



\$~A-34

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

+ RFA(OS) 84/2013 & C.M.No.37241/2023

M/S RAJENDRAS PROPERTIES (DELHI)

PVT. LTD. & ORS.

..... Appellants

Through: Mrs. Kajal Chandra with Mr. Rajesh Aggarwal and Mr. Divye Puri, Advocates.

versus

ASHOK BANSAL & ORS.

..... Respondents

Through: Mr. Vidit Gupta with Mr. Chetan Singh, Advocates.

%

Date of Decision: 08th August, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been filed challenging the decree of ejectment dated 23rd May 2013 and order dated 13th May 2013 passed by the learned Single Judge in C.S. (O.S.) No. 2576/2010, whereby the learned Single Judge has dismissed I.A. 8796/2011, application under Order VII Rule 11 Code of Civil Procedure, 1908 ("CPC") filed on behalf of appellant no.1 herein and has passed an ejectment decree as well as put the suit on trial for mesne profits.



2. Brief facts of the case as per the pleadings on record are that one M/s Ved Prakash Aggarwal & Sons (HUF) was the original landlord/owner of the property in question bearing no. M-116, Connaught Place also known as M-116A, Connaught Place, New Delhi – 110001. The said original owner/landlord had executed two different lease deeds dated 27th August, 1980 and 25th August, 1981 with respect to the property in favour of appellant no.1. The rent mentioned in the two respective lease deeds was Rs. 600/- and Rs. 250/- per month. The said lease deeds gave right to appellant no.1 to induct further sub-tenants, apart from other rights as mentioned in the aforesaid lease deeds.

3. Accordingly, appellant no.1 inducted various sub-tenants in the property after converting the same into 18 units/spaces. Further, a few of those sub-tenants gave possession of their respective spaces to other sub-tenants/occupiers.

4. Subsequently, vide letter dated 31st March, 2001 appellant no.1 was informed by the original owner/landlord, M/s Ved Prakash Aggarwal & Sons (HUF) that the rights with respect to the property in question stand created in favour of respondents No.1 to 5 herein. Appellant no.1 sent reply dated 23rd May, 2001 asking for details of the transfer documents and to execute fresh lease deed, if there were valid documents. As per the case of appellants, the said details were never furnished. Thus, appellant no.1 did not accept respondents No.1 to 5 to be the actual transferee or his landlord.

5. Afterwards, appellant no.1 filed various suits to deposit rent in court, in which respondents No. 1 to 5 herein were also made parties, in addition to the original owner/landlord, M/s Ved Prakash Aggarwal & Sons (HUF). Respondents No.1 to 5 herein were allowed to withdraw the rent in the said



suits filed on behalf of appellant no.1 herein.

6. Subsequently, a suit for possession and recovery of mesne profits, CS (OS) No. 2576/2010 was filed by respondents No.1 to 5 herein before this Court. In the said suit, respondents No.1 to 5 raised a plea that the lease of appellant no.1 was terminated vide notice dated 24th August, 2006. Since rent qua the said property in question fetched a rate higher than Rs. 3500/- per month (in view of arrangement of sub-tenants with the actual occupiers), it was averred that respondents No.1 to 5 herein were entitled for a decree of possession.

7. Appellant no.1 filed an application, being I.A. No. 8796/2011 in the said suit under Order VII Rule 11 CPC seeking rejection of plaint on the basis that there was no cause of action in favour of respondents herein, in as much as the suit for possession was filed by them without there being any document of title or transfer document of any nature. Vide order dated 13th May, 2013, the learned Single Judge dismissed the application under Order VII Rule 11 CPC. Thereafter, vide a further order dated 23rd May, 2013, learned Single Judge passed the decree of ejectment in favour of respondents No.1 to 5. The present appeal has been filed by appellants being aggrieved by the said order dated 13th May, 2013 and decree of ejectment dated 23rd May, 2013 passed by the learned Single Judge.

