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

Reserved on: 25th July, 2019

Pronounced on: 2nd September, 2019

+ CM(M) 340/2012 with CM APPL. 5107/2012 & 5519/2018

SUBHASH CHAND GOEL & ORS Petitioners

Through: Mr. Siddharth Aggarwal, Advocate.

versus

HANS RAJ GUPTA & CO PVT LTD Respondent

Through: Mr. Alok Kumar, Advocate with Mr.
Neeraj Kumar Gupta, Mr. Abhishek
Paruthi, Mr. Sachin Kumar, Advocate
for R-1.

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. By this petition under Article 227 of the Constitution of India, the petitioners challenge an order dated 31.01.2012, passed by the Rent Control Tribunal in RCT No.49/2010, by which the Tribunal has allowed the appeal of the respondent herein, and set aside the order of the Additional Rent Controller dated 05.03.2010 evicting the respondent from the suit premises.

Facts

2. The Eviction Petition was filed by the petitioners herein against the respondents on 11.08.2003, seeking the eviction of the respondent

from the suit property [viz. 4634, Ward No. 07, Bazaar Ajmeri Gate, Delhi] under Section 14(1)(b) of the Delhi Rent Control Act, 1958 [hereinafter referred to as “the Act”]. The contention of the petitioners was that although the suit property was let out to a company by the name of M/s Delhi Iron Syndicate Pvt. Ltd., [hereinafter referred to as “DISPL”] at the monthly rent of ₹685/-, it was in the possession of the respondent herein, viz. a company by the name of M/s Hans Raj Gupta and Co. Pvt. Ltd. [hereinafter referred to as “HRGPL”]. It was contended that DISPL no longer exists, having been amalgamated with HRGPL, which was thus an unauthorized sub-tenant liable to eviction under Section 14(1)(b) of the Act.

3. The written statement was filed by the respondent in December, 2003. It was *inter alia* contended therein that the suit property formed part of a larger property which was originally let out to Lala Hans Raj Gupta [HRG] and payment of rent was made by different entities controlled by HRG as per their convenience. Factually, although it was disputed that DISPL was the original tenant of the suit property, it was also stated that it had merged with HRGPL and that both the companies were owned and controlled by the family of HRG. It is undisputed that a scheme of amalgamation of DISPL with HRGPL was sanctioned by an order of this Court dated 13.09.1971 under Sections 391 and 394 of the Companies Act, 1956. All property rights and powers of DISPL were transferred to HRGPL and vested in HRGPL as a result thereof. It was further averred that HRGPL being part of HRG’s group of entities, was already a tenant in respect of the suit property. The respondent further contended that an amalgamation

does not amount to sub-letting or parting with the possession under Section 14(1)(b) of the Act.

4. The Additional Rent Controller by order dated 05.03.2010 allowed the Eviction Petition. As far as the suit premises is concerned, the contention of the respondent that the suit property was not specifically delineated under Municipal No.4634 was rejected, and it was held that DISPL was the original tenant. Relying upon various authorities including *inter alia* *General Radio & Appliances Co. Ltd. vs. M.A. Khader* (1986) 2 SCC 656, *Cox & Kings Ltd. vs. Chander Malhotra* (1997) 2 SCC 687 and *Singer India Ltd. vs. Chander Mohan Chadha*, (2004) 7 SCC 1, the Trial Court held that amalgamation amounts to sub-letting, assigning or parting with the possession within the meaning of Section 14(1)(b) of the Act.

5. The respondent carried the matter in appeal, which was allowed by the Tribunal vide the impugned order dated 31.01.2012. The Tribunal *inter alia* held that the Eviction Petition was bad for non-joinder of necessary parties as DISPL had not been impleaded as a party. It was also held that the petition was not maintainable for want of permission under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956. Although the question of whether amalgamation amounted to sub-letting or not was argued before the Tribunal, the Tribunal did not consider it necessary to decide the same in view of its decision on maintainability as aforesaid.

Submissions

6. I have heard Mr.Siddharth Aggarwal, learned counsel for the petitioners and Mr.Alok Kumar, learned counsel for the respondent.

Mr.Kumar submitted at the outset that he was not pressing the defence based on the Slum Areas (Improvement and Clearance) Act, 1956. The only issues for decision in the present case therefore are whether the amalgamation amounts to a sub-tenancy under the Act and whether the Eviction Petition was barred by limitation. Learned counsel for both the parties have addressed arguments only on these two issues.

