

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

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C.M.(M) No.777/2014 and C.M.Nos.13754/2014 (exemption)
&13755/2014 (stay)

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25th August, 2014

M/S BAT BRO ENGINEERING & GENERAL MANUFACTURERS

.....Petitioner

Through: Mr. B.R.Sharma, Advocate.

VERSUS

SH. SATPAL VOHRA AND ANR.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

1. This is a petition filed under Article 227 of the Constitution of India impugning the judgment of the Rent Control Tribunal dated 11.7.2014 by which the Rent Control Tribunal has decreed the eviction petition filed by the respondent/landlord on the ground of subletting under Section 14(1)(b) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act') by setting aside the judgment of the Additional Rent Controller dismissing the eviction petition.

2. The tenanted premises comprises of two halls, three bath rooms and two stores are portions on the second floor of the H. No.1/25, Vohra House, Asaf Ali Raod, New Delhi(as shown in red colour in the site plan annexed with the eviction petition). The case of the respondent/landlord was that the suit/tenanted premises were sublet by the petitioner/tenant to Sh.Neeraj and Sh.K.S.Dagar who have opened their office in the tenanted premises in the name of M/s Brilliant Credits Inc. for the business of financing of motor cars as Direct Sales Associates for HDFC Bank Limited.

3. The petitioner/tenant denied the subletting. On a query put to the counsel for the petitioner who has argued the case before this Court, it is clarified on behalf of the petitioner that the case of the petitioner is that Sh.Neeraj and Sh.K.S.Dagar do not at all exist in the tenanted premises and it is not the case of the petitioner that these persons Sh.Neeraj and Sh.K.S.Dagar do exist in the tenanted premises, but there is no sub-letting because the physical control and possession of the tenanted premises continues to be with the petitioner.

4. In order to prove the case of subletting, the respondent/landlord examined a total of six witnesses. PW-1 was the petitioner no.2 in the eviction petition namely Rajinder Pal Vohra i.e the landlord. PW-2,

Sh.Vijender Kumar was the phone mechanic from Darya Ganj Telephone Exchange with respect to the status of the telephone no.23217471 in the name of the petitioner/tenant. PW-3, Sh. Arvind Kumar, was the Assistant Manager (Legal), HDFC Bank. PW-4 was one Sh.Ashley D'Souza, Manager (Personnel & Administration), Rediff.com India Ltd, PW-5 Sh.Anil Singh Bisht was a court process server, Nazarat Branch, Tis Hazari Courts and PW-6 was Sh.Sambhu Kumar Jha, Area Legal Manager, HDFC Bank Ltd.

5. At the outset, I must observe that there was a provision of Section 39 of the Delhi Rent Control Act pertaining to filing of second appeals on substantial questions of law, but, this provision was repealed by the Act 57 of 1988. Once there is no provision for filing of a second appeal, the petition under Article 227 of the Constitution of India cannot be filed as if the same is the second appeal. A petition under Article 227 of the Constitution of India therefore has to be examined in accordance with the legislative intent in repealing Section 39 of the Delhi Rent Control Act pertaining to second appeals i.e only in grave and extraordinary situations courts would exercise the extraordinary and discretionary powers with respect to a petition filed

under Article 227 of the Constitution of India which challenges the judgment of the first appellate court.

6. In order to appreciate the validity of the conclusions of the Rent Control Tribunal in the impugned judgment, the observations made qua each witness by the Additional Rent Controller as compared to the observations made by the Rent Control Tribunal will have to be seen side by side, and are accordingly referred to hereinafter. It is noted that so far as one witness PW-5, Anil Singh Bisht, Process Server is concerned, his testimony is not relied upon by the Rent Control Tribunal and which testimony is therefore not referred to.

