

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.S.A. 12/2002 & C.M. No.16924/2011**

Decided on : May 27, 2015

M/S BHARAT INSULATION COMPANY Appellant
Through: Mr. H.L. Tiku, Senior Advocate with
Ms. Yashmeet Kaur, Advocate.

versus

DR.SURAJ PARKASH & ORS.¹ Respondents

Through: Mr. Gaurav Sarin, Ms.Charul Sarin,
Ms. Veera Angrish & Mr. Ajitesh K. Kir,
Advocates.

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal (rent) filed by the appellant against the judgment dated 06.02.2002 passed by the Additional Rent Control Tribunal in RCA No.883/1996 titled M/s Bharat Insulation Company Thane (State of Maharashtra) & Ors. vs. Dr.Suraj Prakash and Ors by virtue of which the learned Addl. Rent Control Tribunal ('ARCT' for short) has upheld the judgment of eviction dated 01.10.1996, passed

¹ Vide Order dated 30.04.2009 Ms. Shahnaz Parveen has been substituted as Respondent No.1, but no amended memo of parties is on record.

against the appellant by the Addl. Rent Controller on the ground of subletting under Section 14 (1) (b) of the Delhi Rent Control Act.

2. Before dealing with the submissions made by the learned senior counsel for the appellant, it may be pertinent here to give brief admitted facts.

3. Appellant No.1- M/s.Bharat Insulation Company Thane is a firm of which Sh.Dulera Ratilal Mehta, Sh.Vinod Dulera Mehta, Sh.Mahendra Ratilal Mehta and Sh.Hasmukh Ratilal Mehta were the partners. Though they become partners of the firm on different dates but it was before taking the premises on rent. The tenanted premises consisted of a hall, a side room, rear terrace and front open space with separate toilet and WC on the ground floor of the property No.4653/201, Darya Ganj, Ansari Road, Delhi. The site plan of the tenanted premises was filed along with the eviction petition and the same was exhibited as AW1/36. The purpose of letting was non residential and the rent was Rs.925 per month.

4. The case set up by the respondent in the eviction petition was that the premises in question was let out to M/s.Bharat Insulation Company Thane (State of Maharashtra), a partnership firm, which consisted of four partners. It was alleged that the partnership firm, after having inducted

the appellant No.6, M/s. Covered Wires (P) Limited, a company incorporated under Companies Act and having its registered office at Bombay as a partner had sublet or parted possession of the tenant premises in favour of the said appellant No.6. Thus the appellants were liable to eviction. It was pleaded that this fact was learnt by the respondent/landlord in October, 1983 when the rent was remitted by cheque for and on behalf of M/s. Bharat Insulation Company by M/s. Covered Wires (P) Ltd. (the company). On account of dissolution of the appellant no.1 on 31.5.1983, without the prior consent of the landlord later on the appellant No.6 was given the exclusive right to occupy the premises which tantamounted to sub-letting under section 14 (1) (b).

5. It was admitted in the written statement that the appellant Nos.2 to 6 were the partners of the appellant No.1 and the appellant No.1 was dissolved on 31.5.1983 whereupon its assets and liabilities were taken over by the appellant No.6. It was stated that appellant Nos.2 to 5 were the partners of appellant No.1 and they were also the Directors of the appellant No.6 and thus having controlling interest in the affairs of the appellant No.6/Company and, therefore, there was no question of

subletting, assigning or parting with possession and consequently no order for ejectment could be passed against the appellant.

6. The respondent herein filed its replication and contested the aforesaid stand.

7. The learned Additional Rent Controller recorded the evidence of the parties. The appellant examined three witnesses namely RW-1/Hari Sachdev, an official from the Sales Tax department, RW-2/Narinder Pal, resident/representative of appellant No.1 and RW-3/D.R. Mehta who is one of the partners of the dissolved firm. So far as the respondent is concerned, he himself appeared as the sole witness on his behalf being AW-1.