7. Mr.Aggarwal referred to the judgments in *General Radio* (supra), *Cox & Kings* (supra) and *Singer India* (supra), to submit that the effect of an amalgamation order in respect of a tenant company is settled by the Supreme Court in favour of the landlord. He also relied upon the Division Bench decision of the Kerala High Court in *Sadanandan vs. Pradeepan & Ors.* (2001) 2 KLJ 272 to submit that sub-letting constitutes a continuing cause of action to which the bar of limitation would not apply.

8. Mr.Alok Kumar, learned counsel for the respondent distinguished the judgments of the Supreme Court in *Singer India* (supra) and also relied upon the decision of this Court in *J.B. Exports Ltd. & Anr vs. BSES Rajdhani Power Ltd.* (2006) 135 DLT 225 (DB) to contend that the facts of the present case do not disclose a sub-tenancy. Mr.Kumar's submission was therefore that the present case called for piercing the corporate veil and coming to the conclusion that DISPL and HRGPL were in fact one and the same. He submitted that amalgamation of DISPL with HRGPL was by way of a re-arrangement of businesses within the family and not a transfer of business or of the assets of the tenant-company. Mr.Kumar argued that

the amalgamation in the present case having occurred in 1971 and the Eviction Petition having been filed in 2003, the petition was clearly outside the limitation period of twelve years prescribed by Article 66 of the Limitation Act, 1963. He cited the judgment of the Supreme Court in *Ganpat Ram Sharma vs. Gayatri Devi* (1987) 3 SCC 576 in support of this contention.

Analysis

9. The Eviction Petition has been instituted under Section 14(1)(b) of the Act which provides as follows:

“14. Protection of tenant against eviction. –

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-

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(b) that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

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10. In the context of rent control legislation, the effect of amalgamation on tenancy has been considered by the Supreme Court in the judgments cited above. In *General Radio* (supra), the question arose in the context of the Andhra Pradesh Buildings (Lease, Rent and

Eviction) Control Act, 1960 [hereinafter referred to as the “Andhra Pradesh Act”]. Section 10(ii)(a) of the Andhra Pradesh Act, much like Section 14(1)(b) of the Delhi Act, provides for sub-letting to constitute a ground of eviction. The original tenant, General Radio & Appliances Pvt. Ltd. had, by virtue of the order of High Court of Bombay, amalgamated with one National Ekco Radio & Engineering Co. Ltd, on the basis whereof the landlord instituted eviction proceedings. The Supreme Court held that the original tenant was no longer in existence as a result of the voluntary scheme of arrangement entered into. The relevant observations of the Court are as follows:

“10. In the instant case Appellant 1 i.e. M/s General Radio & Appliances Co. (P) Ltd. is undoubtedly the tenant having taken lease of the premises in question from the respondent-landlord by executing a rent agreement dated January 12, 1959 at a rental of Rs 200 per month, the tenancy commencing from 7th day of January 1959. On the basis of the sanction accorded by order of the High Court of Bombay made on March 27, 1968 sanctioning the scheme of amalgamation in Company Petition 4 of 1968 filed by Appellant 1, all the property, rights and powers of every description including all leases and tenancy rights etc. of Appellant 1 were transferred to and vested or deemed to be transferred and vested in Appellant 2 M/s National Ekco Radio & Engineering Co. Ltd. It also appears that the Appellant 1 company stood dissolved from April 16, 1968. This clearly goes to show that the General Radio & Appliances Co. (P) Ltd., the tenant company has transferred all its interest in the tenanted premises in favour of Appellant 2 i.e. National Ekco Radio & Engineering Co. Ltd. (the transferee company). The order of amalgamation has been made on the basis of the petition made by the transferor company in Company

Petition 4 of 1968 by the High Court of Bombay. As such it cannot be said that this is an involuntary transfer effected by order of the court. Moreover the Appellant 1 company is no longer in existence in the eye of law and it has effaced itself for all practical purposes. The Appellant 2 company i.e. transferee company is now the tenant in respect of the suit premises and the Appellant 1 company has transferred possession of the suit premises in favour of the Appellant 2 company. There is undoubtedly no written permission or consent of the respondent-landlord to this transfer of tenancy right of the Appellant 1 company as required under Section 10(ii)(a) of the said Act. Moreover even it is assumed to be a subletting to Appellant 2 by Appellant 1 such subletting has been made contrary to the provisions of the said Act and in violation of the terms of clause 4 of the tenancy agreement (Ex. P-6) which clearly prohibits such subletting of the tenanted premises without the written permission of the landlord... Therefore, Appellant 2 i.e. National Ekco Radio & Engineering Co. Ltd., the transferee company who has been put in possession of the tenanted premises by the transferor tenant General Radio & Appliance Co. (P) Ltd. cannot be deemed to be tenant under this Act on the mere plea that the tenancy right including the leasehold interest in the tenanted premises have come to be transferred and vested in the transferee company on the basis of the order made under Sections 391 and 394 of the Companies Act.

