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

Reserved on: 27th September, 2018

Pronounced on: 14th November, 2018

+ CM(M) 292/2009

YOUNG FRIENDS & CO. & ORS. Petitioners

Through: Mr. Abhijat & Mr. Abhishek
Agarwal, Advs.

versus

PURI INVESTMENTS Respondent

Through: Mr. Dayan Krishnan, Sr. Adv.
with Mr. Jeevesh Nagrath, Mr.
Chitvan Singhal & Mr. Sanjeevi
Seshadri, Advs.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

1. The petitioner, feeling aggrieved by the judgment dated 29.08.2007 of the Additional Rent Control Tribunal (ARCT) granting an order of eviction in favour of the respondent under Section 14(1)(b) of Delhi Rent Control Act, 1958 (for short, "DRC Act") had approached this court by the present petition presenting it initially as a second appeal under Section 39 of the DRC Act. The provision contained in Section 39, however, having been repealed by Section 17

of Delhi Rent Control (Amendment) Act, 1988 brought in force from 01.12.1988, upon objection being taken and it having been conceded that the only remedy available being a petition under Article 227 of the Constitution of India, it has been treated and converted accordingly in terms of directions in the order dated 26.03.2009 read with order dated 15.05.2009.

2. The first petitioner, established in 1924, a proprietary concern of late Mr. Madan Mohan, was admittedly inducted as a tenant in 1936 in premises described as ground floor with mezzanine floor (“the tenanted premises”) forming part of property no.7-E, Connaught Place, New Delhi and upon the respondent acquiring the title and interest in the said property (on 30.04.1958) has been concededly in relationship of a tenant and landlord with it, such tenancy indisputably being one that is protected by the DRC Act. It is also not in dispute that Mr. Madan Mohan having died (sometime in 1985) when the proceedings were pending before the Additional Rent Controller (ARC), the tenancy devolved on his son Mr. Jagmohan Gupta, who was substituted in place of the former and, further, that Mr. Jagmohan Gupta also having died (on 20.11.2017) during the tenancy of these proceedings before this court, the matter has been pursued and prosecuted on behalf of the tenant by his legal heirs (the second and third petitioners).

3. The matter arises out of an application for an order for eviction presented on 22.12.1973 by the respondent (“landlord”) impleading the first petitioner (“tenant”) as one of the parties invoking the provisions contained in Section 14(1)(b) and (k) of DRC Act.

Reference to the clause (k) of Section 14(1) of DRC Act was erroneous in as much as, going by the averments, the case of the landlord was that the tenant had caused substantial damage to the tenanted premises by making unauthorized alterations and constructions, this attracting instead clause (j) of Section 14(1) of DRC Act. Be that as it may, the averments about substantial damage have lost their relevance in as much as the landlord chose to give up the claim on such ground even before the ARC, as noted in (para 19 of) its judgment dated 05.06.1997.

4. In the eviction case, five other parties were shown in the array as respondents, they including Dr. Pradip Jayna (also spelt as “Jaina”), Dental Surgeon (R-2); Dr. S.S. Pant, M.D. (R-3); Mr. K.N. Mehta (R-4); Young Friends & Co., Dealers in fur coats and leather goods (R-5); and M/s. Gautam Enterprises (R-6), the address of each being described as 7-E, Connaught Place, New Delhi.

5. The eviction petition was amended more than once. It was resisted by the tenant (the petitioner herein) through a written statement which was also for and on behalf of R-5, it being explained that the said party (shown as fifth respondent) was same as the tenant, the only difference being that aside from the business of chemists, it was also in the business in fur coats and leather goods from a part of the tenanted premises. It may be added here that in the face of the position of the tenant that the business of fur coats and leather goods was also a business of the tenant, the case for eviction on the ground under Section 14(1)(b) of DRC Act on such facts was not before the first appellate court.

6. The sixth respondent in the eviction case i.e. M/s. Gautam Enterprises (R-6) was impleaded in the case primarily on the allegations that he had been allowed to do business from a certain portion (described as the one shown in red colour in the site plan attached). The tenant in its written statement explained that there had been no subletting, assignment or parting with possession of any portion of the tenanted premises, the respondent in question having set up business from almirahs which had been put by him in corners of the *verandah* in front of the shop, such place being not part of the tenancy but a public street which was maintained by the local authority i.e. New Delhi Municipal Committee (NDMC). It had been conceded that in some removal action taken by the municipal authority, the sixth respondent had moved from the place, the case for eviction of the tenant on account of such presence also not being pressed or pursued.

7. The landlord pressed the petition under Section 14(1)(b) of DRC Act for eviction order on the allegations that R-2, R-3 and R-4 had been inducted as sub-tenants without the consent in writing of the landlord in two different portions at the mezzanine floor.

8. In the petition presented on 22.12.1973, it was also alleged that the petitioner had incurred a case for eviction on the ground of subletting, it having given liberty for use of a portion on the mezzanine floor for running the business of fur coats and leather goods. This averment was reiterated in the amended petition dated 10.05.1974 and also in the amended petition dated 15.05.1978 where it was added that the portion in question had been sublet to the owner of

a business in the name and style of “Figurette” run as a “slimming, hair dressing and beauty parlour”.

