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

Reserved on: 18th November, 2019

Date of decision: 26th February, 2020

\+ **CM(M) 1592/2018 & CM APPL. 54124/2018**

SURESH KUMAR CHAUHAN ..... Petitioner

Through: Mr. K.S. Rana, Advocate (M-9810326424)

versus

DR PUNEESH ROHTAGI ..... Respondents

Through: Mr. Sahib Gurdeep Singh & Mr. P.S. Mehandru, Advocates along with Respondent in person (M- 9999496532)

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present petition arises out of the order of the ld. Rent Control Tribunal *(hereinafter, "RCT")* dated 14th November, 2018, by which the appeal filed by the Petitioner/Tenant *(hereinafter, "Tenant")* was dismissed. The original eviction order decided by the ld. Additional Rent Controller *(hereinafter, "ARC")* was dated 17th February, 2012.

2. The eviction petition was filed under Section 14(1) (a), (b) and (j) of the Delhi Rent Control Act, 1958 *(hereinafter, "DRC Act")* by Dr. Puneesh Rohtagi i.e., the Respondent/Landlord *(hereinafter, "Landlord")* against Mr. Suresh Kumar Chauhan i.e., the Tenant and Mr. Chander Singh i.e., the alleged sub-tenant, in respect of property No. 29-B, Spencer Lane, Alipur Road, Delhi – 110054 *(hereinafter, "suit property")*. The grounds on which eviction was sought were non-payment of arrears of rent, sub-letting and substantial damage being caused to the suit property.

3. Evidence was recorded before the ARC, who concluded that an

eviction order is liable to be passed on all three grounds. The relationship of landlord and tenant had already been admitted between the parties. The first finding of the ARC was that there was clear sub-letting by the Tenant. The ARC came to the conclusion that the alleged sub-tenant was in exclusive possession of the suit property, no accounts of the business were being maintained and it was not clear as to how in the absence of these accounts any commission was being paid to the alleged sub-tenant. On the basis of this, the ARC concluded that Mr. Chander Singh was, in fact, a sub-tenant and not an employee of the Tenant. The ARC then considered the ground of substantial damage being caused to the suit property under Section 14(1)(j) of the DRC Act. According to the ARC, the Tenant had made substantial alterations in the suit property by opening windows as per the site plan. The site plan being referred to was admitted between the parties. Insofar as Section 14(1)(a) of the DRC Act is concerned, it was observed that the Tenant failed to produce his bank pass-book to prove payment of rent and though he admitted that rent receipts were issued, he did not produce rent receipts for the period from 1st February, 2002. Further, the statement of account proved that the payment of ₹3,870/-, claimed to have been made by the Tenant for the period from April, 2002 to March, 2003, has been shown for 'self'. The Tenant was therefore held to be in arrears of rent. Thus, the eviction order was passed under Section 14(1)(a), (b) and (j) of the DRC Act. The benefit of Section 14(2) of the DRC Act was, however, extended to the Tenant in respect of the violation of Section 14(1)(a).

4. In appeal, the RCT also concluded that there was a contradiction in the salary claimed to have been paid to Mr. Chander Singh in his affidavit and the affidavit of the Tenant. The findings of the RCT are as under: -

"11. There is contradiction pertaining to salary being paid to the respondent no.2. Respondent no.1 says that salary of Rs.3,000/- was being paid to respondent no.2, whereas RW-2 says that he was getting salary of Rs.5,000/-. It has also come on record that respondent no.2 was running a canteen from the premises in question. RW1 stated that that lincense has not been got renewed from MCD after March, 2007. Had RW1 been running his business from the premises in question, he would have certainly got the license renewed and this fact also corroborates the factum of respondent no.1 not running his business from the premises in question.

12. Even it has come on record that cheque for the monthly rent was being received from Sikar and this fact also proves that respondent no.1 was not running his business from the premises in question. Since there is no document and evidence on record that appellant no.2 was Manager of appellant no.1 or he was getting any salary from appellant no.2 and appellant no.2 being in exclusive possession of the tenanted shop, it was rightly held by Ld. ARC that premises in question has been sublet to appellant no.2.

