

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

+ **C.M.(M) No. 1305/2011**

% **12th November, 2014**

SMT. PRAKASH KAUR CHADHA & ORS. Petitioners
Through Mr.Arun Batta, Advocate.
versus

SMT. SUDESH MEHTA & ANR. Respondents
Through Mr.Anil Kher, Sr.Advocate with
Mr.Kunal Kher and Mr.Ankur
Gosain, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes.

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India is filed by the petitioners/landlords impugning the judgment of the Additional Rent Control Tribunal dated 10.8.2011 by which the Additional Rent Control Tribunal/first appellate court has set aside the judgment of the Additional Rent Controller/Original Court dated 12.8.2008, and dismissed the eviction petition filed by the present petitioners on the ground of subletting under Section 14(1)(b) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act').

2. The tenanted premises are one hall with latrine, bathroom and open space in the premises bearing no.74A, first floor, Rani Jhansi Road, New Delhi-55 as shown in red colour in the site plan annexed with the eviction petition. The suit/tenanted premises were admittedly let out to the respondent no.1 w.e.f 19.8.1977 at a monthly rent of Rs.1500/- per month.

3. The case of the petitioners/landlords was that respondent no.1 has illegally sublet the suit/tenanted premises to a company/respondent no.2/ M/s Metabro Pvt. Ltd., and therefore the respondents were liable to be evicted from the suit/tenanted premises.

4. In the written statement filed by the respondent no.1 on 31.1.2001, she specifically took up a case that she was not the tenant but the tenant was the company/respondent no.2 since May, 1988, inasmuch as rent was being paid by cheques of the respondent no.2/company to the petitioners/landlords. The petitioners in the replication denied that respondent no.2/company was a tenant and stated that the tenancy was of respondent no.1 but the rent was being paid by the respondent no.2/company for and on behalf of the respondent no.1.

5. The only issue before this Court is whether the respondent no.1 has illegally sublet the suit/tenanted premises to the respondent no.2/company.

6. Before me, the admitted position is, and it is also a position which appears from the record, that in the respondent no.2/company, the respondent no.1 has only 1250 shares, whereas 23000 shares are with the son of respondent no.1 and another 400 shares are with the wife of the son of respondent no.1 i.e the daughter-in-law of the respondent no.1. Therefore out of 24650 shares, 23400 shares of the company are not with the respondent no.1/tenant and thus respondent no.1 does not have controlling interest in the respondent no.2/company.

7. On the aspect that whether there is a relationship of landlord and tenant between the petitioners and the respondent no.1 and whether that the respondent no.2 herein did or did not become the tenant instead of the respondent no.1, the Additional Rent Controller/Original Court, in my opinion, has by giving a very thorough reasoning held that creation of a tenancy is a matter of contract and mere payment of rent cannot make a person a tenant. I would also like to add that as per the Indian Contract Act, 1872, consideration need not flow between the parties to the contract i.e for and on behalf of the party to a contract, consideration can be paid by a third person. Since I fully and completely agree with the reasoning given by the

