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

Reserved on: 20th September, 2019

Date of decision: 23rd October, 2019

+ **CM(M) 1400/2019, CAV 943/2019, CM APPL. 42303/2019 & CM APPL. 42304/2019**

V K DHINGRA

..... Petitioner

Through: Mr. O.P. Saxena, Advocate.
(M:9810012444)

versus

**SHRI RAM SCIENTIFIC INDUSTRIAL RESEARCH
FOUNDATION**

..... Respondent

Through: Mr. B.K. Mishra, Advocate with Mr.
Rupesh Kumar, Asst. Manger Legal..
(M:9818020554)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present is a classic case of what is wrong in the prevalent tenancy laws. The Petitioner – Shri V. K. Dhingra was appointed as a Senior Analyst with Sri Ram Scientific Industrial Research Foundation (*hereinafter* ‘Foundation’). He was allotted residential accommodation by the Foundation, last of which was at Flat No. A-2, SRI Colony, 19, University Road, Delhi-110007. He was in the employment of the Foundation since 1981 and resigned on 16th July, 1992. He has retained the flat since the last 27 years without paying any rent and the Foundation has had to remain embroiled in this long-drawn litigation with him in order to be able to evict him from the residential accommodation, which is purely meant for staff of the Foundation.

2. An eviction petition under Section 14(1)(i) of the Delhi Rent Control

Act, 1958 was filed by the Foundation on 25th February, 1993. Vide order dated 8th May, 2012, the eviction petition was dismissed on the ground that the relationship of landlord and tenant has not been established. The operative portion of the said order, which has been passed 21 years after the institution of the eviction petition, reads as under:

“16. After careful perusal of judgment relied upon by the petitioner, it is reflected that it is not applicable in the present facts and circumstances. In the present case, the amount deducted from the salary of respondent is the license fee and not the rent. It is pertinent to mention here that license fee cannot be equated with rent in any circumstances. Petitioner himself has acknowledged this fact, during evidence, as well as during final arguments. The judgment of “Torbett’s case (Supra)” and “B. M. Lal’s case”(Supra) have laid emphasis upon this distinction nicely. It is also pertinent to mention here that as per the scheme and object of Delhi Rent Control Act the foremost requirement of invoking the jurisdiction of Rent Controller is that there must exist a landlord tenant relationship in between the parties. A person, who is not paying the rent but a license fee cannot be considered as tenant, hence, cannot be said to have covered under jurisdiction of Delhi Rent Control Act. In these circumstances, therefore, I am of the opinion that petitioner has not been able to establish the foremost requirement that there exist landlord tenant relationship in between the parties and respondent is the tenant as per Section 2(i) of Delhi Rent Control Act. In these circumstances, therefore, as there exist no landlord tenant relationship in between the parties, hence, Rent Controller has no jurisdiction to try this case. Hence, petition filed by the petitioner seeking eviction under Delhi Rent Control Act is not maintainable, hence, it is dismissed.”

3. An appeal was preferred by the Foundation challenging the said dismissal. The said appeal was decided by the impugned order dated 19th August, 2019. By the impugned order, the Appellate Court held that the relationship between the parties was one of lease and not of a license. The view of the Ld. Rent Controller was set aside and an order of eviction was passed. The findings of the ld. Appellate Court are as under:

“19. As discussed above, exclusivity of possession of the premises with the occupant is a prima facie indicator of lease, unless other circumstances negate the intention to create lease. In the present case, no circumstance except the terminology of the occupation charges was put forth to negate the intention to create lease.

20. Therefore, I am not at all in doubt while holding that the jural relationship between the parties was of lease and not of license. That being so, I am unable to uphold the view of the learned Additional Rent Controller in the impugned, judgment that the petitioner under Section 14(l)(i) of the Delhi Rent Control Act was not maintainable.

21. In view of the above discussion, the impugned judgment and order dated 08.05.2012 and 06.07.2012 of the learned Additional Rent Controller are set aside. The appeal is allowed, thereby directing that the respondent be evicted out of the demised premises flat No. A-2, SRI Colony, University Road, New Delhi forthwith.”

4. In the present appeal, though various grounds have been raised, the only ground urged by Mr. Saxena, ld. counsel for the Petitioner is that the Petitioner is no longer living in the accommodation and if he is paid all the dues in respect of his provident fund and pension etc., he would be willing to vacate the suit property.

5. On the other hand, ld. counsel for the Foundation has argued before

this Court that the Petitioner has illegally retained the possession of the property for 27 years. In fact, all his dues were agreed to be paid several years ago. However, the Petitioner continued to dispute the actual dues payable and continued to retain the premises. He further submits that separate proceedings are pending in respect of the occupation charges including the penalties payable by the Petitioner and hence, the demand for dues today, in these proceedings, is not liable to be entertained.

6. Submissions were heard on behalf of both the parties on 20th September, 2019 and the judgment was reserved. Thereafter, an application was moved by the Petitioner, which reads as under:

“1. That after hearing the arguments in the above noted case this Hon'ble court has reserved the orders.