7. Before I turn to how the testimonies of each of the five witnesses have been relied upon differently by the courts of the Additional Rent Controller and the Rent Control Tribunal, it is necessary at this stage to refer to a vital fact which will have supervening effect with respect to the issue of subletting and the evidences which have been led, and this issue is that the petitioner is guilty of concealment of facts by not filing various documents in his power of possession with respect to his carrying on business from the suit/tenanted premises i.e adverse inference has to be drawn on account of not filing the necessary documents by the petitioner. The notice under Order

XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) dated 05.8.2011 sent by the respondent/landlord to the petitioner has been exhibited as Ex.RW1/P2. The relevant observations in this regard made by the court of the Rent Control Tribunal read as under:-

“..... The respondent through the testimony of RW1 has admitted the receipt of the notice dated 05.8.2011 under Order 12 Rule 8 of the CPC i.e. Ex.RW1/P2 as received from the counsel of the appellants for production of the following documents:-

1. All original electricity and telephone bills installed in the tenanted premises bearing No.1/25, Vohra House, II Floor, Asaf Ali Road, New Delhi – 110 002 since the inception of tenancy and upto date,
2. All the papers, documents etc. concerning and showing the commencement and continuance of the business run in the name and style of M/s Bar Bro Engineering and General Manufacturers from the tenanted premises bearing No.1/25, Vohra House, II Floor, Asaf Ali Road, New Delhi – 110 002 since the inception of tenancy, and
3. All income tax returns/sales tax receipts/statement of affairs, etc. showing the business being run from the tenanted premises bearing No.1/25, Vohra House, II Floor, Asaf Ali Road, New Delhi – 110 002 since the inception of tenancy.

which were not produced by the respondent stating that the documents were very old and were not in possession of RW1.

Interalia, RW1 stated that the income tax returns filed by him since the institution of the tenancy were also not in his possession nor the statement of receipts nor electricity or telephone bills and that he was not maintaining any accounts of his firm and could not produce the same nor did he have any bank account in the name of M/s Bat Bro Engineering and General Manufacturers.”

In view of the fact that most of the vital evidence and which the petitioner was bound to file as they were documents and evidence in his special knowledge as per Section 106 of the Evidence Act, 1872 an adverse presumption has rightly been drawn against the petitioner by the Rent Control Tribunal that the petitioner has shifted the business from the suit/tenanted premises i.e the suit/tenanted premises were not in physical possession or control of the petitioner/tenant.

8. Let us now turn to the testimonies of the witnesses as dealt with differently by the courts below.

(I) PW-1

(i) By the Additional Rent Controller:-

“ PW-1 in the cross-examination admitted that the front portion of the second floor is with the petitioners and further admitted that the respondent is the tenant of the back portion on the second floor of the property.

PW-1, one of the petitioners in his deposition nowhere stated that Sh.Neeraj and Sh.K.S.Dagar are tenant of the respondent or the respondent is receiving any rent from them or they are paying any rent to the respondent. None of the documents as produced by the petitioners is signed or executed or authored by the respondent. None of the documents or evidence shows any kind of tenancy contract or creation of any tenancy by the respondent in favour of Neeraj and Dagar. The visiting card, Ex.PW1/G, although not proved in accordance with the law, however, it only find mention the telephone number of the respondent. The photographs of the sign board/hoarding alleged to have put by Sh.Neeraj and

Sh.K.S.Dagar in front of the property No.1/25, Vohra House, Asaf Ali Road, New Delhi as Ex.PW1/H is admittedly the property in possession of the petitioners as deposed in cross examination. Moreover in site plan filed by the petitioner nowhere mentioned about back portion of the 2nd floor. No complaint of any nature whatsoever or to the police or notice to the respondent was filed by the petitioners with respect as to why these sign board/hoarding are on their premises in possession. Moreover, no address on the board/hoarding is visible. Evidently, these sign board/hoarding are not on the tenanted premises. There is no photograph or board has been filed in the court record to show that the same has been on the tenant premises with the respondent.”

(ii) By the Rent Control Tribunal:

“A perusal of the testimonies of witnesses produced by the appellants indicates that the appellant No.2 i.e. the petitioner no.2 to the Eviction petition Shri Rajinder Pal Vohra through his affidavit Ex.P-1 and his testimony has categorically asserted that the tenanted premises have been sublet to Shri Neeraj and Shri K.S. Dagar, who were running the business of financing of motor cars under the name and style of M/s Brilliant Credits Inc. at the tenanted premises, which was situated on the back portion of the premises No. 1/25, Vohra House, Asaf Ali Road, New Delhi. The testimony of Sh.Rajinder Pal Vohra also brings forth that there was a sign board/hoarding put up by Sh.Neeraj and Sh.K.S.Dagar in the front side of the tenanted premises and the photographs of the same are Ex.PW1/4 (colly) with the negatives thereof being Ex.PW1/5. The said witness has categorically also stated that no written permission was accorded to the respondent nor sought by the respondent from the appellants before subletting the tenanted premises. Significantly, Sh.Rajinder Pal Vohra examined as AW1 has categorically stated that he had himself visited the tenanted premises occupied by Sh.Neeraj and Sh.K.S.Dagar, who informed that they were doing the finances business.”