8. On behalf of appellants, it is contended that appellants are within their legal right to deny the title of respondents No. 1 to 5 / plaintiffs, in view of the fact that appellants were not put in possession of the suit properties by said respondents/plaintiffs and no title document is existing in their favour. Learned counsel for appellants relies upon decision of the Supreme Court in ***Subhash Chandra vs Mohd Sharit & Others, AIR 1990 SC 636*** wherein it



has been held that the doctrine of estoppel applies where the tenant has been let into possession by the plaintiff.

9. He further submits that appellants never accepted their tenancy from respondents and any deposit of rent before the Rent Controller was without prejudice to the rights and contentions of appellants. He also relies upon the decision of the Calcutta High Court in ***Sambhunath Mishra vs Khaitan Consultant Ltd., AIR 2005 Cal 281*** wherein it has been held that “*a tenant is estopped from disputing the title of his landlord at the time of induction but he is not precluded from disputing the derivative title of a third party who claims title on the basis of transfer from inducing landlord and even if, the tenant erroneously pays rent to such derivative title holder, once it is proved that according to the law no title has really been conveyed in favour of such third party.*”

10. It is the case on behalf of appellants that no document showing transfer of title from M/s Ved Prakash Aggarwal & Sons (HUF) to respondents No.1 to 5, was ever filed in court. Thus, in the absence of any such title document, respondents No.1 to 5 cannot be covered under Section 109 of the Transfer of Property Act, 1882, in as much as they are claiming a derivative title without any document in their favour. He states that the learned Single Judge did not consider that Section 109 of the Transfer of Property Act can only be attracted if there is a genuine transfer and there cannot be automatic attornment of tenancy by way of a sham or nominal sale deed. In support of his submission, learned counsel for the appellants relies upon the judgment of Madhya Pradesh High Court in ***Mirkhan Nathhekhan vs Kutub Ali Tayab Ali 1978 SCC OnLine MP 96*** wherein it has been held that transfer in the said case was a bogus and sham transaction whereby no



title passed.

11. At the outset learned counsel for the respondents states that during the pendency of the present appeal, respondent No.2 has unfortunately expired. He, however, states that there is no need to implead the legal heirs of deceased respondent No.2, as all the co-owners of the suit property are represented through respondents No.1 and 3 to 5.

12. He points out that during pendency of the present appeal, appellant no.1 who was a tenant and had been put up in possession of the suit property, has been struck off vide order dated 20th November, 2019 from the Register of Companies under Section 248 of The Companies Act, 2013 ("The Companies Act"). He states that though an appeal against the said striking off was filed many years ago with the National Company Law Tribunal (NCLT), yet no order *qua* revival of the same has been passed till date. Consequently, according to him the present appeal is liable to be dismissed on this ground alone.

13. Learned counsel for respondents further points out that the issue of 'title' raised by appellants is a '*boggy*' inasmuch as in an eviction proceeding between the landlord and the tenant, there is no need to prove the ownership of the suit property. He emphasises what has to be proved is that the plaintiff is the landlord of the suit property.

14. He contends that such a condition is satisfied in the instant case as the original landlord – M/s Ved Prakash Aggarwal & Sons (HUF) had attorned appellants' tenancy and declared that the respondents No.1 to 5 had become its landlords. He points out that the said fact had also been incorporated in the order dated 19th May, 2004 passed by the learned Senior Civil Judge, Delhi in the suit filed by appellant no.1 herein and on that basis, rent had



been paid to the respondents.

15. He submits that since twelve years have elapsed after the original landlords had attorned in favour of the respondents, the question of title of the suit property has become irrelevant.

16. In rejoinder, learned counsel for the appellants states that the striking off order is still pending challenge before the NCLT and, therefore, the Court should await the said judgment and the proceedings should be adjourned *sine die* till then.

