

Reserved on : 05.04.2019

Pronounced on :12.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.2244 of 2007

Ms.Vasumathi H.Shah

.. Petitioner

Vs.

1. Mr.Pushpa Raju

2. Vasantha Bhavan
represented by its
Managing Director
Muthukirshnan Chettiar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 09.10.2006 in R.C.A.No.752 of 2005 on the file of VII Court of Small Causes, Chennai reversing the Order and Decree dated 27.04.2005 in R.C.O.P.No.2148 of 2004 on the file of the XIV Court of Small Causes, Chennai.

For Petitioner : Mr.R.Harikrishnan

For Respondents : Mr.P.B.Balaji
for Mr.P.B.Ramanujam

ORDER

Aggrieved over the finding of the appellate authority in setting aside the eviction Order passed by the Rent Controller, the present revision has been filed.

2. Brief facts leading to filing of this revision is as follows :

The petition before the Rent Controller has been filed on the ground that the first respondent is a tenant on a monthly rent of Rs.8000/- exclusive of electric charges. The premises was originally rented for running an art gallery. The first respondent without the consent or permission of the petitioner, has unauthorisedly sublet the shop No.4 to Vasantha Bhavan Hotel run by the second respondent, Managing Director of the said hotel. The second respondent demolished the interior structure of the said shop portion without the consent of the petitioner to suit the convenience of the second respondent. Hence, she has issued notice dated 27.10.2004. But no reply was forthcoming. Hence, the petition for eviction of the tenant.

3. The first respondent filed a counter. It is her contention that she was carrying on business of running art gallery in the petition premises prior to December 2000 and monthly rent was Rs.6,300/-, In December 2000, the first respondent desired to carry on business in fast food restaurant. She approached the petitioner for her consent as the municipal authorities required

no objection from the landlord. The petitioner had given no objection to carry on fast food restaurant and rent was enhanced to Rs.8000/- from October 2000. Thereafter, the petitioner issued no objection letter on 04.12.2000. The respondent also paid enhanced rent demanded by the petitioner and continuously paying the same. The respondent had obtained license from the Commissioner of Police, Chennai and also paid the Corporation taxes. Further, there is no person by name Muthukrishna Chettiyar and the entire business was run by the first respondent. It is also denied that the first respondent had demolished the entire structure without any permission. Only after getting permission from the petitioner, she has put up sump in the petition premises for her hotel business. The petitioner had also given a letter dated 14.05.2016 for the above purpose. There was no notice dated 27.10.2004. In fact notice dated 26.10.2004 was properly replied.

4. Before the Rent Controller, P.W.1 was examined and Ex.P.1 to ExP.10 were marked. On the side of the respondent, R.W.1 was examined and Ex.R.1 to Ex.R.11 were marked.

5. The learned Rent Controller after analysing the entire evidence allowed the application. The appellate authority has allowed the appeal and reversed the finding of the Rent Controller. As against which the present revision has been filed.

6. The learned counsel appearing for the revision petitioner submitted that originally the respondent was running an art gallery. Thereafter, she has requested permission to run a fast food restaurant by her. Taking advantage of the permission granted, the entire premises was sublet to the group of hotels known as 'Vasantha Bhavan', the second respondent herein. The documents filed on the side of the petitioner clearly prove the above facts. The first appellate authority has not appreciated the entire facts and allowed the application.

7. The second respondent remained exparte. Notice also has been received by them. The contention that the notice was received only by the staff of the tenant is for the first time spoken in evidence without any pleadings in the counter. Hence, it is the contention of the learned counsel that when the sublet has been taken place in a secret manner, there cannot be a direct evidence to prove the same. If really, the tenant is running hotel business on her own, nothing prevented her from producing the sales tax receipts, income tax returns, etc. Non furnishing of these documents clearly probabalize the case that she has sublet the entire premises and the premises was taken over by the group of hotel run by the second respondent. This aspect has not at all been considered by the first appellate Court. Hence, submitted that the revision has to be allowed. In support of his submissions he relied upon the judgments in **Gajanan Dattatraya Vs. Sherbanu Hosang Patel and others** reported in **1975 (2) Supreme Court**

