

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

Judgment Reserved on: November 16, 2015

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Judgment Delivered on: November 26, 2015

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CM(M) 1394/2011

NK JAIN

..... Petitioner

Through: Mr.Gurmehar S.Sistani, Advocate

versus

A RANGARAJ & ANR

..... Respondents

Through: Mr.D.S.Chauhan, Mr.R.Vasudevan &
Ms.Ruchi Singh, Advocates

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

CM(M) 1394/2011

1. This petition under Article 227 of the Constitution of India has been filed against the concurrent judgment of the learned Additional Rent Controller dated 1st July, 2008 and Additional Rent Control Tribunal dated 18th November, 2011 by which the eviction petition filed by the respondent on the ground of sub-letting has been allowed in respect of the tenanted premises i.e. Shop No.106, First Floor, Mansarovar Building, 90, Nehru Place, New Delhi.
2. The respondents filed an eviction petition against the petitioner seeking eviction on the grounds of sub-letting under Section 14(1)(b) of Delhi Rent Control Act. The eviction petition after trial was decreed in terms of the

judgment by the learned ARC. The appeal preferred against the said judgment before the learned Additional Rent Control Tribunal also failed.

3. Challenge by the petitioner to the impugned orders are interalia on following grounds:-

(i) The petitioner N.K.Jain had taken the suit premises on rent vide lease deed dated 10th March, 1976 on monthly rent of ₹ 777/- for running his business as dealer in real estate.

(ii) In the year 1993 as there was a boom in the computer industry, he decided to deal in assembling and selling computers also along with his real estate business.

(iii) The petitioner formed company M/s Nicom Systems Pvt. Ltd. and he was the Managing Director of the said Company and inducted his two sons as Directors of the said Company with 1/3rd share each.

(iv) All the bills were raised in the name of the petitioner and paid by the petitioner himself. He has been in physical possession of the tenanted premises right from the inception of the tenancy having full control over the tenanted premises as Managing Director of the Company.

(v) The findings given by the Courts below that the petitioner has parted with the tenanted premises to the Company is based on erroneous reasons and bad in law as there is no effacement of the tenant from the suit property.

(vi) The Company M/s Nicom Systems Pvt. Ltd. is incorporated by the petitioner and his two sons who are Directors in the said Company. They are neither stranger to the tenancy nor did they take over the business from their father. Petitioner always remained in possession and control of the premises

wherein business was carried on by him as well by the Company. It is a case of concurrent use of the premises.

(vii) There is no lease deed between the petitioner and the Company formed by him hence there is no relationship of tenant and sub-tenant between the petitioner and the alleged sub tenant i.e. M/s Nicom Systems Pvt. Ltd. It is not necessary to hold majority of the shares for proving the control of the Company. The two Courts below failed to appreciate the legal position as laid down in Santosh Ajit Sachdev Vs. Anopi Shahnai, 2007 (7) SCC 675; Vishwa Nath & Another Chaman Lal Khanna & Another (AIR) 1975 Delhi 117 and M/s Madras, Bangalore Transport Company (West) vs. Inder Singh & Ors. (AIR) 1986 SC 1564.

4. Mr. Gurmehar S.Sistani, Advocate appearing on behalf of the petitioner submitted that it is a case where the suit premises was taken on rent way back in the year 1976 by the petitioner himself for carrying on his commercial activities as property dealer. Till date he is in occupation of the same. Since the tenanted premises was in Nehru Place due to the boom in the Computer Industry apart from carrying on his business as real estate agent he also formed a Company by inducting his two sons as Directors and subsequently two other persons were also made as Directors in the said Company. It is further submitted by the learned counsel for the petitioner that in view of the decisions passed in Santosh Ajit Sachdev Vs. Anopi Shahnai, 2007 (7) SCC 675; Vishwa Nath & Another Chaman Lal Khanna & Another (AIR) 1975 Delhi 117 and M/s Madras, Bangalore Transport Company (West) vs. Inder Singh & Ors. (AIR) 1986 SC 1564 as mere majority of shareholding is not the deciding

factor or enough to prove the actual control over the tenanted premises, a substantial question of law has arisen in the case as to whether merely because the Company has been formed by the tenant by joining his two sons initially and later on two other persons as Directors, which is also carrying on business from the tenanted premises, amounts to sub-letting.

5. Learned counsel for the petitioner has submitted that the two courts below committed grave error in arriving at the conclusion that it is a case of sub-letting hence to prevent gross injustice it is necessary to set aside the findings given by the Courts below.