9. The eviction case was resisted by the tenant (as earlier noted joining R-5 in the contest), and also by R-2 to R-4, who submitted a separate joint statement. Since the focus of the case for eviction on the ground of subletting which is pressed by the landlord concerns the presence, occupation and use of certain portions of the tenanted premises by R-2, R-3 and R-4, on one hand, and for the purposes of business of fur coats and leather goods besides the business in the name and style of “Figurette” on the other, pleadings of the landlord in such regard, as appearing in para 18(a) of the eviction petition may be extracted as under :-

“That the respondent no.1 has without the consent of permission of the landlord sublet assigned or otherwise parted with possessions of the premises as follows :

Portion measuring 12’x 16’ on the mezzanine floor to DR. Pradeep Jayna, Dental Surgeon, where he has his Dental Clinic, shown black in the plan attached.

Portion measuring 8’x 12’ on the mezzanine floor both to Dr. S.S. Pant and Shri K.S. Mehta with a partition in between, shown in green in the plan attached.

Portion measuring 12’x 12’ on the mezzanine floor to M/s. Young Friends & Co. where they are running the business of furcoats and leather goods shown in violet colour.

x x x

That the respondent no.1 has sublet a portion on the mezzanine floor to the owner of a Sliming Hair Dressing and Beauty Parlour who is running the business under the name and style of Figurette”.

10. It was generally stated elsewhere in the eviction petition (paras 16 and 19) that the landlord had illegally and without its consent, authority or sanction in writing sublet, assigned or parted with possession of such parts of the premises as have been mentioned above.

11. The tenant, in its written statement, questioned the correctness and description of the tenanted premises claiming that it consisted of ground floor, first floor and mezzanine floor. But, nothing turns on the plea to such effect since the extent of the tenanted premises as described in the eviction case was more or less admitted during the trial, no evidence to the contrary having been brought out, the fact that the tenanted premises comprised of ground floor portion and mezzanine floor having also come out clearly through the report dated 31.08.1977 of the Local Commissioner, to which reference would need to be made a little later.

12. The tenant, in its written statement, denied that it had sublet, assigned or parted with possession of the tenanted premises or any part thereof asserting that it was in complete possession of the same. The pleadings in the written statement of the tenant, to the extent relevant to the case of the landlord vis-à-vis the presence of R-2, R-3 and R-4 and to the other above referred businesses, may be quoted as under :-

“18(a). This sub para is denied, the respondent has not sublet, assigned or parted with possession any portion to Dr. Partap Jayana Dental Surgeon or Dr.S.S. Pant or K.S. Mehta. The above three persons were mere licencees of this respondent without having physical possession. They are no longer the licencees and do not sit in the demised premises. It has been the practice prevalent in Delhi and New Delhi that the chemists and Doctors have been sitting in the same premises. It may not be out of place to mention that during 1920s and 1930s Dr. Calley, a French National, Dr. B.S. Gupta, Dr. S.S. Mitra have been sitting and carrying on their practice at the premises of the respondent no.1. Doctor Romesh Aggarwal, an Eye Surgeon had been sitting at the premises of Respondent No.1 in 1950s. Other chemists in the area like Kemp & Co., Lal Sons, Messrs. Galan Medical Hall near Madras Hotel, New Delhi, have been keeping Doctors in their premises. The doctors who have been sitting from time to time at the premises of the respondent No.1 have never paid any money for such purpose to respondent no.1. They had occupied the premises as licensees. The presence of a Doctor in a place where Chemists business is carried on, is a part of service which a Chemist offers to the General Public.

Regarding respondents 2, 3 and 4, they have been mere licencees in the premises and the respondent no.1 had merely provided place for their sitting but the control of the premises is of respondent no.1. In case the respondent no.1 does not open the shop for a day, the premises remain locked and closed and the respondents 2 to 4 have no access to the premises. Their entry could also be stopped by respondent no.1 without any cause or notice. The respondent has neither sublet nor assigned nor parted with the

possession of any partitioned portion of the demised shop to the respondent.

x x x

It is pertinent to note that the petitioner mentioned the portions alleged to have been sublet, assigned or parted with the possession of by this respondent to respondent No.2 to 5 but he has made no mention of the portion alleged to be with the respondent No.6 and no specification of the portion alleged to have been sublet to respondent No.6 has been made which clearly shows that the respondent No.6 has been put up by the petitioner for reasons best known to him.

That the allegations that the respondent no.1 has sublet, assigned or parted with the possession of the premises in favour of the Slimming Hair Dressing and Beauty Parlour is absolutely wrong and denied. The business of hair dressing is being run by the respondent no.1. There is no business entity under the name and style of Slimming Hair Dressing and Beauty Parlour. The business which is being carried on by the respondent No.1 has been described by means of a notice board on the premises as Hair Dressing Slimming and Beauty Parlour. It is again reiterated that the same is a description of a business being carried out. The income and expenses from the said business are entered in the books of accounts of the respondent No.1. Figurette and Cosmetics Private Ltd. is a company limited by shares having its registered office at Bombay, which lends its trading name "Figurette" by charging royalty for the use of its name. They have no beauty parlour of their own name in Delhi. No person connected with M/s. Figurette and Cosmetics Pvt. Ltd. is associated with their hair dressing and beauty parlour, run by the respondent

No.1. As stated above, their business is being carried out by respondent no.1 through its own employees.”