Cases 668, Shah Phoolchand Lalchand Vs. Parvathi Bail reported in **AIR 1989 Supreme Court 865, Mallika Vs. A.P.Kathija Beevi and 4 others** reported in **1998 (1) L.W. 44, Syed Maqbul Vs. M.Thangavel Chettiar** reported in **2000 (II) M.L.J. 217 and J.P.Vijayakumar and another Vs. S.Ranjan and another** reported in **2006 (4) L.W. 987.**

8. The learned counsel appearing for the respondent submitted that absolutely there is no evidence to prove that the tenant has parted with the possession to the third party. The entire burden lies on the landlord to show that the possession has been parted to the third party. The evidence of the landlady clearly indicate that she had given permission to the tenant to run a fast food restaurant. Hence, submitted that in the absence of any evidence to show that the possession has been parted out and hotel Vasantha Bhavan was run by the second respondent, eviction cannot be ordered. In support of his submissions, he has relied upon **M/s.Bentool Steel Products Private Limited rep. by its Managing Director, G.K.Pattery Vs. O.M.A. Mohammed Omar and another** reported in **2001 (3) CTC 618** and **Nirmal Kanta (dead) through Lrs. Vs. Ashok Kumar and another** reported in **2008 (7) Supreme Court Cases 722.**

9. The relation between the petitioner and the first respondent is not in dispute. Originally the first respondent was running an art gallery in the premises. Subsequently, it is the specific case of the landlady that the first

respondent has sublet the premises to the second respondent to run the hotel known as Vasantha Bhavan. Whereas, it is the contention of the tenant that till December 2000, she was running art gallery on a monthly rent of Rs.6,300/-. Thereafter, she got the consent from the landlady to convert the same into fast food restaurant and accordingly, she obtained police permission and she is running the hotel in her own name. The landlady is seeking eviction only on the ground of subletting.

10. The initial burden always lies on the landlady to show that the premises was sublet and the possession has been parted with. The landlady has filed Ex.P.3, Ex.P.4, Ex.P.8 to Ex.P.10 to show that the entire premises was run by the second respondent chain of hotels. Whereas, it is the contention of the tenant that she had obtained the permission to run the fast food restaurant. In fact, she herself is running hotel in the name of 'Vasantha Bhavan'. No doubt, she has also originally obtained no objection from the landlady under Ex.R.1 to run fast food restaurant in the premises. Thereafter, she had also obtained license from the Corporation under Ex.R.9. She had also obtained license from the Commissioner of Police to run the restaurant. She has paid professional tax also. The revision petitioner also gave permission to run fast food restaurant and use water sump inside the building under Ex.R.2. The respondent has also paid necessary water and sewerage charges under Ex.R.4. Thereafter, it appears that as an occupier, she has also paid tax to the Corporation.

11. Though the above documents prima facie show as if the first respondent had obtained permission to run the hotel by herself, it is the specific allegation of the landlady that the hotel was run in the name of 'Vasantha Bhavan'. To show that the hotel was run in the name of 'Vasantha Bhavan', Ex.P.3, Ex.P.4 and Ex.P.8 to 10 have been filed. The above facts infact probabilize that the hotel was run by 'Vasantha Bhavan'. The contention of the first respondent that she herself was running the hotel in the name of 'Vasantha Bhavan' cannot be countenanced for the simple reason that hotel 'Vasantha Bhavan' is a chain of hotel and is a reputed hotel in Chennai. When such a reputed hotel has got trade mark of their name and the respondent running the hotel in the same name is highly improbable. She could not have run the hotel in the registered name of the chain of hotels. Further, to countenance that she herself was running the hotel, no details as to the sales tax particulars and income tax particulars has been filed by her. Therefore, merely because some permission has been granted by the landlady to run fast food restaurant, the first respondent cannot take advantage of the same and part with the possession of the property to the reputed hotel known as 'Vasantha Bhavan'.

