HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.5735 of 2011

ORDER:

The deceased petitioner was the landlord of premises tenanted to the respondent on a monthly rent of Rs.2,420/- on the date of filing Rent Control case in the year 2010. The extent is 250 sq. ft. in the ground floor situated at Old Ghasmandi, Secunderabad, using it as godown by the respondent-L.S. Prakash for his business in the said premises under the name and style of "Indrani Trading Corporation". Tenancy was month to month and rent is payable on or before fifth of every succeeding month. The deceased-landlord on the ground that he had retired and intends to carry on business sought for eviction of the respondent. One of the grounds of *bona fide* requirement is that his son was also retired from service just before filing Rent Control proceedings and, therefore, he intends to start business in the tenanted premises and thus, sought for eviction.

2. The respondent-tenant resisted the request contending that initial rent was Rs.850/- per month and it was periodically increased from time to time and the rent as on the date of institution of Rent Control proceedings was Rs.2,660/- per month, from the month of March, 2010, and, in fact, he raised the plea that M/s. Indrani Trading Corporation firm has been the tenant and he is the sole proprietor representing it deposited a sum of Rs.10.000/- as rental advance. He denied other averments putting forth certain details as

his case is also to the effect that sons of the deceased petitioner were well settled in most reputed private jobs and one of them is also in abroad and another son is in India and occupying very good job and there is no *bona fide* requirement, and, therefore, sought to dismiss the same.

3. The Rent Controller formulated the following points for consideration.

> " (1) Whether the non joinder of proper and necessary party of M/s. Indrani Trading Corporation as respondent, vitiate the proceedings?
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> (2) Whether the petitioner is entitled for eviction of respondent from the petition schedule premises on the ground of bona fide personal requirement of himself and his son?
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> (3) Whether petitioner is entitled immediate to recover the petition schedule premises as amended Rent Control Act 17 of 2005?
>
> (4) To what relief? "

4. On behalf of the petitioner-landlord, he examined himself as P.W.1 and his son is examined as P.W.2 and Exs.P-1 to P-6 were marked. On behalf of the respondent, he himself examined as R.W.1 and marked Ex.R-1, which is the acknowledgement of the registration of firm, dated 3.1.1993.

5. On Point No.1, the Rent Controller answered it in favour of the respondent holding that the petition schedule premises is in

occupation of M/s. Indrani Trading Corporation, which is registered firm and its non-impleadment as party by the petitioner vitiates the rent control proceedings.

6. On Point No.2 opining that *bona fide* requirement put-forth by the petitioner is not substantiated, answered it in favour of the respondent.

7. On Point No.3, referring to Section 10 (c) of A.P. Buildings (Lease, Rent & Eviction) Control, Act, 1960 (for short, 'the Act') and explanation appended thereto held in favour of the petitioner, but in view of the finding on Point No.1 dismissed the Rent Control Case by order dated 4.9.2010.

8. Lower Appellate Authority formulated the point for consideration to the effect whether the petitioner-appellant is entitled to seek eviction of the respondent-tenant?

9. Lower Appellate Court also agreed with the Rent Controller that the admissions made by P.Ws.1 and 2 that the rents are being paid by Indrani Trading Corporation (tenant) by way of cheques issued by the wife of L.S. Prakash, representing as proprietrix of M/s. Indrani Trading Corporation, but not by L.S. Prakash, dismissed the Rent Appeal also, affirming the findings recorded by the Rent Controller.

10. Further aggrieved by the judgment and decree in Rent Appeal proceedings, the present Civil Revision Petition is preferred agitating the grounds that both the Courts below erroneously shifted the burden to him to prove that the petition schedule property was let out to the respondent and failed to appreciate that the cheques were issued by the respondent in respect of an account maintained by M/s. Indrani Trading Corporation and signed by his wife; the Courts below relied upon oral testimony of R.W.1 to come to the conclusion that the property was let out to Ms. Indrani Trading Corporation, without there being any documentary evidence; the Court below having observed that the land lord is aged about 83 year-old, ought to have conferred the benefit under Section 10 (c) of the Act and granted immediate relief for recovery of possession. Lastly, he agitates that both Courts below have not taken into consideration the admissions made by respondent during cross-examination.

11. Heard Sri V. Hari Haran, learned counsel for the revision petitioner and Sri C.M.R. Velu, learned counsel for the respondent.

12. Learned counsel for the revision petitioner would contend that the proprietorship concern by itself is not a legal entity apart from its proprietor, the proprietary concern and the proprietrix are one and the same person. In support of the said submission, he placed reliance on a decision of Punjab and Haryana High Court in

Bedi Sons Steels & Wires v. B.G. Brothers[1]. The Hon'ble Punjab and Haryana High Court held in paragraph-7 drawing extracts from **N. Vaidyanathan Deepika Milk Marketing v. Dodla Dairy Limited** (2000 (1) Civil Court Cases 182), and paragraph Nos.14 to 23 therein were extracted. Learned counsel placed reliance on the observation in paragraph No.23, which is thus:

> "23. As indicated above, it is settled position of law that the proprietorship concern by itself is not a legal entity apart from its proprietor, the proprietary concern and the proprietrix are one and the same person. To put it differently, the prosecution against the proprietrix representing proprietorship concern or proprietorship concern represented by proprietrix are one and the same as both these things sink, sail and merge with only the entity."

