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

Date of decision: 10.10.2023

+ CM(M) 380/2023 & CM APPLs. 11362/2023, 11364/2023

UNITED INDIA INSURANCE CO LTD Petitioner

Through: Mr. Harsh Kumar, Advocate.

versus

GOBIND PARSHAD JAGDISH PRASHAD & ORS.

..... Respondents

Through: Mr. R.Y. Kalia, Advocate for R-1

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present petition filed under Article 227 of the Constitution of India impugns the order dated 20.01.2023 passed by the Principal District and Session Judge, Saket Courts, New Delhi ('Rent Control Tribunal') in RCT No. 04/2022 titled as "*M/s Gobind Parshad Jagdish Parshad v. Canara Bank*" whereby, the Rent Control Tribunal allowed the eviction petition filed by Respondent No. 1 under Section 14(1)(b) of the Delhi Rent Control Act, 1958 ('DRC Act').

1.1. The Petitioner herein was arrayed as Respondent No. 5 in the appeal filed by Respondent No. 1 i.e., the landlord.

1.2. The eviction petition was filed by the Respondent No. 1 on the assertion that its tenant Canara Bank i.e., Respondent No. 2 has let out the



different portions of the property bearing No. H-61, H Block, Gobind Mansion, Connaught Circus, New Delhi ('subject property') to five (5) sub-tenants without the knowledge and authority of the landlords. It was stated that the sub-letting is unauthorized and in violation of the lease agreement dated 27.03.1944. Respondent Nos. 3 to 6 are the remaining four (4) sub-tenants.

1.3. The Rent Control Tribunal by its impugned order dated 20.01.2023 held that Respondent No. 2, Canara Bank has sub-let the subject property to the sub-tenants including the Petitioner herein unlawfully as no consent in writing of the landlord was obtained.

1.4. It would be pertinent to observe at the outset that in pursuance to the impugned order dated 20.01.2023; Respondent No. 2 i.e., Canara Bank (the original tenant) has accepted the order and vacated the premises. Similarly, the remaining 4 sub-tenants (i.e., Respondent Nos. 3 to 6) have also accepted the said order and vacated the portions of the subject property, which were under their control and possession.

1.5. In this regard, it would be relevant to note that the remaining sub-tenants i.e., Respondent Nos. 3 to 6 herein had filed an independent petition CM(M) 336/2023 against the impugned order dated 20.01.2023, which was dismissed by a Coordinate Bench of this Court by a judgement dated 12.04.2023 and in pursuance thereof the said sub-tenants have vacated their portion of the subject property. The Court in its judgment dated 12.04.2023 held that the sub-letting was in violation of the clause 4 of the lease agreement dated 27.03.1944 and the sub-tenants were liable to be evicted in pursuance to the impugned order dated 20.01.2023 passed by the Rent Controller.



2. The Petitioner herein is thus, only remaining sub-tenant i.e., United India Insurance Co. Ltd., which is resisting its eviction.

3. The learned counsel for the Petitioner has sought to distinguish his case from the remaining sub-tenants by relying upon additional documents, which have been filed in this petition with CM APPL. 11364/2023. He states that due to these documents the findings of the Coordinate Bench in judgement dated 12.04.2023 are not applicable.

3.1. He states that with this application, he seeks leave to place reliance on the letters dated 14.02.2001, 26.02.2001 and 29.05.2001 to contend that Respondent No. 1, landlord had due notice of the fact that the subject property has been sub-let to the Petitioner herein by Respondent No. 2, the original tenant i.e., Canara Bank. He states that in view of this knowledge, the Petitioner herein is entitled to protection against eviction under Section 18 of the DRC Act.

3.2. He states that these documents were found just before the filing of the present petition and are relevant for evidencing the knowledge of the landlord, as regards, the sub-letting in favour of the Petitioner herein. He states that the sub-letting in the favour of Petitioner herein is in the year, 1944.

3.3. He states that the Petitioner herein is not required to give any statutory notice to the landlord with respect to the creation of the sub-tenancy in its favour within the meaning of Section 17 of the DRC Act.