17. Further, learned counsel for appellants has relied upon the judgment of the Supreme Court in ***Commissioner of Income Tax, Jaipur Vs M/s Gopal Shri Scrips Pvt. Ltd., Civil Appeal no. 2922/2019***. He also relied on the judgment of Madurai Bench of Madras High Court passed in “***M/s S.M.I.L.E. Micro Finance Ltd. Vs. M/s Fathi Softward (Pvt.) Ltd. and Others***” in ***C.R.P. (MD) No. 176 of 2023*** on 16th June, 2023, wherein it has been held as under:-

“11. The suit that has been instituted by the first respondent in O.S.No.7 of 2016 under Order VII Rule 1 of C.P.C. cannot be short-circuited, merely because the first respondent's/plaintiff's name has been struck off from the Register of Companies maintained by the Registrar of Companies.

12. The provisions of Sections 248 and 250 of the Companies Act, 2013, make it very clear that even if the name of the Company is struck off from the Register of Companies maintained by the Registrar of Companies, its registration shall be deemed to have been cancelled from such date. However, there is no embargo for the suit to be filed or to be continued for the purpose of realising the amounts due to the Company and for the payment or discharge of the liabilities or obligations of the Company. In other words, the Company, whose name has been struck off from the Register of Companies maintained by the Registrar of Companies, cannot carry on any business. However, the proceedings which have already been initiated for the



https://www.mhc.tn.gov.in/judis C.R.P.(MD)No.176 of 2023 purpose of realising the amount due to the Company can be proceeded. Similarly, the assets of the Company can be attached and brought to sale to discharge the liabilities or obligations of the Company. The Company can also enter into transactions for discharging the liabilities and obligations even after its name has been struck off from the Register of Companies maintained by the Registrar of Companies. Therefore, I am of the view that there is no case made out for striking off the plaint, merely because the name of the Company has been struck off from the Register of Companies maintained by the Registrar of Companies.”

18. Learned counsel for appellants has also relied upon judgment dated 11th November, 2022 passed in the case of **“The Future Management & Consultancy Pvt. Ltd. Vs. M/s Lancor Holdings Limited and Others”** in CS No. 630 of 2011 passed by the High Court of Judicature at Madras, wherein it has been held as under:

“29. With regard to the submissions of the learned counsel for the defendants 1 to 3 that the amount due to the company must have been https://www.mhc.tn.gov.in/judis C.S.No.630 of 2011 already determined and not one which has to be determined in legal proceedings, this Court is not inclined to subscribe to this view expressed by the learned counsel for the defendants 1 to 3 for the reason that even as per the meaning of the term “due” in the Black’s Law Dictionary, due includes lawful, remaining unpaid, reasonable, payable. If the plaintiff is able to prove his claim in the suit that claim is certainly an amount due to the plaintiff company, “Determined” and “determinable amount” due to the company can be enforced by the company.

30. In this view of the matter, this Court finds that the suit which was filed in 2011, commencement of examination of PW1 on 28.07.2017 on the basis of the board resolution on 29.05.2017, can be proceeded for recovery of the amount due to the company, despite the fact that the company had been struck off from the register of companies with effect from 26.09.2017. Accordingly, this issue is answered against the defendants 1 to 3.”



19. We have heard learned counsel for the parties and perused the record.

20. This Court finds that the original landlord, M/s Ved Prakash Aggarwal & Sons (HUF) who had put appellant no.1 in possession of the suit property, had attorned the appellants' tenancy and declared that respondents No.1 to 5 had become landlords for all practical purposes in respect of the rented accommodation, specifically detailed in the Lease Deed i.e. IInd floor and mazanine of the property no.M-116, (M-116A), Connaught Place, New Delhi-01. The attornment letter dated 31st March, 2021 is reproduced hereinbelow:-

"Dated:- 31.3.2001

Regd. AD/UPC/SPEEDPOST

To

*M/s Rajendra Properties (Delhi) (P) Ltd.
M-52A Connaught Circus
New Delhi-110001
Kind Attention Mr. Rajender Jaina*