12. It is curious to note that the legal notice was issued to the second respondent and the same has been received by the second respondent. The explanation offered by the first respondent to the effect is that one of the staff known as Kumar has received the said notice sent in the name of the second

respondent. This explanation has been offered in her evidence and not in the counter. If really some staff of the first respondent has received the legal notice, she could have proved the same before the Court of law by examining the concerned staff who allegedly signed in the acknowledgment card. She has not done so. This fact also clearly indicate that the second respondent has received the legal notice and remained exparte even in the Rent Controller proceedings. In the Rent Controller proceedings, in fact, the Court notice also served on the second respondent and the explanation of the first respondent is that the Court notice was received by the staff of the first respondent. If really notice was received by one Kumar, a staff of the first respondent, she could have proved the same by examining the staff. Non examination of the staff to prove the above fact coupled with the fact that no sales tax bill and income tax returns have been filed by the respondent, all these facts create serious doubt about the first respondent contention.

13. No doubt, the burden is always on the petitioner to show that the possession has been parted out to third party to prove subletting. When the landlady is able to probabalise her stand, then the burden automatically shifts on the tenant to establish that she has not parted with the possession. The conduct of the tenant in giving various explanation to get over the summons served on the second respondent and failure to produce any documents to show that she is running the business individually, the contention of the landlady that the hotel

was run by the second respondent is clearly probalilized and established. Ex.P.3 and Ex.P.4 documents of the Vasantha Bhavan hotels also indicate that the branch office of their hotel is in the premises. P.W.1 evidence also clearly indicate that since she had already suffered loss in her art gallery business, she obtained permission to run fast food. The above fact also clearly indicate that possibility of giving possession to the second respondent to run the hotel is more probalilized.

14. It is also to be noted that in E.P.7 reply notice, she has categorically stated that there was no person in the name of the second respondent in the premises and the said legal notice also received by the staff of the tenant. Having taken a categorical stand in the reply notice that there was no such person in the premises in the name of the second respondent, she would have definitely informed her staff not to receive any Court notice in the name of the second respondent sent to the said address. Whereas, the Court notice also received in the name of the second respondent. This circumstances is also against normal human conduct.

15. In a judgment in **Mallika Vs. A.P.Kathija Beevi and 4 others** reported in **1998 – 1 L.W. 44**, it has been held as follows :

“10. Revision petition has no case that the second counter petitioner is not doing any business. But her case is only that she

is having control over the building and no exclusive possession has been given to the second counter petitioner. When he is doing business of his own, an inference can be drawn that for the purpose of business, he must have control over that area where the business is being conducted. Further, when a telephone is installed, it could be presumed that he has got a permanent address in the schedule building. That means, he has got the right to exclude and include others in the place where he is doing business. Unless he has got control over the premises, the telephone cannot be installed, for, he must have permanent address in that building. A name board is also placed in the name of the second counter petitioner. A mere denial by the petitioner will not be sufficient to come to the conclusion that the second counter-petitioner has no exclusive possession. On the basis of the evidence, adduced, the Authorities below have come to the conclusion that the second counter petitioner must be in possession exclusively with right to exclude and include others. When the landlord has proved that a stranger is in possession and is doing business in the premises, it is for the tenant to substantiate the circumstances under which the stranger came into occupation. Mere denial may not be sufficient. The arrangement between the tenant and the second counter-

petitioner is a secret arrangement and the details of the same can be spoken only by them. Burden on the landlord is discharged when he proves that a stranger is in exclusive possession atleast in respect of a portion of the premises. The inference drawn by the Authorities below that the second counter-petitioner has exclusive possession, according to me, is the only conclusion that can be arrived at in the circumstances of the case."

16. In **Syed Maqbul vs. M.Thanvel Chettiar** reported in **2000 (II) M.L.J. 217**, it has been held that

"23. The law is well settled that in the case of sub-lease, it is a concealed transaction between tenant and the sub-lessee. Landlord can prove sub-lease only from circumstances. If the transaction be within the special knowledge of tenant and sub-lessee, if certain circumstances are proved by landlord, from which an inference could be drawn that there is a probability that tenant might have sub-let the building, it is for tenant to show that those circumstances are not true to hold that he has unauthorisedly sub-let.

