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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 4th April, 2018

+ CM (M) 349/2016

GURSHARAN KAUR

..... Petitioner

Through: Mr. T.S. Ahuja & Mr. Varun
Ahuja, Advs.

versus

HARBANS SINGH

..... Respondent

Through: Mr. Tarun Kr. Malhotra, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is concededly the landlord vis-à-vis the respondent, the tenant, in respect of premises described as shop situated in property no. 663/12, Mehta Market, Pandit Park, Patparganj Road, Delhi- 110051 as specifically shown in colour red in the site plan filed with the petition for eviction submitted on 04.02.2012 which was registered by the Rent Controller as eviction case no. 10/2012. The case for eviction was instituted on the ground provided under Section 14 (1) (b) of Delhi Rent Control Act, 1958 on the allegations that the respondent (the tenant) had sublet the demised premises to two persons Amrik Singh and Satnam Singh who were in its use and enjoyment to his exclusion. It may be mentioned here that it came out during the trial that Satnam Singh is real brother of the tenant while Amrik Singh is his nephew. The case was contested by

the tenant with explanation that he was running his business in the name and style of Amole Electricals and that Amrik Singh and Satnam Singh were his employees. Evidence was led by both sides wherein Guriqbal Singh (PW-1), the husband of the petitioner appeared on her behalf, she also examining two neighbours (PW-2 and PW-3) primarily to bring on record that it is Amrik Singh who was in occupation and use of the premises. The respondent examined himself (as RW-1) and also relied on the evidence of Amrik Singh (RW-2) and Satnam Singh (RW-3). The Rent Controller dismissed the petition by judgment dated 14.01.2015 holding that the petitioner had failed to prove the allegation of subletting. Her appeal (RCA 09/2015) was dismissed by the Rent Control Tribunal by its judgment dated 08.01.2016.

2. The petition at hand has been filed seeking to assail the above-mentioned consistent judgments of the two forums as mentioned above.

3. Having heard the learned counsel on both sides and having gone through the record with their assistance, this Court finds no substance or merit in the petition. In the considered view of this Court, the Rent Controller and the Rent Control Tribunal have appreciated the evidence adduced by both sides in proper light and have reached the correct conclusions on facts.

4. It must be mentioned at this stage that though allegations of subletting in favour of two persons were made, the petition at hand is pressed only with regard to the presence of Amrik Singh (RW-2) in

the demised premises, the petitioner through counsel making it clear that she gives up her case with regard to the presence of Satnam Singh (RW-3).

5. It does appear that both RW-1 and RW-2 have admitted that the latter (RW-2) has been opening the shop and also closing it at the end of the day he being in possession of a key handed over to him by RW-1. But then, RW-1 has affirmed on oath that he continues to be the tenant having retained another key to the premises, thus being in actual control, RW-2 and also RW-3 being his employees only.

6. It was sought to be pointed out by the counsel for the petitioner that in the evidence, the respondent has claimed that RW-2 and RW-3 had been engaged "on job work basis" which is at variance from the averments in the written statement. This Court does not find anything turning on use of such expression in the evidence. The fact remains that the stand of the respondent has been consistent that RW-2 and RW-3 are employees engaged by him for purposes of his business in the name and style of Amole Electricals.

7. The photographs (Ex.PW-1/4 to Ex. PW-1/7) of the premises do show presence of RW-2. But then, mere presence of such person by itself is no proof of subletting or parting with possession for bringing home the case for eviction. The petitioner was required to prove that the premises is in the control of a stranger to the exclusion of the tenant inducted by her. The word of the tenant (RW-1) here is corroborated by the person (RW-2) stated to be in use, the latter also affirming his status to be only of an employee under the former.

There is no proof of any consideration flowing from RW-2 to RW-1 for use of the premises. On the contrary, RW-2 is on record to state that he receives remuneration from RW-1.

8. The tenant admittedly does not have any documents in the nature of registration of his establishment under the Shops and Establishment Act nor has any payment been made for tax or duty to the authorities relating to income-tax or VAT against his income therefrom. The tenant does not maintain any formal books of accounts or employees' register. The absence of such records or any proof of income actually flowing to the tenant does not necessarily mean that he or his firm are not in use of the premises. The possibility, as is claimed and argued, that the business is not very lucrative cannot be ruled out.

9. The respondent had relied on licence issued by Govt. of NCT of Delhi (Ex.DW-1/1) and the reports submitted (Ex.DW-1/2 and 3) about the employees of Amole Electricals. It does appear that the respondent is shown also an employee. Merely because he is also shown as an employee, will not cut any ice for the petitioner for the reason the licence (Ex.DW-1/1) also reflects him to be the contractor in whose name the licence was issued. The licence in name of Amole Electricals, the document confirming the respondent to be the contractor, was issued on 01.10.1977 and consistently kept validated till 30.09.2014. This licence with reference to the firm Amole Electricals only reinforce the defences of the respondent.

10. In the above facts and circumstances, reliance on *M/s Nath Oil Company & Ors. vs. Smt. Kailash Rani Kapoor & Ors.* 82 (1999) *Delhi Law Times* 936 and *Subhash Khanna vs. Chatar Lal*, CM (M) 12/2010 decided on 11th March, 2010, does not help the petitioner.

11. The petition is dismissed.

R.K.GAUBA, J.

APRIL 04, 2018

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