13. Admitting that certain partitions existed at the mezzanine floor level, the tenant pleaded thus :-

“....The alleged partitions have been in existence in the premises in dispute since the very inception of the tenancy and this respondent, in order to improve his chemist business had asked some Doctors who were specialists in different types of ailments, to sit in the premises thus adding to the service of its customers and have had greater influx of customers due to the presence of specialists thereby increasing his own business...”

14. The additional plea of the tenant (as appearing in para 21 of the written statement) to the following effect may also be taken note of, it reading thus :-

“21. This respondent had neither sublet, assigned nor parted with possession of the demised premises to any of the respondents. Respondent no.6 is the same thing as respondent no.1. Respondents 2 to 4 had nothing to do with the premises in dispute. The respondents 2 to 4 were merely licencees. They were not in possession of any particular portion of the premises. This respondent is in absolute possession of the tenanted premises which remain under his lock and key at all times.”

15. By its replication, the landlord reiterated its case refuting the explanation of the tenant that R-2, R-3 and R-4 were mere licensees or that the other businesses referred to above were of the tenant. As mentioned earlier, the Additional Rent Controller had appointed a

Local Commissioner who inspected the premises on 31.08.1977. The correctness of the report of the Court Commissioner has not been questioned by either side. It may be noted here that the Commissioner had found the chemist-cum-general merchant shop run by the tenant at the ground floor with its signboard displayed outside, this in addition to two other signboards, one of which bore the description of “Young Friends Polyclinic” and the other bearing the particulars of R-3 indicating his qualification and status of Consultant Physician (Specialist in Neurology) and time of his being available from 5.00 p.m. to 8.00 p.m. There were indications of a third signboard having been earlier put on display outside in the *verandah* but the same having been removed. In the concluding part of her report, the Court Commissioner also spoke of two other signboards and two wooden frames from where signboards seemed to have been removed. The sign boards which were found included one bearing the description “Young Friends & Co., dealers in furs, leather garments, hand bags, toys and gifts”.

16. The observations of the Court Commissioner vis-à-vis the status and use of the mezzanine floor may be quoted as under :-

“Thereafter, I proceeded on the mezzanine floor of the disputed premises, there was a room where a sign-board was placed as “Kashmir Arts” where number of coats and bags were lying. The goods belonging to Mr. Manoj Kumar, who on enquiry said that he was not employed by the proprietor of the Young Friend & Co. After this room, there was another room which is 12’x 9 ½’ as it was measured before me. This is Doctor Pant’s clinic where a telephone was installed whose number is 45220 and the same was locked outside this

room (clinic) the two name plates recently seem to have been removed. In the passage before coming to Dr. Pant's Clinic the door has been recently seem to be removed and similarly the door in this clinic has also been removed. The four walls of Dr. Pant's room are made up of wooden walls, Behind this Clinic there is a waiting room. The telephone is also installed. Its number is also 45220. Behind the waiting room there is also another clinic of Dr. Pradeep Jaina, who has left this clinic, recently as informed by the proprietor of the shop. In the clinic of Dr. Pradeep Jaina, the latrine has been constructed while its doors have been removed. More over the door in between the waiting room and the clinic is also removed . On further observations, I saw the sign-board has been recently removed in the waiting room..."

17. The parties went to trial before the Additional Rent Controller against the above backdrop, Mr. V.P. Puri (AW-3), Managing partner of the landlord firm being its prime witness. The landlord also examined two other witnesses viz. Madan Gopal (AW-1) and Babu Lal Gautam (AW-2). It may be mentioned here that AW-2 was none other than R-6 who deposed about he having been allowed to do business against rent by the tenant from a place outside corner of the premises. As mentioned earlier, the presence of R-6 being not within the premises, no case for eviction on his account has been pressed. AW-1 was examined to prove the site plans (Ex. A1 and A2).

18. On the other side Mr. Jagmohan Gupta, the then proprietor of the tenant, appeared as own witness (RW-2), he also examining Mr. R.C. Sharma (RW-1), Banarasi Dass (RW-3) and Surinder Malik (RW-4) as witnesses in support of his contentions. The evidence of

RW-1 is of no import in as much as he was an official of the District Court who had been summoned to prove certain documents relating to another litigation (suit no.341/1957) between the parties, the records of the said case (decided on 23.04.1959) having since been destroyed in June 1976. RW-2 (the tenant) while explaining the presence of R-2, R-3 and R-4 on the lines indicated in the pleadings affirmed on oath that the business in the nature of furs, leather goods, hand bags, toys, etc. was business of the tenant in which context the Kashmir Arts goods were procured from two firms named M/s. M.M. Export and M/s. Eurofash, the transactions concerning such business being reflected in the books of accounts of the tenant. He also testified that the business of beauty parlour was run by his wife (Mrs. Shashi Gupta) who was a qualified beautician engaged for such purposes. RW-4, a partner of the firms M/s. M.M. Export and M/s. Eurofash was brought in to corroborate the word of RW-2 on the basis, *inter alia*, of documents in the nature of bills raised from time to time.

19. The ARC, accepted the version of the tenant and concluded that R-2, R-3 and R-4, had been given access only for permissive user “*concurrent*” with the user of the premises by the tenant, the tenant having always retained “*the right to possession*”, such licencees having “*left*” when asked to do so. She accepted the evidence of the tenant that the other businesses in the nature of Kashmir Art goods and beauty parlour were businesses run by the tenant itself. On these conclusions, it was held that no case for eviction on the ground under Section 14(1)(b) had been established. The petition of the landlord was, thus, dismissed by the ARC, by judgment dated 05.06.1997.

