

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

% **Date of decision: 11th October, 2017**

+ **C.R.P. 222/2017 & CM No.36507/2017 (for stay).**

MIR ABDUL HAI & ANR

..... Petitioners

Through: Mr. Ashok Singh, Mr. R.K. Uppal and
Mr. Jagvir Bhadana, Advs.

versus

SANJEEV VERMA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.36508/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

C.R.P. 222/2017 & CM No.36507/2017 (for stay).

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 24th July, 2017 in RCT No.21/17 of the Court of Rent Control Tribunal (Hqrs.), Tis Hazari Courts, Delhi) of dismissal of the appeal under Section 38 of the Delhi Rent Control Act, 1958 filed by the two petitioners against the order (dated 11th January, 2017 in E. No.4/14/10 (New No.78594/16) of the Court of Additional Rent Controller-02, Central District, Tis Hazari Courts, Delhi) of eviction of the petitioners under Section 14(1)(b) of the Act.
4. Before recording the submissions of the counsel for the petitioners / tenants, I may state that there are concurrent findings of fact of the Additional Rent Controller and of the Rent Control Tribunal, of the petitioner no.1 / tenant having incurred a ground of eviction under Section 14(1)(b) of the Rent Act.

5. The Rent Act, prior to the amendment w.e.f. 1st December, 1988, vide Section 39 thereof, provided for a remedy of Second Appeal to this Court against the order of the Rent Control Tribunal in First Appeal. However, vide the said amendment, the said provision was deleted. I have in judgment dated 24th August, 2017 in CM(M) No.1256/2012 titled **Nawal Kishore Vs. Mohd. Yakub** relying on an earlier judgment of this Court in **Jasbir Singh Vs. Manjit Kaur** MANU/DE/4346/2013 held that though against the order of the Rent Control Tribunal a petition under Article 227 of the Constitution of India would be maintainable but the scope thereof cannot be as wide as that of an appeal. I may in this regard also record that though the appeal to the Rent Control Tribunal vide Section 38 of the Rent Act prior to the aforesaid amendment was on law as well as on facts but with effect from the amendment, has been confined only to questions of law. The legislative intent thus is to give a finality to the findings of fact returned by the Rent Controller. The exercise of jurisdiction by this Court, under Section 115 of the CPC which has been invoked also, is confined to correct only errors of, exercise of jurisdiction not vested in law or failure to exercise a jurisdiction so vested or acting in exercise of jurisdiction illegally or with material irregularity.

6. The orders of the Additional Rent Controller or the Rent Control Tribunal, subject matter of present proceeding, cannot possibly be interfered with on the first two of the aforesaid three grounds. The Additional Rent Controller and Rent Control Tribunal are vested with the power to pass an order of eviction of petitioner no.1 as a tenant if the ground of eviction provided under the Act is found to have been made out and if the premises are in the ambit of the Act. Once it is so, the only other ground on which

revisionary jurisdiction can be exercised is of “exercise of jurisdiction illegally or with material irregularity” and which ordinarily does not permit review of findings, returned on evidence recorded, of facts.

7. Both, the Additional Rent Controller and the Rent Control Tribunal have found that the petitioner no.1 / tenant is no longer even present in the tenancy premises being shop no. 32/3176, Bedanpura, Karol Bagh, New Delhi and for 5 to 6 years prior to the filing of the petition for eviction, had been residing at Kolkata and the petitioner no.2 / sub-tenant alone is carrying on business from the tenancy premises. It has further been found that it was the case of the petitioners themselves that the petitioner no.2 / sub-tenant was earlier an employee of the petitioner no.1 / tenant and then working in the premises on commission basis. On these findings of fact, which are not in dispute, the order of eviction impugned in this petition has been passed.

8. It is not the contention of the counsel for the petitioners that findings of fact returned are not based on the evidence led in the suit or that from the said evidence, an inference, which no reasonable person could have drawn, has been drawn.

9. The arguments of the counsel for the petitioners / tenants are twofold. Firstly it is contended that the respondents / landlords approached the Rent Controller with a petition for eviction on the ground of the petitioner no.1 / tenant having, without the consent of the respondent / landlord, sub-let the shop to the petitioner no.2 / sub-tenant at a rent of Rs.5,000/- per month; however the respondents / landlords have been unable to prove any payment of Rs.5,000/- per month by the petitioner no.2 / sub-tenant to the petitioner no.1 / tenant. The second contention is, that since it was the case of the respondents / landlords themselves that the petitioner no.1 had sub-let the

premises to the petitioner no.2 / sub-tenant at Rs.5,000/- per month, the provisions of the Rent Act, which is inapplicable to premises rent whereof in excess of Rs.3,500/- per month, were not applicable and the jurisdiction of the Rent Controller could not have been invoked.

10. Needless to state that both the contentions, not only do not appear to have been urged before the Courts below, but even otherwise are totally misconceived.

