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

***Decided on: 17<sup>th</sup> May, 2018***

+ CM(M) 1168/2015 and CM 28713/2015

**KAMLESH KUMARI**

..... Petitioner

Through: Mr. S.K. Sharma, Advocate

versus

**USHA RANI**

..... Respondent

Through: Mr. Vijay Kumar Ravi and Mr.  
Sanjay Singh, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**ORDER (ORAL)**

1. Butta Ram, husband of the respondent, concededly was a tenant in the premises in question under the petitioner, it having been described as a shop bearing no.4/2755, Bihari Colony opposite Prakash Punj School, Shahdara, Delhi. Butta Ram, the evidence led on record before the Rent Controller would show, had gone missing on 09.07.2002. On 01.02.2006, the petitioner filed an eviction case on the grounds under Section 14(1)(a), (b) and (j) against Butta Ram in which the respondent came to be impleaded as a party. The allegations on the ground under Section 14(1)(b) of Delhi Rent Control Act, 1958 were that Butta Ram had effaced himself from the premises and had sublet the same in favour of his wife i.e. the respondent. The respondent, while putting in contest, came up with the plea that she was running the business in the shop on behalf of her

husband who had gone missing under mysterious circumstances, she suspecting that he may have died or even been killed.

2. The Rent Controller had initially dismissed the petition on all counts by judgment dated 22.01.2011. On appeal (RCA 02/2011), the Rent Control Tribunal, however, by its judgment dated 31.05.2011 remanded the matter for fresh decision observing that some of the crucial questions had remained unanswered. The matter was thus decided afresh by judgment dated 16.04.2014 whereby the Rent Controller reiterated the previous decision on the grounds under Section 14(1)(a) and (j) but held the other ground under Section 14 (1) (b) proved against the respondent holding her to be a sub-lettee, not entitled to any protection and, thus, granted an eviction order.

3. The respondent challenged the above said fresh decision before the Rent Control Tribunal by appeal (RCA 22/2014). Noticeably, the petitioner did not bring any appeal to assail the dismissal of the case on the grounds under Sections 14(1)(a) and (j) of Delhi Rent control Act, 1958, such findings and result consequently having become final and binding between the parties.

4. By judgment dated 31.08.2015, the Rent Control Tribunal held that the ingredients of sub-letting had not been established and therefore, the ground under section 14 (1) (b) of Delhi Rent Control Act, was not made out there being, in the opinion of the Rent Control Tribunal, no evidence on record to show that the respondent has been in exclusive possession of the property or that there was relationship of lessee and lessor between her and her husband Butta Ram. The

Rent Control Tribunal, however, observed that the judgment of the Rent Controller was deficient as no reasons had been set out for dismissal of the case on the grounds under Sections 14(1)(a) and (j) of Delhi Rent Control Act, 1958 and, for that reason, remanded the matter to the Rent Controller.

5. It is the above decision of the Rent Controller by judgment dated 31.08.2015, which has been assailed by the petition at hand.

6. The counsel for the petitioner submitted that the Rent Controller has already rendered its decision on the grounds under Sections 14(1)(a) and (j) of Delhi Rent Control Act, 1958 and, therefore, there was no occasion for the Rent Control Tribunal to remand the case for fresh decision in that respect. He submitted that the evidence on record had brought home the case of sub-letting and, therefore, the judgment of the Rent Control Tribunal setting aside the eviction order on the ground under Section 14(1)(b) of Delhi Rent Control Act, 1958 is bad in law.

7. The evidence led by the respondents before the Rent Control Tribunal included her own testimony, she having appeared as witness (RW-3) on the strength of her affidavit (Rx. RW3/A) and also the testimony of her son Tarun Luthra (RW-1) deposing on the strength of his affidavit (Ex. R1). Besides this, she also examined Mr. H.C. Mehta (RW-2), Marketing Manager of newspaper Punjab Kesri, published from Delhi, HC Praveen (RW-4), an official of police station Model Town, Shankar Lal (RW-5), elder brother of Butta Ram

deposing on the strength of his affidavit (Ex.R-5) and HC Hitendra Singh (RW-5A), another official of police station Model Town.

8. It does appear that in her testimony the respondent (RW-3) conceded that she is not a tenant in respect of the demised premises but she claims to be in occupation and use of the said premises for and on behalf of her husband Butta Ram. The evidence of the aforementioned witnesses has clearly brought home that Butta Ram went missing on 09.07.2002. Report had been lodged with the local police in this regard pursuant to which even first information report no.448/2002 was registered by police station Model Town on 24.07.2002 for the offences then suspected under Section 365 of Indian Penal Code, 1860. Butta Ram has concededly not been traced till date. There is ample evidence on record to substantiate the fact that his wife and other members of the family have not heard from or of him all these years. In these facts and circumstances, the respondents are right in their submission that the presumption of he having died would arise in terms of Section 108 of Indian Evidence Act, 1872. Since the petitioner claims to the contrary, the burden of proving that he is alive was to be discharged by the petitioner. No evidence worth the name to this effect has been adduced.

9. In these circumstances, it cannot be said that the presence of and use and occupation of the premises by the respondent is in the nature of a sub-lettee. She is the wife of the tenant who hopes he would return some day. Her presence is, therefore, for and on behalf

of her husband and definitely not within the mischief of the clause under Section 14(1)(b) of Delhi Rent Control Act, 1958.

10. Consequently, the petition is found to be devoid of substance and is dismissed. The pending application also stands dismissed.

**R.K.GAUBA, J.**

**MAY 17, 2018**

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