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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 20th April, 2018

+ CM (M) 1367/2011 & CM No. 21211/2011

SAMEER WASON & ANR. Petitioners

Through: Mr. P.K. Rawal, Adv.

versus

AGYA RAM SOOD Respondent

Through: Mr. P.P. Ahuja, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioners claim to be landlords qua the respondent in respect of premises described as shop on ground floor in property no. 53, Old Rajinder Nagar Market, Delhi, the tenancy statedly having been created by Rent Agreement dated 15.07.1988. They had instituted a case for eviction (petition no. E-185/1998) in the Court of Additional Rent Controller on 21.12.1998 invoking grounds under Section 14 (1) (a), (b) and (j) of Delhi Rent Control Act, 1958. The case was contested by the respondent on all counts, evidence having been led by each side. It eventually resulted in judgment dated 02.06.2003 whereby the Additional Rent Controller having found the respondent guilty of being in default of payment of rent within the mischief of Section 14 (1) (a), closed the proceedings by granting the benefit of protection under Section 14 (2) of Delhi Rent Control Act,

1958, the respondent (tenant) having complied with the order under Section 15 (1). There has been no challenge brought to the findings in that regard or the result on that score by either side, the judgment of the Additional Rent Controller to that extent having attained finality. The Additional Rent Controller held, by the said judgment dated 02.06.2003, that the petitioners had failed to prove their case on the ground under Section 14 (1) (j) of Delhi Rent Control Act, 1958. The said ground was not pressed by any appeal before the Rent Control Tribunal and, thus, also needs quietus. The ground of sub-letting under Section 14 (1) (b) of Delhi Rent Control Act, 1958, however, persists and has come up for fresh consideration before this Court through the petition at hand.

2. The Additional Rent Controller had granted eviction order on the petition under Section 14 (1) (b) of Delhi Rent Control Act, 1958 holding the respondent-tenant to have sub-let the premises. The respondent-tenant had challenged the said finding and result. The appeal (RCT 82/2009 old no. RCA 504/2003) was allowed by the Additional Rent Control Tribunal by judgment dated 12.08.2011 and it was held that the petitioners had failed to prove sub-letting. Thus, the eviction order was set aside and the petition on that ground was dismissed.

3. Having heard the learned counsel on both sides and having gone through the record, including the pleadings and the evidence (copies whereof were submitted at the hearing), this Court finds no merit in the petition.

4. The case for eviction on the ground under Section 14 (1) (b), Delhi Rent Control Act, 1958 was set out in the eviction petition thus:-

“That the respondent has already sub-letted, assigned and otherwise parted with the tenancy premises and the respondent tenant is not at all in possession thereof and sub tenant is in exclusive possession of tenancy shop. As per terms and conditions of the rent agreement the respondent has no right to sub-let, assign or otherwise part with the possession of the tenancy premises, hence the present petition on the ground of sub-letting”.

5. The above ground was contested with following averments in the written statement:-

“14 (1) (b). Sub-Para-under-reply is absolutely wrong and false and is emphatically denied. The allegations in the Sub-Para-under-reply are merely repetition of the earlier allegations of the petition and a suitably reply/written statement to the same has already been give above, which, for the sake of brevity, is not being reproduced herein, and it is prayed that the same may please be read as part of the reply to the Sub-Para-under-reply. The petition, being false, frivolous and baseless, is liable to be dismissed, with punitive costs. It is wrong and is denied that the respondent has Sub-letted, assigned or otherwise parted with the tenancy premises or the respondent is not in possession thereof or that it is any alleged sub-tenant who is in possession of the tenancy shop. The terms of the agreement of rent are matters of record, however, the respondent has not violated any of the terms of said agreement date 18.7.88 of rent. The petitioner on the alleged ground of sub-letting is false, baseless ad malafide, and is having no substance or truth in the same. The respondent himself is in use, occupation and possession of the tenanted shop, wherein he in the company of his son, has been running

the business if stationer, books, etc. (including cold drinks)''.

