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

Reserved on: 14th November, 2019

Date of decision: 15th January, 2020

+ **CM (M) 1047/2017**

K.K BALLI & ORS.

..... Petitioners

Through: Mr. Gaurav Seth and Mr. Vipin
Malik, Advocates. (M: 9717355900)

versus

MEHARGHOOB HUSSAIN & ANR.

..... Respondents

Through: Mr. A. K. Gupta, Mr. Sandeep Tyagi
and Mr. Ashish Goyal, Advocates for
R-2. (M: 9811221511)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

Statute(s) Considered:

S. 14(1)(a) and (b), Delhi Rent Control Act, 1958,
S. 101 and S.109, Indian Evidence Act, 1872

1. The present petition has been filed challenging the impugned judgment dated 29th August, 2017, by which the Id. District and Sessions Judge has allowed the appeal filed by Respondent No.2/Sub-Tenant - Sh. Liyaquat Hussain (*hereinafter, "Respondent No.2"*) and set-aside the eviction order dated 6th June, 2015, passed by the Id. Civil Judge-cum-Rent Controller.

Facts

2. The background of this case is that the Petitioners/Landlords – Mr. K.

K. Balli, Mr. Dinesh Sikka and Mr. Sanjay Kapoor (*hereinafter*, “*Landlords*”) filed an eviction petition under Section 14(1)(a) & (b) of the Delhi Rent Control Act, 1958, in respect of Shop No.19, Ground Floor, IX/6932, Hanuman Market, Prem Gali, Gandhi Nagar, Delhi – 110031 (*hereinafter*, “*suit property*”), against Respondent Nos.1 and 2. The primary allegation in the petition was that Respondent No.1 was the main Tenant (*hereinafter*, “*Respondent No.1*”) and Respondent No.2 was the Sub-Tenant and sub-letting was done behind the back of the Landlords.

3. The Id. Civil Judge-cum-Rent Controller, vide order dated 6th June, 2015, decreed the eviction petition on the ground of sub-letting. The said order was appealed by Respondent No.2 before the Id. District and Sessions Judge, who, vide the impugned judgment dated 29th August, 2017, set aside the said decree.

Submissions

4. The grounds in the present petition which are urged by the Id. counsel for the Landlords are that the Respondents do not question the ownership of the Landlords. The suit property was purchased by the Landlords in the year 2005 from three owners, including one Chaudhary Raj Singh. It is further submitted that the Id. District and Sessions Judge has, in the impugned order, completely misinterpreted the provisions of Section 101 of the Indian Evidence Act, 1872 (*hereinafter*, “*IEA*”) to hold that the onus of proving sub-letting has not been discharged by the Landlords. It is submitted that the eviction order was quite well-reasoned and captured all the facts in respect of the discrepancies in the case of the Respondents.

5. Respondent No.2 claims that he was given possession of the suit property in January, 2000, by Chaudhary Raj Singh. However, Id. Counsel

for the Landlords submits that Chaudhary Raj Singh himself purchased the suit property only in May, 2000 and thus, could not have given it on rent to Respondent No.2 in January, 2000. He further submits that the rent receipts which have been placed on record, including the rent receipts for the months of January, 2000, February, 2000 and March, 2000, are all forged and fabricated documents, inasmuch as Chaudhary Raj Singh did not have the right to collect rent till May, 2000. It is submitted that the onus of proving sub-letting was initially discharged by the Landlords by showing that Respondent No.2 was in possession of the suit property and after this, the onus shifted onto Respondent No.2, which he failed to discharge. It is thus argued that on a misinterpretation of Section 101 of the IEA, the eviction decree could not have been set-aside.

6. Ld. counsel for the Landlords further submits that the case of Respondent No.1, that he surrendered his tenancy to Chaudhary Raj Singh on 15th December, 1999, is false, inasmuch as Chaudhary Raj Singh did not have any right to take possession or accept the surrender of the tenancy in December, 1999. Once it was established that the Respondents were making incorrect statements in their pleadings and evidence, the eviction decree was liable to be upheld, inasmuch as it was not disputed that Respondent No.2 was in possession of the suit property.