13. The petitioner had also raised dispute with regard to fixing of 3 windows in the premises in dispute. Both the parties have filed their respective Site Plans disputing each other. But Site Plan EX.PW1/2A filed with the Rent Agreement has not been disputed. Rent Agreement Ex.PW1/2 is dated 17.04.1982 executed between Sh. Suresh Kumar S/o Sh. Gulab Singh and landlord Dr. Puneesh Rohatgi. In this Site Plan, description of the tenanted property has been given as 'a shop forming part of ground floor No. 29-B, Spencer Lance, Alipur Road, Delhi consisting of two rooms viz. front room 10'x 10' with Pucca roof and back room 10'x 10' with asbestos cement sheet. It is also mentioned that landlord had spent Rs.20,000/- for carrying out structural addition and alteration and thus rent was increased. The Site Plan Ex. PW1/2A, which is undisputed, shows that there were no windows in the tenanted premises. This proves the case of the landlord that substantial damage has been

> *caused to the tenanted premises by fixing 3 windows.*
> *14. In view of above discussion, I hold that there is no illegality or impropriety in the impugned judgment. There is no merit in the appeal. Same is accordingly dismissed. TCR be sent back along with copy of the order."*

5. Ld. counsel for the Tenant submits that the Landlord has miserably failed in proving the sub-tenancy. Moreover, it is submitted that there was no failure in payment of the rent and that the opening of the windows in the shop was with the consent of the Landlord.

6. On the other hand, it is argued on behalf of the Landlord that the burden of proving that Mr. Chander Singh was not a sub-tenant was on the Tenant, which the Tenant failed to discharge. It is submitted that the Tenant has not been able to prove that the business being run from the suit property was a continuing business of the Tenant. The Landlord relies upon the judgment of this Court in ***Mukesh Seth & Anr. v. A.B. Lal & Sons & Ors., 2010 (117) DRJ 12.***

7. A perusal of the record, the judgments cited and the submissions made by the parties show that in this case, there are concurrent findings of the ARC and the RCT. The evidence on record clearly shows that in the cross-examination, the Tenant is unable to give any details or documentary proof to establish the relationship between him and Mr. Chander Singh. The Tenant himself states that the monthly payment being made to Mr. Chander Singh is ₹3000/- per month along with commission on sales. He admits that he was working in various foreign countries during the life time of his father and that he is permanently settled in Sikar, Rajasthan. He also admits that he does not pay any income tax. The Tenant's evidence is as under: -

> *"I used to work with my father on the suit shop when he*

was alive. Chander Singh was working as a Manager in the suit shop since the time of my father still he is working as manager. He is being paid Rs. 3,000/- per month as salary plus the commission on the sale of the articles. I have not maintained any employee register. I am not obtaining any receipt for the salary or commission paid to him. I am not maintaining any account for the business conducted by me. I am not paying income tax. It is correct that I was working in foreign countries during the lifetime of my father but it is incorrect that even now I am working in abroad in foreign countries. I have passport in my name but I have not brought the same. I am having the details of the blank cheques given to the petitioner and I have brought the same. I am having my bank account in Punjab National Bank. I can tell my account number after checking with the records but I have not brought my passbook today. It is correct that the respondent no. 2 is running the canteen. Chander Singh is only working with me and is not working anywhere else. I do not know whether respondent no. 2 is paying income tax or not. It is incorrect to suggest that only respondent no. 2 is doing his business in the suit premises or that I am not doing any business from the suit shop. It is correct that my MCD license has not been renewed after March 2007. It is incorrect to suggest that I have opened three windows at points AB, CD and EF shown in Ex. PW1/1 without the consent or permission of the petitioner. Vol- The petitioner himself had got the windows opened. It is correct that I was taking the rent receipt for the rent paid by me. I have brought the rent receipts issued by the petitioner. It is incorrect to suggest that I have not issued cheque no. 491305 to the petitioner. This cheque was encashed by the petitioner. I do not remember the date when this cheque was encashed. It is incorrect to suggest that I am deposing falsely.

Further cross-examination deferred on the points of passport and bank passbook only. The witness is directed to produce both these documents on the next date of hearing."

8. Insofar as the statement of Mr. Chander Singh i.e., the alleged sub-tenant, is concerned, he claims that he gets a salary of ₹ 5000/- per month as well as commission on the gross sales of the shop. The shop is being run as a canteen. He also admits that the Tenant lives in Rajasthan and that he manages the whole shop. His evidence is crucial and is set out below:

> *"I tender my evidence by way of affidavit which is Ex. RW-2/A which bears my signatures at point A and B respectively. The contents of the same are true and correct. My affidavit may be treated as my examination in chief.*
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> *XXXX Cross by Sh. P.S. Mahenderu, Counsel for petitioner.*
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> *I work on a Tea Shop in the suit premises. I am an employee in said shop. I get salary of Rs. 5,000/- per month plus some commission on the gross sale of the shop. The tea shop is in the nature of a Canteen. We serve Tea, coffee, cold drinks, samosas, pakoras. and fries channa. It is wrong to suggest that we also serve chapaties. I have no other evocation besides the above. It is correct that respondent no. 1 lives in Sikar (Rajasthan). It is correct that I manage the whole shop. I have a bank account. I am not an income tax payee. The cheque for the monthly rent is received from Sikar and I hand over the same to the petitioner as and when the same is received."*

9. A perusal of the above two testimonies clearly shows that there is a contradiction in respect of the salary of Mr. Chander Singh. While the Tenant states that ₹ 3000/- is being paid as salary, Mr. Chander Singh states the he is receiving a salary of ₹ 5000/-. Both admit that Mr. Chander Singh receives a commission, however, they also admit that no accounts are being maintained. In fact, the Tenant also does not pay any income tax.