20. The landlord approached the ARCT by statutory appeal (RCA 461/1997) under Section 38 of DRC Act. The ARCT, by its judgment dated 29.08.2007, held that the ARC had not appreciated the fine distinction of law, its conclusions suffering from material irregularities and calling for interference. It found, on re-appreciation of the evidence, that user of the portions of the mezzanine floor had been allowed to the above mentioned persons (R-2, R-3 and R-4) for their medical practice such that it was “*exclusive*” which, in the opinion of the ARCT, “*must have been under a secret arrangement*”, this permitting an inference that “*some kind of consideration*” must have passed from such strangers to the tenant. The ARCT set aside the judgment dated 05.06.1997 of ARC and allowed the eviction petition granting an eviction order against the petitioner, by its judgment dated 29.08.2007.

21. The learned senior counsel appearing for the landlord at the hearing submitted that the scope for interference by this court in exercise of the jurisdiction under Article 227 of the Constitution of India being limited, given the findings on facts returned by the ARCT they, in turn, being based on correct appreciation of evidence this court must not interfere.

22. In *Bathutmal Raichand Oswal Vs. Laxmibai R. Tarta and Anr.*, (1975) 1 SCC 858, the Supreme Court had examined the extent of the power of the High Court vis-à-vis Article 227 of the Constitution of India, in the context of a similarly placed litigation involving landlord-tenant dispute arising out of Bombay Rents Hotel and lodging House Rates Control Act, 1947. Referring to previous rulings including

Waryam Singh Vs. Amarnath, AIR 1954 SC 215, the court held that the High Court cannot, while exercising jurisdiction under Article 227 interfere with findings as to facts recorded by the subordinate court or tribunal, its function being limited to see that such forum had acted “*within the limits of its authority*”. It was observed that the supervisory jurisdiction could not be exercised with the cloak of an appeal in disguise.

23. The case *M/s. S.F Engineer Vs. Metal Box India Ltd.*, AIR 2014 SC 2189 had also arisen from a dispute relating to the Bombay Rent Control legislation where questions of law concerning extent of interference in the revisional jurisdiction by the High Court required to be addressed. The following observations of the court in the said decision provide good guidance :-

“37. At this juncture, we are obliged to deal with the submission of Mr Sundaram, learned Senior Counsel for the appellant, that the High Court in exercise of its civil revisional jurisdiction could not have dislodged the concurrent findings of the courts below. We have been commended to an authority in Renuka Das v. Maya Ganguly [(2009) 9 SCC 413 : (2009) 3 SCC (Civ) 780] wherein it has been opined that it is well settled that the High Court, in revision, is not entitled to interfere with the findings of the appellate court, until and unless it is found that such findings are perverse and arbitrary. There cannot be any cavil over the said proposition of law. But in the present case, as we notice, the trial court as well as the appellate court have reached their conclusions on the basis of inferences. As has been held by this Court, the issue of sub-letting can be established on the basis of legitimate inference drawn by a court. In P. John Chandy and Co.

(P) Ltd. v. John P. Thomas [(2002) 5 SCC 90] , while dealing with a controversy under the rent legislation arising under the Kerala Buildings (Lease and Rent Control) Act, 1965, it has been ruled that drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. We entirely agree with the aforesaid view. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible. Therefore, it cannot be said that the High Court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the courts below. Therefore, we have no hesitation in holding that the High Court has not committed any illegality in its exercise of revisional jurisdiction under the obtaining facts and circumstances.”

(emphasis supplied)

24. The landlord places reliance on a Constitutional bench ruling reported as *Hindustan Petroleum Corporation Ltd. Vs. Dilbahar Singh*, (2014) 9 SCC 78. The questions of law had arisen out of conflicting decisions of the Supreme Court in certain previous rulings primarily against the backdrop of exercise of revisional jurisdiction by the High Court and the issue was answered thus :-

“43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappraisal of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to

find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity.”

(emphasis supplied)

25. The ruling in *Gulshan Khanam Vs. Aftab Ahmad*, (2016) 9 SCC 414 generally followed the percept of the Constitution bench in *Hindustan Petroleum Corporation Ltd.* (supra) and observed further as under :-

“33. ...The High Court as is clear from the judgment probed all factual aspects of the case, appreciated

evidence and then reversed the factual findings of the appellate court and the prescribed authority. This, in our view, was a jurisdictional error, which the High Court committed while deciding the writ petition. In other words, the High Court, in our view, should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate court while deciding the first appeal. It was, however, not done.

34. In our considered opinion, the question in relation to the bona fide need of the appellant's daughter to expand the activities of running the clinic was rightly held by the prescribed authority and the first appellate court in the appellant's favour by holding the appellant's need to be bona fide and genuine. We find no ground on which the High Court could have upset the concurrent finding on this question in its writ jurisdiction under Article 227, which is more or less akin to revisional jurisdiction of the High Court. The High Court also failed to hold that findings of the two courts were so perverse to the extent that any judicial person could ever reach to such conclusion or that the findings were against any provision of law or were contrary to evidence adduced, etc."

(emphasis supplied)

26. Thus, while it is clear that this court exercising supervisory jurisdiction under Article 227 of the Constitution of India cannot subject the decision of the first appellate forum as if it was sitting in appeal, it being not within the domain of scrutiny here to re-appreciate or re-assessee the evidence, it is the bounden duty of this court to interdict incase it is found that the findings of the appellate court on facts or on questions of law are “perverse”, they being erroneous on account of non-consideration of material evidence or being

conclusions which are contrary to the evidence which was adduced or, for that matter, being based on inferences that are impermissible in law.