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12. It has been urged that the effect of amalgamation is analogous to that of a man who enters with partnership with another. The two companies do not become jointly liable to their respective separate creditors and neither becomes liable for the debts of the other...

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14. We have already stated hereinbefore that the Appellant 1 company, the tenant, has transferred their interest in the tenanted premises to the Appellant 2

company on the basis of the order made by the High Court of Bombay in Company Petition 4 of 1968 sanctioning the scheme submitted to it by the transferor company. We have also held that this is not an involuntary transfer by operation of law, but a transfer of the interest of the tenant company on the basis of their application made before the said High Court in the said company petition. Furthermore, we have also held that the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 which is a special Act provides specific grounds for termination of a tenancy and eviction of the tenant in Section 10(ii)(a) i.e. on the ground of subletting and/or transferring the interest of the tenant either in whole or any part of the tenanted premises to another person. Thus the Act prohibits in specific terms both subletting as well as the transfer or assignment of the interest of the tenant. Moreover clause 4 of the rent agreement executed by Appellant 1 expressly prohibits subletting of the tenanted premises without the express consent of the landlord. The transferor company in this case has undoubtedly been dissolved and the company has ceased to exist for all practical purposes in the eye of law. All the interest of the transferor company including possession in respect of the tenanted premises have been transferred to the transferee company in contravention of the provisions of the said Act as well as in contravention of the terms and conditions of the said rent agreement thereby making the transferee company liable to be evicted from the tenanted premises.

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16. It is pertinent to mention in this connection the decision of this court in Parasram Harnand Rao v. Shanti Prasad Narinder Kumar Jain [(1980) 3 SCC 565 : AIR 1980 SC 655 : (1980) 3 SCR 444] . In this case the appellant landlord executed a lease in respect of the disputed premises in favour of Respondent 2 for three years on April 1, 1942. In 1948 the appellant landlord filed a suit for eviction of the tenant for non-payment of

the rent and for conversion of user of the premises. The suit for possession was dismissed, but a decree for arrears of rent was passed and it was held that Laxmi Bank was the real tenant. The Bombay High Court subsequently made an order that the Bank be wound up and in the winding up proceedings, the High Court appointed an official liquidator who sold the tenancy right to the Respondent 1 in 1961. The sale was subsequently confirmed by the High Court and Respondent 1 took possession of the premises on February 24, 1961. The landlord appellant filed an application under the Delhi Rent Control Act for eviction of the Laxmi Bank and a decree for eviction was passed in favour of the appellant. Thereafter Respondent 1 filed a suit for declaration that he was tenant of the landlord. The suit was dismissed and the appeal against that order also failed. Respondent 1, however, filed an application for recalling the warrant of possession issued by the court in pursuance of the decree in favour of the appellant. This ultimately came up in second appeal and the High Court allowed the Rent Controller's order allowing recalling of warrant of possession. On appeal by special leave this Court held that the amplitude of Section 14(b) of the Delhi Rent Control Act was wide enough not only to include any sub-lease but even an assignment or any other mode by which possession of the tenanted premises is parted. In view of the wide amplitude of Section 14(b), it does not exclude even an involuntary sale.”

11. The subsequent decision in *Cox & Kings* (supra) is under Section 14(1)(b) of the Delhi Act, with which the present case is also concerned. In that case, the original tenancy in favour of a foreign company was transferred to an Indian company in which the foreign company held 40% of the shares in view of orders of the Reserve Bank of India passed under the Foreign Exchange Regulation Act,

1973 (“FERA”). It was submitted before the Supreme Court that the transfer of tenancy was therefore involuntary, and did not constitute sub-letting under Section 14(1)(b) of the Act. The Supreme Court held that the assignment even in such circumstances could not bind the landlord whose permission had not been sought and would constitute either a sub-letting or an assignment contrary to the provisions of the agreement between the parties. In paragraph 6 of its judgment, the Court relied upon its earlier judgment in *Parasram Harnand Rao vs. Shanti Parsad Narinder Kumar Jain* (1980) 3 SCC 565 to hold that Section 14(1)(b) of the Act includes not only sub-lease but also an assignment or any other mode by which possession of the tenanted premises is parted, including an involuntary sale. The Court further followed the ratio of *General Radio* (supra) in the context of the Delhi legislation as well:

“7....In Venkatarama Iyer v. Renters Ltd. [(1951) 2 MLJ 57 (NRC)] , K. Subba Rao, J., as he then was, had to consider a similar question under the Madras Buildings (Lease and Rent) Control Act. There was an assignment between the two companies and considering the effect thereof it was held that if a company doing business in a particular premises taken on lease, transfers its business as a going concern to another company and also the net assets for consideration and thereafter the transferee company takes over the business and carries on business in the premises let out to the former company, it cannot be said that there was no transfer of the right of the former company under the lease to the latter company. On such transfer, the tenant is liable to be evicted as a sub-tenant. The above judgment is clearly on the point in issue before us. In General Radio & Appliances Co. Ltd. v. M.A. Khader [(1986) 2 SCC 656 : (1986) 2 SCR

607] (SCR at p. 620 : SCC p. 666) a three-Judge Bench had approved the above ratio. Two companies having been amalgamated, eviction against the amalgamated company came to be filed. On consideration of all the decisions referred to above hereinbefore, the irresistible conclusion followed that there had been a transfer of the tenancy interest of Appellant 1 in respect of the premises in question to Appellant 2, subsequently, renamed Appellant 3, M/s National Radio Electronics Co. Ltd. Accordingly, their eviction was upheld under Section 10(ii)(a) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. ...”

12. The third judgment of the Supreme Court in *Singer India Ltd.* (supra) is also under Section 14(1)(b) of the Act. In this case also, the alleged transfer occurred as a result of orders under FERA, consequent upon which the foreign company had sanctioned a scheme of amalgamation by which the Indian undertaking of the foreign company [which was the original tenant] stood amalgamated with the Indian company. The Supreme Court relied *inter alia* upon *General Radio* (supra) and *Cox & Kings* (supra) and formulated its conclusion thus:

“11. These cases clearly hold that even if there is an order of a court sanctioning the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act whereunder the leases, rights of tenancy or occupancy of the transferor company get vested in and become the property of the transferee company, it would make no difference insofar as the applicability of Section 14(1)(b) is concerned, as the Act does not make any exception in favour of a lessee who may have adopted such a course of action in order to secure compliance with law.”

13. The argument regarding piercing the corporate veil in such circumstances was rejected with the following reasoning:

“13. Shri Divan has next contended that on amalgamation Singer Sewing Machine Company (American Company) merged into Indian Sewing Machine Company (Indian Company) shedding its corporate shell, but for all practical purposes remained alive and thriving as part of the larger whole. He has submitted that this Court should lift the corporate veil and see who are the directors and shareholders of the transferee company and who are in real control of the affairs of the said company and if it is done it will be evident that there has been no sub-letting or parting with possession by the American Company.

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16. However, it has nowhere been held that such a course of action is open to the company itself. It is not open to the company to ask for unveiling its own cloak and examine as to who are the directors and shareholders and who are in reality controlling the affairs of the company. This is not the case of the appellant nor could it possibly be that the corporate character is employed for the purpose of committing illegality or defrauding others. It is not open to the appellant to contend that for the purpose of FERA, the American Company has effaced itself and has ceased to exist but for the purpose of the Delhi Rent Control Act, it is still in existence. Therefore, it is not possible to hold that it is the American Company which is still in existence and is in possession of the premises in question. On the contrary, the inescapable conclusion is that it is the Indian Company which is in occupation and is carrying on business in the premises in question rendering the appellant liable for eviction.”

14. In the present case also, the fact of amalgamation of the original tenant viz. DISPL with HRGPL is undisputed. Mr.Kumar, however,

drew my attention to paragraph 16 of *Singer India Ltd.* (supra), extracted above, in support of his submission that the said judgment applies to cases where the original tenant has amalgamated with another company in order to overcome a statutory impediment which would otherwise hinder its operations. It is in such circumstances, according to him, that the Supreme Court has held that the company cannot contend that it continues to be the tenant of the demised premises under the Act. I am of the view that a holistic reading of the judgment does not support this argument. The observations of the Court in paragraph 11 are not confined to cases of this nature but apply to amalgamation under the Companies Act, 1956 in general. In fact, the argument that a company is placed on a different footing if it has adopted such a course to secure compliance of law, has been expressly rejected.