Sir,

As per lease deed dt. 27.08.1980 and 25.08.1981 executed between you and us you are tenant in respect of a portion of second floor and mazanine in property no. M-116 (now known as M-116A) Connaught Place, New Delhi at the rate of Rs. 850/-per month (Rs. 600/-+Rs.250/-)

As You know that the said property is mutated in the Land and Development office, New Delhi, in the name of Ajay Aggarwal and Akhil Aggarwal both co-partner of Ved Prakash Aggarwal & Sons (HUF) and tenancy was created in your favour on behalf of owners namely Sh. Ajay Aggarwal and Akhil Aggarwal by the Karta of Ved Prakash Aggarwal & Sons (HUF) namely sh. Ved Prakash Aggarwal who is the father of the owners of the aforesaid property.

We have already conveyed you telephonically and personally to pay the rent of the aforesaid premises w.e.f. August, 97 at the aforesaid rate to 1. Sh. Ashok Bansal S/o Sh. Shree Kishan Bansal, 2. Smt. Murti Devi W/o Sh. Srikishan Bansal, 3. Smt. Nirmal Bansal W/o Sh. R.N. Bansal, 4. Smt. Babita Bansal W/o Sh. Ashok Bansal, 5. Smt. Manju Bansal W/o Sh. Rajesh Bansal



R/o A-26, Preet Vihar, Delhi as we owners of the building (Ajay Aggarwal & Akhil Aggarwal) have executed transferring title in their favour in respect of the portion in your tenancy as per the Lease Deed referred above.

Now once again it is requested kindly deal with Sh. Ashok Bansal in future in respect of the rented accommodation in your tenancy detailed in aforesaid Lease Deed and pay the arrears of the rent to him and he is authorized to receive the rent and issue the receipt to you. Therefore your tenancy has been attorned and this have became landlord for all particular purposes of you in respect of the aforesaid rented accommodation specifically detailed in the lease deed i.e. IInd floor and mazanine of the property no. M-116, (M-116A), Connaught Place, New Delhi-110001.

Please note: Copy kept

With regards,

Ved Prakash Aggarwal & Sons (HUF)”

21. Further, it is also to be noted that appellant no.1 had filed various suits in the court of Senior Civil Judge, Delhi being *Suit Nos. 664/2003, 72/2004, 73/2004, 454/2004, 455/2004, 456/2004 & 374/2004* to deposit rent in court. In the said suits, the original owner M/s Ved Prakash Aggarwal & Sons (HUF) along with respondents No.1 to 5 herein were arrayed as respondents. In the said suits, original owner M/s Ved Prakash Aggarwal & Sons (HUF) filed its written statement whereby it categorically pleaded and reiterated its submission of having attorned the tenancy in favour of respondents No.1 to 5 herein. In the said proceedings, respondents No.1 to 5 herein, who were respondents No.2 to 6, were permitted to withdraw the rent that had been deposited by appellant no.1 herein in court. One such order dated 19th May, 2004 passed by Senior Civil Judge, Delhi which is on record, is reproduced as here under:

“Present: Advocate for parties

Respondent no.1 in the W.S./Reply which is duly supported by



affidavit stated that he is transfer all his interest in favour of respondent nos. 2 to 6.

Let respondent nos. 2 to 6 accept the amount deposited in the Court without prejudice to his rights and claims against the petitioner.

Accordingly, petition filed by the petitioner stands disposed. Petitioner stands discharged to the extent of amount deposited in the Court.

Announced in open court.