6. On behalf of the respondent Mr.D.S.Chauhan, Advocate submitted that as there is a concurrent finding of fact by the two courts below to the effect that parting of the possession without the consent of the landlord to the Company in which the petitioner is not having actual and substantial control, this Court cannot interfere in exercise of the jurisdiction vested under Article 227 of the Constitution of India. He has relied upon the decision of Hon'ble Supreme Court passed in *India Pipe Fitting Co. Vs. Fakkruddin M.A. Baker and Anr., 1977 UJ (SC)* in support of his submissions.

7. I have considered the rival contentions and perused the record.

8. Prior to 1st December, 1988 Section 39 existed in the Delhi Rent Control Act which provided for filing of second appeal which can be filed only on limited ground that there existed a substantial question of law. The provision of Section 39 of Delhi Rent Control Act stands repealed by Act 57 of 1988 with effect from 1st December, 1988.

9. Once second appeal is not allowed a petition under Article 227 of the Constitution of India cannot be filed as a substitute for a second appeal for the reason that if scope of hearing on second appeal was limited to substantial question of law only than the scope of hearing in a petition under Article 227 of the Constitution of India is further restricted. It is well settled that power vested in this Court under Article 227 of the Constitution of India is a discretionary jurisdiction to be exercised only if gross injustice has been caused.

10. In the case of ***Jai Singh and Ors. Vs. Municipal Corporation of Delhi and Anr., (2010) 9 SCC 385***, the Apex Court considered the scope of Power under Article 227 of the Constitution of India and held as under:-

“25. Undoubtedly, the High Court has the power to reach injustice whenever, wherever found. The scope and ambit of Article 227 of the Constitution of India had been discussed in the case of *The Estralla Rubber Vs. Dass Estate (P) Ltd., (2001) 8 SCC 97* wherein it was observed as follows:

“The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where

if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

11. The learned Rent Control Tribunal examined the facts and evidence adduced by the parties in this case and considered the same in the light of various judicial pronouncements relied upon by the parties. The relevant discussion appears in para Nos.30, 34, 35, 37, 38 and 39 are extracted hereunder:-

“30.As seen in the case at hand, the tenant herein does not have controlling interest in the company. He may be one of its directors but that seems to be only in the name sake. There is no shred of proof of he participating in the management of the company.

34.As observed in the case of Santosh Ajit Sachdeva (supra), even majority share holding is not necessarily to be treated as proof of control of the company by the tenant. As submitted by the counsel for the landlord, what is crucial is the question as to whether the tenant continues to be in occupation and control of the premises. In the present case, the company, admittedly a separate legal entity is shown by the evidence to be using the premises to the exclusion of the tenant. It may be that the company is controlled by the family of the tenant. But then, it remains a separate legal entity in which tenant is holding minority shares, his son Neeraj Jain being holder of majority. It may be that the tenant had also been signing the annual returns submitted with Registrar of

Companies. But this, by itself, cannot be a good proof of he actually controlling the management or affairs of the company. He remains one of the directors. His other status vis-a-vis the company is left hazy. In the pleadings, he would describe himself as Managing Director while in the evidence he would describe himself as the Chairman. He would not produce even an iota of evidence to prove either of such status.

35.The plea that the other business of property dealing continues to be run by the tenant from the demised premises is not founded on any pleadings. In the written statement, he rather stated that he was running his business in the name and style of M/s Nicom System Pvt. Ltd., being its Managing Director. It was only at the stage of evidence, that he would claim that his other business of property dealer was also running from the demised premises.

37.In the entire evidence, the tenant has not adduced any iota of document or material to show that his other business is also running side by side with that company in the demised premises. The evidence of AW1 to the effect that she did not find the tenant running the business from the tenanted premises has gone virtually un rebutted. As in the case of Amar Singh Trilochan Singh (supra), when a third person is established to be functioning in the property in question and there is nothing to show that the tenant did any business from the tenanted premises, conclusion of subletting or parting with possession by the tenant is obvious to be reached in this case.

38.Since there is total effacement of the tenant from the tenanted premises, the cases of Vishwa Nath (supra), Madras Bangalore Transport Company (supra) and Jagan Nath (supra) are of no help to him. The case of Helper Girdharbhai (supra) is distinguishable because it did not involve a company, a juristic person.

39.In the foregoing facts and circumstances, I am unable to conclude that the findings of evidence recorded by learned ARC

are perverse or against the record. The appeal, therefore, has no merits and is dismissed.”

12. The learned Rent Control Tribunal while dealing with the various contentions and applicability of the case laws cited by the petitioner who was appellant before the Tribunal has noted the following facts in para Nos. 16 & 17 of the judgment:-

(i) The tenant during his cross-examination as RW-1 has stated that at the inception of the tenancy he was engaged in the business of property dealing.

(ii) He admitted that the Company was incorporated on 3rd November, 1993 having registered office at Barakhamba Road.