4. In reply, the learned counsel for the Respondents states that in the first instance, all issues raised in this petition are covered by the judgement dated 12.04.2023 passed by a Coordinate Bench of this Court in CM(M) 336/2023 with respect to the other sub-tenants; and this Court should not differ from



the said judgement as the facts in these cases are identical.

4.1. He states that CM APPL. 11364/2023 filed by the Petitioner for bringing on record the additional documents is without any merits. He states that the Petitioner did not file any written statement in the eviction proceedings. He states that the stand, which is now sought to be urged in this petition that the landlord had knowledge of sub-tenancy and is therefore, entitled to protection under Section 18 of DRC Act was never raised in the Courts below and therefore deserved to be rejected on this ground alone.

4.2. He states that in fact in the written statement filed by Respondent No.2 i.e., Canara Bank and the other sub-tenants, the said parties had categorically denied that the premises had been sub-let by the original tenant. He refers to the written statement dated 29.03.2010 filed by Respondent No. 2, Canara Bank and the written statement dated 06.05.2010 filed by Respondent No.6 i.e., Canara Bank Employee Union before the Rent Controller. The relevant portion of the written statement dated 29.03.2010 filed by Respondent No.2, Canara Bank reads as under:-

“5. Contents of para No.5 of the petition are wrong, are not admitted and are denied. It is denied that the premises has been sub-let by the respondent No.1- in favour of the respondents No. 2 to 6.

xxx

xxx

xxx

16. Contents of para No.16 of the petition are wrong, are not admitted and are denied. In view of the facts stated in the foregoing paras and as stated herein after, it is denied that the premises in suit has been unauthorizedly sub-let, assigned or parted with by respondent No.1 in favour of respondents No.2 to 6.

xxx

xxx

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“18(a)(i) Contents of para No. 18 (a) (i) of the petition are wrong, are not admitted and are denied. It is denied that the respondent No. 1 has sub-let, assigned or parted with possession of the premises in suit in favour of



respondents No.2 to 6 or anyone else. The present petition is without any cause of action and is an abuse of the process of law. At the outset, it is submitted that the respondents No. 2 to 6 namely Shri Rajinder Dhawan, H.S. Ahuja & co., G.K. Arora & Co., United India Insurance Co. Ltd. and Canara Bank Employees Union are using different portions of the premises in suit well within the knowledge of the landlord. The said persons are using the premises for last over 12 years from today and as such the present petition on the ground of alleged sub-letting is barred by law of limitation. Without prejudice to the above objections relating to the present petition on the ground of sub-letting being barred by limitation, it is submitted that all the aforesaid persons have been using the different portions of the premises in suit for large numbers of years well within the knowledge of the landlord. The landlord has been unequivocally accepting the rent from the respondent without any demur and have never raised any objection with regard to the use of the premise by the aforesaid persons or any one of them. The petitioner is thus deemed to have waived his right, if any or at all to claim the user of the premises by the aforesaid persons amounts to an illegal sub-letting.

Without admitting the allegations made in the petition, it is submitted that as per clause 4(a) of the lease deed dated 27.3.1944 the respondent has got the right to sub-let the whole or part of the premises in suit. Clause 4(a) of the lease deed dated 27.3.1944 reads as under :-

"4.

(a) sublet or part with possession of the said premise or any part therein and that any rent, premium or any like sum received from the sub-lessee in addition of the prescribed rent dues. shall belong to and paid to the owners;

....."

Without prejudice to the above submissions and without in any manner admitting the allegations made by the- petitioner in the petition, it is submitted that there is no sub-letting, parting with or assignment of the premises in suit or any part thereof by respondent No. 1 in favour of respondents No. 2 to 6. In this behalf, it is submitted that the respondents No.2 to 6 named above have been using different portions of the premises in suit merely as a licensees. None of the said users have claimed any hostile title or right of possession of any portion of the property in suit being used by them as licensees, much less to the exclusion of respondent No.1/tenant. The legal possession of the entire premises in suit continues to vest with the respondent No.1. There does not exist any relationship of landlord and tenant between the respondent No.1 on the one hand and on the other hand the respondents No.2 to 6 or anyone of them. There is no subletting, assignment of tenancy rights or parting with of the tenanted premises or any part thereof by the respondent No.1 in favour of anyone, much less the