13. In the same context, he also placed reliance in **M/s. Shankar Finance and Investments v. State of Andhra Pradesh and others**[2], and relies on the expression of the Hon'ble Apex Court in paragraphs-8 and 9, thus:

> "8. As contrasted from a company incorporated under the Companies Act, 1956 which is a legal entity distinct from its shareholders, a proprietary concern is not a legal entity distinct from its proprietor. A proprietary concern is nothing but an individual trading under a trade name. In civil law where an individual carries on business in a name or style other than his own name, he cannot sue in the trading name but must sue in his own name, though others can sue him in the trading name. Therefore, if the appellant in this case had to file a civil suit, the proper description of plaintiff should be "Atmakuri Sankara Rao carrying on business under the name and style of M/s Shankar Finance & Investments, a sole proprietary concern". But we are not dealing with a civil suit. We are dealing with a criminal complaint to which the special requirements of section 142 of the Act apply. Section 142 requires that the complainant should be payee. The payee is M/s Shankar Finance & Investments. Therefore in a criminal complaint relating to an offence under section 138 of the Act, it is permissible to lodge the complaint in the name of the proprietary concern itself.

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[1] (2002) 112 CompCas 426 (P and H)
[2] AIR 2009 SC 422

9. The next question is where a proprietary concern carries on business through an attorney holder, whether the attorney holder can lodge the complaint? The attorney holder is the agent of the grantor. When the grantor authorizes the Attorney Holder to initiate legal proceedings and the attorney holder accordingly initiates legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder, and not by the attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed : (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the `payee'; (ii) The proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and

(iii) the proprietor or the proprietary concern represented by the attorney-holder under a power of attorney executed by the sole proprietor. It follows that in this case the complaint could have been validly filed by describing the complainant in any one of the following four methods :

"Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments"

Or

"M/s. Shankar Finance & Investments a sole proprietary concern represented by its proprietor Atmakuri Shankara Rao"

Or

"Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments, represented by his Attorney Holder Thamak Satyanarayana"

Or

"M/s. Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his Attorney Holder Thamada Satyanarayana".

What would have been improper is for the Attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant."

14. He further lays emphasis on the expression of the Hon'ble Apex Court in **Ashok Transport Agency v. Awadhesh Kumarand another**[3]. He still further relies on a decision in **Miraj Marketing Corporation v. Vishaka Engineering and Another**[4] for the proposition that a sole proprietorship firm is not a legal entity which can sue or be sued in its own name. Such suit relating to or against the affairs or claims of a proprietorship concern has to be

[3] (1998) 5 SCC 567
[4] 115 (2004) DLT 471

brought or made against the person who is the sole proprietor of the firm. He would also refer to the definition of 'person" in General Clauses Act, 1897, thus:

> "Person
>
> (42) "person" shall include any company or association or body of individuals, whether incorporated or not;"

15. So far as *bona fide* requirement is concerned, he relies on a decision of the Hon'ble Supreme Court in **Raj Kumar Khaitan and others v. Bibi Zubaida Khatun and another**[5] and the expression of the Hon'ble Apex Court in paragraph-3, thus:

> "3. It is clear from the averments made in the above quoted paragraphs that the plain tiffs asserted that there was no other means of livelihood with them and as such they wanted to set up their own business in the premises in dispute. The High Court, however, came to the conclusion that apart from above quoted pleadings it was necessary to plead the nature of the business which the appellants-plaintiffs wanted to start in the premises. We are of the view that the High Court fell into patent error. It was not necessary for the appellants- landlords to indicate the precise nature of the business which they intended to start in the premises. Even if the nature of business would have been indicated nobody could bind the landlords to start the same business in the premises after it was vacated."

16. Thus, the submission of the learned counsel for the revision petitioner is that there is no legal infirmity in mentioning the name, L.S. Prakash as he has been dealing with day-to-day affairs of 'M/s. Indrani Trading Corporation' and in view of the law laid down by the Hon'ble Apex Court that the proprietorship concern by itself is not a legal entity apart from its proprietor, the proprietary concern and the proprietrix are one and the same person, and, therefore, there is no infirmity in arraying L.S. Prakash as respondent on behalf of Indrani

[5] AIR 1995 SC 576

Trading Corporation, and, both the Courts below went wrong in appreciating the legal aspect and arrived at a wrong conclusion, and, requests to set it aside.

