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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 31.03.2016

Judgment delivered on : 05.04.2016

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CM(M) 1300/2011 & C.M. No.1389/2016

PADAM CHAND VAISH

..... Petitioner

Through Mr. C. Hari Shankar, Sr. Adv. with
Mr. Padam Kant Saxena, Mr. Ravi
Garg, Mr. Jagdish, Mr. P.K. Singh and
Mr. Ashly Chairan, Advs.

versus

CHAMAN LAL BAJAJ & ANR

..... Respondents

Through Mr. Ravi Gupta, Sr. Adv. with Mr.
P.K. Rawal, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner who is landlord before this Court is aggrieved by the order passed by the Rent Control Tribunal (RCT) vide which the order passed by the Additional Rent Controller (ARC) dated 24.05.2008 had been reversed. The impugned judgment had held that the sub-tenant i.e. Chaman Lal Bajaj is a valid sub-tenant and his right was protected under the provisions of Section 18 of the Delhi Rent Control Act (hereinafter referred

to as the 'said Act'); the premises having been validly sub-let to the sub-tenant, the sub-tenant could not be evicted. The appeal of the sub-tenant was accordingly allowed.

2 Record shows that an eviction petition had been filed by the landlord (Padam Chand Vaish) seeking eviction of his tenant (Madan Gopal Har Gopal). The eviction petition was founded u/s 14 (1)(b) of the said Act. The submission of the landlord was that a sub-tenancy had been illegally created by the tenant which had entitled the landlord to seek an eviction order. This petition was decreed in favour of the landlord on 03.08.2002. The plea of lawful sub-tenancy sought to be raised by the tenant was rejected. The appeal filed by the tenant was dismissed by the Tribunal on 07.11.2003. This judgment was endorsed by the High Court in C.M. (M) No.1004/2003. Vide judgment dated 25.09.2004, the SLP (C) Civil No.23108/2004 was dismissed by the Apex Court on 22.11.2004.

3 On 14.11.2003, the landlord applied for the execution of the decree before the Executing Court. Objections were filed under Section 25 of the said Act. These were filed by the legal heir of the tenant as also by the sub-tenant.

4 The ARC vide a detailed order dated 24.05.2008 dismissed these

objections. The ARC returned a finding that requirement of notice under Section 17 (2) of the said Act not having been complied with; the sub-tenant was not entitled to the protective umbrella under Section 18 of the said Act. He was of the view that sub-tenancy was not lawful. Objections of the sub-tenant were accordingly dismissed.

5 An appeal was preferred before the RCT. The RCT (vide the impugned judgment) had allowed objections of the sub-tenant and set aside the order of the ARC.

6 Arguments have been addressed at length.

7 Learned senior counsel for the petitioner/landlord submits that the order passed by the ARC was legal; the law relating to the sub-tenancy had been correctly appreciated; since admittedly no notice had been given by the sub-tenant under the provisions of Section 17 (2) of the said Act and this provision being mandatory, it could not be said that the sub-tenant was entitled to the protection under Section 18 of the said Act. Learned senior counsel for the petitioner has placed reliance upon a judgment of a Bench of the Apex Court reported as (2001) 6 SCC 645 Kapil Bhargava Vs. Subhash Chand Aggarwal as also another judgment of a Bench of this Court reported as AIR 2000 Del 357 Subhash Chand Aggarwal Vs. Murli Manohar Lal.

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Submission being that a sub-tenancy can become valid only if the notice as postulated under Section 17 is served upon the landlord. In the absence of such notice which is a mandatory provision, a lawful sub-tenancy cannot be created and the so called sub-tenant cannot acquire a status which is specifically denied to him by the Statute in the absence of this mandate not having been complied with. Written submissions have also been filed. Submission being reiterated that under Section 17 of the said Act, in addition to the requirement of a written consent of the landlord, notice to the landlord by the sub-tenant in the requisite format is also required to be given and although in the instant case, the RCT had returned a finding that the consent of the landlord has been obtained yet even presuming this to be the correct factual position in the absence of the notice by the sub-tenant to the landlord, a valid sub-tenancy cannot be created. Submission being again reiterated that it is an admitted position that no notice had been given by the sub-tenant to the landlord and in fact this is not even the case of the sub-tenant. The twin requirements of Section 17 having not been fulfilled, the impugned judgment is clearly an illegality and is liable to be set aside.

