

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RSA 146/2015**

Reserved on: 30.05.2016

Date of decision: 14.07.2016

TEJPAL SINGH

..... Appellant

Through: Dr.L.S.Chaudhary & Mr.Ajay
Chaudhary, Advocates.

versus

M/S.METAL FABRICATORS
(A PARTNERSHIP FIRM)

..... Respondent

Through: Mr.Manish Sharma &
Ms.Malika Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR , J.

CAV 377/2015

1. Mr. Manish Sharma, learned advocate appears for caveator.
2. The caveat is discharged.
3. The application is disposed of.

RSA 146/2015

1. Heard the counsel for the parties.
2. The appellant/plaintiff has challenged the judgment and order dated 16.02.2015 passed by the Additional District Judge-01, North East District, Karkardooma Courts, Delhi in RCA No.3/2015 whereby the judgment and decree dated 10.12.2014 passed in Suit

No.1709/2006, decreeing the suit of the appellant/plaintiff for recovery of possession, rent and damages was reversed by setting aside the findings with respect to recovery of possession and mesne profits but upholding the recovery of arrears of rent only.

3. The appellant/plaintiff, claiming himself to be the landlord of property bearing No.53A and C, Dilshad Garden, Delhi-110095 in which the respondent/defendant was inducted as a tenant with respect to one hall measuring 315 sq.yards but internally divided into 5 compartments, on monthly rental of Rs.4000/-, filed a suit for possession of the premises, rent and damages as the defendants were found to have defaulted in making payments of rent since 01.04.2006. A legal notice was allegedly sent to the respondent/defendant on 06.10.2006. Despite notice with clear indication that the tenancy is terminated from the midnight of 31.10.2006, neither the suit premises was vacated nor the arrears of rent were paid. Thus it was prayed in the suit that apart from asking the respondent/defendant to deliver possession of the suit property, they be directed to pay damages at the rate of Rs.50,000/- per month with effect from 01.11.2006 till the suit premises is vacated.

4. The aforesaid suit was contested by the defendant primarily on the plea of the suit being barred by the provisions of Delhi Rent Control Act. It was averred in the written statement that the father of the appellant/plaintiff, (owner/landlord of the property), had inducted the defendant, M/s.Metal Fabricators as tenant in three of the sheds in the suit premises in the year 1980 when the aforesaid firm was being

run by three partners namely B.R.Chadha, Ajay Chadha and Atul Chadha. The area of each shed was different and was let out on a different monthly rental. However, it has been stated that though the aforesaid three sheds were let out by the father of the appellant/plaintiff by way of separate tenancy but a consolidated rent was required to be paid to the father of the appellant/plaintiff which was Rs.3100/- per month. Another shed was taken on rent by M/s.Metal Fabricators in the year 1982 for the purposes of expanding the business for which the rent agreed was Rs.1300/- per month. Similarly, again, another shed was taken on rent in the year 1984 on a monthly rental of Rs.1500/-. All the sheds as aforesaid were reconstructed and a full fledged construction was made in the year 1987. It was only on 12.09.1985 that the respondent/defendant was introduced as a partner in the Firm after the father of the appellant/plaintiff had given No Objection Certificate to the respondent/defendant whereupon he became tenant of Shed Nos.1 & 5 as a partner.

5. It was further submitted by the respondent/defendant that the constitution of the Firm, M/s. Metal Fabricators (A Partnership Firm) underwent a change and the defendant became the sole owner of the Firm and, therefore, the sole tenant of the sheds in the property. The family members of the respondent/defendant were inducted as partners in the aforesaid firm. The father of the appellant/plaintiff was receiving the rent against all the five sheds till 01.04.2005 but he issued single receipt of Rs.5,900/- per month for all the sheds. The appellant was permitted, later, by his father to collect rent with respect

to shed No.2 (area measuring 39 x 28 ft); shed No.3 (area measuring 27 x 25 ft) and shed No.4 (area measuring 42 x 28 ft). The wife of the appellant/plaintiff was given the authority to collect rent for shed No.5. The father of the appellant/plaintiff accepted the rent of only one shed namely Rs.2200/- per month.

6. The respondent/defendant also denied that he was in arrears but submitted that the suit was not maintainable as possession was sought for the premises which was let out vide different tenancies with separate monthly rentals and the monthly rental of each of the sheds were less than Rs.3500/- per month thereby attracting the provisions of Section 3 of the Delhi Rent Control Act which renders the act inapplicable to premises whether residential or not, whose monthly rental exceeds Rs.3500/-. Thus the present suit was not maintainable and could have been filed only before the Rent Court.