Additional Rent Controller/Original Court in para 10 of the judgment dated

12.8.2008, I reproduce the same as under:-

“10. Petitioner has claimed that there is relationship of landlord and tenant between the petitioner and respondent no.1. On the other hand, the case of the respondents is that it is respondent no.2 and not the respondent no.1, which is the tenant of petitioner. In order to prove the relationship of landlord and tenant between petitioner and respondent no.1, the PW1 (attorney of petitioner and also LR of petitioner) has deposed that late Sh.Chunni Lal Chadha, the husband of the petitioner, was the original owner of the tenanted premises i.e. one hall measuring 1100 sq. feet (the entire first floor consisting of latrine, bathroom and open space) more specifically shown in the site plan Ex.PW1/2 and inducted respondent no.1 as tenant w.e.f 19.08.1977 on a monthly rent of Rs.1,500/- exclusive of water and electricity charges and the respondent no.1 executed a Rent Note dated 19.08.1977 which is Ex.PW1/3. He has further deposed that Sh.Chunni Lal Chadha expired on 08.05.1988 and the petitioner Smt. Parkash Kaur Chadha became the owner/landlady by virtue of Will dated 23.04.1984, executed by Chunni Lal Chadha. He has further deposed that petitioner wrote a letter dated 04.07.1988 Ex.PW1/4 to respondent no.1 informing her about the death of Sh.Chunni Lal Chadha and that she had become the owner/landlady of the tenanted premises by virtue of said Will and that the said letter was duly received by respondent no.1 and that she attorned the petitioner as the owner/landlady. Respondent no.1 appeared in the witness box as DW1 and admitted in her cross examination that the premises were let out to her in the year 1977 by Sh.Chunni Lal at the rate of Rs.1,500/- per month and that she had also executed Rent Note Ex.PW1/3. She has also admitted the receipt of letter Ex. PW1/4 and that she started paying rent to petitioner after receipt of the said letter. She has further deposed that she had been paying rent till November, 1997 to petitioner. Thus, it stands proved that there is relationship of landlord and tenant between the petitioner and respondent no.1. So far as, the respondent no.2 is concerned, though it is alleged by both the respondents that respondent no.2 is the tenant of petitioner, but nothing substantive is proved on record by them in support of their averment. The case of the respondents is that respondent no.2 is tenant since May, 1988. But no documentary evidence is led regarding creation of tenancy in favour of respondent no.2. No rent receipt in favour of respondent no.2. No rent receipt in favour of respondent no.2 is also proved or produced on record. It is submitted by respondent no.2 that no rent receipts were issued by the

petitioner after May, 1988. But nothing is pleaded or brought into evidence regarding steps taken by respondents against the petitioner for non-issuing of rent receipts. The only contention of respondents is that respondent no.2 is the actual tenant as petitioner has accepted the rent from respondent no.2 by way of cheques which were bearing the seal of respondent no.2 company. To prove this point they had examined RW2, RW3 and RW4 and RW3 deposed that the summoned cheques could not be brought by them as these were not available being old record of more than 10 years. RW4 i.e. Assistant Manager from Andhra Bank brought the certified copy of statement of bank account of respondent no.2 and deposed that the entries of Rs.1,500/- shown in the said statement, had been credited in the account of Smt.Parkash Kaur, i.e. the petitioner. But he said that he had not brought the cheques by which the said amount used to be credited to the account of the petitioner and also further said that he can not say who had signed those cheques or whether seal of the company i.e. respondent no.2 was affixed on it. Thus it is not proved that these cheques were bearing the seal of respondent no.2 and consequently that these cheques were given on behalf of respondent no.2. RW5 Sh.Brij Mohan Mehta had deposed that the rent was being paid from May, 1988 to November, 1997 by way of cheques by respondent no.2. But in his cross-examination he has said that he does not know if any letter is on record to the effect that respondent no.1 or respondent no.2 have ever written to the petitioner that the rent had been paid from the account of respondent no.2. However, even if it is presumed that the rent was paid by respondent no.2, even then respondent no.2 does not become tenant on the ground of acceptance of rent from it. It is held by Hon. High Court of Punjab & Haryana in **Mohinder Kumar Madan Vs. Madan Mohan Lal, 1972 RCR 112** that if the rent is paid by the brother of the tenant then the brother does not become the tenant. The Apex Court has also held on similar lines in **Ram Saran Vs. Piyare Lal and Anr., AIR 1996 SC 2361**. It is held in this case:-

“ By a unilateral action of the tenant of surrendering his rights of tenancy in favour of third party by delivering possession of the tenanted premises to the said third party, no new tenancy is created which may legally bind the landlord. By mere acceptance of rent for the tenanted premises tendered by the tenant in the name of the registered society, neither a new tenancy nor a valid sub-tenancy in favour of the said registered society has been created.”