24. It is true that it is for landlord to prove the case of unauthorised sub-lease. Law is also well settled that landlord has to prove that third party is in exclusive possession of the building.

If that is proved, taking into consideration the normal course of human conduct that the person who is allowed to be in exclusive possession is occupying the building for consideration. It has been so held in *Nihal chand Rameshwar Dass Vs. Vinod Rastogi* (1994) 4 S.C.C. 325, wherein their Lordships followed the case of *Rajbir Kar V. S.Chokesiri and Co.*, (1989) 1 S.C.C. 19.

25. If the explanation offered by the tenant is not satisfactory, or there is improbity in his explanation on the basis of the evidence adduced by landlord, court will be justified in holding that there is unauthorised sub-lease. Whether third party is in exclusive possession also could be proved by circumstances. If the business that is carried on in the building is such that without possession the same cannot be carried an inference is possible that third party is in exclusive possession. It is also could be informed when the tenant fails to prove that he continues to have control over the building and not conducting business in the premises. From the above law, let us consider the evidence in this case.”

17. In **Shah Phoolchand Lalchand Vs. Parvathi Bai** reported in **AIR 1989 Supreme Court 865**, it has been held as follows :

“5. It was next submitted by Mr.Nayar tha there was no evidence in the case to come to the conclusion that the appellants had sublet the shop of M/s.Adeshwar Glass Mart. In our view, there is no substance in this contention. There is evidence to show that M/s.Adeshwar Glass Mart was carrying on business at the said premises and that firm was carried on in the said premises even for some time during which the appellants firm had ceased to carry on the business there. Moreover, although a notice was given by the respondent to the appellants and M/s.Adeshwar Glass Mart to produce their income-tax returns, assessment orders as well as account books and ledgers for the relevant period, these were not produced. It was surely open to the trial Court from these circumstances to come to the conclusion that had the account books and ledgers been produced they would have shown that rent was received by the appellants from M/s.Adeshwar glass Mart which would justify the finding of subletting. In these circumstances, this contention of Mr.Nayar must fail.

18. In **J.P.Vijayakumar and another Vs. S.Ranjan and another** reported in **2006 (4) L.W. 987**, it has been held that

“Even otherwise, a tenant is not supposed to enter into franchise agreement with another person, allowing the other person to use and utilise the entire premises for a commission, as the same will amount to putting the other person in possession of the leased property giving full power of control and management over the same (leased property) – Sub-letting of the petition property) – Sub-letting of the petition property by the first respondent to the 2nd respondent is proved as rightly observed by the Rent Controller – Eviction order passed by the Rent Controller on the grounds of sub-letting and committing acts of waste restored.”

19. In **Nirmal Kanta (dead) through Lrs. Vs. Ashok Kumar and another** reported in **2008 (7) Supreme Court Cases 722**, it has been held that

“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-tenant and/or the allegation of sub-letting stands established."

20. In **M/s.Bentool Steel Products Private Limited rep. by its Managing Director, G.K.Pattery Vs. O.M.A. Mohammed Omar and another** reported in **2001 (3) CTC 618**, this Court has held that when the landlord failed to prove that the third party is in exclusive possession of the premises, eviction cannot be Ordered under the ground of subletting.

21. From the above judgments, it can be stated that only when the landlord proves parting of exclusive possession to the third parties, eviction under subletting can be ordered. There is no dispute on the above decisions. But as already discussed above, the tenant has infact taken advantage of the consent letter obtained from the landlady to run fast food restaurant, has parted the exclusive possession of the premises to the third party, namely the second respondent to run hotel in the name of 'Vasantha Bhavan', her contention that she alone is running the hotel 'Vasantha Bhavan' has not been established.