7. Based on the pleadings of the parties, the Trial Court vide order dated 18.04.2011 framed the following issues:-

- i. *Whether there were three separate tenancies between the plaintiff and the defendant in respect of three tin sheds/halls as mentioned in the para no.1 of the plaint? OPD*
- ii. *Whether three tin sheds i.e. tenanted premises are part of single tenancy and let out to defendant @Rs.4000/- p.m.? OPD*
- iii. *Whether present suit is barred under Section 50 of DRC Act? OPD*
- iv. *Whether tenancy of the defendant has been duly terminated by the plaintiff by way of service of notice dated 06.10.06? OPP*

- v. *Whether the plaintiff is entitled to recover a sum of Rs.28,000/- on account of arrears of rent upto 31.10.06 along with interest @18% p.a.? OPP*
- vi. *Whether the plaintiff is entitled to recover a sum of Rs.50,000/- as damages w.e.f.01.11.06 till the recovery of possession of the tenanted premises? OPP*
- vii. *Whether the plaintiff is entitled for decree for possession of the tenanted premises i.e. three tin sheds/halls as mentioned in para no.1 of the plaint? OPP*
- viii. *Relief.*

8. What is required to be seen is whether the appellant/plaintiff could prove that the tenancy with respect to Shed Nos.2, 3 & 4 is common and one for the suit to be maintainable before a Civil Court.

9. The appellant has examined himself as PW-1 and has stated before the Trial Court that the rent of the premises (Rs.5900/-) under the tenancy was initially received by his father. He has referred to the receipt dated 07.02.1996 (Exh.PW-1/DA) issued by his father behind the back of which was inscribed the area of the sheds. He admitted in his cross examination that there are three portions in the tenanted premises and for two of the portions, his father and wife collected the rent whereas he has been given the authority to collect the rent of Rs.4000/- for the portion of the premises which falls in his share. The appellant/plaintiff has also relied upon the site plan (Exh.PW-1/1) and four rent receipts (Exh.PW-1/2 to Exh.PW-1/5) as well as legal notice dated 06.10.2006.

10. Pramod Kumar, PW-2 has stated before the Trial Court that he is one of the tenants of the appellant/plaintiff having taken 28 sq.yards

for a monthly rental of Rs.9240/-. He admits of being in the tenancy of the aforesaid premises since 2008 and has proved receipt dated 23.03.2013 which is Exh.PW-2/A.

11. Similarly, Mehraj, PW-3 claims himself to be the owner of premises 519-A/4, Dilshad Garden, Delhi and has deposed that he had let out four halls having a total area of 200 sq.yards approximately on a monthly rental of Rs.55,000/-. He further testified that the suit property falls in the same area and locality where his property is situated.

12. The Trial Court struck off the defence of the defendant vide order dated 05.06.2014.

13. Thus from the materials available on record, the Trial Court was of the view that the tenancy with regard to all the three sheds which had a monthly rental of Rs.4000/- was a single tenancy and not different tenancies. The suit of the appellant was decreed. The appellant was held to be entitled to recovery of arrears of rent in the sum of Rs.28,000/- along with interest @ 15% p.a. along with mesne profits/damages at the rate of Rs.50,000/- p.m. w.e.f. 01.11.2006 till handing over of the possession of the suit premises by the respondent/defendant to the appellant/plaintiff and the respondent/defendant was directed to hand over the vacant physical possession of the suit premises to the appellant/plaintiff.

14. The Lower Appellate Court differed with the finding of the Trial Court and held that the ratio in *S.N.Sheopuri vs. Fab India Overseas Pvt Ltd*, 181 (2011) DLT 255 which was relied upon by the

Trial Court was not applicable to the facts of this case. In Sheopuri (Supra) there were six different portions in the same building which were let out on different dates on different amount of rent but there was one tenant whose subsequent act and conduct led to the finding that there was single tenancy. The First Appellate Court was of the view that Exh.PW-1/DA which is the receipt of the amount of Rs.5,900/-, behind the back of which there is an endorsement about five different sheds along with their measurement clearly demonstrates that there were different tenancies and the same could not have been clubbed together for the purposes of assuming jurisdiction of the Civil Court or negating the application of Delhi Rent Control Act. There was no reason for the appellant/plaintiff, the First Appellate Court opined, to produce only one rent receipt after January, 2006 especially when the respondent/defendant had placed on record previous rent receipts issued by his father.

15. The First Appellate Court, therefore, was of the opinion that evidence was being created by the appellant/plaintiff since 01.12.2006 for the purposes of establishing that the portion of the tenanted premises which fetched Rs.4000/- was part of the single tenancy and not different tenancies.