15. Mr.Kumar also relied on the Division Bench judgment of this Court in *J.B. Exports Ltd.* (supra). In that case, a company which was a registered consumer of electricity was the wholly-owned subsidiary of another company. Upon an inspection revealing that electricity was being consumed by the holding company, the supplier *inter alia* demanded sub-letting charges. The Division Bench held that the principle of piercing the corporate veil would apply as the company which was consuming electricity held the entire share capital in the company which was the registered consumer. Although the Court noted the judgment of the Supreme Court in *Singer India Ltd.* (supra), it has held that the doctrine of piercing the corporate veil is expanding.

16. In the face of the judgments of the Supreme Court in *Singer India Ltd.* (supra) and *Cox & Kings* (supra), which deal directly with Section 14(1)(b) of the Act, the judgment of this Court in *J.B. Exports Ltd.* (supra) cannot apply in the present case. It may be additionally noted that *J.B. Exports Ltd.* (supra) only concerns the issue of sub-letting whereas the statutory provision in the present case applies also to cases of assignment and parting with possession, which have been expressly discussed in the judgments of the Supreme Court.

17. In view of the above discussion, I hold that the amalgamation of the original tenant DISPL with HRGPL rendered HRGPL liable to eviction from the suit premises under Section 14(1)(b) of the Act.

18. The second question which requires consideration is whether the eviction petition was barred by limitation. The factual position that the amalgamation took place under an order dated 13.09.1971 and the Eviction Petition was instituted on 14.08.2003 is not disputed. Mr.Kumar has relied upon *Ganpat Ram Sharma* (supra) to contend that the limitation period of twelve years applies to eviction proceedings under the Act. The Supreme Court in that case held that Article 66 of the Act is applicable to proceedings for the possession of immovable property, as no determination of tenancy was required. The Trial Court, in the present case, rejected this defence both on the facts of the case and as a matter of law, holding as follows:

“13. The case of the petitioner is that M/s Delhi Iron Syndicate Pvt. Ltd. was the tenant in the suit premises and it was amalgamated with the respondent long ago, but the respondent has concealed the factum of amalgamation and there were several litigations between

the parties, but the factum of amalgamation has not been disclosed by the respondent in any of the litigation and these civil suits were contested in the name of M/s Delhi Iron Syndicate Pvt. Ltd. The petitioner has placed on record the certified copy of the suit for Permanent Injunction filed against M/s Delhi Iron Syndicate Pvt. Ltd. in 1971 as Ex.A-2 and certified copy of the written statement as Ex.A-3. Similarly, another suit for Perpetual Injunction was filed by the petitioner against M/s Delhi Iron Syndicate Pvt. Ltd. in 1977 and the certified copy of the same is Ex.A-5 and certified copy of the written statement filed on behalf of M/s Delhi Iron Syndicate Pvt. Ltd. is Ex.A-6. A perusal of these civil suits filed by the petitioner shows that the same were filed against M/s Delhi Iron Syndicate Pvt. Ltd. and the written statement was filed on behalf of M/s Delhi Iron Syndicate Pvt. Ltd. despite the fact that M/s Delhi Iron Syndicate Pvt. Ltd. despite the fact that M/s Delhi Iron Syndicate Pvt. Ltd. was no more in existence as it was amalgamated long ago with the respondent in the year 1971. There is no dispute so far the fact that M/s Delhi Iron Syndicate Pvt. Ltd. got amalgamated in the year 1971 as RW-1 Sh.Rajender Kumar Gupta who is son of Lala Hans Raj Gupta has stated in the examination in chief itself that M/s Delhi Iron Syndicate Pvt. Ltd. was amalgamated with the respondent w.e.f. December 31, 1970. Although, it has been stated by RW-1 in his evidence that a notice of the amalgamation was given in the newspapers and also in the public gazette, but in the cross-examination, RW-1 has categorically stated that they did not inform. Again, he stated that he does not remember if the intimation was ever sent to the petitioner regarding amalgamation. He further states that he is aware of only one suit filed by the landlord against M/s Delhi Iron Syndicate Pvt. Ltd. but he does not remember when the said suit was filed. He further categorically states that the said suit was contested on behalf of M/s Delhi Iron Syndicate Pvt. Ltd. A specific question was put to RW-1 by the Ld. Counsel

for the petitioners that when the said suit was contested, whether M/s Delhi Iron Syndicate Pvt. Ltd. was in existence and RW-1 replied that M/s Delhi Iron Syndicate Pvt. Ltd. is a part of M/s Hans Raj Gupta & Co. Pvt. Ltd. and was in existence. Another question was put to the witness that did he inform the Court at any time that M/s Delhi Iron Syndicate Pvt. Ltd. has been amalgamated with the respondent and further that whether the earlier suit has been contested by the respondent to which he replied that he does not remember whether the petitioner was informed and further that he does not remember that whether the information was given to the court or not. Similarly, the RW-1 avoided to answer the question that suit was contested in the name of M/s Delhi Iron Syndicate Pvt. Ltd. by concealing the fact of amalgamation.