19/5/2004

*Sd/-
DAYA PRAKASH
SENIOR CIVIL JUDGE, DELHI*

22. It is also to be noted that now despite passage of more than 22 years since the original owner attorned the tenancy in favour of respondents No.1 to 5 herein, neither M/s Ved Prakash Aggarwal & Sons (HUF) nor any of its constituents has demanded the rent from appellant no.1, except respondents No.1 to 5 herein. In this regard, learned Single Judge in the impugned order dated 13th May, 2013 has categorically held as follows:

“5. However, what is interesting in the present case is that the letter of M/s. Ved Prakash Aggarwal & Sons (HUF) to the defendant No. 1/applicant for attorning to the plaintiffs is of as far back as of 31st January, 2001. The counsel for the defendant No.1/applicant on enquiry states that neither M/s. Ved Prakash Aggarwal & Sons (HUF) nor anyone else except the plaintiffs have since then claimed to be the landlord of the premises or demanded rent from the defendant No. 1/applicant. It has come in pleadings and has not been disputed by the counsels for the defendants that M/s. Ved Prakash Aggarwal & Sons (HUF) was a party to the proceedings by the defendant No.1 for deposit of rent in the Court and in the said proceedings also disclaimed any rights to the property and confirmed the rights of the plaintiffs to rent from the defendant No. 1/applicant.

*6. More than twelve years have elapsed since the defendant No.1/applicant was first asked to so attorn the plaintiffs. This Court in **Milk Food Vs. Kiran Khanna** 51 (1993) DLT 141 has in*



a similar situation held that where twelve years have lapsed during the pendency of suit, notice thereof can be taken and irrespective of a deficiency in title even if any of the person claiming to be the landlord, it is not open to the tenant to deny the relationship.

7. *It is significant that in a suit between a landlord and tenant, as the present suit professes to be, the question of title is irrelevant and not to be adjudicated. Reliance in this regard can be placed on **Sri Ram Pasricha Vs. Jagannath** AIR 1976 SC 2335, **State of A.P. Vs. D. Raghukul Parshad** (2012) 8 SCC 584 and **Jai Bhawan Mittal Vs. Meena Join** MANU/DE/0587/2013”.*

23. It is pertinent to note here that Supreme Court in the case of **Ambica Prasad Vs. Mohd. Alam and Another, (2015) 13 SCC 13** has held that the definition of landlord includes not only the owner but also any person receiving rent, whether on his own account or for the benefit of any other person or as a trustee, guardian, or receiver for any other person. Thus, it has been held as follows:

“12. From the definition of “landlord”, it is clear that the definition is couched in a very wide language, according to which not only the owner but also any person receiving rent, whether on his own account or on behalf of or for the benefit of any other person or as a trustee, guardian, or receiver for any other person, is also the landlord. However, for the purpose of eviction of a tenant on the ground of personal need or reasonable requirement, one must show that he is the owner of the building.

.....

15. On the question of tenancy, both the trial court and the High Court have not considered the provision of Section 109 of the Transfer of Property Act.

“109. Rights of lessor's transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the



transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased.”

From a perusal of the aforesaid section, it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under Section 106 in terms of the old terms of lease by the transferor (sic transferee) landlord would be proper and so also the suit for ejectment.”

24. The aforesaid detailed discussion clearly manifests that in the order dated 19th May, 2004, the original landlord had affirmed before the learned Senior Civil Judge, Delhi that he had transferred all his interest in favour of the respondents No.1 to 5 and they were entitled to accept the amount deposited in the Court, without prejudice to their rights and claims.

25. Since more than twelve years have elapsed after appellant no.1 was asked to attorn to respondents No.1 to 5, learned Single Judge in the impugned order correctly relying upon the decision passed in ***Milk Food vs Kiran Khanna; 51 (1993) DLT 141*** held that irrespective of any deficiency



in title of the person claiming to be the landlord, it is not open to the tenant to deny the relationship. Consequently, this Court is in agreement with the finding of the learned Single Judge that the question of title is irrelevant and need not be adjudicated.

26. In view of the aforesaid, the plea raised on behalf of appellants questioning the entitlement and status of respondents No.1 to 5 qua the property in question is found without any merits.

