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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 6th April, 2018

+ CM (M) 433/2013

BHAGWANT SINGH PABLA & ORS. Petitioners

Through: Ms. Sonali Malhotra, Advocate.

versus

CURRENT ADVERTISING (P.) LTD. & ANR..... Respondents

Through: Mr. Atul Nigam, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners admittedly are the landlords *qua* the premises described as third floor of property bearing No.4-E/7, Jhandewalan Extension, New Delhi (subject premises), let out initially by a lease deed (Ex.PW-1/R1) dated 27. 06.1979 in the name of a partnership firm described as M/s. Current Advertising and Marketing in which M.L. Aggarwal and R.P. Aggarwal were partners. It is not disputed that tenancy had been created by Mr. Dial Singh Pabla, who having died, the petitioners having stepped into his shoes as his successors-in-interest. It is further an admitted fact that the said partnership firm was converted into a private limited company in the name and style of M/s. Current Advertising (P) Limited (the first respondent) in which the said erstwhile partners - M.L. Aggarwal and R.P. Aggarwal - were the

only Directors, the entire shares of the company held by them. It is further undisputed that the tenancy rights were transferred in the name of the first respondent, it having been accepted as the tenancy qua the subject premises with effect from 27.03.1990. It is admitted that the said Directors of the first respondent company parted ways w.e.f April, 1992 where after one of them, viz., M.L. Aggarwal took over the said company, having shifted elsewhere, the other Director (R.P. Aggarwal) continuing on the subject premises retaining its control. The subject premises concededly came to be in use and occupation of M/s. Censor Advertising Pvt. Ltd., (second respondent), a company in which R.P. Aggarwal is a Director.

2. Against the above backdrop, the petitioners had instituted a case for eviction (E.No.99/04/94) on 28.07.1994 on the grounds under Section 14 (1)(a) and Section 14(1)(b) of the Delhi Rent Control Act, 1958 alleging, *inter alia*, that the first respondent (the tenant) had sub-let the subject premises to the second respondent without the previous consent in writing of the landlord and further that the tenant had run into arrears of rent which had not been paid in spite of demand. The petition was contested by both the respondents through separate written statements and was decided by the additional rent controller by judgment dated 26.03.2012. The petition on the ground under Section 14(1)(a) of the Delhi Rent Control Act, 1958 was disposed of with observations that there was no outstanding rent on the date of judgment, the interim order under Section 15(1) of the Delhi Rent Control Act, 1958 having been complied with. The trial court, however, was of the view that the petitioners had failed to prove the

ground of subletting and, thus, dismissed the petition on that ground.

3. The dismissal of the eviction case on the ground of subletting was challenged by the petitioners in appeal (RCT Appeal No.29/2012) before the rent control tribunal, the said having been dismissed by the judgment dated 15.12.2012. The petition at hand was filed seeking to assail the view of the two authorities below primarily on the ground that the evidence has not been properly appreciated, the presence of a stranger in the premises without the consent of the landlord having been overlooked.

4. The first respondent has chosen not to appear to contest in spite of notice. The second respondent, described by the petitioners as the sub-lettee has appeared through counsel to resist the petition.

5. Arguments of the counsel for the petitioners and for the second respondent were heard at length and with their assistance the record perused.

6. In the considered view of the court, the additional rent controller (ARC) and the rent control tribunal have misconstrued the case totally, ignoring the crucial aspect, they having been swayed, erroneously and improperly so, by clause no.(vi) of the lease deed (Ex.PW-1/R1) dated 27.06.1979.

7. The clause referred to by the respondents in the lease deed dated 27.06.1979 reads thus:-

“(vi) That the lessee will not, without the previous consent, of the lessor in writing, sublet, assign or otherwise part with in any manner, transfer the

possession of the whole or any part of the demises premises or its interests in the same to anybody else, but the other firms, where the any of the partner of above mention firm and their family members can do the business.”

8. The lease deed dated 27.06.1979 having been entered upon by the landlord with the firm M/s. Current Advertising and Marketing, it had served its purpose and exhausted itself when the firm was dissolved and instead a company by the name of M/s. Current Advertising (P) Ltd. (first respondent), established by its partners, was accepted as the tenant by the landlord. The effect of the firm being converted into a company and the company having been accepted as the tenant w.e.f. 27.03.1990 would mean the tenancy in the name of the erstwhile firm, or of its erstwhile partners, had come to an end. Upon the first respondent company being accepted as the tenant w.e.f. 27.03.1990, it is the said company (a juristic person) with which the landlord had the privity of contract. Having regard to the intent, import and effect of the clause of the lease deed dated 27.06.1979, as quoted above, it is vivid that its benefit would not inure in favour of any third person connected with the company.

9. The abandonment of the premises by M.L. Aggarwal, one of the erstwhile partners of the initial tenant (firm), he also being a Director in the company which had been accepted as tenant w.e.f. 27.03.1990 and the retention of the premises by R.P. Aggarwal, the other Director in the company were events which had no approval or consent of the landlord. It is the second respondent, in which R.P. Aggarwal is a Director, which has instead taken over the exclusive control of the

subject premises. The second respondent admittedly is a company and, therefore, an independent juristic person. It is a stranger in the premises whose presence is indisputably without the prior consent in writing of the petitioner landlord. This constitutes unauthorized assigning or subletting within the mischief of the provision contained in Section 14 (1)(b) of Delhi Rent Control Act, 1958. [See: *M/s. Cox & Kings Ltd. & Anr. Vs. Smt. Chander Malhotra*, 65 (1997) DLT 412 (SC)].

10. Thus, the impugned orders of the additional rent controller and the rent control tribunal rejecting the case of the petitioners for eviction on the ground of subletting cannot be upheld. They are set aside. The eviction petition of the petitioners on the said ground is allowed. An eviction order in respect of subject premises is passed in favour of the petitioners and against the respondents under Section 14 (1)(b) of the Delhi Rent Control Act, 1958.

11. The petition stands disposed of in above terms.

R.K.GAUBA, J

APRIL 06, 2018

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