14. In view of above, it is clear that there has been various litigations between the parties since 1971 by filing the civil suits by the petitioners against M/s Delhi Iron Syndicate Pvt. Ltd. and these civil suits were contested by the respondent in the name of M/s Delhi Iron Syndicate Pvt. Ltd. despite the fact that M/s Delhi Iron Syndicate Pvt. Ltd. was no more in existence and it has already got amalgamated in the year 1971 with the respondent. It has also come on record that no such information was given to the petitioner regarding amalgamation and, as such, when the respondent itself was contesting the civil suits filed by the petitioners against M/s Delhi Iron Syndicate Pvt. Ltd. in the name of M/s Delhi Iron Syndicate Pvt. Ltd. despite the fact that the said M/s Delhi Iron Syndicate Pvt. Ltd. is no more in existence, it amounts to concealment of fact of amalgamation. Therefore, it cannot be said that the petitioner was in the knowledge of amalgamation and the present petition is barred by limitation as petitioner was never in the knowledge of the said amalgamation upto the year 2000. Moreover, it is a settled law that law of limitation does not apply for filing the petition u/s 14 (1)

(b) of DRC Act. It has been held by the Hon'ble Kerala High Court in Mohd. Sageer Vs. Prakash Thomas that, "Limitation Act, Section 5-Sub-letting without consent of landlord- No period of limitation prescribed for filing a Rent Control petition on the ground of sub-letting." In view of above, there is no merit in the contention of the Ld. Counsel for the respondent that present petition is barred by limitation."

The Tribunal has not addressed itself to this issue.

19. Mr. Aggarwal cited the Kerala High Court decision in *Sadanandan* (supra) to support his submission that a case of sub-letting is one of a recurring cause of action. The relevant paragraph of the judgment reads as follows:

"7. We are also of the view that where a subletting is involved, the landlord gets a clause of action, which can only be described as a recurring clause of action. Every moment the objectionable sub-tenancy continues, the landlord gets, a right to apply for eviction under the Act after complying with the requirement of the proviso to Sec. 114)(i) of the Act. There is nothing in the Act which provides for the extinguishment of the right, once a notice under the proviso is issued, but it is not followed up by a petition for eviction. The objectionable subletting does not become an authorised subletting by that process. The right to apply for eviction will continue so long as the objectionable subletting subsists...."

20. The Gujarat High Court has come to a similar conclusion in *Amrutlal Jagjivandas Shah and Anr. Vs. Ramniklal Jagjivandas Shah* (2005) 2 RCR 388, in the context of Section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Paragraph 10 of the judgment reads as follows:

“10. Even otherwise, it is to be seen that in case of raising pakka construction, the moment construction is completed, a cause of action generates or accrues in favour of the landlord. In case of a sub-tenancy, which is continuing since after its creation, would give continuous cause of action to the landlord. A tenant cannot be allowed to say that though sub-tenancy was created, but after 12 years, it would ripen into a valid sub-tenancy. The judgment in the matter of Shakuntala (supra) was on different facts and cannot be applied to the facts of the present case.”

21. The reasons given by the Kerala and Gujarat High Courts in the aforesaid judgments are applicable to Section 14(1)(b) of the Act as well. In the present case, the factual narration noted by the Trial Court also shows that the fact of the amalgamation was not made known to the petitioners. In the Kerala High Court decision, the fact of sub-letting was in fact known to the landlord who had also issued a notice of eviction. Even in those circumstances, a belated Eviction Petition was held not to be barred by limitation. The defence of limitation raised by the respondent is therefore rejected.

Conclusion

22. For the reasons aforesaid, the present petition is allowed. The impugned judgment of the Tribunal is set aside, and the judgment of the Additional Rent Controller dated 05.03.2010 is restored.

PRATEEK JALAN, J.

SEPTEMBER 02, 2019

‘hkaur’/s