27. Another important aspect to be noted by this Court is that name of appellant no.1 has been struck off from the Register of Companies under Section 248 of the Companies Act, 2013 vide order dated 20th November, 2019. Though the appeal on behalf of appellant no.1 is pending before the NCLT since the year 2021, yet despite lapse of reasonable time the name of appellant no.1 has not been restored on the Register of Companies till date. Therefore, appellant no.1/Company is not a legal entity as on date which can maintain the present proceedings. Appellant no.1 has ceased to operate as a company and thus, cannot maintain the present proceedings.

28. Reliance on Section 250 of the Companies Act, 2013 by appellants herein is totally misplaced. Section 250 of the Companies Act, 2013 reads as follows:

“250. Effect of company notified as dissolved.— Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.”

29. Reading of the aforesaid Section makes it evident that a company will stand dissolved upon removal of its name from the Register of Companies,



except for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company. The present proceedings pending before this Court are neither for the purpose of realizing the amount due to the company nor for the payment or discharge of the liabilities or obligations of the company. Thus, the judgments relied on behalf of appellants are clearly distinguishable and do not assist appellants in any manner. The judgments of Madras High Court pertain to cases wherein the dissolved company had filed suits for recovery of amounts due to the company, which is not the case in the present proceedings.

30. Similarly, the judgment in *Commissioner of Income Tax, Jaipur Vs M/s Gopal Shri Scripts Pvt. Ltd.*, Civil Appeal no. 2922/2019, does not come to the assistance of appellants in any manner. The said case deals with the claim of Income Tax Department wherein the Income Tax Department had filed an appeal before Rajasthan High Court against a company. The said appeal was dismissed by the High Court on the ground that the name of the company had been struck off from the Register of Companies. In view thereof, Supreme Court held that dismissal of appeal of Income Tax Department by High Court was not legally sustainable. However, the present case falls on a different footing. Claim by Income Tax authorities against a company falls within the purview of discharge of the liabilities and obligations of the company. Whereas, the present appeal does not deal with the issue of realization of any amount due to the appellant no. 1 company or discharge of the liabilities or obligations of appellant no. 1 company. Therefore, the aforesaid judgment would have no applicability to the facts and circumstances of the present case.



31. It is to be noted that the learned Single Judge had segregated the suit with respect to recovery of possession and recovery of mesne profits. Decree of ejectment was passed against appellants herein qua the relief of possession sought on behalf of respondents No. 1 to 5 herein. However, as regards the relief of mesne profits against appellants herein, by the impugned order dated 23rd May, 2013, learned Single Judge had framed an issue on the said aspect. It was further directed that evidence shall be led on the said issue regarding claim of mesne profits. The suit before the learned Single Judge is still pending on the aspect of recovery of mesne profits. Therefore, appellants would have the right to defend the said suit as the same relates to the liabilities or obligations that may be levied upon the appellants.

32. Since this Court has come to a finding that the present proceedings are not maintainable by appellant no.1 in view of the fact that the same already stands dissolved in view of its name having been removed from the Register of Companies, it is held that the other appellants also cannot maintain the present appeal. This is for the the reason that other appellants have been inducted into sub-tenancy by appellant no.1 or other sub-tenants of appellant no.1. Therefore, other appellants do not have any privity of contract with respondents No. 1 to 5 herein, as they were not inducted by the original owner from whom respondents No.1 to 5 derive their right over the property in question.

33. In view of the aforesaid detailed discussion, it is held that the present appeal is not maintainable by appellants. Further, on merits also, this Court finds no ground for interference in the impugned orders passed by the learned Single Judge.



34. Accordingly, the present appeal is dismissed both on merits and maintainability.

MANMOHAN, J

MINI PUSHKARNA, J

AUGUST 08, 2023
KA/au

Signature Not Verified

Digitally Signed By: ASWANT
SINGH RAWAT
Signing Date: 17-08-2023
18:21:09

RFA(OS) 84/2013

Page 16 of 16