9(i). A reading of the discussion and reasoning of the courts below shows that the Rent Control Tribunal has correctly relied upon the photographs of the sign board/hoarding put up by Sh.Neeraj and Sh.K.S.Dagar with the statement of the landlord, Sh. Rajinder Pal Vohra that he had personally visited the tenanted premises and found Sh.Neeraj and Sh.K.S.Dagar at the tenanted premises who stated that they were doing finance business. Further, in my opinion, the Additional Rent Controller was wrong in rejecting the visiting card Ex.PW1/G, and which even the counsel for the petitioner admits before this Court that the same contains the address of the tenanted premises. Since there was no objection raised to exhibiting this visiting card at the time the same was being produced in evidence, the Additional Rent Controller was not justified in observing that the same was not proved in accordance with law. Observations of the Additional Rent Controller are against the categorical ratio of the judgment of the Supreme Court in the case of ***R.V.E.Venkatachala Gounder Vs. Arulmigu Viswesaraswami & V.P.Temple & Anr. AIR 2003 SC 4548.***

(ii) Merely because the expression back portion is not as per the counsel for the petitioner found in the visiting card inasmuch as the tenanted premises is on the back side of the second floor, the same will not make any

difference once the visiting card shows the address of the tenanted premises being H. no.1/25, Vohra House, Asaf Ali Road, New Delhi along with reference to the second floor.

10. I may at this stage itself state that if Sh.Neeraj and Sh.K.S.Dagar were not occupying the tenanted premises but were very much found in the premises at H. no.1/25, Vohra House, Asaf Ali Road, New Delhi then nothing would have been easier for the petitioner/tenant then to summon these persons to show that they are not in the tenanted premises in the back portion of second floor but in some other portion of the property, especially in the facts of the present case as discussed below where the landlord has led enough evidence to show the existence of Sh.Neeraj and Sh.K.S.Dagar in the tenanted premises. At the cost of repetition, it is stated that it is not the case of the petitioner that Sh.Neeraj and Sh.K.S.Dagar are in the tenanted premises but it is the petitioner who retains physical possession and control of the tenanted premises, inasmuch as the case of the petitioner/tenant is that there is no business at all being conducted in the name of M/s Brilliant Credits Inc. at all in the tenanted premises. Therefore, in my opinion, the Rent Control Tribunal was justified in drawing a presumption against the petitioner on account of existence of the sign board/hoarding and its

photographs along with positive averment of the landlord that he found Sh.Neeraj and Sh.K.S.Dagar in the tenanted premises.

11. The second testimony is of PW-2, Sh.Vijender Kumar, phone mechanic of Darya Ganj Telephone Exchange. In this regard the relevant and the different observations of the Additional Rent Controller and the Rent Control Tribunal are as under:-

PW-2

(i) By the Additional Rent Controller:-

“ PW-2 Sh.Vijender Kumar from telephone exchange has only proved that the telephones are installed in the tenanted premises of the respondent in the name of the respondent.”

(ii) By the Rent Control Tribunal:

“ The testimony of Sh.Vijender Kumar, Phone Mechanic, Darya Ganj Telephone Exchange, New Delhi brings forth that there was one telephone bearing No.23217471 in the name of Bat Bro Engineering at the tenanted premises but that the telephone No.23217472 in the name of the respondent had been shifted to M/s Bar Bro, Shed No.7, Phase-I, Badli Industrial Area, Delhi.”