In the instance case admittedly all the cheques were given by tenant i.e. respondent no.1 and even if these cheques were given from the account of the respondent no.2, no new tenancy or valid sub tenancy has been created in favour of respondent no.2 by virtue of abovesaid case-laws. So in the light of the above said it is held that respondents have failed to prove by any cogent evidence that the relationship of landlord and tenant exists between petitioner and respondent no.2.” (underlining added)

8. It is therefore clear that it was not the case of the respondent no.1 that she continued as a tenant, and that she was in control and possession of the premises, but on the contrary the respondent no.1 took up a case that she was not the tenant and that the company/respondent no.2 was the tenant. Effectively, therefore in my opinion, the respondent no.1 conceded the tenancy and the consequences of tenancy including the control and possession of the suit/tenanted premises with the respondent no.2 who was stated to be the tenant. Therefore, once the control and possession is with the alleged tenant/respondent no.2, the control and possession of the tenanted premises surely is not with the respondent no.1, and thus the respondent no.1 clearly is proved to have sublet or parted with possession of the suit/tenanted premises to the respondent no.2-company.

9. The Additional Rent Control Tribunal in the impugned judgment dated 10.8.2011 makes absolutely no reference to the aforesaid reasoning and conclusions given by the Additional Rent Controller/Original Court

which held that it is the respondent no.1 who continued to be the tenant and respondent no.2-company was not the tenant. Therefore, the *sequitur* is that once the conclusions of the Additional Rent Controller/Original Court are not disturbed that it was the respondent no.1 who continued as the tenant and the respondent no.2 did not become the tenant, and tenancy is being claimed of the respondent no.2, there does not remain even an iota of doubt that the respondent no.1 had sublet or parted with possession of the suit/tenanted premises to the respondent no.2/company.

10. The only aspect which now requires consideration is that if the respondent no.2/company is found to be in control and possession of the suit/tenanted premises, it being treated as a tenant by respondent no.1, even so can it be said that there would be no subletting because the company is of the son of the respondent no.1, and it is the son who along with his wife owns 23400 shares in the respondent no.2/company out of the total of 24650 shares.

11. Learned counsel for the respondents has relied upon the following judgments in support of his arguments that even if the controlling interest in the respondent no.2/company is not of the tenant/respondent no.1 but with the son of the respondent no.1, there is no sub-letting:-

- (i) ***Vishwa Nath & Anr. Vs. Chaman Lal Khanna & Anr. AIR 1975 Delhi 117,***
- (ii) ***Madras Bangalore Transport Co. (West) Vs. Inder Singh & Ors. (1986) 3 SCC 62,*** and
- (iii) ***Smt. Nirmal Kanta (D) by L.Rs. Vs. Ashok Kumar & Anr. AIR 2008 SC 1768.***

12. The judgment of the learned Single Judge of this Court in the case of ***Vishwa Nath (supra)*** had the facts that the tenancy was of a tenant who was carrying on the business in the name of his sole proprietorship concern Interads International Advertising Agency. The tenant running the sole proprietorship concern, incorporated a company Interads Advertising (P) Limited which carried on the earlier sole proprietor business of the tenant. The sole proprietor continued to be the exclusive owner of the company and had a controlling interest in the newly incorporated company. The issue in that case was, as to whether by mere incorporation of a company by the tenant can it be said that the tenant has sublet the tenanted premises to a company. A learned Single Judge of this Court held that there could not be held that subletting existed because the tenant/sole proprietor continued to have controlling interest in the new company. Para 22 of the judgment, in my opinion is relevant because it specifically notes that where a sole proprietorship business is converted into a business which is run by a

private limited company, and the controlling interest continues to remain with the sole proprietor, then there is no subletting. Para 22 of the judgment reads as under:-