11. The petitioners, in the joint written statement filed by them, not only denied subletting at the rate of Rs.5,000/- per month but also did not take the plea as is now being taken, of the premises being outside the ambit of the Rent Act and the Court of the Additional Rent Controller not having jurisdiction. Had the petitioners taken such a plea in their written statement, the respondent could have chosen to, instead of pursuing the petition for eviction, sue the petitioners for ejectment in the Civil Court and in which case the respondent could have also claimed *mesne* profits or damages for use and occupation of premises. The petitioners, after contesting the petition for eviction before the Additional Rent Controller and also after preferring appeal to the Rent Control Tribunal and which could be filed only if the Rent Act applied, and after being unsuccessful in both, cannot be permitted to turn turtle and deprive the respondents from the fruit of success in the said proceedings. To allow the petitioners to contend so would amount to permitting the petitioners to blow hot and cold.

12. The respondents / landlords filed the petition for eviction under Section 14(1)(b) of the Act, which provides for eviction of tenant if the tenant has without permission in writing of the landlord sub-let, assigned or parted with possession of the premises. It has been held in *M/s Bharat Sales*

Ltd. Vs. Life Insurance Corporation of India AIR 1998 SC 1240 followed by me in *Man Singh Vs. Kaushalia Devi* 2009 SCC OnLine Del 4084 that arrangements of such sub-letting, assignment or parting with possession between a tenant and sub-tenant / assignee are always hidden from the landlord and shrouded in secrecy and it is always difficult for the landlord to prove so by direct evidence and of which the landlord cannot be aware in exactitude. Even otherwise, the legislature has in Section 14(1)(b) used alternate expressions of sub-letting, assignment or parting with possession. It was further held in aforesaid judgments that once landlord has established presence of stranger in tenancy premises, onus shifts on tenant to explain his presence.

13. The petitioners / tenants though claimed the petitioner no.2 / sub-tenant to be earlier an employee of the petitioner no.1 / tenant and subsequently working for the petitioner no.1 / tenant on commission basis but the findings of facts returned on the basis of evidence led are of no such employment or commission agreement having been proved; rather, it has been found that the petitioner no.2 / sub-tenant Ghanshyam Patel has been carrying on business in the tenancy premises in the name and style of M/s. Patel Tools and which is a surname of the petitioner no.2 / sub-tenant and nowhere otherwise connected to the petitioner no.1 / tenant Mir Abdul Hai. It is contrary to the grain of normal human conduct for an employer / principal to allow an employee / commission agent to carry on business in the premises of the employer / principal in the own name of the employee / agent. I fail to fathom that if this would not a case within the meaning of Section 14(1)(b), what else would. Once it has been proved that the petitioner no.1 / tenant has allowed the petitioner no.2 / sub-tenant use and

occupation of the premises and the petitioner no.1 / tenant has not led any evidence to show his control and possession of the premises, irrespective of whether the plea of the respondents / landlords was of sub-letting or assignment or parting with possession, the tenant will have to be evicted. Supreme Court in ***Dina Nath Vs. Subhash Chand Saini*** (2014) 11 SCC 20 and ***Nidhi Vs. Ram Kripal Sharma*** (2017) 5 SCC 640 has held that though judgments of yester years always interpreted Rent Laws for protection of tenant by leaning towards the tenant but off late there has been a shift in the said stand and the interpretation of the Rent Laws and time has now come for the interpretation of the Rent Laws to be without any bias towards either the landlord or the tenant.

14. The second contention rather cuts into the first argument of the counsel for the petitioners. On the one hand it is argued that the sub-tenancy at Rs.5,000/- has not been proved and on the other hand it is contended that the Rent Controller did not have jurisdiction owing to the rent paid by the petitioner no.1 / tenant to petitioner no.2 / sub-tenant being Rs.5,000/- per month.

15. It is otherwise not in dispute that the rent payable by the petitioner no.1 / tenant to the respondents / landlord for the premises was Rs.550/- per month. The premises were thus well within the ambit of the Rent Act and the tenant cannot, by alleging or by fixing consideration for illegal sub-letting, assignment or parting with possession of the premises in excess of Rs.3,500/- per month, unilaterally oust the rights of the landlord to seek eviction under the provisions of the Rent Act. It is only when the premises though let at rent of less than Rs.3,500/- per month are lawfully sublet at a rent in excess of Rs.3,500/- per month that the landlord, in ***P.S. Jain Co. Ltd. Vs. Atma Ram***

Properties (P) Ltd 1997 (40) DRJ 220, has been held by the Division Bench of this Court to be entitled to sue for ejectment in the Civil Court. I may even otherwise notice that even if the contention of the petitioners though in law misconceived were to be accepted, the petitioners / tenants would still be liable to be evicted from the premises by a decree of the Civil Court.

16. There is thus no merit in the petition.

17. The petition is dismissed with costs of Rs.20,000/- payable to the respondents / landlords and if not paid, recoverable by the respondents in execution of the order of eviction.

RAJIV SAHAI ENDLAW, J

OCTOBER 11, 2017

‘pp’..

(Corrected and released on 7th November, 2017).