respondents No. 2 to 6. It is submitted that the respondents No. 2 to 6 have been paying license fee by way compensation for using the portion of the property to the petitioner and mere description of such compensation as "rent" is of no consequence inasmuch as the said word "rent" has been used in generic terms and in fact the same implies the payment of the compensation/license fee by respondents No.2 to 6 for using the portion in their respective use. It is thus incorrect to allege that the respondent No.1 has sub-let, assigned or parted with possession of the premises in suit or any portion thereof in favour of the respondents No. 2 to 6 or anyone else. The present petition is without any merit. The present petition of the petitioner is malafide and the same is liable to be dismissed."

(Emphasis Supplied)

4.3. He states that as is evident from the written statement, the original tenant ('Canara Bank') and the other Respondents had denied sub-letting to avoid eviction under Section 14 (1) (b) of the DRC Act. He states therefore, the plea of protected sub-tenancy under Section 18 of the DRC Act now sought to be raised by this Petitioner is a complete somersault.

4.4. He further states that it is a matter of record that the Petitioner herein failed to issue any statutory notice of the creation of sub-tenancy to Respondent No. 1 as per Rule 21 of the Delhi Rent Control Rules, 1959 ('DRC Rules') read with Form-E. He states that since the Respondent has failed to serve the said statutory notice, no reliance can be placed by Petitioner on letters dated 14.02.2001, 26.03.2001 and 29.05.2001 for claiming protection under Section 18 of DRC Act.

4.5. He states that to seek the benefit of Section 17 of the DRC Act, the Petitioner must satisfy the Court with respect to two tests; (i) consent in writing from the landlord; and (ii) notice of the creation of sub-tenancy in accordance with Rule 21 of DRC Rules. He states in the facts of this case, these two tests have not been satisfied.

4.6. He relies upon the judgement of the Supreme Court in *M/s. Girdhari*



Lal and Sons vs. Balbir Nath Mathur & Ors. 1986 (2) SCC 237 and the judgement of the Single Judge of this Court in *Tara Chand vs. Mst. Marrium Bi and Anr., 1969 RCR 438* to support his contention that in the absence of service of a statutory notice issued as per Rule 21 of DRC Rules, the Petitioner herein cannot claim any protection under Section 17 of the DRC Act.

4.7. He states that, in any event, once the Respondent No. 2, original tenant i.e., Canara Bank itself has accepted the impugned order dated 20.01.2023 and vacated the subject property, the Petitioner herein is bound by the said action of the tenant and must vacate the portions of the subject property, which is under its control and possession. He states that Petitioner has no independent right to occupy the premises under any capacity.

4.8. He states that the Petitioner in CM APPL. 11364/2023 has also placed on record documents pertaining to property bearing No. H-60, Connaught Circus, New Delhi. He states that the property bearing No. H-60, Connaught Circus, New Delhi, is a distinct property and is not the subject property which was let out to Canara Bank. He states the documents pertaining to said distinct property are therefore irrelevant to this litigation.

4.9. He states that the Respondent has, in any event, not disputed the finding of the Coordinate Bench of this Court in the judgement dated 12.04.2023; that as a matter of fact as per clause 4 of the lease agreement dated 27.03.1944 between the landlord and the tenant, Canara Bank that no sub-tenancy could have been created without the written consent of the landlord.

5. This Court has heard the learned counsel for the parties and perused the record.



6. The Petitioner has not disputed the submissions of the Respondents that the impugned order dated 20.01.2023 has been affirmed by a Coordinate Bench of this Court in its judgment dated 12.04.2023 passed in CM(M) No. 336/2023.

6.1. The Petitioner does not dispute that the Respondent No. 2, original tenant i.e., Canara Bank has vacated the subject property and surrendered possession to the Respondent No. 1 i.e., the landlord.