17. Learned counsel for the respondent would dispute the submission made by the learned counsel for the petitioner contending that the proprietor concern is a registered firm and Ex.B1 reflects the same, L.S. Prakash cannot be shown as respondent and even if it is admitted that he is the sole proprietor of Indrani Trading Corporation for argument sake either the name of company should be the prefix or suffix, and, therefore, the Courts below did not commit any mistake and requests to dismiss the present Civil Revision Petition.

18. The point for consideration is, whether the concurrent findings recorded by the Courts below are patently perverse warranting interference of this Court. It is needless to refer to the finding recorded on Points 1 to 3 by the Rent Controller for the reason that the Rent Controller favoured the revision petitioner herein and that finding as rightly observed by the learned lower Appellate Court was not challenged and attained finality. It is open to the revision petitioner to seek remedy by describing tenant correctly.

19. However, the only controversy occurring in the present Civil Revision Petition is whether describing the tenant as “L.S. Prakash” instead of “M/s. Indrani Trading Corporation, represented by” such and such person would satisfy the requirement of law. The

learned counsel for the revision petitioner, no doubt, relied on the aforesaid authorities, but in **M/s. Shankar Finance and Investments** (2 supra) the Hon'ble Apex Court was dealing with dishonour of cheque, and the offence under Section 138 read with Section 142 was alleged. In **Ashok Transport Agency** (3 supra) the Hon'ble Apex Court ruled that a suit by or against the proprietory concern is by or against the proprietor of the business and in the event of the death of the proprietor who alone can sue or be sued it, is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings of the proprietary business when the real party who is being sued is the proprietor of the said business.

20. In **Miraj Marketing Corporation** (3 supra), a Division Bench of Delhi High Court expresses that a sole proprietorship firm is not a legal entity which can sue or be sued in its own name and such suit relating to or against the affairs or claims of a proprietorship concern has to be brought or made against the person who is the sole proprietor of the firm. The definition clause occurring in General Clauses Act, 1897, defining 'person' is an inclusive one and envisages that a person shall include any company or association or body of individuals, whether incorporated or not.

21. The moot question that arises for consideration in the present case is, whether the respondent - L.S. Prakash was the proprietor of M/s. Indrani Trading Corporation. As could be seen from the stand taken by the petitioner, M/s. Indrani Trading

Corporation is the tenant and using the petition schedule premises as occupant and P.W.1 received rents through account payee cheques issued by the wife of respondent signed as proprietrix of M/s. Indrani Trading Corporation.

22. Therefore, further question that arises for consideration is, whether the petitioner can proceed against Mr. L.S. Prakash, husband of the proprietrix of M/s. Indrani Trading Corporation. This was dealt with elaborately under Point No.1 by the learned trial Court and arrived at the conclusion that the petition schedule premises is in occupation of M/s. Indrani Trading Corporation, which is a registered firm and since it is not impleaded as party by the petitioner, Rent Control proceedings are vitiated.

23. On the same analogy, though, independently analysing the evidence on record, the learned lower Appellate Court arrived at the very same conclusion by considering the evidence of P.Ws.1 and 2. When the wife of respondent is the proprietrix of M/s. Indrani Trading Corporation and P.W.1 received rents through account payee cheques signed by the wife of the respondent as proprietrix of M/s. Indrani Trading Corporation, invariably tenant being M/s. Indrani Trading Corporation, represented by its sole proprietrix, would be the respondent, but not the husband of the proprietrix of the said Indrani Trading Corporation. In the present context, the expression of the Hon'ble Supreme Court occurring in paragraph-9 extracted herein above in **M/s. Shankar Finance and Investments** (2 supra) is apt to

recapitulate and the four methods enunciated by the Hon'ble Apex Court mentioned above, become relevant. When examined on the anvil of the above extracted four methods, none of them is occurring in the present case. Therefore, merely because M/s. Indrani Trading Corporation is the sole proprietory concern, arraying the husband of the proprietrix in his individual capacity will not meet the legal requirement. Thus, there is patent defect in arraying him as respondent-party and that defect cannot be cured on the mere ground that the proprietorship concern by itself is not legal entity apart from its proprietor, the proprietary concern and the proprietrix are one and the same person.

24. Thus, for the reason that the proprietrix is not the respondent and the tenant is not described properly, it cannot be said that the concurrent findings recorded by the Court below are tainted with any patent illegality.

25. There is no merit in the present Civil Revision Petition. Hence, the present Civil Revision Petition is dismissed. The parties shall bear their own costs.

26. The learned counsel for the revision petitioner would submit that the dismissal of the present CRP may preclude the legal representatives of the original landlord from instituting a fresh rent control proceeding and, therefore, sought to grant liberty there-for. There is every reason to grant liberty to the revision petitioner, who is

the legal representative of the original landlord and, therefore, the dismissal of the present CRP will not preclude the revision petitioner herein to institute rent control proceedings afresh properly describing the parties as per the law declared in **M/s. Shankar Finance and Investments**[2].

As a sequel thereto, miscellaneous petitions if any pending in the Civil Revision Petition shall stand closed.

A.SHANKAR NARAYANA

Dt. 28.06.2018
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