7. Ld. counsel for the Landlords relies upon the judgments in ***Prem Prakash v. Santosh Kumar Jain & Sons (HUF) and Anr., JT 2017 (8) SC 606*** and ***Bharat Sales Ltd. v. Life Insurance Corporation of India, (1998) 3 SCC 1***. It is submitted by ld. counsel for the Landlords that after the impugned order was passed, a further order has also been passed by the ld. Civil Judge-cum-Rent Controller on 30th April, 2019.

8. On the other hand, ld. counsel for Respondent No.2 submits that the initial onus of proving sub-letting was clearly upon the Landlords, which the Landlords miserably failed to discharge. Emphasis was placed on the fact that different dates are contained in the demand notice and the petition, as to the alleged date when the sub-letting took place. In the demand notice, it is alleged that the sub-letting took place in the year 2002-2003, whereas in the petition, it is alleged that the sub-letting took place in the year 2009. No independent evidence was adduced by the Landlords to prove that there was sub-letting. In fact, on the other hand, Respondent No.2 has led independent third-party evidence to show that he had been put in possession by Chaudhary Raj Singh.

9. Ld. counsel for Respondent No.2 submits that the case of Respondent No.2 is clear. When he learnt of the ownership of the Landlords, he tendered rent to the Landlords, however, rent receipts were not issued. This has also been proved by him during his cross-examination. Ld. counsel relies upon the judgment of the Supreme Court in ***Ram Murti Devi v. Pushpa Devi & Ors., (2017) 15 SCC 230*** to argue that to prove sub-letting, the landlords have to establish, without any doubt, that the third party was in exclusive possession of the whole or part of the rented property for some monetary consideration. The Landlords in the present case could not show, through any evidence whatsoever, that Respondent No.1 had put Respondent No.2 in possession. In fact, the case of Respondent No.2 in his written statement was that he had been put in possession by Chaudhary Raj Singh. It is further submitted that the onus never shifted onto Respondent No.1 in the present case and the order of the ld. District and Sessions Judge is completely justified and in accordance with law.

10. Ld. counsel for Respondent No.2 places reliance on para 16 of the eviction petition and the demand notice issued on behalf of the Landlords on 26th March, 2010, to argue that whereas in the former, the sub-letting is alleged since 2009, in the notice, the allegation is that the sub-letting took place sometime in 2002-03. Further, as per the eviction petition, the claim of rent is from 1st December, 1999. It is submitted that since the sale deed for the suit property, by which the Landlord's claim to have acquired ownership, is itself dated 28th January, 2005, the allegations of sub-letting prior to the said date would be irrelevant. Ld. counsel further submits that as per clause 4 of the sale deed dated 28th January, 2005, some part of the suit property is under tenancy.

11. Moreover, it is submitted that in his written statement, Respondent No.1 clearly acknowledges that he was in the suit property till December, 1999 and had surrendered his tenancy to Mr. Raj Singh, the landlord at the time, who had thereafter given it to Respondent No. 2. Thus, the allegation of sub-tenancy has not been established. Emphasis is laid on the fact that PW-1, one of the Petitioners, failed to recognize the signatures of Mr. Raj Singh even though his signatures are contained in the sale deed. PW-2 admitted that Respondent No. 2 is a tenant in other shops, namely Shop No.'s 19, 21, 22, 23 and 35. Thus, the Landlords were well aware that Respondent No. 2 was also a tenant in Shop No. 24. It is therefore argued that the onus of proving sub-letting was not discharged.

12. On behalf of the Landlords, it is further submitted that Respondent No. 2 was well-aware of the purchase of the shops by the Landlords but he never tendered any rent. Moreover, the rent receipts which have been produced are completely dubious. It is submitted that if a tenant pays rent

and no receipt is given, remedies are provided for the same under Section 26 of the Delhi Rent Control Act, 1958. Respondent No.2 was already a tenant in four other shops and was thus aware of the Landlords' rights in the suit property. The best evidence for Respondent No. 2 was Mr. Raj Singh, who was not produced. It cannot be presumed that Respondent No. 2 was put in possession of the suit property by Mr. Raj Singh.