8. The issue before the trial court was very short one, that is, whether the transfer of tenancy in favour of appellant No.6 by appellant No.1 on its dissolution constituted sub-letting under the provisions of Section 14 (1) (b) of the DRC Act. The learned ARC after referring to various case laws decided the question of subletting in favour of the respondent holding that so far as appellant No.6 is concerned, it was a distinct legal entity and, therefore, it was deemed that respondent Nos.2 to 5, who were the original partners of appellant No.1 have sublet, assigned and parted

with possession of the tenanted premises to a different legal entity. So far as the plea of the appellant No.6 being a partner in the appellant No.1 was concerned, it was observed that the appellant No.6 was not a partner of appellant No.1 at the time of creation of tenancy on 20.2.1971 and, therefore, it could not have taken the tenancy rights on account of appellant No.1 having been dissolved.

9. As regards some of the individual partners having controlling interest in the appellant No.6 is concerned, it was held by the learned ARC that there was no evidence produced by the appellant except one document in support of the aforesaid contention and, therefore, it could not be said that appellant Nos.2 to 5 were either having controlling interest in appellant No.6 at the time of its incorporation..

10. Feeling aggrieved, the appellant preferred an appeal before the learned ARCT, which was dismissed. The ARCT concurred with the reasoning given by the ARC with respect to the appellant's contention of having controlling interest in appellant No.6. The appellant had filed an application under Order 41 Rule 27 CPC before ARCT for producing by way of additional evidence a photocopy of an alleged statement of M/s Covered Wires (P) Ltd. submitted to the Registrar of Companies,

Maharashtra, Bombay dated 17.2.1984 but the same was rejected by ARCT while observing that the document did not suggest of the vesting of control in either of erstwhile partners and therefore, cannot be allowed to be brought on record under Order 41 Rule 27 CPC.

11. The aforesaid order dated 6.2.2002 of the ARCT is being assailed in the present appeal. Vide order dated 4.4.2002 of this court, the operation of the eviction order has been stayed.

12. The learned senior counsel for the appellant has vehemently contested that the present appeal raises substantial questions of law which are as under:

(a) Whether induction of a company incorporated under the companies act as a partner to the partnership firm by the existing partners can be said to tantamount to subletting, assigning or parting with possession when the company is owned, controlled and managed by some partners and

(b) Whether the continuation of business by one of the partners of the partnership firm, upon its dissolution will tantamount to subletting, assigning or parting with possession of the suit property.

13. The learned senior counsel for the appellant has alleged that the learned ARC has grossly erred by holding that as there was no evidence on record to show that the appellant Nos.2 to 5 had a major control over the company, appellant No.6 during 1.6.1983 to 27.12.1984, the possibility does exist that they may lose control over the company in future as well. It is further alleged that it is well settled that a partnership firm is only a compendious way of describing the partners of the firm and so far as the partnership firm is concerned, it has no legal sanctity and it acts for and on behalf of the partners and, therefore, the partners in their individual capacity become tenants of the rented premises. In view of the aforesaid, it is stated that the ARC erred in appreciation of facts.

14. The learned senior counsel for the appellant in support of his contention has relied upon the following judgments:

- i) Murli Dhar v. Chuni Lal & Ors; 1970 RCJ 922;
- ii) Nand Kishore Mangilal Gajabi and Ors.v. Keshav Dadaji Jadhav & Ors.; 1980 (1) RCJ 90.
- iii) Kanahiya Lal Balkishan Dass v. Labhu Ram; AIR 1971 Delhi 219.

15. The second submission of the learned counsel for the appellant is that the dissolution of a partnership does not by itself bring to an end to

the tenancy of partners. The fact that the appellant No.1 was dissolved in 1983, did not dissolve the tenancy and it continued to exist in the shape of assignment in favour of appellant No.6.

