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

Date of decision: 7th November, 2019

+ **CM (M) 1491/2019 & CM APPL. 45483/2019**

SURENDER KUMAR

..... Petitioner

Through: Mr. Pradeep Kumar Arya, Mr. Raj
Karan Sharma, Mr. Priyanshu Malik,
Mr. Prateek Singh, Ms. Sanya Arora
and Mr. Gaurav Chaudhry,
Advocates. (M:9810359511 &
9871454546)

versus

M/S KHANDELWAL JAIN SOCIETY & ANR. Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(oral)

1. The present petition has been filed challenging the impugned order dated 28th September, 2019 passed by the Id. Rent Control Tribunal (*hereinafter*, “RCT”) by which the appeal filed by the Petitioner/Tenant (*hereinafter*, “Tenant”) has been dismissed. The appeal was preferred by the Tenant challenging the eviction decree dated 15th October, 2013, by which the Id. Rent Controller (*hereinafter*, “RC”) had allowed the petition for eviction on the ground that the Tenant had sub-let the property. The operative portion of the eviction decree reads as under:

“18. From a reading of affidavit of PW1 Mr. Prabodh Chand Jain it appears that no evidence has been led by him to prove the nature and extent of the damage caused by the respondents to the premises. Furthermore, the site plan which has been referred to

by him does not exist in the file and has not been tendered by him. In the absence of cogent evidence led by the applicant to prove that the respondents have caused substantial damage to the premises it cannot be held that the ground of eviction mentioned in clause (j) of proviso to sub-section (1) of 14 of Act 59 of 1958 has been proved.

19. In view of my above discussions, the application for eviction made by the applicant is allowed to the extent that the applicant is found entitled to recover possession of premises bearing quarter no. 2-A, Jain Mandir Compound, Jaisinghpura, Jain Mandir Road, Raja Bazaar, New Delhi as shown in colour red in site plan Ex. PW1/3 on ground mentioned in clause (b) of proviso to sub-section (1) of 14 of Act 59 of 1958. In so far as the other grounds for eviction mentioned in clause (j) of proviso to sub-section (1) of 14 of Act 59 of 1958 is concerned, the application fails. It is ordered accordingly. There shall be no order as to costs. File be consigned to record room,”

2. The ld. RCT has primarily proceeded on the basis that the Tenant and alleged sub-tenants, who were impleaded as Respondent Nos.1 & 2 in the eviction petition, had chosen not to appear before the ld. RC. Further, no evidence was led and even the Landlord's witness was not cross-examined. The ld. RCT observed that even during the time when the petition was pending, an application was filed under Order XVIII Rule 17 CPC, which was dismissed by the ld. RC. There being no evidence or cross-examination of the Landlord's witness by the Tenant or alleged sub-tenants, the testimony of the Landlord's witness remained unrebutted. Accordingly, the appeal was dismissed with the following observations:

“10. On 27.07,2013, an application u/o 18 Rule 17 r/w/s 151 CPC for examining the petitioner witness therein was filed by the counsel for the respondent-

therein / appellant-herein, which was fixed for reply and arguments for 16.08.2013. Reply was filed to the said application on 16.08.2013 and thereafter the matter was fixed for arguments on the said application for 27.08.2013. Arguments were heard qua the said application and it was observed by the Ld. Trial Court that the said application was highly belated and the defence of the applicant -therein was struck off and the respondent therein / appellant-herein was proceeded ex parte. It was further observed and held that no explanation had been furnished by the applicant -therein for not filing the application at relevant stage and that the said application was filed merely to delay the proceedings. The Ld. Trial Court further held that more than ample opportunities had already been granted to the applicant-therein / appellant-herein to prosecute the matter but of no avail and the applicant was very casual in prosecuting the case. The Ld. Trial Court also held that the provisions u/o 18 rule 17 does not apply in the facts and circumstances of this case. Therefore, the said application was dismissed and the matter was fixed for final arguments for 05.10.2013. On 05.10.2013, final arguments were heard on behalf of the petitioner-therein but no one was present on behalf of the respondent-therein / appellant-herein at that time for arguments and the matter was kept for consideration / orders on 15.10.2013. Thus, the Ld. RC passed the impugned order dated 15.10.2013.

11. Despite several opportunities, the appellant herein failed to file the written statement or the appropriate application seeking recall of the order dated 21.03.2013 vide which his defence was struck off. Meaning thereby, the appellant-herein was sleeping for availing his right to move appropriate application against the said order dt.21.03.2013 as per procedure and law and waited till the application under Order 18 Rule 17 r/w/s 151 CPC was filed on 27.07.2013. If again and again opportunities are given to the

appellant herein, it would be endless process for the proceedings and trial of the said petition, which was filed in the year 2010. The aforesaid judgments relied upon by the Ld. Counsel for the appellant-herein are distinguishable from the facts and circumstances of the present case. Thus, in view of the above discussions and facts and circumstances of the case, this appeal is devoid of any merits and the same is dismissed. Trial Court record along with copy of this Judgment be sent back. File of appeal be consigned to Record Room.”

3. Ld. counsel for the Tenant vehemently urges before this Court that the Landlord failed to discharge even the initial burden cast upon him to prove that there had been sub-letting.