27. The endeavour of the landlord has been to bring the case within the mischief of clause (b) of Section 14(1) of DRC Act which provision is to be read alongside sub-Section (4). The said clauses may be quoted thus :-

“14. (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

x x x

(b) that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

x x x

(4) For the purposes of clause (b) of the proviso to sub-section (1), any premises which have been let for being used for the purposes of business or profession shall be deemed to have been sub-let by the tenant, if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person to occupy the whole or any part of the premises ostensibly

on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to that person.”

28. It is clear from the bare perusal of the statutory provision that a landlord may bring home the case for eviction of a tenant if he is able to prove that the tenant has either “*sublet*” or “*assigned*” or “*otherwise parted with the possession*” of the whole or any part of the premises, it being incumbent that for such act(s) of commission, the tenant must not have obtained the consent in writing of the landlord. In the facts and circumstances of the case, the allegations of subletting, assignment or parting with have been leveled with reference to period post the specified date of 09.06.1952. Further, since the tenant is in total denial, the question of it having obtained the consent of the landlord, in writing or otherwise, does not even arise. From the averments and the evidence, it is clear that the tenancy in respect of the premises in question was created for purposes of business and, therefore, the provision of Section 14 (4) may be attracted. The said clause raises a presumption of “*subletting*” if the landlord is able to show to the satisfaction of the Rent Controller that the tenant had “*allowed*” a stranger “*to occupy*” the whole or any part of the premises.

29. The import and effect of the expressions “*subletting*” or “*assignment*” or “*parting with possession*” as have been used in almost all similarly placed statutory provisions of rent restriction laws prevalent in different States of the Union, has been the subject of consideration of the courts for a long time now. In the context of

similar provision in Rajasthan Premises (Control of Rent and Eviction) Act, 1950, the Supreme Court in its decision reported as *Gopal Saran Vs. Satyanarayana*, (1989) 3 SCC 56, while referring to its various previous decisions including *Associated Hotel of India Ltd. Delhi vs. S.B. Sardar Ranjit Singh*, AIR 1968 SC 933; *Dr. Vijay Kumar Vs. Raghbir Singh Anokh Singh* (1973) 2 SCC 597; and *Shalimar Tar Products Ltd. Vs. H.C. Sharma*, (1988) 1 SCC 70, *inter alia*, held thus :

“...to constitute a sub-letting, there must be a parting of legal possession i.e., *possession* with the right to include and also right to exclude others and whether in a particular case there was sub-letting was substantially a question of fact.

X X X

...parting with possession is understood as parting with legal possession by one in favour of the other by giving him an exclusive possession to the ouster of the grantor...

X X X

...the question whether there is a tenancy or licence or parting with possession in a particular case must depend upon the quality of occupation given to the licensee or the transferee. Mere occupation is not sufficient, in our opinion, to infer either sub-tenancy or parting with possession...”

30. The case of *Bharat Sales Ltd. Vs. Life Insurance Corporation of India*, (1998) 3 SCC 1 had arisen out of a ground for eviction provided under Section 14(1)(b) of DRC Act. The Supreme Court interpreted the law thus:

“4. Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let.”

(emphasis supplied)

31. In *Nirmal Kanta Vs. Ashok Kumar*, (2008) 7 SCC 722, the law was explained in the following words :

“16. What constitutes sub-letting has repeatedly fallen for the consideration of this Court in various cases and it is now well established that a sub-tenancy or a sub-letting comes into existence when the tenant inducts a third-party stranger to the landlord into the tenanted accommodation and parts with possession thereof wholly or in part in favour of such third party and puts him in exclusive possession thereof. The lessor and/or a landlord seeking eviction of a lessee or tenant alleging creation of a sub-tenancy has to prove such allegation by producing proper evidence to that effect. Once it is proved that the lessee and/or tenant has parted with exclusive possession of the demised premises for a monetary consideration, the creation of a sub-tenancy and/or the allegation of sub-letting stands established.”

(emphasis supplied)

32. Referring *inter alia* to *Nirmal Kanta* (supra), in *Celina Coelho Pereira vs. Ulhas Mahabaleshwar Kholakar*, (2010) 1 SCC 217, the law was reiterated and summarized by the Supreme Court as under :-

“25. The legal position that emerges from the aforesaid decisions can be summarised thus:

(i) In order to prove mischief of sub-letting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(ii) *Inducting a partner or partners in the business or profession by a tenant by itself does not amount to sub-letting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant.*

(iii) *The existence of deed of partnership between the tenant and alleged sub-tenant or ostensible transaction in any other form would not preclude the landlord from bringing on record material and circumstances, by adducing evidence or by means of cross-examination, making out a case of sub-letting or parting with possession in tenancy premises by the tenant in favour of a third person.*

(iv) *If the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession.*

(v) *Initial burden of proving sub-letting is on the landlord but once he is able to establish that a third party is in exclusive possession of the premises and that tenant has no legal possession of the tenanted premises, the onus shifts to the tenant to prove the nature of occupation of such third party and that he (tenant) continues to hold legal possession in tenancy premises.*

(vi) *In other words, initial burden lying on the landlord would stand discharged by adducing prima facie proof of the fact that a party other than the tenant was in exclusive possession of the premises. A presumption of*

sub-letting may then be raised and would amount to proof unless rebutted.

