM KUMAR VERMA **Petitioner**

Through: Mr.Vipin Kumar Saini, Adv.

Versus

RAJIV KUMAR SHARMA & ORS. **Respondents**

Through: Mr.Sanjev Sachdeva, Sr.Adv. with
Mr.Siddharth Aggarwal,
Ms.Priyam Mehta, Advs.

CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J. (Oral)

1. This petition under Article 227 of the Constitution assails the order dated 27.08.2012 of the District Judge-cum-ARCT, South District, Saket Courts, whereby the appeal filed by the petitioner, being ARCT No. 05/2012 against the order dated 5.12.2011 of the Rent Controller (RC), was dismissed.

2. The petitioner was a tenant in respect of a Shop bearing no. 72/1, Main Market, Yusuf Sarai, Mehrauli Road, New Delhi forming part of

the property earlier bearing No. 71/1, Bazar Yusaf Sarai, New Delhi under the tenancy of Net Ram Sharma, deceased father of the respondents No. 1 and 2. A petition under Section 14(1) (b) of the Delhi Rent Control Act (for short the 'Act') was filed against the petitioner as also his brother Moti Lal (respondent No. 3 herein) by Net Ram Sharma, the original landlord. During the pendency of the petition, Net Ram Sharma expired and his sons, the respondents No. 1 & 2 herein were impleaded in place of their father. It was alleged that the tenanted shop was let out to the petitioner in 1953 against a rent note dated 6.12.1953. It was further alleged that the petitioner has sublet, assigned or otherwise parted with the possession of a part thereof to his brother respondent No. 3 Moti Lal, without the consent of the respondents No. 1 & 2 or their late father Net Ram. It was alleged that the tenanted shop had been partitioned and a part thereof (Mark ABCD in the site plan) had come in the exclusive possession of the respondent No. 3, Moti Lal, who has put his own lock thereupon and been running his independent business therein of watch merchant/repairs. Thus, their eviction was sought from the tenanted premises by the respondents No. 1 & 2 on the ground of subletting, etc.

3. It is pertinent to mention herein that the respondent No. 3 Moti Lal had also filed an appeal against the order of ARC dated 5.12.2011, being ARCT No. 04/2012, against the petitioner and the respondents No. 1 & 2, which also came to be dismissed vide the impugned order of ARCT dated 27.08.2012. However, the present petition under Article 227 has been preferred by the petitioner alone.

4. In his reply/written statement to the eviction petition, the petitioner denied the case of the landlords/respondents No. 1 & 2 about the tenanted premises being earlier part of property bearing 71/1, Bazar Yusaf Sarai, New Delhi. It was averred that the initial letting out was made by Sh.Chunni Lal, late grand-father of the respondents No. 1 & 2. The petitioner claimed that the tenanted shop was taken on rent around February, 1950 under oral tenancy, and thus, the petitioner disputed the case of the respondents No. 1 & 2 about the tenancy having been created through the rent note dated 6.12.1953, which according to him relates to distinct property bearing No. 71/1, Bazar Yusaf Sarai, New Delhi. Though the petitioner raised plea about the existence of relationship of landlord-tenant between the parties, however, in his written statement, he

conceded that he had been paying rent to the respondents No. 1 & 2 after the death of their father Net Ram and that, a part of the tenanted shop was in possession of respondent No. 3 Moti Lal. It was his case that the respondent No. 3 being his younger brother and having earlier worked with him as his representative, had turned dishonest and illegally occupied the said portion of the tenanted premises. It was also his plea that the provision of separate shutter was made as per the order of the Civil Court and was without his consent or permission. He averred that the sub-letting if any, being prior to 9.6.1952, no consent or permission of the landlord was required to be obtained and thus, the eviction petition under Section 14 (1) (b) of the Act was not maintainable. It was further his plea that a new tenancy had been created in his favour on account of enhancement of rent w.e.f. April, 1997 and it had the effect of washing away of the default if any, on the part of the petitioner, and thus, there was no cause of action accruing in favour of the landlords/respondents No. 1 & 2.

5. Respondent No. 3 Moti Lal also filed his written statement to the eviction petition and denied of he being a sub-tenant in part of the

tenanted shop. He alleged that the tenanted shop had two portions for the last many years, and a part of the shop had been in his exclusive possession for more than 30 years. He claimed to be a tenant in the said part in his own independent right, and that he had been paying rent @ Rs. 30/- per month.