10. In these circumstances, the finding of the RCT that the parties have

created a complete façade of the commission arrangement is correct and justified. There is, in fact, no evidence to show that there was any commission being paid as no accounts were even maintained by the business. Under such circumstances, reliance on the judgment of this court in ***Prem Sagar v. Vijay Kumar Rajput [CM(M) 233/94, decided on 12th September, 1996]*** is apt. In the said judgment, the ld. Single Judge relies on a Division Bench judgment of this Court to observe that when accounts are not properly maintained, adverse inference can be drawn against the tenant.

11. Insofar as the sub-tenancy is concerned, law is settled in the judgment of the Supreme Court in ***Bharat Sales Ltd. v. Life Insurance Corporation of India, (1998) 3 SCC 1***. In the said judgment, the Court holds that sub-tenancy is an extremely difficult fact to prove as it is exclusively within the knowledge of the tenant and sub-tenant. The landlord is usually not able to obtain any evidence of the sub-tenancy. In ***Bharat Sales (supra)***, the observation of the Supreme Court is as under: -

> *"4. <u>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</u>*

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."

12. Even in ***Mukesh Seth (supra)***, a ld. Single Judge of this Court holds that when there is an issue with respect to specialised knowledge, only the person who has that specialized knowledge can provide evidence in respect thereof. Thus, the onus of proving the relationship *inter-se* the Tenant and the alleged sub-tenant was upon the Tenant and not on the Landlord, who was not privy to it.

13. The Tenant has relied upon ***Gurbachan Singh & Anr. v. Ram Niwas, (2006) 5 SCC 296*** to argue that sub-letting cannot be presumed as long as control over the premises is kept by the Tenant. The relevant extract of ***Gurbachan Singh (supra)*** is as follows: -

"15. It is seen from the above paragraph that sub-letting cannot be presumed as long as control over the

> *premises is kept by the tenant and the business run in the premises is of the tenant. This judgment also says that in an application for eviction of a tenant from a shop which is based on the allegations that the premises has been sub-let, the allegation has to be proved. As already noted in the instant case, the allegation of sub-letting has been clearly established by the evidence of the employee of RTDC and also by payment of rent. This judgment is also of no assistance to the appellants."*

14. There is no doubt as to the legal propositions which have now been settled in ***Bharat Sales (supra)*** and ***Gurbachan Singh (supra)***. The question is whether the Tenant has any control over the suit property. Both parties clearly agree that the Tenant is permanently residing in Rajasthan. The everyday control of the suit property is thus with Mr. Chander Singh. The alleged sub-tenant also admits to be getting paid commission on the gross sales of the business. However, it is claimed that no accounts of the business are maintained. No commission can be paid in the absence of accounts being maintained. In the absence of accounts, an adverse inference is liable to be drawn against the Tenant. The relationship between him and Mr. Chander Singh is thus that of a tenant and sub-tenant and not of an employer and employee. The plea of employer-employee is, accordingly, liable to be rejected.

15. Insofar as the question of substantial damage being caused to the suit property is concerned, the case of the Tenant is that the windows were opened with the consent of the Landlord. However, the evidence points to the contrary as the site plan was admitted and no evidence was led to show as to how the Landlord had consented to the changes that were effected in the suit property. Thus, the decree under Section 14(1)(j) of the DRC Act is

also liable to be upheld.

16. Insofar as Section 14(1)(a) of the DRC Act is concerned, the non-payment of rent also stands admitted. The RCT notes that the Tenant failed to produce the bank account statement/passbook to show the payment of rent. Thus, from 1st January, 2002 there was no payment of any rent by the Tenant. The eviction order is therefore liable to be upheld on all three grounds.

17. Moreover, the overall facts of this case also show that the father of the Landlord had given the suit property on rent to the Tenant sometime in 1982. At that time, Mr. Chander Singh was the sole-witness to the rent agreement. The shop is being used as a canteen for selling paan, cigarettes, soft drinks and everyday food items. The same has continued to remain in possession of the Tenant from 1982 till date, which is almost 40 years. The rent last paid was admittedly approximately ₹300/- per month. The sub-letting having been established and there being no regular payment of rent since 2002, the impugned order is liable to be upheld.

18. The petition is accordingly dismissed. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 26, 2020
T/MR/R