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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 2nd April, 2018

+ CM (M) 276/2012

AMOLAK SINGH (DECEASED) THRU. LR Petitioner
Through: Mr. Riju Raj Jamwal, Adv.

versus

VINAY NARAIN & ORS Respondents
Through: Mr. Sanjay Goswami, Adv. for
R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner's predecessor-in-interest had initiated the proceedings for eviction of the respondents from the tenanted premises described as Prem House, C-18, Cannaught Place, Opposite Odeon Cinema, New Delhi on the grounds under Section 14 (1) (b) and (j) of Delhi Rent Control Act, 1958 on 24.12.1992, the petition having been registered as E-678/2006. The original petitioner (landlord) having died, the proceedings were continued by the petitioner, he having been substituted. The tenancy concededly was in the name of Kanti Narain, the predecessor-in-interest of the first to fourth respondents, he having died, the tenancy having devolved upon them. It may be added here that the fourth respondent also died during the pendency of these proceedings and her name stands deleted, the cause of action having survived against the other three.

2. The petition for eviction, after trial, however, was dismissed by the Additional Rent Controller by judgment dated 31.01.2008. The petitioner then took out appeal (RCTA 23/08) in the course of which it was submitted before the Rent Control Tribunal that the case was pressed only on the ground of sub-letting of the tenanted premises. The Rent Control Tribunal found no merit in the case of the petitioner in that context and, thus, dismissed the appeal by judgment dated 28.09.2011 which is assailed through the petition at hand.

3. The allegations of sub-letting were leveled against the tenant on account of agreement (Ex.RW1/A) dated 16.05.1992 executed by the first respondent and the fifth respondent, the fifth respondent having been described by the petitioner as the sub-lettee inducted in the premises by the tenant without previous consent of the landlord in writing. Reliance was also placed on advertisement (Ex.RW-1/P1) and photographs (Ex.RW1/P3 and P4). It may be mentioned here that the petitioner had appeared as his own witness (AW-1), the tenant having contested the case by examining the first respondent (RW1) in addition to one Mohan Lal Aggarwal (RW2) described as partner of the fifth respondent. The fifth respondent suffered the proceedings *ex-parte*, the tenant taking the position that the possession of the premises had always remained with the tenant (i.e. the first respondent) during the tenure (five years) of the aforementioned agreement (Ex.RW1/A).

4. The terms and conditions of the agreement (Ex.RW1/A) dated 16.05.92 on which the case for eviction on the ground of sub-letting is

based have been summarized by the Rent Control Tribunal in its judgment dated 28.09.2011 as under:-

“21....In this agreement, it is mentioned that R1 is a tenant. R5 had approached him (R1) to conduct sales of ready made garments in the premises. R2 has already been carrying on business of ready made garments at different places. The ready made garments of R5 shall be stocked in the premises under the tenancy of R1 and would be sold by R1 in the manner referred to herein. The sale shall be conducted by R1 by himself and through salesman to be appointed by him. He would earn the commission of 10% on the total net sale conducted by him (R1) in the said premises. R1 shall wholly and fully engage himself in carrying on business of sale of ready made garments belonging to R5, who indeed would keep the premises well stocked as per the need of the market. R1 shall have the fully control of the premises where the business would be carried on. R1 shall have the fully control of the premises where the business would be carried on. R1 shall deploy regular accountant/cashier and shall keep full account of the goods in the premises and the commission as stipulated. R1 shall be responsible to deposit the same each day in the bank account nominated by R2. R1 shall however be entitled to all the payments and the expenses which he (R1) shall incur in the conduct of business including staff salary etc. as may be mutually agreed between the parties from the sale proceeds and the agency goods to be conducted by R1. All the expenses shall be duly accounted for and paid from the sale proceeds towards together with stipulated commission of R1 on or before 15th of the next succeeding month. The agreement does not in any way create any employment of R1 nor tenancy of R2 in the premises. It is only R1 who is the tenant. R-5 has no claim, charge, lien, interest of any nature, whatsoever. The full control of the premises as also the business shall always remain with R1, who alone shall be entitled to

appoint the staff and to terminate their services. The payment of rent of the premises shall be the individual responsibility of the R1 and R1 shall pay the same directly to the landlord regularly. The furniture fitting etc. in the premises in dispute shall remain the property of R1 except the furniture and fixtures especially provided by R-5 for better display of agency goods. The agreement is initially for a period of five years. Further, the same can be terminated by R5 by giving notice in writing of three months and in that eventuality all the unsold goods which shall be lying in the premises as also other items of furniture brought on the premises would be taken back by R5 after settling of account and adjust dues. The entire possession of the premises would always remain with R1 during the tenure of agreement as the same is now”.

5. The photographs (Ex.RW1/P3 & P4) depict a sign board of the fifth respondent across the tenanted premises describing the first respondent as the retail agent. Similar is the import and effect of the advertisement (Ex.RW1/P2)

6. As noted by the Rent Control Tribunal in the impugned judgment, the petitioner's witness admitted during cross-examination that he was not aware as to who was in possession of the premises at the relevant point of time. The tenants (first to fourth respondents), by evidence, had proved that all the facilities in the premises have continued to remain functional in their name. No suggestion worth the name was given to RW1 and RW2 about the premises having been sub-let to the fifth respondent or that the fifth respondent had occupied the premises in his individual capacity. There is no evidence led to show the fifth respondent to ever have been in possession of the

premises to the exclusion of the tenant. The agency agreement (Ex.RW1/A), the gist whereof has been noted above, leaves no room for doubt that there was no parting with possession of any portion of the demised premises by the tenant in favour of the fifth respondent. It was purely an agency agreement wherein the fifth respondent was allowed to stock and display for sale his goods in the demised premises through the tenant.

7. In the above fact-situation, the Rent Control Tribunal has taken an appropriate view by rejecting the case for eviction on the ground under Section 14 (1) (b), Delhi Rent Control Act, 1958.

8. The petition is, thus, found devoid of substance. It is dismissed.

R.K.GAUBA, J.

APRIL 02, 2018

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