6. The learned Rent Controller vide his order dated 5.12.2011 observed that this was a case of subletting the premises by the petitioner to the respondent No. 3 without consent in writing of landlord and thus, he passed the eviction order against the petitioner as also respondent No. 3 Moti Lal. The petitioner Ram Kumar Verma and the respondent No. 3 Moti Lal carried the matter by two separate appeals being ARCT Nos. 04/2012 & 05/2012, both of which came to be dismissed by common order of ARCT dated 27.08.2012. The same is under challenge in the instant petition by Ram Kumar Verma, the petitioner herein.

7. I have heard learned counsel for the petitioner as also learned senior counsel for the respondents and perused the entire material available on record.

8. Before advertent to the respective submissions of learned counsel for the parties, it is important to keep in mind that the power of this Court under Article 227 of the Constitution is not in the nature of appellate jurisdiction and so, the extent and scope of power with this Court is limited and restrictive in nature, and in the normal circumstance, it is exercised where there is want of jurisdiction, error of law or perverse findings by the trial Court. Such power is to be exercised to keep the subordinate court within limits of their jurisdiction and authority and it is not to act as an Appellate Court for correcting the decisions of the subordinate courts. This court would not substitute its opinion or interfere with the findings of the facts of the trial Court, if there was no infirmity or perversity. Thus, in the absence of there being any material illegality or perversity, the order of the court below is not to be faulted with or interfered with by this court in its supervisory power under Article 227. Reference in this regard can be made to the decisions of the Supreme Court in **Waryam Singh and Anr. Vs. Amarnath and Anr., AIR 1954 SC 215** and **Mohammed Yusuf Vs. Faij Mohammad and Ors., I (2009) CLT 153 (SC)**.

9. The petitioner claimed that firstly, there is no landlord-tenant relationship between him and the respondents as the initial letting out was made by Sh. Chunni Lal, late grandfather of the respondents. He claimed that the tenanted shop had been taken on rent around the time of February 1950 under oral tenancy. He disputed the case of the respondents that the tenancy was created through a rent note dated 06.12.1953. However, in the written statement of the petitioner, he conceded to the fact that he has been paying rent to the respondents after the death of the original landlord. Thus the relationship of landlord-tenant has been established.

10. It was the case of the respondents that the shop in question as shown in the site plan (Ex. PW 1/1) was let out as a whole to the petitioner. It is their case that the tenant had partitioned the suit shop by erecting the partition wall so as to carve out the separate space ABCD, with each portion being covered by a separate shutter on the front. It is also their case that the portion ABCD was in exclusive possession of respondent Moti Lal who was doing his business therein and was putting his lock. It was also the case of the respondents that the suit premises

earlier bearing No. 71/1 and was subsequently renumbered as 72/1 and same is shown in the site plan (Ex. PW 1/1). The petitioner in the written statement did not deny that the portion ABCD was in the exclusive use and occupation of his brother Moti Lal. He has, however, attributed this to Moti Lal having forcibly occupied the said portion and having retained the same under the stay order of the Civil Court. On the other hand, Moti Lal in his written statement took the stand that he had been inducted as a tenant in the said portion and was paying Rs.30/- per month directly to the landlord. He has claimed to be in possession of this portion in his independent right for over 30 years.

11. The controversy as regard to the number of the suit premises being 71/1 and that the tenancy of the suit premises was oral, has been unnecessarily raised by the petitioner. It has been noticed by ARC/ARCT, that the tenancy was created by rent note dated 06.12.1953 in favour of petitioner. The plea regarding the number of the suit premises has been dealt with by the ARC as also by the ARCT by referring to the evidence brought on record. The petitioner had stated regarding tenancy of two different shops viz-a-viz 71/1 and 72/1. The

petitioner had also deposed that his brother Moti Lal was working with him in shop No. 72/1 since the inception of tenancy. He had categorically deposed that the tenanted shop was bearing No. 72/1 from the very beginning and it never bore number 71/1 at any point of time. He also deposed that shop No. 71/1 is different shop and is presently occupied by one Brij Lal. The learned ARC recorded, and rightly so, that the failure to lead any evidence by the respondents to prove that the tenanted shop earlier bore No. 71/1 and was subsequently re-numbered as 72/1 will not make any difference, in view of the fact that petitioner in his written statement has admitted that he is tenant in the shop No. 72/1 and Rajiv Kumar Sharma and Sanjeev Sharma are the legal heirs of original landlord Chunni Lal. In view of this, the question whether the tenanted shop, which admittedly is 72/1, was earlier numbered 71/1, becomes irrelevant.