16. It is contended by the learned senior counsel for the appellant that in case of subletting, there must be existence of animus domini and corpus possessionis meaning thereby that the person who has dominion over the property must have the intention coupled with the possession of the premises in question. Since, in the instant case, the limited company is only an alter ego of the partners, it could not be said that there was any subletting. In support of the aforesaid contention, the learned senior counsel relied upon Madras Bangalore Transport Co.v.Inder Singh; 1986 (3) SCC 62; Vishwa Nath v.Chaman Lal; AIR 1975 Delhi 117.

17. Before dealing with the submission made by the learned senior counsel for the appellant and analyzing its application to the facts of the case, it may be pertinent here to analyze the judgments which have been relied upon by the learned senior counsel for the appellant.

18. In Murli Dhar v. Chuni Lal & Ors; 1970 RCJ 922, the partnership firm was the tenant which consisted of three partners. On closure of the business of the firm the premises were used by a new firm of which

admittedly the partners were the partner of the earlier firm. It was held in the aforesaid case that firm name was only a compendious name for describing the partners. Therefore, no case of sub-letting was made out. It was further observed that the firm is not a legal entity. But this judgment would not be applicable to the facts of the present case because in the instant case, the new entity is not a partnership firm but a private limited company which is a legal entity in the eyes of law therefore this judgment is not applicable.

19. In Nand Kishore Mangilal Gajabi and Ors.v. Keshav Dadaji Jadhav & Ors.; 1980(1) RCJ 90, it has been held where a partnership consisted of three partners and the firm is dissolved, but one of the partners continued to be in possession of the shop in question and he got the right to use the suit premises on account of such a dissolution or severance of status, this would not tantamount to subletting and accordingly the judgment of the High Court was set aside.

20. The aforementioned judgment is also not applicable to the facts of the present case because the new person in occupation of the premises was a partner of firm which was the tenant. Therefore, this judgment is also not applicable.

21. In *Vishwa Nath v. Chaman Lal*; AIR 1975 Delhi 117, a single Judge of this court negatived the allegation of subletting, assignment or parting with possession on the ground that the Chief Executive and the Managing Director of the newly incorporated was controlled by the proprietor who was let out the premises in question, meaning thereby that in a case where an individual is a tenant running a proprietary business converts his proprietary business into a private limited company and does not divest himself of the possession, but on the contrary, has the complete control over the company so incorporated, then it will not tantamount to subletting.

22. This judgment is also not applicable to the facts of the case because in the instant case the firm was a tenant which consisted of four partners at the time of inception. The company which was found to be in possession was incorporated after the creation of the tenancy. Moreover, none of the partners of the tenanted firm were the promoter of the newly inducted company. Further, the partners became stakeholders in the company much later. Also, no evidence was produced before the trial court to show that controlling partners of the new firm were holding the majority interest of the company.

23. In *Lalita Gupta v. Modern Trading Company*; 133 (2006) DLT 55, the learned single Judge of the High Court has held that in order to prove the allegations of Section 14(1) (b) i.e. subletting, existence of animus domini and corpus possessionis must be proved, In the said case, the tenancy was originally created in favour of respondent No.1 a partnership firm of which respondent Nos.2 to 5 were the partners. Respondent No.6 was the family concerned of respondent Nos.2 to 5 which was permitted to run the business from the said premises. It was not disputed that the limited company is an alter ego of the partners. Therefore, the court held that there was no case for subletting made out against the respondent. On the basis of the aforesaid legal position, it is urged by the learned senior counsel for the appellant that since in the instant case the partnership firm/appellant No.1 was the tenant and the appellant Nos. 2 to 5 were the partners, they were also to be considered as tenants but the appellant No.6 was inducted in due course of time as a partner and in 1983 when the dissolution had taken place, the assets in the form of tenancy premises had gone to appellant No.6.

24. It is contended that this would not be meeting the test laid down by the Supreme Court in *Madras Bangalore Transport Company (West) vs.*

Inder Singh & Ors.; (1986) 3 SCC 62 inasmuch as appellant No.6 cannot be termed to be a stranger and moreover appellant No.6 has paid rent to the respondent which has been accepted by them. Therefore, a tenancy is created.