Therefore, on the date of notice, when the landlady has established that there was subletting, certainly, the landlady is entitled for Order of eviction.

22. In **Gajanan Dattatraya Vs. Sherbanu Hosang Patel and others** reported in **1975 (2) Supreme Court Cases 668**, the Honourable Supreme Court has held that

“On the date of the subletting in 1944, this Court found in Goppulal's case (supra) that there was no rent control legislation in force. This Court did not consider the question as to whether subletting to be within the mischief of the relevant statute was to subsist at the date of the suit. This Court held that Section 13(1) (e) of the Rajasthan Act would include any subletting which though made in the past would continue at the point of the time when the Act came into force.”

Therefore, the tenant is liable to be evicted, once the act of subletting is proved on the date of notice. Considering the above judgments and the fact that the first appellate Court has been clearly carried away by the consent letter given by the landlady to run fast food restaurant has set aside the Order of eviction. But, it has not gone to the extent of deciding whether the hotel 'Vasanth Bhavan' was run by the first respondent herself. Therefore, the Order of the first appellate Court is certainly liable to be interfered.

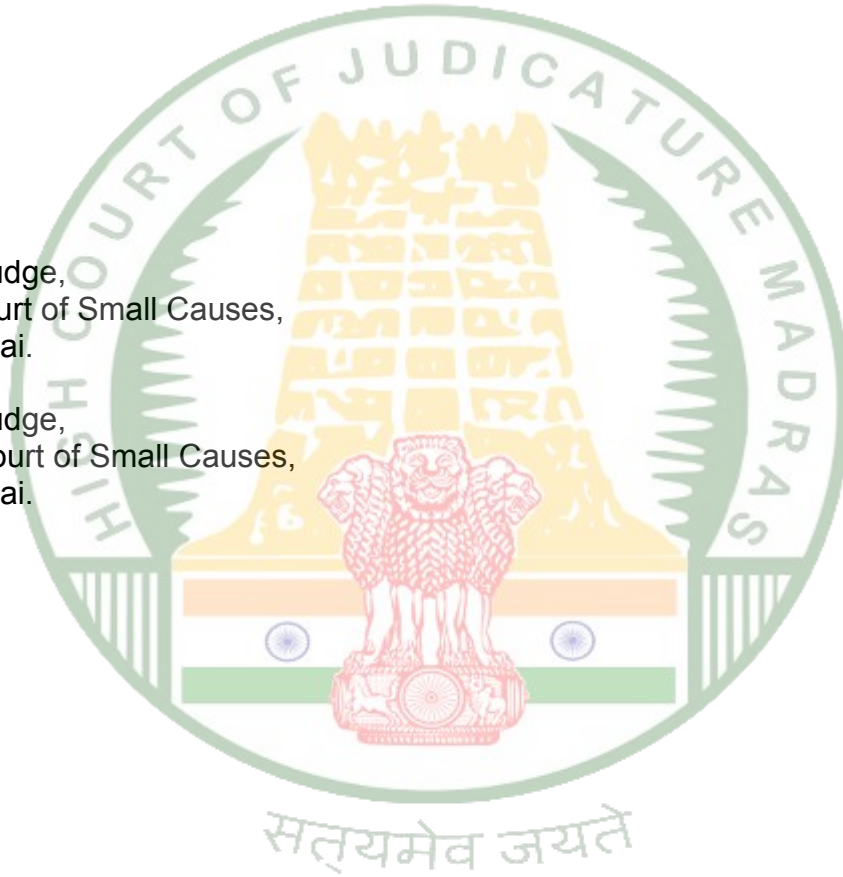
23. Accordingly, this Civil Revision Petition is allowed and the Order of the first appellate Court is set aside and the eviction Order passed by the Rent Controller is restored. No cost.

12.04.2019

vrc

To

1. The Judge,
VII Court of Small Causes,
Chennai.
2. The Judge,
XIV Court of Small Causes,
Chennai.



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N.SATHISH KUMAR, J.

VRC



Order in

CRP.(NPD) No.2244 of 2007

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