2. That the petitioner most respectfully submits that he is willing to vacate the premises in question and he will hand over the keys in the high court its self at the time of hearing before the Hon'ble court

3. That the petitioner prays that the applicant may be allowed to vacate premises and the respondent be directed to handover the cheque in terms of annexure P-3 for a sum of Rs.15,64,496/-

It is, therefore most respectfully prayed that this Hon'ble

court may kindly be pleased to:

i) not pass a order on merits of the case. Allow the petitioner to withdraw the petition;

ii) allow the applicant to vacate the premises and direct the respondent to hand over the amount of Rs. 15,64,496/- as per order dated 29.05.2018 of the Learned R.C.T.

Pass such other orders as this Hon'ble court may deem fit and proper in the facts and circumstances of the case.”

7. The said application was listed before this Court on 1st October, 2019,

on which date, submissions were again heard on the application. Ld. counsel for the Petitioner again contended that if the Petitioner is paid the sum of Rs.15,64,496/-, he is willing to hand over possession of the premises. However, ld. counsel for the Foundation, on the other hand, submitted that even if an average of Rs.5,000/- per month is counted as the monthly occupation charges since 1992, the dues of the Petitioner would be more than Rs.16 Lakhs and hence, the Foundation cannot accept the Petitioner's contentions. Further, despite the Foundation having repeatedly offered amounts due to the Petitioner during the pendency of the eviction petition, he had never accepted the same and he illegally continued to retain the premises.

8. Since the application was conditional to the payment to the Petitioner, the same could not be entertained and was rejected.

9. Coming to the merits of the case, it is clear from a perusal of the impugned order passed by the Appellate Court that the premises in question was occupied by the Petitioner as he was an employee of the Foundation. The monthly occupation charges were, in fact, being deducted from his salary itself. Initially, the Petitioner was allotted a bachelors flat and thereafter, he was upgraded when his mother and his brother started residing with him. The said upgradation was based upon the needs of the Petitioner. The Petitioner tendered his resignation to the Foundation on 16th July, 1992 and the same was accepted by way of letter dated 20th July, 1992 with effect from 16th July, 1992. In the eviction petition, the Petitioner had raised two main objections. First, that the petition was not signed by a duly authorized person and secondly, the relationship being one of license and not of tenancy or lease, the provisions of Delhi Rent Control Act do not apply.

10. The Id. Rent Controller had held that the person signing the petition was duly competent to sign. However, on the question as to whether there existed a landlord-tenant relationship, the Id. ARC held that what was being charged was license fee. The Id. ARC further held that since there is no landlord-tenant relationship, the petition is liable to be dismissed.

11. On the other hand, the Appellate Court has, after discussing the law on the subject including judgments in *Jagdish Singh v. Shyam Lal Charitable Trust*, 53 (1994) DLT 190 and *Madhu Bala v. Ram Scientific and Industrial Research Foundation*, 98 (2002) DLT 399 has held that the relationship between the parties is one of lease and not of license. The Id. Appellate Court has further held that the use of the terminology 'license' does not by itself mean that it is not a lease. The relationship of the landlord-tenant exists between the parties and thus the appeal was allowed.

12. Before this Court, none of the grounds raised either before the Id. ARC or before the Appellate Court were urged. However, in the petition itself the question as to lease or license has been raised and the same is, accordingly, being considered by this Court.

13. The difference between lease and license is now well settled and is no longer *res integra*. In *Associate Hotels of India Ltd. v. R. N. Kapoor*, AIR 1959 SC 1262 the Supreme Court laid down the following as the test to decide as to whether the particular relationship is as of a lease or license:

“Whether a document is a lease or a licence it is the substance of the agreement that matters and not the form, for otherwise clever drafting can camouflage the real intention of the parties.

A lease is a transfer of an interest in land. The interest transferred is called the leasehold interest. The lessor parts with his right to enjoy the property

during the term of the lease, and it follows from it that the lessee gets that right to the exclusion of the lessor.

Under S. 52 if a document gives only a right to use the property in a particular way or under certain terms while it remains in possession and control of the owner thereof, it will be a licence. The legal possession, therefore, continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose. But for the permission, his occupation would be unlawful. It does not create in his favour any estate or interest in the property. There is, therefore, clear distinction between the two concepts.

The following propositions may, therefore, be taken as well-established: (1) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties – whether they intended to create a lease or a licence; (3) if the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and (4) if under the document a party gets exclusive possession of the property, “prima facie”, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.”

From the above judgment, it is clear that if an interest is created in the property and the possession is exclusive, the person has to be considered as a tenant. *Associate Hotels (supra)* has been, thereafter, followed in a large number of the judgments of the Supreme Court including in *Sohan Lal Naraindas v. Laxmidas Raghunath Gadit, (1971) 1 SCC 276* wherein the Supreme Court observed as under:

“A licence confers a right to do or continue to do something in or upon immovable property of grantor

which but for the grant of the right may be unlawful, but it creates no estate or interest in the immovable property of the grantor. A lease on the other hand creates an interest in the property demised.