Eviction Order and Impugned Order

13. On 6th June, 2015, the Id. Civil Judge-cum-Rent Controller, after perusing the pleadings and the evidence, arrived at the following findings:-

(1) There is a major doubt as to the competence of Mr. Raj Singh to issue rent receipts for a period when he was not the owner and to execute a surrender deed before he purchased the suit property. Thus, Mr. Raj Singh ought to have been called to clarify and confirm the facts. Since neither of the Respondents examined Mr. Raj Singh, the Id. Civil Judge-cum-Rent Controller concluded that the rent receipts were fabricated.

(2) On the basis of Section 109 of the IEA and the burden of proof contained therein, the Id. Civil Judge-cum-Rent Controller concluded that the factum of tenancy cannot be decided in favour of Respondent No. 1. The surrender deed having not been established, there is a presumption that Respondent No. 1 continued as a tenant.

(3) The best evidence, in the form of a statement by Mr. Raj Singh, did not come forward, hence, adverse inference drawn against the Respondents.

(4) The fact that Respondent No. 2, and not Respondent No. 1, was in possession of the suit property, without the consent of the Petitioners, sub-letting stands proved.

(5) In view of Section 27 of the General Clauses Act, 1897, the demand notice dated 26th March, 2010, along with the postal receipt, is also established.

(6) The rent receipts being fabricated, the Landlords have proved that rent for the sum of Rs. 250/- per month is due. Hence, Respondents directed to hand over vacant and peaceful possession of the suit property within thirty days and pay arrears of rent.

14. In the impugned order dated 29th August, 2017, the Id. District and Sessions Judge held that the Landlords have failed to prove that the Tenant had created a sub-tenancy i.e., Respondent No. 1 had created a sub-tenancy in favour of Respondent No. 2. The Id. District and Sessions Judge further held that the date of the alleged sub-letting is uncertain and that there is a variance in the pleadings and the documents produced. Thereafter, relying on Section 101 of the IEA on onus of proof, it is held that there is a heavy burden on the Landlords to prove sub-letting. The findings of the Id. District and Sessions Judge are as under: -

“15. This court is constrained to hold that the aspect of sub-letting is not proved on record for the following reasons:

(a) Pleadings at para 16 of the petition gives the date of sub-letting as 2009.

(b) Affidavit evidence at Ex. PW1/B at Para 8 gives the date as 2002-2003.

(c) The oral testimony of PW-1 is silent with regard to the date.

(d) There is a clear-cut admission by PW-1 in the cross-examination that he has no documents to show that respondent no. 1 was the tenant in the premises.

(e) PW-2 Nafees Ahmed, who is running

business in Shop No. 24 for more than 15 years, had not disclosed as to when the R1 in the trial court had sub-let the premises to R2. In his cross-examination, he admits that the payment and receipt of rent concerning the shop in question did not take place in his presence.

(f) In view of Section 101 of the Evidence Act where the initial burden is heavy on the landlord to have proved the aspect of sub-letting, having not been proved in accordance with law and further the documentary evidence adduced on record being in total variance with the pleadings, the findings of the trial court that the aspect of sub-letting is proved on record cannot be held to be proper in the context of the facts and evidence on record and the law governing the subject.

16. To sum up, the aspect of sub-letting is not proved. Therefore, the order of eviction passed on this ground cannot be sustained. Thus, the order of eviction passed against the tenant (respondent no.1 in the trial court) though remains on record, cannot be enforced against the present appellant who is pleaded as the sub tenant of respondent no.1 in the trial court. Hence, the following order:

ORDER:

The appeal stands allowed. The impugned judgment dated 6.6.2015 in E. No. 33/11 on the files of Id. Sr. Civil Judge-cum Rent Controller, Shahdara, Delhi on the grounds u/s 14 (1) (b) of the DRC Act stands hereby set aside. The eviction under Section 14(1) (a) of DRC Act, cannot be enforced as against the appellant. There shall be no order as to costs.

Copy of this order be sent along with trial court records to the court concerned. File be

consigned to Record Room.”

Findings

15. A perusal of both, the initial eviction order and the impugned order, shows that while the Id. Civil Judge-cum-Rent Controller relied upon Section 109 of the IEA on burden of proof, the Id. District and Sessions Judge relied upon Section 101 of the IEA. While Section 101 is a general section on burden of proof, Section 109 is specifically in respect of some categories of cases such as partnerships, tenancy matters and agency. The said two provisions are extracted below:-

“Burden of proof.

101. *Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.*

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.

A must prove the existence of those facts.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

109. *When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been*

acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.”