12. In my opinion, the Rent Control Tribunal was justified in relying upon the testimony of the PW-2, Sh.Vijender Kumar inasmuch as the telephone No.23217471 was in the name of the petitioner/tenant in the tenanted premises and this telephone number was found to be subsequently shifted to another premises of the petitioner at Shed No.7, Phase-I, Badli Industrial

Area, Delhi i.e at a premises other than the tenanted premises thus showing that the petitioner/tenant was not doing any business at the tenanted premises. This aspect has to be taken with the fact that it is not the case of the petitioner that there exists any other than the telephone number in the name of the petitioner at the tenanted premises. Accordingly, the testimony of PW-2, Sh. Vindender Kumar does establish that the petitioner had left the tenanted premises and left it completely to Sh. Neeraj and Sh. K.S.Dagar who are doing business of financing of vehicles in the name of M/s Brilliant Credits Inc.

13. The third witness whose evidence was led on behalf of the landlord as PW-3 was Sh. Arvind Kumar, Assistant Manager (Legal), HDFC Bank. In this regard, the courts of the Additional Rent Controller and the Rent Control Tribunal have given the following different conclusions:-

PW-3

(i) By the Additional Rent Controller:-

“ PW-3, Arvind Kumar from HDFC Bank exhibited one document i.e agreement between HDFC Bank and Brilliant Credits Inc. as Ex.PW3/A. In the said document no actual address of the tenanted premises is mentioned. The respondent is not a party or witness or executor of these documents. This witness has no personal knowledge regarding execution of EX.PW3/A. These documents have not been proved as per the law of evidence nor it prove the

case of the petitioners with regard to any kind of subletting or parting with the possession of the tenanted premises.”

(ii) By the Rent Control Tribunal:

“PW-3 examined by the petitioners was Shri Arvind Kumar, Assistant Manager (Legal), HDFC Bank whose testimony brought forth that he had brought the original agreement between HDFC Bank Limited and Brilliant Credits Inc. (copy of which is Ex.PW3/A on the record) and that he was an authorized representative of the HDFC Bank Limited and had brought the GPA on behalf of the HDFC Bank Limited authorizing him to represent the bank in the court. He further stated that he had no personal knowledge regarding the execution of the document Ex.PW3/A i.e the original agreement between HDFC Bank Limited and M/s Brilliant Credits Inc.”

14. The Additional Rent Controller has committed an illegality in discarding the agreement entered into between the HDFC Bank and the Brilliant Credits Inc., proved as Ex.PW3/A, inasmuch as nothing is shown to this Court that there was any objection to exhibiting of the document/agreement when the same was exhibited, and therefore, the Additional Rent Controller in view of the ratio in the case of ***R.V.E.Venkatachala Gounder (supra)*** was not justified in rejecting the agreement. Also, it may be noted that it is not necessary that only those persons who execute the documents can prove the documents, inasmuch as the Supreme Court has now in the judgment in the case of ***Gulzar Ali vs.***

State of HP, (1998) 2 SCC 192 has held that Section 47 of the Evidence Act, 1872 is not exhaustive of the manner and method of proof of documents and documents which are received from proper custody by their very nature can also be got proved by a witness even who has not executed the documents. The documents, therefore having come from correct custody of the HDFC Bank could not have been discarded by the Additional Rent Controller.

15. The next witness is PW-4, Sh.Ashley D'Souza, Manager (Personnel & Administration), Rediffmail.com India Ltd. and he deposed to the fact of the telephone No.23217471 being used for the e-mail ID bci.hdfc@rediffmail.com. This evidence clearly showed that the business of BCI i.e Brilliant Credits Inc. as agent of HDFC Bank was being run from the suit/tenanted premises via telephone No.23217471 (a telephone number is related to a domain name on the internet) and which telephone number was subsequently shifted to the new address of the petitioner at Badli Industrial Area. The Additional Rent Controller was not justified in rejecting the evidence of Sh.Ashley D'Souza by observing that an e-mail can also be got registered with them by anyone giving any particulars, because the Additional Rent Controller ought not to have ignored the fact of the co-

incidence of telephone number being of the petitioner and the domain name being of the business of Brilliant Credits Inc.