Intention of the parties to an instruments must be gathered from the terms of the agreement examined in the light of the surrounding circumstances. The description given by the parties may be evidence of the intention but is not decisive. Mere use of the words appropriate to the creation of a lease will not preclude the agreement operating as a licence. A recital that the agreement does not create a tenancy is also not decisive. The crucial test in each case is whether the instruments is intended to create or not to create an instrument in the property the subject-matter of the agreement. If it is in fact intended to create an interest in the property it is a lease, if it does not, it is a licence. In determining whether the agreement creates a lease or a licence the test of exclusive possession, though not decisive, is of significance.”

14. The Appellate Court in the present case has applied the judgment in ***Nirmal Singh Gill v. United Church of Northern India Trust Association, Moga, (1989) I Vol. XCV Punjab Law Reporter 540***, which held that if the employee does not vacate the property, which was given for his residence to be used during the course of employment, the employer could seek eviction under the relevant provisions of Section 13(3)(a)(i)(d) of the East Punjab Urban Rent Restriction Act 1949.

15. Further, in the present case, the conduct of the Petitioner clearly shows that he has merely held on to the premises as a security “for ensuring the full and final settlement of his dues”. Such conduct cannot be condoned because the Petitioner did not have any justification after having resigned from his employment to retain the residential accommodation which was

meant for the staff of the Foundation. The Id. Appellate Court records specifically in paragraph 18 as under:

“18. In his chief examination affidavit, the respondent as RW1 went on to depose that the demised premises were the designated security” in his hand to ensure full and final settlement of his legal dues. Further, cross-examination of respondent as RW1 also reflects that the demised premises were under his lock and key whenever he visited his brother and mother who had shifted out of the demised premises. That also clearly shows exclusivity of possession of the demised premises, with the respondent.”

16. Insofar the allegation as to whether he had voluntarily tendered his resignation or not, the Id. ARC also held that there was no pressure on the Petitioner to resign and he had resigned out of his own will. While the Petitioner would be entitled to obtain his dues in accordance with the applicable service conditions etc. The retaining of the premises as an arm-twisting tactic, for non-payment of dues, reflects the *malafide* conduct of the Petitioner, who is a well-educated person and who occupied a position such as Senior Analyst at the Foundation. The fact that he retained the premises only in order to put pressure for his dues, is evident from paragraph 3 of the present petition where the entire focus is only in respect of his dues.

17. The interpretation of the Appellate Court in respect of the landlord-tenant relationship is in accordance with the settled legal position. The occupation of the property by the Petitioner was not temporary in nature. He had exclusive possession of the property and he and his family were residing in the property. Despite having shifted out of the premises, he kept the property under his lock and key out of sheer spite. It cannot be said that the

Petitioner and the Foundation were not in a landlord-tenant relationship. There is no doubt that the employer-employee relationship existed between the parties and in case of an employer-employee, if the employee ceases to be in employment, the premises are liable to be vacated. In case of employer-employee relationship, there is also a presumption that the employee is a tenant. The judgment in **Jagdish Singh (supra)** is categorical and clear to this effect. It is observed in the judgment as under:

“(3) That the petitioner was in the service or employment of the Trust is not disputed. That he has ceased to be in the service or employment is also not disputed. The only question that remains to be seen is as to whether the premises in question had been let out to the petitioner for use and occupation by the respondent Trust by reason of his being in the service or employment of the Trust. The order of the Tribunal would go to show that he has appraised and analysed the evidence properly. Even otherwise the Trust has examined two witnesses, namely Sh. Trilok Nath Goel, who is the Secretary of the Trust and Sh. Rajender Kumar who is one of the Trustees of the respondent Trust. Both of them have stated in clear and unambiguous terms that the premises were let out to the present petitioner for residence on account of his being in service or employment of the respondent Trust. Of course, the present petitioner as RW-1 has denied this, but then the learned Tribunal has rightly placed reliance on the two witnesses examined by the Trust. Moreso, since it is borne out from the record that the rent charged was being deducted from the salary of the petitioner. I feel that as the evidence on the record has been analysed properly and looked into in the right perspective it is not a case calling for any interference. In this respect I seek to draw force from a judgment of the Supreme Court in O.T.M.O.M. Meyyappa Chettiar v. O.T.M.S.M. Kasi Viswanathan

Chettiar & Anr., 1993 (3) SCALE 540.”

18. The same has been followed in several other judgments. It is the settled legal position that once there is employer-employee relationship, the question of landlord-tenant relationship does not even arise. Under these circumstances, the petition is dismissed. However, in view of the unreasonable conduct of the Petitioner, costs of Rs.50,000/- are imposed on the Petitioner. The costs shall be paid within a period of four weeks to the Foundation. Caveat is discharged. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 23, 2019/dk