16. This Court is afraid, the reasoning given by the First Appellate Court is incorrect and not based on cogent reasons. The First Appellate Court has, though, at one place rightly held that there could be a family arrangement whereby some part of the rent was permitted to be collected by the appellant/plaintiff and some part by the wife and

father of the appellant/plaintiff, but erred in holding that there were different tenancies.

17. In the first paragraph of the plaint, the appellant/plaintiff has given the measurement of three halls and has stated that the consolidated rent of all the sheds was Rs.4000/- per month. Single rent receipt was being issued with respect to the tenanted premises. There is nothing on record to suggest that the entire demised portion of the suit property was not the part of the same property but differently located. There is no material on record suggesting any specific instrument or registered deed creating different tenancies with respect to the suit premises. The respondent/defendant, after the change in the constitution of the Firm viz. M/s.Metal Fabricators, remained its sole proprietor and later inducted his family members as partners in the said Firm. In that event, even if part of the suit premises were successively taken on rent at different times, that by itself would not create different tenancies. What is of relevance here is that the same entity viz. M/s. Metal Fabricators, entered as tenant in a part of the suit premises when the father of the appellant/plaintiff was in possession and authority of the same. Later, another part of the suit premises was taken in 1982. Again in 1984, in order to expand the business of the respondent/defendant further, the other part was taken on rent. Thus if one person is the tenant and the tenancy is with respect to a single firm, it pre supposes that there is a single tenancy and not different tenancies, notwithstanding different receipts of rent and some of such receipts detailing the area of a particular shed. The evidence with respect to the transfer of respective shares in favour of

the appellant/plaintiff, his wife and his Father is non-existent. It can be presumed that there is a family arrangement wherein for one portion of the suit property which fetches a rent of Rs.4000/-, the appellant/plaintiff has been permitted to collect the rent. For the other portions, as admitted in the written statement, rents were collected by the father and the wife of the appellant/plaintiff respectively.

18. It would be apt to refer to the written statement of the respondent/defendant regarding the internal partitioning of the hall. In the written statement, it has been stated that there were four walls inside a big hall, out of which, three portions were taken on rent in the beginning and later, two other portions were also acquired and taken on rent. After sometime, a permanent structure was made. There is no evidence as to whether each of the halls in the demised premises has a different entry. In the absence of any such evidence, it can only be presumed that there is one entry to the entire demised premises, and, therefore, any internal partition would not be an evidence of a separate tenancy. That apart, even for a solitary instance, if one rent receipt is issued, that is a definite proof of the fact that there is a single tenancy.

19. That three persons have been collecting the rent of the suit premises does not ipso facto lead to the inference that there were separate tenancies. The most important of all indices to decide about the nature of tenancy, is the purpose for which the premises have been taken on rent. It has been admitted by the respondent/defendant that the suit property initially was taken on rent with respect to three portions in a big hall when there were three partners to the Firm.

Later, the partners decided to quit and the present respondent/defendant remained the sole proprietor. That apart, there is another admission that in order to expand the business further, another portion of the suit premises was taken on rent at two stages. The rental, even if different for each of the portion of the demised premises, would not lead to a definite conclusion that they are different tenancies. For the purposes of calculating the rental, each area and the location might have been mentioned but there does not appear to be any intention on the part of either the appellant/plaintiff or the respondent/defendant to have created/accepted different tenancies. The two aspects of the matter namely the respondent having been in possession of the entire portion of the suit premises and there being one entry to the suit premises which comprises a hall with inner partition, the balance tilts in favour of the appellant/plaintiff regarding the tenancy being one.

20. In *Hira Lal Kapur vs. Prabhu Choudhury*, (1988) 2 SCC 172, the Supreme Court while considering whether payment of rents for separate portions, by separate individuals, at the consent of the landlord, where the initial tenancy was single, constituted separate contracts held as hereunder:

“7. We are inclined to agree with this submission of the landlord. The initial tenancy was only an oral tenancy. Nevertheless there were two witnesses who deposed that the original tenancy agreement was only between the petitioner and the respondent. At that time, admittedly, there was no question of Balkunj being the tenant in respect of any portion of the premises. All that the respondent says is that subsequently cheques were being

issued in the name of Balkunj also and that this must be taken to lead to an inference that the petitioner had accepted Balkunj as its tenant. It is very difficult to accept this argument. It is no doubt true that the rent has been paid by two cheques since November 1976 but the mere payment of rent by two cheques, in the circumstances of this case, cannot mean that there were two tenancies. The landlord was entitled to a rent of Rs 600 p.m. and so long as he got this amount, it was immaterial for him whether the amount was paid in a lump sum or by one cheque or more than one cheque and who the makers of the cheques were. It is not unusual to come across cases where a tenant pays the rent not by a cheque drawn by himself but by a cheque drawn by some other concern in which he has an interest such as a partnership concern, a limited company or other entity in which he is interested. So, the mere fact that for some reason the respondent chose not to issue a single cheque for the rent of Rs 600 but that he gave two separate cheques, one for Rs 250 drawn by himself and one for Rs 350 drawn in the name of Balkunj cannot lead to an irresistible conclusion that the tenancy was created in favour of Balkunj with the concurrence of the landlord. The letter dated November 26, 1978, far from "clinching" the respondent's claim, as held by the High Court, does not in our view improve the tenant's case at all. It only evidences the fact that the landlord was receiving the cheques issued in the name of the trust in discharge of the respondent's obligation to pay the rent of Rs 600 p.m. It is also true that, since the landlord was also occupying a part of the ground floor premises, he might have been aware that certain activities of Balkunj were being carried on in the hall. But this can only mean that the landlord permitted the tenant to use a portion of the premises let out for running the activities of the trust. Even assuming that, standing by themselves these two facts might have been sufficient to draw any such inference as is suggested the two letters of August 5, 1977 and January 15, 1978 place the matter beyond all doubt. The landlord

categorically asserted in these letters that he does not recognize Balkunj as his tenant and that the respondent alone was his tenant. There was no reply to these letters from the respondent. In these circumstances there can be no doubt at all that the premises had been let out only to the respondent by the petitioner and that Balkunj cannot be considered to be a tenant of the premises or any portion thereof.”

21. The finding of the Rent Controller that there was only a single tenancy was essentially a finding of fact based on the material and circumstances to which we have adverted and we are also inclined to accept the conclusion of the Rent Controller as the correct one.

22. In ***Panjumal Daulatram vs. Sakhi Gopal***, (1977) 3 SCC 284, it was held that whether the leases for different purposes could be treated as a composite lease, or separate leases, is a question of fact and a Court cannot treat a single transaction into separate ones. The Supreme Court held as hereunder:

4. The residential portion is a part of the building and is an accommodation by definition. The non-residential portion is also a part of the building and is an accommodation by definition. The lease has been given for residential as well as non-residential purposes. The landlord is entitled to eviction of the residential portion if he makes out a bona fide residential requirement. Likewise he is entitled to eviction of the non-residential portion which is an accommodation if he makes out a non-residential requirement. We have already found that The final court of fact, affirmed by the High Court, has found in favour of the landlord regarding his residential as well as non-residential requirements. Therefore, nothing more can be done in defence of the tenant in the light of the present law.

5. Counsel contended that in a decision of this Court viz. S. Sanyal v. Gian Chand [AIR 1968 SC 438 : (1968) 1 SCR 536 : (1968) 2 SCJ 218] it has been held that it is not permissible for the Court to split up a contract in an eviction proceeding. We agree. There is no question of splitting up of the contract in the present case, as is abundantly plain from what we have stated. The contract was integral but had dual purposes. The landlord has put forward dual requirements which neatly fit into Section 12(1)(e) and (f). The consequence is inevitable that the eviction order has to be upheld.”

23. The legal position, therefore, appears to be that even if a property is let out at different times, and may be, for two different purposes (residential or commercial), the Courts would not be justified in splitting the tenancy and creating separate transactions, unless permitted by law.

24. In *Hira Lal Kapur* (supra), the Supreme Court has clarified that even if portions of the premises are occupied by separate individuals with the approval of the landlord, who receives amounts separately from each of them, as long as the original tenancy was created by one of them, for the whole premises, and a portion was later occupied by another person, at the recommendation of the original tenant, the law would recognize one tenancy between landlord and the original tenant, and the Court cannot split the tenancy.

25. For the reasons that (i) all the portions of the demised premises are part of the same property; (ii) there is no instrument or document creating different tenancies or lease, as alleged; (iii) evidences of single payment; and (iv) one entity being in possession of the entire

premises (be he the landlord or the tenant), the tenancy is held to be one.

26. Thus the judgment delivered by the Trial Court, allowing the suit of the appellant/plaintiff is restored and the judgment delivered by the First Appellate Court is set aside. The suit of the appellant is allowed and he is entitled to the reliefs granted to him by the Trial Court.

27. The present second appeal is allowed and disposed of accordingly.

ASHUTOSH KUMAR, J

JULY 14, 2016

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