6.2. The Petitioner also does not dispute that the other sub-tenants i.e., Respondent Nos. 3 to 6 as well have vacated the subject property and handed over the possession to the Respondent No. 1, landlord in view of the judgment dated 12.04.2023.

7. The sole ground on which the Petitioner seeks to distinguish his case from the other sub-tenants is on the basis of the letters dated 14.02.2001, 26.02.2001 and 29.05.2001 placed on record with CM APPL. 11364/2023. The Petitioner contends that the said letters evidence that the Respondent No. 1 had due knowledge of the sub-letting in favour of the Petitioner herein. And, hence, the Petitioner is entitled to protection under Section 18 of the DRC Act. He states that letter dated 29.05.2001 was in fact issued by Respondent No. 1 herein.

7.1. The Respondent No. 1 has admitted the existence of letters dated 14.02.2001, 26.02.2001 and 29.05.2001 (in its synopsis dated 05.07.2023) and therefore, this Court deems it appropriate to consider the said documents while dealing with the submissions of the Petitioner.

7.2. Before dealing with this contention of the Petitioner, it would be therefore relevant to refer to the content of these letters. The brief description of letters is as under:



- a. Letter dated 14.02.2001 is addressed by Respondent No. 1 (landlord) herein to Respondent No. 2 (Canara Bank) enclosing a letter dated 08.02.2001 received from the Petitioner herein.
- b. Letter dated 26.02.2001 addressed by Respondent No.2 (Canara Bank) to the Petitioner herein cautioning them against corresponding directly with the Respondent No. 1 (landlord).
- c. Letter dated 29.05.2001 issued by Respondent No. 1 (landlord) to the Petitioner calling upon them to attorn to the Respondent No. 1 and enter into a direct tenancy.

7.3. The Petitioner fairly admitted that the Petitioner did not act upon the offer in letter dated 29.05.2001 and did not attorn in favour of Respondent No.1 (landlord); and continued to pay rent only to Respondent No. 2 (Canara Bank). The Petitioner therefore admits that it acted as per the mandate issued by Respondent No. 2 vide letter dated 26.02.2001 and only accepted Respondent No. 2 as its landlord. Thus, the Petitioner rejected the offer made by Respondent No. 1 in its letter dated 29.05.2001.

7.4. In view of the admission of the Petitioner that it rejected the said offer made by the Respondent No. 1 in its letter dated 29.05.2001, the status of the Petitioner in the subject property remained as a sub-tenant. The Petitioner's landlord was therefore Respondent No. 2 i.e., Canara Bank alone. Consequently, the Petitioner's sub-tenancy would remain co-terminus with the tenancy of the Respondent No. 2 i.e., the original tenant (Canara Bank).

7.5. This Court is of the opinion that in view of the admission of the Petitioner that the letter dated 29.05.2001 was not acted upon by the Petitioner and it rejected the offer of the Respondent No. 1, no reliance can



be placed upon the said letter to take the benefit of Section 18 of the DRC Act.

8. It is a matter of record that the Petitioner herein was duly impleaded as Respondent No. 5 in the eviction petition. The Petitioner herein elected not to file any written statement before the Rent Controller.

8.1. The Petitioner has sought to contend during arguments that the sub-tenancy was created in his favour in 1944 and therefore, bar of Section 16 (2) of DRC Act is not attracted. However, the said contention of fact raised for the first time in this petition cannot be accepted as it is not admitted by Respondent No. 1. And in fact, the finding of the Rent Control Tribunal at paragraph '61' categorically records that there is no material on record to show that the sub-tenancy dates back prior to 09.06.1952. The relevant paragraph '61' reads as under:

“61) As per the facts of this case, discussed in above paras, this is neither the case of the Respondents nor any document in this regard has been brought on record that sub-tenancy dates back prior to 09.06.1952. Thereby, as per the settled legal position consent in writing of the landlord i.e, Appellant who is the owner is sine qua non for creation of valid sub-tenancy. Respondents No. 2 to 6 have taken the plea that their sub-tenancy was within the knowledge of the landlord/Appellant and there was specific consent of the Appellant or atleast there was implied consent of the Appellant in this regard. To establish their defence, Respondents No. 2 to 4 have relied upon three documents i.e. letter. Ex. RW-4/P-1, receipt Ex. PW-IIR2-4/1.and Ex. PW-1/8 vide which Appellant has sought information under the RTI Act from the Respondent No. 1 mentioning the names of the sub-tenants.”