(emphasis supplied)

33. In *Ram Murti Devi Vs. Pushpa Devi and Ors.* (2017) 15 SCC 230, the above principles of law have been reiterated. The landlord also relies on *Smt. Rajbir Kaur & Anr. Vs. M/s. S. Chokesiri & Co.*, (1989) 1 SCC 19; *S.P. Chengalvaraya Naidu vs. Jagannath*, (1994) 1 SCC 1; *Sharafat Hussain (Deceased through LRs) vs. Gurpal Singh*, (2006) 90 DRJ 453; *Chunni Lal & Anr. vs. Vidya Devi and Ors.*, 2007 (93) DRJ 418; and *Flora Elias Nathoum & Ors. vs. Idrish Ali Laskar*, (2018) 2 SCC 485.

34. The core element of the ground of subletting, assignment or parting with possession etc. is that a stranger comes in possession of the tenanted premises (or part thereof) without the consent of the landlord. Though the ingredient of “*parting with possession*” occurs as one of the three possible mischiefs, it is inherent in all the three limbs. The prime onus of proving the presence of a stranger in the tenanted premises and he being in exclusive possession is of the landlord. It is only when the landlord has proved the requisite facts to show that the tenants stands excluded from the tenanted premises – whether whole or in part – that an inference of subletting arises thereby shifting the onus on the tenant to explain. To put it slightly differently, it must be shown that the tenant stands “*excluded*” from the premises or has forfeited the “*right to repossess*”. It is inherent in the element of “subletting” that there must be some monetary

consideration. The inference to this effect may be raised. But then, it would be a rebuttable presumption.

35. Lest it creates any confusion or doubt, it may be mentioned again here that the evidence of Babu Lal Gautam (AW-2), who was impleaded as R-6 in the eviction case, is of no consequence. It has been amply demonstrated during the trial, through the pleadings and the evidence, as indeed the report of the Court Commissioner, that he was operating for certain period from the almirah which was placed outside the tenanted premises in the public way (veranda), a portion with which neither the landlord nor the tenancy contract had any connection. The presence of R-6 at the said place was taken exception to even by the tenant. There is unchallenged evidence on record to show that this had led to litigation in the civil court, even the authorities in NDMC (the local body) having objected and such person having eventually been removed from what turns out to be a case of squatting in public street. Conceding to this factual position, the case for eviction has not been pressed by the landlord on account of possible nexus, if any, between R-6 on one hand and the tenant on the other.

36. The landlord sought to prove its case through the testimony of the managing partner, V.P. Puri (AW-3) for eviction on the ground under Section 14(1)(b) of the DRC Act against the tenant with reference to the user or occupation of certain spaces on the mezzanine floor by R-2, R-3 and R-4 and for purposes of business of Kashmir Art Goods or of the beauty parlour or, for that matter, the business in the name of style of "Figurette". AW-3 proved the site plans (Ex. A1 and

A2) which had been prepared, on his instructions, by Mr. Madan Gopal (AW-1). The plans and the report of the Court Commissioner concededly show the premises to be comprised of ground floor and the mezzanine floor, access to the latter being through a staircase leading from within. It is clear from the evidence of the landlord, as indeed shown by the Court Commissioner's report and also demonstrated in the testimony of the tenant (RW-2) that the ground floor portion can be accessed from one single door of entry or exit. It is also clear that in order to reach to the mezzanine floor one has to gain entry to the premises through the said solitary door (of entry / exit) and then climb upstairs. To put in more clearly, there can be no entry to any portion whether at the ground floor or any part of mezzanine floor unless one enters the shop from the single point of entry / exit.

37. AW-3 testified that the tenant had "*sublet*" to R-2, R-3 and R-4 and one Kashmiri goods seller. He stated that R-2 (Dr. Pradip Jayna) had a separate cabin while R-3 and R-4 (Dr. S.S. Pant and Dr. K.N. Mehta) had a "*joint cabin*", the third cabin on the mezzanine floor being with the Kashmiri goods seller. He deposed that each of them were "*independently in possession of their respective portions*", the tenant "*having no possession*" of such portions. He deposed further that previously the three portions at the mezzanine floor which were created by partitions had independent doors. According to him, the doors and the boards had been removed prior to the visit of the Court Commissioner. He spoke about a urinal and wash basin having been added to the portion in use of R-2 and also about R-3 having installed a telephone connection which he would keep "*locked*".

38. During the cross-examination while conceding that R-2 had left the premises, referring in this context to some press announcements, he explained his knowledge about the user by the persons alleged to be sub-tenants on account of his visit “*as a customer*” and as “*a landlord*”, though conceding that he had not come across any of the doctors, the portions used as clinics being closed at the time of his visit. He infact added that he had not gone beyond the portion used by the Kashmiri goods seller which would be the first of the three portions of the mezzanine floor when one would access it through the staircase. From his admissions that he had never met any of the doctors in person nor anyone else who may have visited the said doctors, it is clear that he drew inference about the user and occupation of the said persons on the basis of the signboards placed outside the premises. He admitted being not aware as to what consideration, if any, was flowing from them to the tenant. He conceded that his assertion that they were sub-tenants was based on presumption for the reason their profession, to quote him in his own words, “*had nothing much to do with the chemist business*”.