16. Insofar as the tenancy in favour of Respondent No. 1 is concerned, the same is not disputed. In the written statement filed by Respondent No. 1, he admits that he was a tenant of the erstwhile landlord, however, in addition, he has pleaded as under:-

“1&2. That the contents of Paras No 1 & 2 are false, wrong and denied as replying respondent has no concern with the said shop and is not tenant therein. The replying respondent remained tenant in the said shop till December 1999 and he vacated and handed over the possession of the suit shop to the then owner/landlord and the then owner/landlord further had let out the shop in question to the respondent No.2 Liyakat Hussain who is lawful tenant therein.”

17. From the above assertion, it is clear that Respondent No. 1 admitted tenancy in the suit property but also asserted that he has surrendered the said tenancy. Thus, either under Section 101, IEA or Section 109, IEA, the burden of proving that tenancy had been surrendered was on Respondent No. 1, which was not discharged as the document relied on to argue surrender of tenancy was not proved by Respondent No. 1.

18. Insofar as Respondent No. 2, i.e. the alleged Sub-Tenant is concerned, it was argued that he had been put in possession of the suit property by the erstwhile landlord - Mr. Raj Singh. The averment to this effect in the written statement is as under: -

“3. That the petitioners have filed the present false petition against the replying respondent

with a view to harass or humiliate the replying respondent whereas the replying respondent No.2 is a lawful tenant in the suit shop and had taken the suit shop on rent from the previous owner/landlord Chaudhary Raj Singh in January, 2000 at a monthly rent @ Rs. 250/- per month excluding other charges and had being paying the rent to him against rent receipts, sometimes he did not issue receipts. (The photocopies of some rent receipts are issued by him are attached herewith.) Thereafter, the petitioners told that they have purchased the property and started taking the rent from the replying respondent and never issued any rent receipt and now with ulterior motive in collusion and conspiracy of respondent No. 1 has filed the present false petition by creating false, forged and fabricated documents and grounds. The respondent No.1 has no concern with the shop nor he is tenant in the shop in question so the question of sub-letting the shop or parting with the possession by respondent NO. 1 to the respondent No.2 does not arise.”

19. From the above extract, it is clear that Respondent No. 2 also relied upon Mr. Raj Singh to argue that he had been put in possession of the suit property by him and also that he had issued rent receipts. A perusal of the rent receipts shows that they are for the period 1st January, 2000 to 31st January, 2000; 1st January, 2001 to 31st December, 2001; 1st March, 2000 to 31st December, 2000; 1st February, 2000 to 28th February, 2000 and 1st January, 2002 to 1st July, 2002.

20. Admittedly, Mr. Raj Singh acquired rights in the suit property only as per the GPA dated 12th May, 2000. Thus, no rent receipts could have been received by him prior to the said period. In order to clarify these facts, Mr.

Raj Singh's testimony was very important but he never appeared. Respondent No.2's case in the reply to the petition is that there was an earlier GPA dated 3rd June, 1999. This GPA ought to have been established by producing the said GPA and some party to the said GPA, including Mr. Raj Singh. Neither was the first GPA, dated 3rd June, 1999, produced nor was the surrender letter dated 15th December, 1999 proved in accordance with law. Mr. Raj Singh himself was also not produced. Thus, except for the self-serving statements by Respondent No. 1 and Respondent No. 2 in their respective written statements, there is no independent evidence of either the first GPA or the surrender letter. Moreover, a perusal of the alleged rent receipts also shows that they are all in the same hand writing and appear to have been executed at the same time. The receipts do not inspire any confidence in the eyes of the Court.

21. Respondent No. 1 admittedly being the tenant and the factum of surrender and giving of possession to Respondent No. 2 by Mr. Raj Singh having not been proved, Respondent No. 2 was clearly a sub-tenant. Respondent No. 2 does not deny that he is in possession of the suit property. Insofar as the Landlords are concerned, the mere fact that different dates were given in the demand notice and in the eviction petition as to when the suit property was sub-let does not obviate the fact that the Petitioners are indeed the Landlords and Respondent No. 2 continues to occupy the premises without any right and without paying any rent. Possession of the property by Respondent No. 2 being admitted, there being no evidence to show how he came into possession, and Respondent No.1 admittedly being the tenant, the Id. District and Session's Judge's finding that sub-letting was not proved is not correct.

