

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

% **Date of decision: 20th July, 2017.**

+ **CM(M) 482/2014**

KULJEET SINGH

..... Petitioner

Through: Ms. Savita Malhotra and Ms. Suman
Malhotra, Advs.

Versus

S.T.S.ENTERPRISES

..... Respondent

Through: Mr. B.S. Chauhan, Adv. for Mr. S.C.
Singhal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This petition under Article 227 of the Constitution of India impugns the judgment (dated 2nd January, 2014 of the Additional Rent Control Tribunal (ARCT) (West), Tis Hazari Courts, Delhi in ARCT No.11/2013) allowing the appeal preferred by the respondent/tenant against the order (dated 22nd December, 2012 of the Additional Rent Controller (ARC) (West), Tis Hazari Courts, Delhi in E No. 137/2011) of eviction of the respondent/tenant from second floor of property No.B-17, Block - B, Community Centre, Janakpuri, New Delhi in a petition for eviction filed by the petitioner/landlord under Section 14(1)(b) of the Delhi Rent Control Act, 1958.

2. Vide the impugned order, the ARCT has allowed the appeal of the respondent/tenant and set aside the order of eviction.

3. This petition was entertained and notice thereof issued and Trial Court record requisitioned.

4. The counsel for the petitioner/landlord has been heard. Mr. S.C. Singhal, counsel for the respondent/tenant has not appeared and Mr. B.S. Chauhan, Advocate who appears on his behalf has not argued anything. The record of the Trial Court has been perused.

5. The petitioner/landlord instituted the petition for eviction pleading that the premises were let out on 17th January, 1984 to the respondent/tenant M/s S.T.S. Enterprises but the respondent/tenant in or about the year 2002 sublet, assigned and/or parted with possession of the whole of the tenancy premises to S.T.S. Enterprises Pvt. Ltd., a newly formed company having a distinct entity under the law and altogether a different person having different directors other than the original partners of the respondent/tenant M/s S.T.S. Enterprises and the said S.T.S. Eneterpirse Pvt. Ltd. was in possession of the tenancy premises.

6. The respondent/tenant contested the petition for eviction *inter alia* pleading (i) that S.T.S. was the sole proprietorship of Sukhvinder Singh; (ii) that the said Sukhvinder Singh was also the Managing Director of S.T.S. Enterprises Pvt. Ltd. was at E-32, Navada Housing Complex, opposite Kakrola Mod, New Delhi; and, (iv) denying that the tenancy premises had been sublet, assigned or parted with possession of.

7. The learned ARC, on the basis of the evidence led before him, passed an order of eviction reasoning (a) that it had been proved that S.T.S Enterprises Pvt. Ltd. had been running and operating from the tenanted premises between 2002-2007, till it shifted to E-32, Navada Housing

Complex; (b) that it had further been proved that the only two directors of S.T.S. Enterprises Pvt. Ltd. were Sukhwinder Singh holding 89,000 equity share and Gurpreet Rai wife of Sukhwinder Singh holding 21,000 equity shares and that there were no other directors or shareholders of S.T.S. Enterprises Pvt. Ltd.; (c) that though it has been held in several judgments that when an individual takes a premises on rent and then converts his sole proprietorship concern into a private limited company in which he has controlling interest, it would not amount to parting with possession but in the present case, at the time of inception of the tenancy, there were two partners of S.T.S. Enterprises i.e. the aforesaid Sukhwinder Singh and Shashi Gupta; on the death of Shashi Gupta, Sukhwinder Singh became the sole proprietor of S.T.S. Enterprises; (d) that the tenant S.T.S. Enterprises had not come before the Court with clean hands and had denied that S.T.S Enterprises Pvt. Ltd. was having its registered office at the address of the tenancy premises, when it was proved in evidence that S.T.S. Enterprises Pvt. Ltd. indeed had its registered office in the tenancy premises till it was shifted in the year 2007; (e) that the respondent/tenant had also falsely denied the relationship of landlord and tenant with the petitioner when it had been proved to the contrary; (f) that the respondent/tenant had thus not approached the Court with clean hands and had suppressed material facts in the written statement and made wrong averments on which the respondent/tenant persisted till his cross-examination; (g) that the respondent/tenant on account of his such conduct was not entitled to any relief; (h) accordingly, the order of eviction was passed.