25. Mr.Gaurav Sarin, the learned counsel for the respondent, has contested the submissions made by Mr.H.L.Tiku, Senior Advocate. It has been contended by him that though the appeal has remained pending for almost a decade before this court, however, no substantial question of law is involved in the matter which is the prerequisite for admission of the matter under Section 39 of the (since repealed) Delhi Rent Control Act.

26. It has been contended by him that on perusal of the impugned order, it is *prima facie* evident that there is no jurisdictional error, impropriety or illegality or perversity in the concurrent findings returned by the two courts below holding that the appellant is guilty of subletting the premises under Section 14 (1) (b) of the Delhi Rent Control Act.

27. In order to support his submission, the learned counsel Mr.Sarin has referred to these broad submissions.

28. Firstly, it has been contended by the learned counsel for the respondent that the original tenant of the respondent was Bharat

Insulation which was a partnership firm consisting of five people. However, the original tenant ceased to exist on dissolution of the said partnership firm on 31.5.1983. It is stated that admittedly the original partners have parted with the possession of the property and created tenancy in favour of a stranger i.e. M/s Covered Wires (P) Limited which was inducted as a partner and is in occupation of the premises. Thus, it tantamounted to subletting of the premises in favour of M/s Covered Wires (P) Limited.

29. It has been averred by the learned counsel for the respondent that the contention of the appellant that the erstwhile partners of M/s Bharat Insulation Company are the Directors in M/s Covered Wires (P) Limited and their shareholding in the company is approximately 53%, therefore, they have sufficient controlling interest in the transferee company and thus continue to be in possession of the tenanted premises does not hold good for two reasons

- i) No evidence has been produced by the erstwhile partners before the trial court with regard to their percentage of holding in the transferee company namely M/s Covered Wires (P) Limited.
- ii) Further so far as the transferee company M/s Covered Wires (P) Limited is concerned, it is a company and thus a juristic person in its own

independent right and could not be considered to be a partner.

30. It is contended that as on 01.06.1983 when appellant No.6 took possession of the suit premises, no evidence was in existence with regard to the shareholding of the formers partners of the dissolved firm in appellant No.6.

31. The second submission made by Mr.Sarin is that so far as M/s Covered Wires (P) Limited is concerned, it is a distinct legal entity and has been doing business in the suit premises in its individual capacity with effect from 01.06.1983 when it was given the possession of the suit premises. It is stated that the factum of the aforesaid would not legalize the possession with regard to the suit premises. It has been further stated that this tantamounted to subletting of the premises in contravention of Section 14(1)(b) of the Delhi Rent Control Act.

32. It has also been contended that merely because this transferee company continued to deposit rent in terms of the orders of the High Court or paid for that matter to the respondent herein, does not make it a tenant because this rent was paid by them unilaterally without there being

any acceptance of the same by the respondent with a view to accept him as a tenant.

33. The third submission made by Mr.Sarin is that although there are judicial precedents which lay down that if the tenancy is in the name of the partnership and subsequent thereto, the partnership firm is dissolved then the tenanted premises if they are allotted to any of the partners as his share in the assets of the partnership firm, such a partner who has joined the partnership firm initially at the time of inception of the tenancy would become the tenant. But in case such a partnership to whose share the assets fall on account of the dissolution has joined that partnership firm subsequent to the inception of the tenancy then it is only a camouflage to overcome the question of subletting and in such a contingency it will tantamount to violating Section 14(1)(b). It has been contended that precisely this is what has happened in the instant case where a party namely M/s Covered Wires (P) Limited came into existence of 01.10.1972 i.e. after the inception of tenancy which took place on 20.02.1971 and was inducted as a tenant after the inception of tenancy by the appellant No.1.

34. It is contended that as a matter of fact the respondent learnt about M/s Covered Wires (P) Limited being inducted as a partner only in

October, 1983 after the dissolution of the original firm M/s Bharat Insulation Company. On the basis of the aforesaid, it has been contended that an iron cast case for subletting is made out against the appellant and there are concurrent findings returned by the two courts below in this regard.