22. Moreover, in the sale deed dated 28th January, 2005, executed in favour of the Landlords, a clear representation has been made by Mr. Raj Singh that the premises are under tenancy. Clause 4 of the said sale deed is extracted herein below: -

“4. THAT the Vendors have already sold some portion in the said property as per floor scheme, (which is shown in red colour in site Plan attached with this deed) & other remaining portion is occupied by the tenants so the Vendors have handed over the actual, physical & peaceful symbolic possession of the said property hereby conveyed to the vendee on the spot at the time of execution of this Sale Deed and the Vendees has also taken over the symoblic possession thereof on the basis of this Sale Deed.”

23. Thus, it cannot be held that the onus of proving sub-tenancy was not discharged by the Landlords. The initial onus was clearly discharged and, in any case, in view of Section 109, IEA, since the tenant i.e., Respondent No. 1, admitted that he was a tenant and it was his case that he no longer remained a tenant, the burden of proof was clearly upon Respondent No. 1 to prove the surrender of his tenancy. The Supreme Court has, in the case of ***Bharat Sales (supra)*** and more recently, in ***Prem Prakash (supra)*** described the manner in which a sub-tenancy comes into being and the role of a landlord in arriving at such an arrangement. The relevant portion of ***Bharat Sales (supra)*** is as under:

“4. Sub-tenancy or sub-letting 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 or 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 overt acts 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 sub-let 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 sub-let 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 sub-let.”

24. The Court has been informed that after the passing of the impugned order dated 29th August, 2017 the executing Court has, in fact, passed the following order on 30th April, 2019:

“Matter is fixed for clarification on the aspect of benefit u/s 14(2) of DRC Act. Arguments heard. Nazir has given the report that respondent No. 1 has not deposited the arrears of rent in compliance of order dated 06.06.2015 till date.

2. Before proceeding further under Section 14(2) of the DRC Act, it is necessary to retrace the brief history of this case. The present petition under Section 14(1) (a) and (b) of DRC Act was allowed vide order dated 06.06.2015. The said judgment was set aside qua respondent no. 2 under Section 14(1)(b) of DRC Act by the Hon’ble Rent Tribunal vide order dated 29.08.2017. It was further held vide the said order that the viction order under Section 14(1) (a) of DRC Act cannot be enforced against respondent no. 2. The second appeal against the said order has also been dismissed for non prosecution. However, no appeal was preferred against the order under Section 14(1)(a) of the DRC Act by respondent no. 1. Hence matter survives only for the purpose of consideration of benefit of Section 14(2) of DRC Act.

3. In the present case, order under section 15(1) of DRC Act was not pressed by the counsel for petitioner vide order dated 29.08.2011. The final order/judgment was passed on 06.06.2015 as per which respondent no. 1 was held to be in arrears of rent @ Rs. 250/- per month w.e.f. 16.02.2008 till date and the matter was posted for consideration regarding grant of benefit under Section 14(2) DRC Act.

4. Respondent no. 1 has neither challenged the

said order before any appellate forum nor has deposited the arrears of rent as per final order dated 06.06.2015. Accordingly, respondent no. 1 is held to be defaulter in payment of rent as per the aforesaid orders passed under Section 15(1) DRC Act. Hence, he is not entitled to benefit under Section 14(2) DRC Act. Consequently, petitioner/landlord is entitled to an eviction order against the respondent no. 1.

5. Eviction order is passed in favour of petitioner and against respondent no. 1. Respondent no. 1 is directed to hand over the vacant physical possession of shop bearing private no. 19, ground floor, IX/6932, Hanuman Market, Prem Gali, Gandhi Nagar, Delhi-110031 as shown in red colour in the site plan Ex. PW1/A which is annexed alongwith the petition. No order as to costs. File be consigned to Record Room."

25. In view of the above, the petition is allowed. The findings of the Id. District and Sessions Judge and the interpretation given to Section 101, IEA is clearly erroneous. The Id. Civil Judge-cum-Rent Controller's order is thus liable to be upheld. Costs of Rs. 25,000/- are imposed on the Respondents, to be paid to the Petitioners within one month. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

**JANUARY 15, 2020
MR/T**