39. It has already been noted in the earlier part of this judgment that the tenant’s case vis-à-vis the business of Kashmiri art goods, beauty parlour and business in the name and style of “*Figurette*” has been that they were businesses run by the tenant firm. The tenant having appeared as his own witness (RW-2) reiterated this position and his word was corroborated by RW-4, a partner of the two firms from which supplies for such additional businesses were procured by the tenant.

40. The ARC, in her judgment dated 05.06.1997, examined the relevant evidence in this regard at sufficient length, drawing satisfaction, *inter alia*, from the books of accounts produced by the tenant confirming that the receipts from the transactions pertaining to such businesses had also been accounted for by the tenant in its ledgers. No evidence to the contrary has been adduced by the landlord. The finding returned by the Additional Rent Controller rejecting the case of the landlord for eviction with reference to the businesses of Kashmiri art goods, beauty parlour and “*Figurette*” were not even assailed before the ARCT and thus have attained finality. There is no reason why the said part of the case of the landlord should be revived at this stage in the present proceedings.

41. The ARC, in her judgment dated 05.06.1997, concluded that the “*concurrent user*” of the premises by the tenant and R-2 to R-4 had been admitted before her. She noted that there was no proof of “*vesting of possession*” in another person by the tenant “*divesting itself*” of physical possession or of the right to possession. She also noted that the evidence showed that R-2 to R-4 would provide medical consultation from the above-mentioned portions on the mezzanine floor from 5.00 p.m. to 8.00 p.m. which was within the working hours of the main chemist business of the tenant. An argument was raised before the ARC that a duplicate key might have been made available to R-2 to R-4. This was a suggestion that had been refuted. But, examining it nonetheless, the ARC observed that even retention of a duplicate key would not amount to parting with possession, placing reliance in this context to *Reliable Finance Corporation Pvt. Ltd. Vs.*

Clearing House and Agencies (P) Ltd. and Ors., 1984 SCConline Del 146. She rejected the case for eviction noting that the tenant always had the right to repossess which right had been asserted and demonstrated by the fact that R-2 to R-4 had left the premises when asked to do so.

42. The ARCT, however, by its judgment dated 29.08.2007 found the approach of the ARC in rejecting the plea of the tenant about the presence of R-2, R-3 and R-4 being a case of permissible user or license, to be erroneous on account of its conclusion that the testimony of RW-2 (tenant) had revealed that the time for which the doctors (R-2, R-3 and R-4) used to sit in the tenanted premises was one wherein they were “*using the portion assigned to them independently and without any interference*” from the “*tenant*”. It noted that the tenant had claimed that he was running a polyclinic and yet no income of the three doctors was reflected in its books of accounts. It also noted that the tenant had provided furniture and electricity supplied in the three portions, each doctor operating from such portions using their own letterheads / prescription slips, there being no formal arrangement indicating terms or conditions of such user of the premises.

43. During the course of evidence, it had also come to be admitted that R-3, Dr. S.S. Pant, had got installed a telephone connection (bearing number 45220) in his name in the portion on the mezzanine floor under his use. From these facts, it was deduced by ARCT that each of the three doctors had been allowed user of “*exclusive portion*” at the mezzanine floor which did not have “*any interference*” of the tenant. Referring to the evidence indicating that the main door of the

tenanted premises, user whereof was necessary to gain entry into or exit from any part thereof would always remain under the lock and key of the tenant, the ARCT observed that *“it is a matter of common sense and common knowledge that many buildings have a common central door where a lock is put by a guard who opens the same in the morning and closes the same in the evening while everyone occupying a portion of the building uses his own portion as and when they are required to come as also it is being done in the case of a lawyer.”* The ARCT further added that *“in the case of a doctor, he is not required to keep any lock because what he is required to do is to come, sit, provide consultancy and go”* and further that *“it does not matter that before starting his practice and closing the same, the premises is not even locked by him”*, he being in *“exclusive possession”* for the period *“for which he is in his clinic”*.

44. In the considered view of this court, the approach of the ARCT has been wholly erroneous and mis-directed. It failed to bear in mind the basic principle that as the appellate forum, it was not expected to substitute its view with that of the view of the forum of trial (ARC), if both views could possibly be taken. [see *Collector of Customs vs. Swastic Woolens (P) Ltd.*, 1988 Supp SCC 796; *Satya Gupta (Smt.) Alias Madhu Gupta Vs. Brijesh Kumar*, (1998) 6 SCC 423; *Amrita Daulata Pawar and Ors. Vs. Shri Sahu Co-operative Housing Society and Ors.*, 2001 SCC Online Bom 421; *West Bengal Electricity Regulatory Commission vs. CESC Ltd.*, (2002) 8 SCC 715; *Commissioner of Customs, Mumbai Vs. Bureau Veritas and Ors.*, (2005) 3 SCC 265; and *Kashmir Singh vs. Harnam Singh and Anr.*,

(2008) 12 SCC 796]. It is apt to quote the following observations of the Supreme Court in *U.P. Coop. Federation Ltd. vs. Sunder Bros*, AIR 1967 SC 249 : 1966 Supp. SCR 215 :-

“...In dealing with the matter raised before it at the appellate stage the appellate court would normally not be justified in interfering with the exercise of the discretion under appeal solely on the ground that if it had considered the matter at the trial stage it may have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court’s exercise of discretion...”