8. Needles to state the ARCT in appeal preferred by the respondent/tenant, finding that it was in evidence that Sukhwinder Singh

who according to the petitioner/landlord also was a tenant in the premises, was in control and possession of the premises, set aside the order of eviction.

9. The counsel for the petitioner/landlord has before this Court also argued that the conduct of the respondent/tenant disentitled the respondent/tenant to be even heard and axiomatically entitled the petitioner/landlord to the order of eviction.

10. I am unable to comprehend the aforesaid contention. Section 14 of the Rent Act prohibits eviction of a tenant from a premises within the ambit thereof save on the Controller constituted under the Rent Act being satisfied of at least one of the grounds of eviction mentioned thereunder having been established. The language of Section 14 does not permit the Controller or for that matter any other Court to pass an order of eviction of the tenant on any other ground.

11. Thus, the judgment in *Meghmala Vs. G. Narasimha Reddy* (2010) 8 SCC 383 and *S.P. Chengalvaraya Naidu Vs. Jagnnath* (1994) 1 SCC 1 invoked by the learned ARC and referred to by the counsel for the petitioner/landlord also, to the effect that a person who does not come to the Court with clean hands is not entitled to any relief from the Court, cannot be read as adding to the grounds of eviction mentioned in Section 14 of the Act. In my opinion, howsoever despicable the conduct of the tenant may be, the Controller cannot owing thereto pass an order of eviction against the tenant, without being satisfied of a ground of eviction stipulated in the Act having been established. In fact, I have enquired from the counsel for the petitioner/landlord, whether a tenant can be evicted also on the grounds of being a thief or a gangster or being guilty of any other offences. In my

opinion, a tenant cannot be evicted on such grounds. Supreme Court in ***Precision Steel & Engineering Works Vs. Prem Deva Niranjana Deva Tayal*** (1982) 3 SCC 270 held that Section 14(1) starts with a non-obstante clause which would necessarily imply that the Controller is precluded from passing an order or decree for recovery of possession of any premises in favour of the landlord against the tenant unless the case is covered by any of the clauses of the proviso. Similarly, in ***D.C. Bhatia Vs. Union of India*** (1995) 1 SCC 104 it was held that the Delhi Rent Control Act restricts eviction of tenants except on the special grounds stated in the statute.

12. It is quite clear that the learned ARC was undoubtedly swayed by the defence of the respondent/tenant to the petition for eviction and under such sway passed an order of eviction on the grounds other than those provided under the Act and which error has rightly been corrected by the ARCT.

13. I have in fact drawn the attention of the counsel for the petitioner/landlord to the dicta of this Court in ***Lalita Gupta Vs. Modern Trading Company*** (2006) 133 DLT 55 and SLP(C) No.2157/2007 preferred whereagainst was dismissed on 12th February, 2007. In that case, even though the tenants were contending that the private limited company had been accepted as tenant and it was the argument of the counsel for the landlord that the same amounted to assignment of tenancy rights but still it was held that since the private limited company was only an alter ego of the tenants and it was the tenants who on behalf of the private limited company also were in occupation of the tenancy premises, no ground of eviction under Section 14(1)(b) was made out.

14. The counsel for the petitioner/landlord has however argued that the law as applicable to conversion of a sole proprietary into a private limited company would not be applicable to conversion of a partnership into a private limited company. It is argued that as distinct from a sole proprietary, a partnership is a different entity in law.

15. There is no merit in the aforesaid contention. It is well settled that a partnership has no independent entity itself other than its partners and is a compendious name for the partners. Reference if any required can be made to *Dulichand Lakshminarayan Vs. The Commissioner of Income Tax* AIR 1956 SC 354, *Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai* (1977) 1 SCC 431 and *Malabar Fisheries Co. Vs. Commissioner of Income Tax, Kerala* (1979) 4 SCC 766. As far as I remember even in *Lalita Gupta* supra, it was a partnership which was converted into a private limited company and not a sole proprietorship and the same law as applicable to conversion of a sole proprietary into a private limited company was applied.

16. There is thus no error in the order of the ARCT.

17. The petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 20, 2017

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