35. The learned counsel for the respondent in support of his submissions has relied upon the following judgments:

36. In Ram Saran v. Pyare Lal and Anr; (1996) 11 SCC 728, the Hon'ble Apex Court has held as under:

24.

If upon accepting the surrender of tenancy of the said tenant, occupation of a new tenant is acknowledged by the landlord by accepting payment of rent from the new tenant, then by such payment and acceptance of rent between the tenant and landlord, a new tenancy may be created. By a unilateral action of the tenant of surrendering his right of tenancy in favour of a 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 or a valid sub-tenancy in favour of the said registered society has been created.”

25.

Consequently, landlord will not be estopped from claiming eviction of unauthorised sub-tenant along with

the tenant for indulging in inducting sub-tenant without lawful authority.”

37. On the basis of the aforesaid judgment, it is contested that the acceptance of rent by the respondent cannot be treated as creating a new tenancy in favour of appellant No.6.

38. Relying on *Gurubachan Singh v. Ram Niwas* (2006) 5 SCC 296, it is stated by the learned counsel for the respondent that the essential ingredients of subletting are: i) there is a transfer of the legal possession/exclusive right to enjoy the premises, and ii) some amount has been collected by way of rent or compensation. It is further stated that the instant case meets the aforesaid prerequisites.

39. In *Parvinder Singh v. Renu Gautam and Ors*; (2004) 4 SCC 794, it has been held as under:

8.

To defeat the provisions of law, a device is at times adopted by unscrupulous tenants and sub-tenants of bringing into existence a deed of partnership which gives the relationship of tenant and sub-tenant an outward appearance of partnership while in effect what has come into existence is a sub-tenancy or parting with possession camouflaged under the cloak of partnership. Merely because a tenant has entered into a partnership he cannot necessarily be held to have sublet the premises or parted with possession thereof in favour of his partners. If the tenant is actively associated with the

partnership business and retains the use and control over the tenancy premises with him, may be along with the partners, the tenant may not be said to have parted with possession. However, if the user and control of the tenancy premises has been parted with and deed of partnership has been drawn up as an indirect method of collecting the consideration for creation of sub-tenancy or for providing a cloak or cover to conceal the transaction not permitted by law, the Court is not estopped from tearing the veil of partnership and finding out the real nature of transaction entered into between the tenant and the alleged sub-tenant.”

40. In *Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar*; (2010)

1 SCC 217, it has been held as under:

“28. The legal position that emerges from the aforesaid decisions can be summarised thus:

(i) In order to prove mischief of subletting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by tenant in favour of a third party with exclusive right of possession and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii) Inducting a partner or partners in the business or profession by a tenant by itself does not amount to subletting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.

(iii) The existence of deed of partnership between tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.

(iv) If tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.

(v) Initial burden of proving subletting is on landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.

(vi) In other words, initial burden lying on landlord would stand discharged by adducing prima facie proof of the fact that a party other than tenant was in exclusive possession of the premises. A presumption of sub-letting may then be raised and would amount to proof unless rebutted.”