4. Ld. counsel took the Court through PW-1's evidence by way of affidavit where, according to ld. counsel, only a bald statement was made that the property was sublet. Ld. RC ought to have examined the question as to whether the onus of the Landlord had been discharged or not, and if the initial burden is not discharged, sub-letting cannot be presumed. Reliance is placed on the judgment of the Supreme Court in ***Rangammal v. Kuppuswami and Anr., (2011) 12 SCC 220*** to argue that once the onus is on the Plaintiff, the onus has to be discharged, with positive evidence being led by the Plaintiff.

5. This Court has perused the testimony of PW-1, the initial eviction order passed by the ld. RC as also the ld. RCT's order. The testimony of PW-1 clearly states as under:

“2. I say that the petitioner is landlord/owner of Quarter No. 2-A, Jain Mandir Compound, Jaisinghpura, Jain Mandir Road, Raja Bazar, New Delhi-110 001. The tenanted portion is more particular shown in RED in the site plan annexed with

the present petition, the copy of the same is exhibited as Ex-Pw-1/3. My signature is appearing at point "a" of Ex-Pw-1/3. I further say that The respondent no.1 is one of the legal heirs of late Shri Kanshi Ram, who was tenant in the said Quarter No.2-A, Jain Mandir Compound, Jaisinghpura, Jain Mandir Road, Raja Bazar, New Delhi-1.

3. That I say that The Respondent no.1 remained in exclusive possession of the tenanted portion i.e. Quarter No.2-A, Jain Mandir Compound, Jaisinghpura, Jain Mandir Road, Raja Bazar, New Delhi-110 001 after death of his father. The Respondent no.1 has left to unknown place after parting with/sub-letting the tenanted portion i.e. Quarter No. 2-A, Jain Mandir Compound, Jaisinghpura, Jain Mandir Road, Raja Bazar, New Delhi-110 001 to the respondent no.2 without knowledge and written consent of the petitioner of the petitioner society. I further say that the respondent no.2 is unauthorized occupant in the tenanted portion and has been residing there alongwith his family member which includes his wife and child. I further say that since the respondent no.1's address is not traceable, the tenanted portion address had been shown/written in the title of the petition but as a matter of fact, the respondent no.1 has not been residing in the tenanted portion and the same is in exclusively possession of the respondent no.2, the unauthorized occupant. "

6. A perusal of the above testimony shows that according to PW-1, the father of the Tenant was a tenant in Quarter No.2-A in the compound where the temple is located. In fact, the Tenant himself has left to an unknown place after subletting the said quarter to Respondent No.2. PW-1 categorically asserts that Respondent No.2 has been residing in this quarter along with his family members, which include his wife and child. Both the

Tenant and alleged sub-tenant chose not to appear before the Id. RC. In view of this testimony, the Id. RC concluded that there exists a relationship of Landlord and Tenant, and that it has been proved that the premises had been sub-let. The finding of the Id. RC is as under:

“16. From the testimony of PW1 Mr. Prabodh Chand Jain it has been proved that there exists relationship of landlord and tenant between the applicant and respondent no.1 in respect of premises bearing quarter no. 2-A, Jain Mandir Compound, Jaisinghpura, Jain Mandir Road, Raja Bazaar, New Delhi, which was let out to late Kanshi Ram and after his death tenancy was inherited by the respondent no.1. From the testimony of PW1 Mr. Prabodh Chand Jain it has also been proved that the said premises has been sub-let by the respondent no.1 in favour of the respondent no.2 without obtaining the written permission of the applicant. Thus, the ground of eviction prescribed in clause (b) of proviso to sub-section (1) of section 14 of Act 59 of 1958 has been proved in respect of the premises shown in colour red in Ex. PW1/3.”

7. The appeal, which was filed by the Tenant, has also been dismissed on the ground that the entire evidence of PW-1 has been unrebutted. The Id. RCT also notes the Landlord's submission that the premises is a temple, and hence the Respondents, having themselves chosen not to lead any evidence, cannot be said to have any grievance against the Id. RC's order. It is the well-established position that subletting always takes place behind the back of the Landlord, and on almost all the occasions, documentary evidence is not available. In ***Bharat Sales v LIC of India***, (1998) 3 SCC 1, the Supreme Court has held as under:

“4. Sub-tenancy or subletting 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 of 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 overacts 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 sublet 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 sublet 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 sublet.

8. Thus, sub-letting is clearly proved by the testimony of PW-1, who has

stated specifically that Respondent No.2 is living in the premises along with his wife and son. This testimony has gone unrebutted, as both the Tenant and the alleged sub-tenant chose not to appear before the Id. RC or to lead any evidence. The unrebutted testimony of PW-1 ought not to be called into question. The Court has put a specific query as to since when the said quarter has been in possession of the Tenant. Ld. counsel for the Tenant fairly states before the Court that the quarter has been in the possession of the Tenant's father for more than 40 years, on a monthly rent of only Rs.100/-.

9. Ld. counsel for the Tenant states that the Tenant can be put to terms and an opportunity may be given only to cross-examine PW-1. This Court is of the opinion that setting back the clock would be unfair and prejudicial to the Landlord at this stage, inasmuch as a long period has elapsed since the passing of the eviction decree. Accordingly, this prayer is rejected.

10. Considering the overall facts and circumstances, the Landlord at some point of time ought to be entitled to get vacant and peaceful possession of his property. The eviction decree was itself passed in 2013 and thereafter, the appeal has come to be decided almost 6 years later. Under these circumstances, this Court deems it appropriate not to interfere with the impugned order under Article 227 of the Constitution of India.

11. The eviction decree is, accordingly, upheld. The petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 07, 2019/dk