12. It is settled law that the burden of proof of sub-letting is on the landlord. But once the same is established, the burden shifts to the tenant. Reference can be made to the case of ***“Joginder Singh Sodhi vs. Amar Kaur, (2005) 1 SCC 31”***, wherein the Supreme Court has held as under:-

“It was observed that the burden of proof of sub-letting is on the landlord but once he establishes parting of possession by the tenant to a third party, the onus would shift on the tenant to explain his possession. If he is unable to discharge that onus, it is permissible for the court to raise an inference that such possession was for monetary consideration.”

13. It is also not mandatory for the landlord to prove that there is some monetary consideration being paid by the sub-tenant to the tenant. The Supreme Court in the case of **“Bharat Sales Ltd. vs. LIC of Indi, (1998) 3 SCC 1”**, explained this principle of law. The relevant portions of the judgment are as under:-

“4. Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession 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 into

possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.”

14. It is the admitted case of the parties that the tenanted shop was let out to the petitioner and a part thereof marked ABCD is in occupation and user of respondent Moti Lal and further that he is doing his

independent business therein to the exclusion of the petitioner, and is also putting his own lock thereon. The explanation of the petitioner in this regard is that Moti Lal was initially working with him as his authorized representative, but later on he turned dishonest and has retained the possession of the portion ABCD illegally under the stay order of the civil court. As is noted above, the case of respondent Moti Lal, on the other hand, is that he is in possession of the aforesaid portion of the tenanted premises to the exclusion of the petitioner for over 30 years and has been paying rent directly to the landlords. Though this plea of Moti Lal that he was paying rent to the respondents/landlords, could not be substantiated by him by way of any evidence on record, but it is the admitted case of the parties that he has been in exclusive possession of the aforesaid portion of the tenanted premises. It was nowhere the case of the petitioner that at any point of time he had parted with the possession of the portion ABCD to Moti Lal with the consent of the respondents/landlord. The plea, which is set up by the petitioner is that Moti Lal is in illegal possession of a portion of the suit premises and in any case, the possession being with him prior to the enactment of Delhi Rent Control Act in 1952, no consent of landlord was required. His

further plea was that in any case, the default on his part was condoned with the creation of new tenancy with the enhancement of rent w.e.f. April, 1997.

15. All these pleas, which are taken by the petitioner had been dealt with by the RC and ARCT. It was admitted by the petitioner that there was no written agreement for creation of the new tenancy as alleged by him. He deposed that the rent receipt of Rs.175/- dated 3.5.1998 is the only rent agreement to that effect. It has been rightly observed by ARCT that this was not the creation of new tenancy or condonation of the default on the part of the petitioner for parting with possession, but only enhancement of rent of the tenanted premises.

16. The original landlord Net Ram Sharma (since deceased) examined himself as PW 1. He had stated that at the time of inception of the tenancy there was only one shop and that the same was let out to respondent No.1. He further stated that Moti Lal was carrying on independent business in the portion marked ABCD, which had a separate shutter. This fact was also confirmed by Moti Lal during his cross-examination. He also conceded that prior to the partition, there was only

one shutter on the front and that no permission was obtained from respondents/landlords for creating separate portions for two shops. He had also stated that partition was done as an arrangement based on mutual consent between him and his brother, the petitioner. Both the courts below have analyzed the evidence led by the parties and I do not see any perversity in their appreciation of the evidence. From the evidence led, it is established that it was a mutual understanding that not only the partition of the shop was created, but the common shutter was removed and two portions with separate shutters were carved out. The portion ABCD came in the exclusive possession of Moti Lal and the rest continued to be with the petitioner. Once it was established that Moti Lal is in exclusive possession of a portion of the tenanted premises, the burden lied on the petitioner to prove that his occupation was with the consent of the respondents/landlords. The petitioner sought to justify that this was under the orders of the Civil Court. On the other hand, my attention has been drawn to the order dated 20.11.1995 of the Civil Court. From this it is evident that no such permission was given by the civil court to the petitioner or his brother Moti Lal to carve separate portions or have separate doors on the tenanted shop.

17. From the above, it would be seen that there was no privity of contract between the respondents/landlords and Moti Lal. It was the entire shop, as shown in Ex. PW 1/1, including portion ABCD, which was let out to the present petitioner and he had allowed his brother Moti Lal to come in the tenanted premises, may be initially for assisting him in the business, but later he created a separate portion ABCD and permitted him to be in exclusive possession thereof some time in or around 1997. There being no consent of the respondents/landlords for such purpose, the parting with the possession of a part of the tenanted premises was thus a mischief within the under provisions of Section 14 (1) (b) DRC Act.

18. In view of my above discussion, I do not see any infirmity or illegality in the impugned order of the ARCT. The petition is hereby dismissed.

M.L. MEHTA, J.

OCTOBER 17, 2012

mmn/pkv