41. In *Vinaykishore Punamchand Mundhada v. Shri Bhumi Kalpatru*; (2010) 3 SCC (Civ) 625, it has been held as under:

15. We are not impressed by the submission made by the learned Counsel for the respondents that unless

payment of consideration was established as a fact between the tenant and sub-tenant, the application under the provisions of the Rent Control order filed by the landlord cannot be allowed. Is it possible for any landlord to establish the actual agreement or understanding between the tenant and the person to whom the possession of the premises is delivered? It is well settled that **sub-tenancy or sub-letting comes into existence when the tenant voluntarily surrenders possession of the tenanted premises wholly or in part and puts another person in exclusive possession thereof without the knowledge of the landlord.** In all such cases, invariably the landlord is kept out of scene rather, **such arrangement whereby and whereunder the possession is parted away by the tenant is always clandestine and such arrangements take place behind the back of the landlord.** It is the actual physical and exclusive possession of the newly inducted person, instead of the tenant, which is material and it is that factor which reveals to the landlord that the tenant has put some other person into possession of the tenanted property. It would be impossible for the landlord to prove, by direct evidence, the arrangement between the tenant and sub-tenant. It would not be possible to establish by direct evidence as to whether the person inducted into possession by the tenant had paid monetary consideration to the tenant. Such arrangement which may have been made secretly, cannot be proved by affirmative evidence and in such circumstances, the Court is required to draw its own inference upon the facts of the case proved at the enquiry. Delivery of exclusive possession by the tenant to a stranger to the landlord and without the prior permission of the landlord is one dominant factor based on which the

Court could infer as to whether the premises was sub-let.

42. I have heard the learned counsel for the parties and gone through the judgments cited by the respective sides.

43. There is no dispute about the fact that law has been crystallized by a catena of judgments that so far as the partnership firm is concerned, even though it may be a tenant, but since partnership firm is not a legal entity, all the partners are deemed to be the tenants. In the event of dissolution of partnership firm, if all the tenancy rights fall into the hands of one or some of the partners start a fresh business under a new partnership firm which is not a legal entity or where a proprietary concern is converted into a private limited company but the erstwhile sole proprietor continues to retain the control of private company in the capacity of managing director or chairman then notwithstanding that it is a legal entity still in none of the situations it will tantamount to creating a sub-tenancy and eviction cannot be ordered.

44. Now comes the question of a case like in the instant one where a partnership firm is a tenant and originally, had only four partners at the time of inception of tenancy. If it be so, there should be no difficulty if

tenancy rights are taken by one or more of the partners in the event of the partnership firm being dissolved by operation of law or on will. But the difficulty arises only when a person or a company which was not a partner at the time of inception of tenancy is inducted as a partner in the firm later on. In such an event in case the dissolution takes place and the tenancy rights are given to such newly inducted partner then it is for the courts to see whether the new entity which is made a partner and which has come to acquire the tenancy on account of dissolution of the firm will tantamount to subletting or not. The test for this which has been laid down by the courts is as to check whether this new entity is a legal entity or not and if so then whether original partners have controlling interest in the said legal entity or not. Reliance in this regard is placed on the judgment of this court in *Vishwa Nath and Anr. V. Chaman Lal Khanna and Anr*; AIR 1975 Delhi 117 which was later approved by the Apex Court in *Madras Bangalore Transport Co.(West) v. Inder Singh and Ors*; (1986) 3 SCC 62.

45. Coming back to the facts of the present case, there is no dispute about the fact that so far as appellant No.6 is concerned, it was not a partner of the appellant No.1 at the time of creation of tenancy, but was

inducted as a partner much later. Appellant No.1 is admittedly dissolved in 1983 and at the time of dissolution, the respondent herein were not aware that a company has been inducted as a partner. It is only when appellant No.6 starts making the payment to the respondents that they learn about its induction and the factum of dissolution of the original tenanted firm. It is because of this alleged subletting, the respondents initiated the eviction proceedings.

46. Now so far as appellant No.6 is concerned, it is an independent distinct legal entity and, therefore, according to the judgment of the court in Ram Saran v. Pyare Lal's case (supra) qualifies to meet the requirement of Section 14(1) (b) of the Delhi Rent Control Act meaning thereby that the induction of this partner in the partnership firm and the subsequent subletting in its favour tantamounts to subletting.

47. Now, the question which arises is that whether appellant Nos.2 to 5 have a controlling interest in appellant No.6 as is sought to be urged before this court and as was contended by Mr.Tiku that the company or the firm is an alter ego of the partners or the persons who are having controlling interest and, therefore, if appellant Nos.2 to 5 have a majority

shareholding in appellant No.6, therefore, it could not be said that there is a case for subletting made out against appellant Nos.1 to 6.

