

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

% *Date of Judgment: 22.05.2013*

+ CM(M) 61/2012
AMIR CHAND MANCHANDA

..... Petitioner

Through Mr. R.S. Sharma, Adv.
versus

TEJINDER PAL SINGH

..... Respondent

Through Mr. Sanjay Goswami, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The petitioner is aggrieved by the impugned order dated 12.10.2011 which has been passed by the Additional Rent Control Tribunal (ARCT) affirming the findings returned by the Additional Rent Controller (ARC) dated 09.04.2009 whereby the eviction petition filed by the respondent/landlord under Section 14 (1)(b) of the Delhi Rent Control Act, 1958 (DRCA) had been decreed in his favour. The ground under Section 14 (1)(j) had failed.

2 Record shows that the respondent has filed this eviction petition qua a shop bearing No. 1046/9 forming part of property bearing No. 1046, Gali No.9, Gobind Puri, Kalkaji, New Delhi. He is admittedly the owner/landlord of the said property. The premises had been tenanted out to Amir Chand Manchanda in his individual capacity. Ground of subletting had been averred in the eviction petition. It had been stated

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that the original tenant has sublet/parted with possession of the suit property in favour of 'Vishal Footwear' of whom the sole proprietor was his son Vishal. This was in the year 1997.

3 Written statement was filed. Needless to state that the petition was hotly contested. The respondent/landlord Tejinder Pal Singh had come into the witness box as PW-1. He had on oath reiterated the averments made in the petition. In para 4 of his affidavit, he has specified that the original tenant has parted with possession of the premises in favour of 'Vishal Footwear' which is running an independent business from there; photographs of the said shop had been exhibited as Ex.PW-1/10 substantiating these averments. Further submission being that Vishal was the sole proprietor of 'Vishal Footwear' and a bank account maintained by Vishal as proprietor of 'Vishal Footwear' in the Oriental Bank of Commerce, Sant Nagar, East of Kailash, New Delhi had also been filed on record to substantiate this argument. PW-1 was not cross-examined inspite of opportunity having been granted to him. Testimony of PW-1 thus remained un rebutted. PW-2 an official from the Oriental Bank of Commerce had proved the aforementioned account opening form.

4 RW-1 i.e. the tenant had also come into the witness box. His submission was that he was running 'Vishal Footwear' as his proprietor and Vishal is his son. Certain portions of his cross-examination are relevant. He has admitted that the bank account of 'Vishal Footwear' was opened in the name of his son Vishal as proprietor of 'Vishal Footwear'. He denied the suggestion that there is no subletting. It is this

cumulative evidence which has weighed in the mind of the trial Court to arrive at a finding that a case of sub-letting is made out. Not only the version of PW-1 (landlord) which has remained unrebutted but even the admissions made by the tenant in his cross-examination had persuaded the Court to arrive at the aforementioned findings. This was the fact finding returned by the Court below. Eviction petition had accordingly been decreed in favour of the landlord.

5 The RCT vide the impugned order had endorsed these fact findings. The Court had noted that it is not the case of the tenant that he is running 'Vishal Footwear' as its sole proprietor. His submission that he was the sole proprietor of 'Vishal Footwear' has been negated by Ex. PW-2/1.

6 A twofold argument has been addressed before this Court. The first submission is that there is no averment in the petition that the premises had been sublet by the original tenant in favour of the sub-tenant for any consideration; in the absence of this, there cannot be a valid sub-letting. The second submission is based on the premise that there is also no averment in the pleadings that the possession of the premises had been delivered to the sub-tenant and in the absence of which again a case of subletting cannot be made out. The arguments of the petitioner are wholly frivolous. Testimony of PW-1 has clearly specified that the premises had been sub-let to 'Vishal Footwear' of whom the sole proprietor was Vishal which position also stands admitted by RW-1 in his cross-examination. It is also not the case of the

tenant that 'Vishal Footwear' is not carrying on the business from the
aforenoted premises; his argument is that he is the proprietor of 'Vishal
Footwear' which submission has been rejected by the two courts below.

7 These are fact findings returned by the two fact finding forums
below. This Court is sitting in its powers of superintendence.
Interference is called for in the orders of the subordinate forum only if
there is a patent illegality or a manifest error apparent on the face of the
record which is clearly not so in the instant case. Evidence both oral and
documentary has been construed in the correct perspective. This Court is
also conscious of the fact that the right of second appeal has been
abrogated from the DRCA.

8 This Court has also been informed that the premises has since
been delivered to the respondent who has taken possession of the same
on 09.11.2011. This fact has been mentioned in the present petition
itself.

9 In this factual scenario the impugned order calls for no
interference.

10 Petition is without any merit. Dismissed.



INDERMEET KAUR, J.

MAY 22, 2013

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