(Emphasis Supplied)

8.2. This Court is unable to accept the contention of the Petitioner that the sub-tenancy in its favour was created in 1944 as contended during oral arguments. A defence raised on a factual plea, which is contested by the Respondent, cannot be permitted to be raised for the first time in this



petition filed under Article 227 of the Constitution.

9. Secondly, the Petitioner admits that no statutory notice of creation of sub-letting was issued to Respondent No. 1 under Section 17 of the DRC Act read with Rule 21 of DRC Rules. In the absence of the service of statutory notice, no protection under Section 18 of the DRC Act can be extended to the Petitioner herein as held by the Coordinate Bench in the judgment dated 12.04.2023.

9.1. The judgement of the Coordinate Bench of this Court pronounced on 12.04.2023 upholding the impugned order dated 20.01.2023 is applicable to the Petitioner herein on all fours and the Petitioner herein has not brought on record any fact, which would distinguish the facts of the Petitioner.

9.2. The Coordinate Bench in the judgement dated 12.04.2023 passed in CM(M) 336/2023 returned the following findings, which bind the Petitioner herein as well, in the facts of this case: -

(i) Clause 4 of the original lease agreement executed between the landlord (Respondent No. 1) and the tenant (Respondent No. 2) placed an obligation upon Respondent No. 2 to obtain written permission of the landlord to create a sub-tenancy.

(ii) Clause 4 of the lease deed dated 27.03.1944 is binding on the original tenant as well as the sub-tenant inducted in the subject property as a tenant.

(iii) Knowledge of the existence of the sub-tenants is of no consequence in view of the mandatory provision of Section 17 read with Section 18 of the DRC Act as there is no document evidencing the consent of Respondent No. 1, landlord for creation of the sub-tenancy.

(iv) No statutory notice was issued and the dicta of the learned single judge of this Court in *G.L. Kapoor vs. Ram Chander Nijawan & Ors; 1972*



(8) *DLT 514* was followed, wherein the Court held that for a sub-tenant to claim protection under Section 18, the sub-tenant must prove the written consent of the landlord as per Section 14(1)(b) and Section 16(2) of the DRC Act and secondly, the statutory notice of creation of sub-tenancy should be given to the landlord either by the tenant or the sub-tenant under Section 17 of the Act.

(v) In the absence of service of the statutory notice under Rule 21 of the DRC Rules, no protection under Section 18 of the DRC Act can be invoked by the sub-tenants.

10. In the opinion of this Court, the aforesaid findings of the Coordinate Bench apply with all fours to the present Petitioner. Therefore, there is no merit in this petition and the same is accordingly dismissed.

11. As regards CM APPL. 11364/2023 this Court has only considered the letters dated 14.02.2001, 26.02.2001 and 29.05.2001 as the Respondent No. 1 had admitted the existence of the said documents. However, in any event, the said documents have been considered and dealt with in the previous paragraphs and this Court is of the opinion that these additional documents do not entitle the Petitioner herein to the protection of Section 18 of the DRC Act.

11.1. With respect to the remaining documents, this Court agrees with the submissions of the Respondent No. 1 that the said documents pertain to distinct premises H-60, Connaught Circus, New Delhi and are therefore not relevant to the present controversy. The Respondent No. 1 has specifically disputed the existence, veracity and relevance of the remaining documents sought to be placed on record by the Petitioner. The justification for placing on record the additional documents at this belated stage, 15 years after the



litigation began is not reasonable and this Courts finds no grounds to allow the said application. Accordingly, the said application is dismissed except to the extent of letters dated 14.02.2001, 26.02.2001 and 29.05.2001, which are taken on record.

12. Pending application, if any, stands disposed of.

13. Interim orders, if any, stand vacated.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 10, 2023/rhc/asb

Click here to check corrigendum, if any