“ 22. If an individual takes the premises on rent and then converts his sole proprietorship concern into a Private limited company in which he has the controlling interest he cannot be evicted from the premises. On the proved facts, this is the inevitable conclusion. The person who took the premises on rent remains in possession though he forms a company and ceases to be the sole proprietor. He does not cease to be in possession. He has not parted with the possession with any one. He has changed the form of his business. In *Interads Vishwa Nath* was the sole proprietor. In *Interads Private Limited* he has the controlling interest and his wife and his two sons are the other shareholders along with two other strangers. He was all in all in his proprietorship concern. Now also he is the chief executive, chairman and the managing director of the company. It is true that the company is a juristic person but in each case what we have to see is whether Possession has been parted with and whether there is an ouster of the tenant. If the company is a facade concealing the true facts it may be necessary for the Court to pierce the corporate veil.”

Therefore, in my opinion, the judgment in the case of *Vishwa Nath (supra)* has no application in the facts of the present case where the controlling interest is not with the tenant/respondent no.1 but is with her son.

13. The judgment of the Supreme Court in the case of *Madras Bangalore Transport Co. (supra)* is again not applicable because in the facts of the said case partnership firm was a tenant and the partners of the partnership firm floated a company and operated the company from the same tenanted place, and in such circumstances the Supreme Court held that though the firm

(Caravan Goods Carrier Pvt. Ltd.) was a separate legal entity, actually it was an *alter ego* of the partners of the tenant firm and the reflection of the partnership firm, and therefore the partnership firm and company were separate only in name but for all practical purposes they were one, and hence there was no subletting under Section 14(1)(b) of the Act. This judgment of the Supreme Court therefore also has no application to the facts of the present case where the respondent no.1/tenant does not have the controlling interest in the respondent no.2 company.

14. The other judgment which has been relied upon by the respondents/tenants i.e *Nirmala Kanta (supra)* and which pertains to the general principles of law of sub-letting, and the law in this regard is well settled that in the event of subletting, the sub-tenant must be found to be in control and possession of the suit/tenanted premises or that there must exist a sub-tenancy.

15. In the facts of the present case, I have already stated above that it is the specific case of the respondent no.1/tenant that she had ceased to be the tenant and tenancy was created of the respondent no.2-company, and hence subletting is found to have been clearly established because once there is found that the tenancy is not of the respondent no.2-company, but the

respondent no.2 is yet stated to be the tenant, the tenancy of the respondent no.2 company can only be an illegal sub-tenancy created by the respondent no.1.

16. Let us at this stage refer to those observations of the Additional Rent Controller/Original Court as per which the Additional Rent Controller/Original Court refers to the fact that the respondent no.1 took up a case that she had taken permission for creating tenancy in the name of the respondent no.2-company because under the Delhi Rent Control Act, 1958, tenancy is an illegal sub-tenancy only if it is created without obtaining the permission of the landlord. Therefore, once the respondent no.1 took up a specific case that permission had been taken for creating the sub-tenancy in the name of respondent no.2-company, clearly her case was that there was a sub-tenancy in favour of respondent no.2-company and the only aspect which remained was, whether the said permission was taken. The Additional Rent Controller/Original Court in this regard refers to the admission in the cross-examination of the respondent no.1/tenant in which the respondent no.1 stated that she had taken permission from the present petitioners/landlords, but no such permission was filed or proved by her on record. The relevant observations of the Additional Rent Controller/Original