8 Per contra, arguments have been refuted. Learned senior counsel for the respondent submits that the impugned judgment in no manner calls for

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any interference. The purpose and purport of enacting Sections 16 to 18 of the said Act was to give a protection to the sub-tenant and the intent of the legislation has been fully complied with as in this case apart from a letter dated 18.02.1980 (admitted document) sent by the landlord to the tenant (Madan Gopal Har Gopal) wherein the name of the sub-tenant specifically finds mention and the landlord having specifically granted permission to the sub-tenant (Manohar Lal Chaman Lal & Sons) not only continue to retain the premises but also to construct a 'dchatti', it does not now lie in the mouth of the landlord to state that he was not aware of this sub-tenancy. Learned senior counsel for the respondent further submits that apart from this letter addressed by the erstwhile owner (Mahaliram Lachman Dass) of the property to the tenant, a sale deed by virtue of which the landlord had become the owner of this property as also the specific clause (para 3 of the sale deed) wherein also the fact that the landlord was fully aware of this sub-tenancy in favour of Manohar Lal Chaman Lal & Sons finds mention is another admitted document and the RCT had correctly appreciated the factual matrix of the case to hold that the protective umbrella of the said Act was available to the sub-tenant. Learned senior counsel for the respondent has placed reliance upon the judgment of the Apex Court reported as (1986)

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2 SCC 237 M/s Girdhari Lal & Sons Vs. Balbir Nath Mathur and Others to support his proposition that the intent of the Legislature has to be gathered from the factual matrix of each case and the intent of the Legislature admittedly in incorporating Sections 17 & 18 of the said Act was to afford a protection to sub-tenants who have been inducted into possession with the consent of the landlord. Submission being that those sub-tenants who had obtained consent of the landlord should be entitled to such a protection and although normally the law envisages that an eviction order passed against the tenant would be binding against the sub-tenant as well which sub-tenancy had been knowingly created and the landlord being fully aware of this fact, such a sub-tenant cannot be evicted. Further submission being that the Apex Court in this judgment had in fact laid down the proposition that the Statute has to be interpreted keeping in view the object of the legislation and although ordinarily the plain language should be adopted but not so where it would lead to an anomaly and injustice. The impugned judgment calls for no interference.

9 Arguments have been heard. Record has been perused.

10 The factual matrix of the instant case is relevant. The two documents referred to by the learned senior counsel for the respondent are both admitted

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documents. The first is a letter dated 16.02.1980 addressed by the erstwhile owner (Mahaliram Lachman Dass) to the tenant namely Madan Gopal Har Gopal. It would be useful to extract the text of this letter. It reads herein as under:-

"Mahaliram Lachman Dass

Bardana Vyapari & Commission Agent

4280, Gali Bhairon Wali

Nai Sarak, Delhi-6

Dated 18.02.21980

To

M/s. Madan Gopal Har Gopal

4766 to 4770, Cloth Market,

Delhi.

Dear Sirs,

With reference to your letter dated 16.02.1980

As you wrote in you letter that you are willing to give the half portion of your main shop, next to M/s. Barkat Ram & Sons, to M/s. Manohar Lal Chaman Lal & Sons. S/o Ram Lal resident of A/20 Lal Quarter, Krishan Nagar, Delhi, on rent (not the half portion of building). We grant the permission to give the half portion of your main shop to M/s. Manohar Lal Chaman Lal & Sons on rent and also allow M/s. Manohar Lal Chiman Lal & Sons to construct Duchatti in their portion.



Yours faithfully,

-sd-

11 The erstwhile landlord by virtue of this letter was informed the tenant that he is giving permission to the tenant to give half portion of the main shop (suit property) to Manohar Lal Chaman Lal and Sons (sub-tenant) on rent and further to allow Manohar Lal Chaman Lal and Sons to construct a 'duchatti' in their portion. This permission given by the landlord to the tenant clearly envisages that the landlord had consented to the sub-tenancy which had been created by the tenant in favour of Manohar Lal Chaman Lal and Sons and the landlord had in fact given permission to the sub-tenant to even construct a 'duchatti' in that portion.

12 Another relevant document for the disposal of this petition would be the sale deed. The sale deed dated 13.02.1986 which is a registered document and by virtue of which the landlord (Padam Chand Vaish) had purchased this property from the erstwhile owner (Mahaliram Lachman Dass) is also mentioned. It would be useful to extract para 3 of the said sale deed which reads herein as under:-

"That the entire said property is in the tenancy of Messrs. Madan Gopal Har Gopal. The vendors and I on their duty constituted attorneys or agents have not given permission to sub-let, assign or otherwise part with possession of any portion or portions of the entire said property to any person or persons

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except half portion of shop No. 4770, Private No: 4770-B; to M/s. Manohar Lal Chiman Lal & Sons, son of Shri Ram Lal. As a matter of fact, to the best of their knowledge and belief, the vendors have not given or executed any General or Special Power of Attorney for that purpose in favour of any person. The vendors have also not been served till date with any notice Under Section 17 and/or 18 of the Delhi Rent Control Act by the tenant or by any of unauthorized sub-tenants occupying various portions of the said property."