45. The ARC had reached a very crucial finding based on reasoning that cannot be faulted, it being to the effect that the user of the premises by the tenant and others (R-2 to R-4) had invariably been “concurrent”. It had also held that the user of the portions on the mezzanine floor by R-2 to R-4 was in the nature of permissive user, rendering them licencees as against being sub-lessees – as demonstrated by the fact that they had left the premises when asked to do so. These findings are actually borne out from the material on record and should not have been sidelined so as to draw inference on the basis of conjectures or surmises as has been done by ARCT. This may be elaborated hereinafter.

46. There is no contest to the evidence of the tenant that the tenanted premises have always remained under its lock and key. After all, there is no denial to the clear evidence, it not even being a case of the landlord to the contrary that there is only one door of entry or exit.

The landlord did not even prove the period of the day during which the three doctors would operate from the portions on the mezzanine floor. The evidence of the tenant that such doctors would come to provide consultation to the patients primarily during 5.00 p.m. to 8.00 p.m., it being a time coinciding with the presence and use of the premises by the tenant, no case of exclusion of the tenant could be inferred. The reasoning articulated by ARCT to hold otherwise, based on possibility of a guard having been deployed to open the premises in the morning and closing the same in the evening while each person would use their respective portions, is founded on speculation or surmises which is impermissible. There is no evidence of such arrangement having ever been put in position vis-à-vis the tenanted premises.

47. The ARCT seems to have drawn impressions from the report of the Court Commissioner, and the evidence indicating wooden partitions creating specific space for use of each doctor, possibility of each cabin being closed by a door, presence of a telephone connection in the name of R-2 and the tenant having not disclosed the terms of the arrangement by any formal documentation particularly vis-à-vis monetary consideration (if any) flowing therefrom, to conclude that it is a case of “*secret arrangement*” from which inference of subletting can be drawn. This reasoning is fallacious for several reasons.

48. As noted earlier, the prime onus to bring home the case of subletting, assignment or parting with possession is of the landlord who seeks eviction. As has also been noted above, the evidence of the landlord (AW-3) did not create any foundation for the onus to shift on

to the tenant. AW-3 admitted that he had not even seen the presence of R-2 to R-4, leave alone observing the manner in which they were functioning from the three partitioned portions on the mezzanine floor. He categorically admitted that the allegation about sub-tenancy was based on “*presumption*”. His reasoning that sub-tenancy was to be presumed because the profession of R-2 to R-4 had nothing to do with the chemist business is illogical. In fact, the medical practice in which R-2 to R-4 were engaged had everything to do with the chemist business of the tenant. The tenant has testified about permitting R-2 to R-4 to operate from the portions on the mezzanine floor because their presence would attract customers to his business of dispensing chemist. He was to thus gain indirectly from the presence of R-2 to R-4. This is why he chose to call such arrangement as one of the “*poly clinic*”. The arrangement may not strictly have been that of a “*poly clinic*” but then the fact remains that there is no evidence of any monetary consideration flowing from R-2 to R-4 unto the tenant.

49. It has to be borne in mind that R-2 to R-4 were providing medical consultation, this necessarily required semblance of some privacy to be provided to the patients who would avail of their services. From this perspective, the wooden partition or the doors to the cabins could not be grudged. At the same time, there is no evidence that the cabins were ever put under the lock and key of the three doctors. It is clear from the testimony of RW-2, and there is no evidence of the landlord to the contrary, that the doctors (R-2 to R-4) had no right or practice to keep their respective cabins under their lock and key. Though the Court Commissioner’s report would indicate

some doors had been put up earlier on the cabins, the door leaves having been removed, no evidence has been brought forth to show that such doors (when in existence) were ever locked by any of the three doctors during the period of their use.

50. The existence of the telephone connection (no.45220) in the name of R-3 only confirms his presence but cannot lead to the conclusion that such presence excluded the tenant from the space. It was a facility that had been brought in by R-3 and even the report of the Court Commissioner shows that such facility was shared by R-3 with others, its extension being available beyond the portion of his use.

51. The prime conclusion of ARCT that the user of the space by R-2 to R-4 during the period they were in their respective clinic renders it they being in “*exclusive possession*” is not supported by any evidence, it being a conclusion based on surmises. As observed earlier, in the proceedings before the ARC, the landlord resting its case primarily on the evidence of its managing partner (AW-3) had failed to adduce such material, as could show a third party being in possession to the exclusion of the tenant. On the contrary, the evidence of the landlord, as indeed of the tenant, unmistakably show that the tenant has always been in full control and possession – physical and legal – of the tenanted premises. The presence of others was temporary, for a few hours of the day when the tenant would also be present, and clearly for permissive use, it having come to an end, such persons having left the premises on their own when called upon to do so by the tenant.

52. The view taken by the ARCT, clearly, was erroneous, it being based on conclusions which are contrary to the evidence that was adduced, and by drawing inferences which were not permissible in law, the appellate power having been improperly exercised for substituting one subjective satisfaction with another without there being a justifiable reason to do so.

53. Consequently, the petition is allowed. The impugned judgment dated 29.08.2007 of the Additional Rent Control Tribunal is set aside. The judgment dated 05.06.1997 of the Additional Rent Controller stands restored and revived. In the result, the eviction case of the respondent stands dismissed.

(R.K. GAUBA)
JUDGE

NOVEMBER 14, 2018
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