16. The Additional Rent Controller also unnecessarily read too much into 'back portion' of the second floor not being mentioned in a visiting card or an advertisement board or on the domain name address, inasmuch as it is not necessary to have a specific reference to the back portion of the second floor and it is sufficient if the address is mentioned of Brilliant Credits Inc. having its office at H. no.1/25, Vohra House, Asaf Ali Road, New Delhi and once that is so, onus had shifted on the petitioner in the facts of the present case, to show that the Brilliant Credits Inc. was running its business not from the tenanted premises but from some other portion of the premises at H.no. 1/25, Vohra House, Asaf Ali Road, New Delhi, and which onus the petitioner has failed to discharge.

17. The final witness who was examined by the respondent/landlord was Sh.Shambhu Kumar Jha, PW-6 who was the Area Legal Manager of HDFC Bank Ltd. and who filed various certified copies of the documents of the Bank and which were collectively exhibited as Ex.PW6/A. The Rent Control Tribunal in this regard has rightly referred to the fact that the partnership deed between Sh.Neeraj and Sh.K.S.Dagar was, no doubt, of a

photocopy but that was supplied to the Bank by Brilliant Credits Inc. and was duly certified by being compared with original and consequently the same was not a forged and fabricated document. The relevant observations made by the Rent Control Tribunal in this regard are as under:-

“The testimony of PW-6 Shri Sambhu Kumar Jha, Area Legal Manager, HDFC Bank Ltd. indicates that he had filed the certified copies of:-

1. letter of authority for acting as a Direct Agent Sales on behalf of the HDFC Bank,
2. deed of partnership executed between Shri K.S.Dagar and Shri Neeraj Nanda,
3. the Direct Sales Associate application from duly filled in by Shri Neeraj nanda and Shri K.S.Dagar, and
4. Direct Sales Associate Sourcing Agreement duly signed on behalf of Brilliant Credits Inc.,

Photocopies of which were collectively exhibited as Ex.PW6/A, the originals of the same are however stated to be lying at the Head Office situated in Mumbai.

On being cross-examined, the witness PW6 categorically denied that the partnership deed filed by him was forged and fabricated and stated that only the photocopy of the said partnership deed was supplied to the bank by the Brilliant Credits Inc., though the same was duly verified with the originals. He further denied that the said partnership deed has not been verified by the bank but admitted that there was no agreement executed between the respondent and the bank. He further denied however that the documents brought by him were forged and fabricated.” (underlining added)

18. In my opinion, therefore, the Rent Control Tribunal was fully justified in setting aside the findings and conclusions of the Additional Rent Controller in the first appeal filed under Section 38 of the Act.

19. Learned counsel for the petitioner very vehemently relied upon para 15 of the judgment of the Additional Rent Controller to argue that since respondent/landlord had failed to prove the sub-tenancy or that the petitioner had lost physical possession and control of the suit premises, consequently, the case of subletting should have been dismissed, however, it is noted that an eviction petition is to be decreed under Section 14(1)(b) of the Act not only on the ground of 'subletting' but also on the ground of 'parting with possession' as found in Section 14(1)(b) of the Act, and as already stated in the earlier part of this judgment, the case of the petitioner is not that he has left the premises and that Sh.Neeraj and Sh.K.S.Dagar are only using the tenanted premises which remains in the physical possession and control of the petitioner. The case of the petitioner on the contrary is that there is no one called Sh.Neeraj and Sh.K.S.Dagar carrying on any business in the tenanted premises as Brilliant Credits Inc. Once, therefore, sufficient evidence was led by the respondent/landlord to show existence of Sh.Neeraj and Sh.K.S.Dagar working as Brilliant Credits Inc. in the tenanted premises,

onus of proof shifted upon the petitioner/tenant to explain the presence and status of Sh.Neeraj and Sh.K.S.Dagar in the suit premises, but this onus petitioner/tenant failed to discharge as to how Sh.Neeraj and Sh.K.S.Dagar were only using the suit premises under the physical possession and control of the petitioner. Therefore, the observations in para 15 of the impugned judgment of the Additional Rent Controller with respect to petitioner retaining legal possession has no bearing and applicability in the facts of the present case and cannot help the petitioner.

20. In view of the above, the present is not a fit case for exercising of discretionary and extraordinary powers under Article 227 of the Constitution of India, and therefore the petition is dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

AUGUST 25, 2014
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