13 This document (admitted) has specifically recorded that the new owner (present petitioner) have given a permission to sub-let the suit property (half portion of shop No. 4770, private number 4770-B to M/s Manohar Lal Chaman Lal and Sons of Shri Ram Lal). It further records that notice under Sections 17 & 18 of the said Act by the tenant or the sub-tenant has not been served qua this property.

14 This document thus clearly shows that the new owner i.e. the petitioner Padam Chand Vaish dated 13.02.1986 was fully known of the fact that the suit premises had been tenanted out by the original tenant (Madan Gopal Har Gopal) to M/s Manohar Lal Chaman Lal and Sons and the sub-tenancy was in existence when the petitioner purchased this property. This second document is also an admitted document.

15 A reading of the aforementioned two documents clearly shows that the landlord had full knowledge of the fact that the original tenant had sub-let these premises to M/s Manohar Lal Chaman Lal and Sons and it was the

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landlord himself who vide his letter dated 18.02.1980 granted permission to the tenant to create this sub-tenancy in favour of the sub-tenant with a further right to the sub-tenant to construct a 'dachatti'. This sale deed by virtue of which the petitioner became the owner of the suit property and stepped into the shoes of the erstwhile owner again re-recorded the fact that M/s Manohar Lal Chaman Lal and Sons was a sub-tenant of Madan Gopal Har Gopal. These documents clearly evidence that the petitioner/landlord was fully aware of the sub-tenancy having been created by Madan Gopal Har Gopal in favour of M/s Manohar Lal Chaman Lal and Sons and the erstwhile owner while granting this permission to the tenant had also given a right to construct a 'dachatti'. The petitioner who had stepped into the shoes of the erstwhile landlord and had no better right than the erstwhile owner was again made aware of this factum by para 3 of the sale deed which had reiterated the fact that the original tenant Madan Gopal Har Gopal had created a sub-tenancy in favour of the sub-tenant M/s Manohar Lal Chaman Lal and Sons. It thus nowhere now lies in the mouth of the landlord to say that he was not aware of this fact.

16 The submission of the learned senior counsel for the petitioner that the twin requirements of Section 17 (2) of the said Act have not been met with

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and even presuming that there was a consent given by the landlord to create the sub-tenancy but in the absence of a notice under Section 17 (2) by the sub-tenant to the landlord (which in this case is absent) is an argument only noted to be repelled.

17 The object of the enactment of this legislation i.e. Sections 16 to 18 of the said Act was with the object to protect the rights of sub-tenants. These safeguards were created primarily for a sub-tenant in order that he could get a protection under Section 18.

18 At this stage, it would be relevant to extract the provisions of the Statute. Sections 16 & 17 of the said Act read herein as under:-

"16. Restrictions on sub-letting. (1) Where at any time before the 9th day of June, 1952, a tenant has sub-let the whole or any part of the premises and the sub-tenant is, at the commencement of this Act, in occupation of such premises, then notwithstanding that the consent of the landlord was not obtained for such sub-letting, the premises shall be deemed to have been lawfully, sub-let.

(2) No premises which have been sub-let either in whole or in part on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord, shall be deemed to have been lawfully sub-let.

(3) After the commencement of this Act, no tenant shall, without the previous consent in writing of the landlord,-

(a) Sub-let the whole or any part of the premises held by him as a tenant; or

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(b) transfer or assign his rights in the tenancy or in any part thereof.

(4) No landlord shall claim or receive the payment of any sum as premium or puggree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole or any part of the premises held by the tenant.

17. Notice of creation and termination of sub-tenancy. --

(1) Whoever, after the commencement of this Act, any premises are sub-let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant or the sub-tenant to whom the premises are sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within one month of the date of such sub-letting and notify the termination of such sub-tenancy within one month of such termination.

(2) Where, before the commencement of this Act, any premises have been lawfully sub-let either in whole or in part by the tenant, the tenant or the sub-tenant to whom the premises have been sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within six months of the commencement of this Act, and notify the termination of such sub-tenancy within one month of such termination.