48. I fully agree with this submission of Mr.Tiku that in case appellant Nos.2 to 5 have controlling interest in appellant No.6 then perhaps it could be said that there was no case for subletting made out but this question as to whether appellant Nos.2 to 5 have a controlling interest in appellant No.6 or not, is a question of fact which has been decided against the present appellants concurrently by the two courts below and the reasons for this have been given by the ARC by observing that there is no evidence produced before the learned ARC to the effect that appellant Nos.2 to 5 had a controlling interest in appellant No.6.

49. I am tempted here to reproduce para Nos. 23 & 24 of the judgment of the ARC in this regard.

“23. Though it has been brought out through RW3/3 that as on 27.12.84 the major share holding of the company is controlled by respondent Nos.2 to 5 either in the individual capacity or jointly with certain family members. But then there is no evidence led as to what was the nature of share holding in the company as on 01.06.83 when the respondent No.6 admittedly took control over the suit premises. At the same time the plea that respondent No.6 was floated in 1972 by respondent No.2 to 5 has also not been proved. Rather, the memorandum of Association brought on record

shows that the promoters of company were persons other than respondent No.2 to 5. It is evident that the share holding and control over the company has been undergoing change over the years. As there is no evidence on record to show that respondent No.2 or 5 had a major control over the company during 1.6.83 to 27.12.84, the possibility does exist that they may loose control over the company in future as well.

24. Therefore, applying the principle of *Ram Saran v. Pyare Lal* (supra), I hold that respondent No.6 is a distinct legal entity and its business in the suit premises is in the capacity of a stranger in occupation which must lead to the conclusion that there has been parting with legal possession by the tenant. This also for the added reason that respondent No.3 to 5 have not offered rent has been offered to be paid by respondent No.6 within their knowledge. Respondent No.6 thus asserts its independent rights to the tenancy which were not available it.”

50. The appellants had also filed an application under Order 41 Rule 27 CPC seeking permission to produce additional evidence at the appellate stage to show that appellant Nos.2 to 5 had a controlling interest in appellant No.6. This application also stood rejected by the ARCT for two reasons. Firstly, this was a document which was in possession of the appellants themselves at the time when the evidence was sought to be produced before the ARC. Therefore, additional evidence cannot be permitted to be adduced by a party to fill up the lacunae. Additional

evidence can be permitted to be produced by a party only if the piece of evidence which it wants to produce was not in its knowledge earlier or it was beyond its control. There is no such finding returned by the ARCT that it was meeting such a requirement in the face of the evidence which was to be produced by them. Even otherwise, after perusal of the document which was sought to be placed by them on record, the learned ARCT has observed that the aforesaid document does not establish any controlling interest in appellant No.6 as is sought to be urged by them. For these reasons also, their appeal was rejected.

51. For the reasons mentioned above, I feel that since there is concurrent finding returned by the two courts below which is perfectly in tune with the legal position that appellant No.6 was not a partner of appellant No.1 at the time of inception of tenancy. Therefore, a stranger could not be permitted to be thrust as a tenant on the respondent under the garb of tenancy rights being devolved upon the appellant on dissolution of appellant No.1. The holding of shares by the erstwhile partners in appellant No.6, as stated in the eviction petition, is a matter of fact and not a matter of law. Moreover, even if the partners have the shares in the company, nothing prevents them from divesting the same later on.

52. So far as the question of payment of rent by appellant No.6 is concerned, the learned counsel for the respondent has referred to a judgment in Ram Saran's case (supra) wherein it has been clearly laid down that since the amount is being deposited voluntarily by appellant No.6, it could not be treated to be creating a tenancy in favour of the appellants.

53. For the reasons mentioned above, I feel that the aforesaid submissions urged by the learned counsel for the appellants do not raise any substantial question of law and the appeal must necessarily fail.

54. Accordingly, the present regular second appeal is dismissed.

V.K. SHALI, J.

MAY 27, 2015
AD/dm