Court in para 14 of the judgment dated 12.08.2008 in this regard read as under:-

“ 14. It is the case of the petitioner that no consent of petitioner in writing was obtained by respondent no.1 for subletting, assigning or parting with the possession of the tenanted premises in favour of respondent no.2. The PW1 in his evidence by way of affidavit has stated that respondent no.1 has sublet, assigned and otherwise parted with the possession of whole of the suit premises to a company namely M/S Metabro Pvt. Ltd. without consent of the landlady/petitioner in writing. But the respondent no.1, during her cross-examination said that she had taken the permission in writing from Parkash Kaur Chadha that M/s Metabro Pvt. Ltd. would operate from the premises in question. When she was asked by the petitioner's counsel to produce such permission in the court, she first said that the same is with her counsel and then said that she did not remember and then again said she had placed such permission on judicial file. When the file was handed over to her, she along with her counsel checked up the entire file but no such permission was found to be filed on record. The Court observed that she was shivering and was looking nervous and at her request adjournment was granted by my Ld. Predecessor. When RW-5 Brij Mohan Mehta (son of respondent no.1 and major share holder of respondent no.2) was cross-examined and asked if he could show from the record the written permission granted to respondent no.1 for subletting the premises to respondent no.2, he replied “let me talk to my mother since she has all the control on the respondent no.2 company and the suit premises.” Thus the respondents have remained unable to prove that written permission of petitioner was obtained by respondent no.1 for subletting, assigning or otherwise parting with the possession of tenanted premises in favour of respondent no.2.” (underlining added)

17. In view of the aforesaid observations, the following conclusions emerge:-

(i) Admittedly, the respondent no.1 was inducted as a tenant in the premises.

(ii) The respondent no.1 took up a case that it was not her but the respondent no.2-company which had become the tenant i.e the respondent no.1 in fact denied her own tenancy and averred that a tenancy in the name of respondent no.2-company existed, and the effect of which will be that unless and until the respondent no.2 is proved to be a tenant or is proved to be a legal sub-tenant, the case of the petitioners/landlords of subletting by the respondent no.1 to the respondent no.2 will stand proved/established.

(iii) In the present case, the respondents have failed to prove creation of any tenancy in favour of respondent no.2-company and the Additional Rent Controller/Original Court has rightly held that no tenancy was created in favour of respondent no.2-company and only the respondent no.1 continued as a tenant. Thus on this basis itself the case of sub-letting stood proved.

(iv) Controlling interest in the respondent no.2 company is not with the respondent no.1, and once the controlling interest of the respondent no.2-company is not with the tenant, controlling interest of the company which is a separate legal entity, clearly amounts to a case of subletting or parting with possession of the suit/tenant premises.

(v) The very fact that the respondent no.1 admitted in her cross-examination and took up a case that she has taken permission to create

tenancy in favour of the respondent no.2-company, and which aspect was however not proved by the respondents, the same makes it abundantly clear that there is an illegal sub-tenancy and parting with possession by the respondent no.1/tenant in favour of respondent no.2-company because there exists no permission for creation of sub-tenancy.

18. Unfortunately, the Additional Rent Control Tribunal/first appellate court in a very cursory manner has upset the findings of the Additional Rent Controller/Original Court without even bothering in the impugned judgment to refer to the detailed conclusions and reasoning of the Additional Rent Controller/Original Court. I have already reproduced the detailed reasoning and conclusions of the Additional Rent Controller/Original Court, and I do not find any illegality in that judgment which can in any manner be said to be validly upset by the reasoning and conclusions given by the Additional Rent Control Tribunal. Clearly therefore, findings of the Additional Rent Control Tribunal are totally perverse and grossly illegal. The gross illegality and perversity in the impugned judgment of the Additional Rent Control Tribunal has caused gross injustice to the petitioners, and therefore this Court is duty bound to exercise the powers under Article 227 of the Constitution of India to remedy the injustice caused to the petitioners by the

judgment of the Additional Rent Control Tribunal setting aside the judgment of the Additional Rent Controller/Original Court.

19. In view of the above, this petition is allowed. Impugned judgment of the Additional Rent Control Tribunal dated 10.8.2011 is set aside and the judgment of the Additional Rent Controller/Original Court dated 12.8.2008 is upheld, and consequently respondents are directed to be evicted from the suit/tenanted premises in terms of the operative para of the judgment of the Additional Rent Controller/Original Court dated 12.8.2008. Parties are left to bear their own costs.

VALMIKI J. MEHTA, J

**NOVEMBER 12, 2014
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