(3) Where in any case mentioned in sub-section (2), the landlord contests that the premises were not lawfully sub-let, and an application is made to the Controller in this behalf, either by the landlord or by the sub-tenant, within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of this notice by the tenant or the sub-tenant, as the case may be, the Controller shall decide the dispute."

19 What has been argued primarily before this Court is the provision of Section 17 (2). Admittedly Section 17 (2) speaks of a notice which has to be

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served by the sub-tenant to the landlord in a prescribed manner notifying him of the termination of the sub-tenancy. The whole purpose of the notice as envisaged under Section 17 is to give protection to the sub-tenant to save him from eviction; if such a notice has been served and along with this notice a written consent of the landlord has been obtained, such a sub-tenant will have an independent right as that of a tenant. The Apex Court in the judgment of M/s Gerhard Lal (supra) has enunciated the law clearly. The object of Sections 17 & 18 was to protect the sub-tenant from eviction where the landlord has obtained a decree of eviction against a principal tenant. In an action for eviction by the landlord against the principal tenant, the sub-tenant would normally have no defence of his own; he would go with the tenant. It was the awareness created arising out of such like problematic situations that the legislature has enacted Sections 17 & 18 of the said Act. Thus a sub-tenant who had been inducted into possession with the consent of the landlord would be entitled to the protective umbrella of Section 18. The legality of the possession of the sub-tenant was founded upon his establishing the written consent of the landlord. The Apex Court had gone on to state that there is no magical form in which a consent has to be given by a landlord; the essence of the matter being that the consent of sub-tenancy



must be obtained from the landlord. The purpose of giving a notice under Section 17 (2) by the sub-tenant to the landlord was only in continuation of the intent of the legislation which was to safeguard the right of the sub-tenant where the sub-tenant was able to establish and prove that the landlord had consented to his sub-tenancy. This notice as contemplated under Section 17 (2) of the said Act was to inform the landlord of the creation of this sub-tenancy and termination of the sub-tenancy within a month of this termination. The object of the notice as is clear from the language of Section 17 (2) was to tell the landlord that the sub-tenant was sitting in the premises in his own right.

20 The aforementioned two documents which is a letter dated 18.02.1980 written by the erstwhile landlord to the tenant granting permission to the tenant to create a sub-tenancy with a further right to construct a 'duchatti' which was followed by the subsequent paragraph 3 of the sale deed dated 13.02.1986 informed the present petitioner/new owner that this written permission had been granted by the erstwhile owner to create this sub-tenancy. It does not now behove the landlord to argue that this permission was based on a letter which was forged or in the absence of the notice under Section 17 (2), a valid sub-tenancy has not been created.

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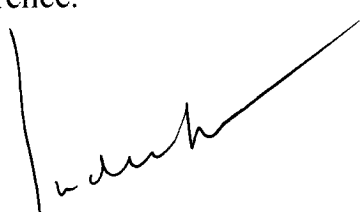
21 In fact, it is the registered sale deed (dated 13.02.1986) which has created ownership/landlord status in favour of the petitioner. This document cannot be relied upon in piecemeal. Para 3 of the document (at the cost of repetition) gives knowledge to the petitioner/owner/landlord that a sub-tenancy has already been created in favour of the sub-tenant and such a permission has been granted by the erstwhile owner. The petitioner stepped into the shoes of the erstwhile owner. In fact he has relied upon this very sale deed to establish his status as owner. A notice under Section 17 (2), at the cost of repetition, was in continuation of the written consent which has to be obtained by the sub-tenant from the landlord and which he has been able to sufficiently establish and prove by way of aforementioned two documents. Even presuming that there was no formal notice given to the sub-tenant, it is deemed to be an implicit notice and which factum is to be gathered from the conduct of the parties. The conduct of the parties being based on the aforementioned two documents which clearly envisage that the landlord was fully aware of the creation of the sub-tenancy in favour of his sub-tenant. He cannot now urge or argue that such a sub-tenant does not have an independent status. At the cost of repetition, the provisions of Sections 17 & 18 have been incorporated into the Statute book as a protective cover for the

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sub-tenants. It is further worthy to note that the present petitioner had purchased this property in 1986 i.e. six years after the creation of the sub-tenancy which had been created by the erstwhile owner vide his letter dated 18.02.1980. The present petitioner/new owner had reiterated this in the sale deed again six years later. The petitioner had full knowledge of this sub-tenancy.

22 The impugned judgment has appreciated the facts as also the law in the correct perspective. It does not call for any interference.

23 Petition is without any merit. Dismissed.


INDERMEET KAUR, J

APRIL 5th, 2016

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