(iii) He pleaded ignorance to the suggestion that in 1999 the issue capital was ₹ 45,500 shares out of which he was holding 4000 shares, his son Neeraj Jain was holding 28,900 shares and other son Naveen Jain was holding 9900 shares. Two other shareholders Ms. Shilpi Jain and Ms. Anju Jain were holding 2000 and 500 shares respectively. He was matriculate having not done any course in the computer.

(iv) The tenant was not having effective control of the business was on the basis of extent of his shareholdings, inducted the Company in the suit premises and indulged in unauthorized sub-letting.

13. In para 30 of the said judgment it was further noted that he was there in the Company only for the name sake with no proof of participating in the management of the Company.

14. In the pleadings he described himself to be the Managing Director but at the stage of evidence he described himself as Chairman without producing any proof to above effect.

15. In para no.35 learned Rent Control Tribunal has noted that in the pleadings the tenant did not plead of running his business of property dealer from the tenanted premises and it was only at the stage of evidence such claim was made. Thus, the statement which was beyond pleadings was rejected.

16. In para no.37 learned Rent Control Tribunal has also noted that the tenant has not adduced any evidence of running his business of dealing in real estate from the said premises.

17. The business being done by the Company which is separate legal entity with no proof of the petitioner/tenant having actual control in the management/affairs of the Company was considered to be an act of sub-letting.

18. In my considered opinion the learned Rent Control Tribunal has noted all these facts in correct prospective while endorsing the findings by learned ARC to the effect that it was a case of sub-letting by the tenant to the Company. Thus the submissions made by the learned counsel for the petitioner that a substantial question of law has arisen, does not entitle the petitioner to seek any relief under Article 227 of the Constitution of India as earlier second appeal could have been filed if substantial question of law was raised, which has been taken away as Section 39 stands repealed with effect from 1st December, 1988.

19. Powers under Article 227 of the Constitution of India are not a substitute for a second appeal and such power can be exercised in case of stark illegality in the findings/conclusion by the Courts below. The concurrent findings of the

facts by the two Courts on appreciation of the evidence taking a plausible view calls for no interference by this Court as held in case of **India Pipe Fitting Co. Vs. Fakkruddin M.A. Baker and Anr., 1977 UJ (SC)** in the following manner:-

4. *The limitation of the High Court while exercising power under Article 227 of the Constitution is well-settled. Power under Article 227 is one of judicial superintendence and cannot be exercised to upset conclusions of facts however erroneous those may be. It is well-settled and perhaps too late in the day to refer to the decision of the Constitution Bench of this Court in **Waryam Singh and Another v. Amarnath and Another, (1954) SCR 565** where the principles have been clearly laid down as follows :*

*"This power of superintendence conferred by article 227 is, as pointed out by Harries C.J. in **Dalmia Jain Airways Ltd. v. Sukumar Mukherjee, AIR 1951 Calcutta 193** to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".*

*The same view was reiterated by another Constitution Bench of this Court in **Nagendra Nath Bora & Another v. The Commissioner of Hills Division and Appeals, Assam and Others, (1958) SCR 1240**. Even recently in **Bathut mat Raichand Oswal v. Laxmibai R. Tarta and Another, (1975) 1 SCC 858** dealing with a litigation between a landlord and tenant under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, this Court relying on its earlier decisions observed as follows :-*

"If an error of fact, even though apparent on the face of the record, cannot be corrected by means of a writ of certiorari it should follow a fortiori that it is not subject to correction

by the High Court in the exercise of its jurisdiction under Article 227. The power of superintendence under Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal. The High Court cannot in guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the Legislature has not conferred a right of appeal and made the decision of the subordinate court or tribunal final on facts".

20. The learned Rent Control Tribunal found it to be a case where there were no pleadings by the petitioner/tenant that he was carrying on his business of real estate from the tenanted premises. Incorporation of the Company namely *M/s Nicom System Pvt. Ltd.* which was initially incorporated at the address at Barakhamba Road is carrying on business in the tenanted premises without obtaining any consent from the landlord, the Courts below have arrived at the conclusion that the petitioner/tenant was not having actual control of the business. Hence, the various judicial pronouncements relied upon by the petitioner before the Courts below as well as before this Court have been rightly distinguished.

21. Since no second appeal lies against the order of the Tribunal after Section 39 of the Delhi Rent Control Act has been abrogated, this being not an appellate Court, this case warrants no interference by this Court in exercise of the supervisory jurisdiction vested in this Court under Article 227 of the Constitution of India.

22. The petition has no merit and the same is hereby dismissed.

23. No costs.

CM Nos.21663/2011, 16760/2012 & 21199/2012

Dismissed as infructuous.

**(PRATIBHA RANI)
JUDGE**

NOVEMBER 26, 2015

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