6. The second petitioner appeared in evidence (as AW-2), reliance being placed additionally on the evidence of certain other witnesses, the prime effort of the petitioners to prove that the respondent had sublet the shop to his son Arun Sood, and that he was in exclusive use of the premises, running his business in the name and style of M/s Sood Store. These facts were sought to be demonstrated, *inter alia*, by photographs (Ex. AW-2/22, 26 and 28), and the evidence of Chander Pal (AW-1), Section Officer from Mahanagar Telephone Nigam Ltd.(MTNL) and Rajesh Anand (AW-4), Clerk-cum-cashier, Oriental Bank of Commerce, old Rajinder Nagar, New Delhi. The respondent, on the other hand, examined himself (as RW-2), also examining Gulab Singh (RW-1), another official from the aforementioned bank in addition to other witnesses including his son Arun Sood (RW-4). The photographs depict display of the sign board of Sood Stores across the subject premises. The respondent, in his evidence, did not deny the presence of his son Arun Sood in the premises, his argument being that he is assisted in the business run from the premises by his said son, it also being not disputed that the son was engaged in the business of Sood Store which was run simultaneously from the premises, it being the case of the respondent that he continues to be in possession and control of the tenanted shop.

7. The evidence of the official witnesses from MTNL would show that a telephone connection in the name of Arun Sood, son of the respondent was installed in the premises. The evidence of the official

witnesses of the bank would show that Arun Sood, the son of the respondent had opened a bank account in the name of Sood Stores.

8. The learned counsel for the petitioners read extensively from the evidence and the judgment of the Additional Rent Controller to argue that the petitioners had proved the presence of a stranger in the premises and, therefore, had discharged the burden of proof on the ground of sub-letting and further that there was no satisfactory explanation offered by the respondent and consequently the eviction order granted by the Additional Rent Controller should not have been disturbed by the Additional Rent Control Tribunal. *Per contra*, the counsel for respondent relied on the judgment of the Additional Rent Control Tribunal and argued that mere proof of existence of a telephone connection in the name of the son and use of the address of the suit shop by the son for opening a bank account in the name of M/s Sood Store does not bring home the case of sub-letting, the evidence of the respondent about he having continued to be in possession and control being credible and rightly accepted by the appellate forum.

9. Having accorded consideration to the rival submissions in the light of pleadings and the evidence on record, this Court finds the view taken by the Additional Rent Control Tribunal to be based on correct appreciation of facts and proper application of law. There is no evidence worth the name to show that while allowing his son to simultaneously run the business of Sood Stores from the subject premises, the respondent has effaced himself from the tenanted shop. His evidence, duly supported by that of other witnesses including his son (AW-4), as indeed that of Amarjit Singh (RW-3), Secretary of the

Market Association, leaves no room for doubt that the respondent-tenant continues to be not only in use and occupation of the premises but also engaged in the business run therefrom.

10. There is no evidence of any monetary consideration flowing from the son of the respondent to him for use of the subject premises by the former. It is not a case of the tenanted premises having been partitioned or any particular portion having been rendered in exclusive use of a stranger by the tenant. In these circumstances, the view taken by the Additional Rent Control Tribunal with reference to the rulings in *Gulzar Singh Ors. vs. Sri Chand Gupta* 29 (1986) *Delhi Law Times* 50; *Jaganath vs. Chander Bhan & Ors.* AIR 1988 Supreme Court 1362; *Niranjan Lal Kanodia vs. Harbans Lal* 1995 (34) DRJ 14; *Sohan Lal vs. Siri Pal & Ors.* 48 (1992) DLT 65; *Chander Kishore Sharma & Ors. vs. Kampa Wati* 24 (1983) *Delhi Law Times* 316; *Bhagwan P Sajnani vs. Ranbir Singh* 29 (1986) *Delhi Law Times* 45 and *Nirmal Kanta vs. Ashok Kumar* AIR 2008 Supreme Court 1768 does not call for any interference.

11. The petition and the pending application are, thus, dismissed.

R.K.GAUBA, J.

APRIL 20, 2018

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