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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 04th September, 2024*

+ CM(M) 1376/2017

ANIL KALRA & ANR

.....Petitioners

Through: Mr. Sunil Mittal with Mr. Vineet Mishra, Ms. Navita Gupta and Mr. Sonil Yadav, Advocates with petitioner in person.

versus

SHEIKH MOHD IQBAL

.....Respondent

Through: Mr. Rajat Aneja with Ms. Garima Saxena, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Respondent had filed a petition seeking eviction of his tenants Sh. Anil Kalra and his wife Smt. Kiran Bala from the tenanted premises on the grounds of *non-payment of rent* and *subletting* as provided under Section 14(1)(a) and 14(1)(b) of Delhi Rent Control Act, 1958 (in short "DRC Act") respectively.

2. According to landlord/respondent, the rate of rent was Rs. 550/- per month, excluding other charges. It was contended that the tenants were in arrears and that they had sublet the tenanted premises and had parted with possession of the same and a wine-shop was being run in the tenanted premises. It was also claimed that such sub-letting, assigning or parting with the possession had been done by the tenants



without obtaining any consent in writing from them.

3. The learned Rent Controller allowed the petition vide order dated 11.09.2015 on both the grounds. However, since it was reported to be the case of first default, the inquiry, in terms of Section 14(2) of the DRC Act was directed to be conducted.

4. Fact remains that there was a specific finding of subletting of the tenanted premises and it was noticed that the premises had been given by the tenants to Delhi Tourism and Transportation Development Corporation (DTTDC) in the year 1985. Observing that DTTDC had exclusive possession over the tenanted premises, the subletting was held proved against such tenants.

5. Such order was challenged by filing an appeal under Section 38 of the DRC Act by the tenants which, too, was dismissed by the learned Tribunal vide order dated 14.11.2017. It, however, needs to be highlighted right here that the tenants had merely challenged the eviction on the ground of subletting before the learned Tribunal and did not challenge the eviction qua Section 14 (1) (a) of DRC Act.

6. This is how the tenants have filed the present petition under Article 227 of the Constitution of India.

7. This Court, at the very outset, would be conscious of the confines and limitation within which any petition under Article 227 of the Constitution of India is to be considered and the averments are to be appreciated. This Court cannot act as an Appellate Court and,



therefore, cannot go deeper into the facts and evaluation of evidence, unless there is complete perversity.

8. Admittedly, after the creation of tenancy in question, one license agreement was executed between the tenants and DTTDC on 16.07.1985.

9. Such license agreement was placed before the learned Controller and was also duly proved during the trial of the aforesaid eviction petition.

10. As per the above license agreement, the licensor i.e. the tenants/petitioners herein had given the suit premises to said Corporation for running a wine shop. It was also mentioned therein that the license had already been granted with effect from 26.02.1985 and the broad terms and conditions of the license agreement were being reduced in writing vide aforesaid license agreement. Such terms and conditions of license deed are as under:-

1. *That the Licensor has granted permission to the licensee for use of the premises comprising portion of Shop No. 1897, Chandni Chowk, Delhi alongwith back magazine floor w.e.f. 26.2.1985.*
2. *That the licensor shall continue using Shop No. 1897, along with its separate entrance.*
3. *That the Licensee shall use the premises for the sale of Indian Made Foreign Liquor under L-2 licence on rent compensation as the same are approved premises for selling liquor in accordance with the excise rules and regulations of Delhi Administration leviable on the grant of import permit for foreign liquor.*
4. *That the license has been granted for a period of one year effective for the financial year beginning from 26.2.1985 and ending on 31.3.1986. This period shall be extended for further period of 3 years in case the license L-2 is granted to the licensee on the same terms and conditions.*



5. *That licensor has agreed to handover the said premises on rent compensation @ 12½% as a percentage of the gross profit from the sale of the liquor from the said premises upto 31.3.1985.*
6. *That Rent Compensation is to be paid subject to the convenience of the licensee either weekly or on the closing date of every English Calendar month. The certificate of the Financial Controller of the licensee or any other officer for the time being performing similar duties and function by whatever designation he may be called, about the purchase of bottle by the licensee and the Rent Compensation accruing to the licensee therefrom shall be final and binding on the licensor.*
7. *That maintenance of licensed premises shall be the responsibility of the licensor.*
8. *That the licensee shall pay electric and water charges as per consumption basis. The charges for the use of telephone shall be payable by them to the licensor towards call charges etc. for the period of period of licence.*
9. *That in case of unsold stock, remaining with the licensee on the expiry of L-2 permit, the Rent Compensation any shall be adjusted with Rent Compensation, payable to the licensor on the month proceeding the month of expiry of L-2 permit.*
10. *That tenancy of the premises in favour of the Licensor shall not be affected by the grant of this licence. Even otherwise it is specifically agreed between the parties that the licensee shall not claim any right in the said tenancy premises of the licensor.*
11. *That the legal possession of the premises shall be that of the licensor. However, that the licensor hereby guarantees free access to the employees, agents and representatives of the licence and its customers in the licensed premises. The licensor shall have no right control supervision or interference in this regard.*
12. *That the breach of any condition of this agreement on the part of the licensee or licensor shall result in the revoking termination of the licence. The licensee shall hand over the vacant and peaceful possession of the Licensed Portion back to the licensor.*
13. *That the licensor further ensures that the premises are in conformity with the provision of Punjab Excise Act, rules and regulations of M.C.D., NDMC and Delhi Development Authority building bye-laws.*
14. *That if for any reasons license for running the wine shop is revoked or remains in operative or in abeyance for any reason whatsoever the licensor will have no right to claim any compensation on account of or in line of Rent Compensation or other-wise.*
15. *If any dispute or differences arises between the parties hereto*



or their representatives or in regard to any other matter under these presents, save as to any matter the decision whereof is hereinbefore expressly provided for, the same shall be referred to the sole arbitration of the Managing Director of Delhi Tourism Dev. Corpn. Ltd. and if he is unable or unwilling to act, to the sole arbitration some other person appointed by him. It will be no objection to any such appointment that the person appointed is/was an employee of the Corporation or that he had to deal with the matters to which the contrast relates and that in the course of his duties as such employees of the Corporation he had expressed views on all or any of the matter in dispute or differences. The reference to the arbitration shall be deemed to be a submission within the meaning of the Arbitration Act, 1940 or any statutory modifications or re-enactment thereof, and the rules made thereunder for the time being in force shall apply to such reference and this deed shall be deemed to be submission to such arbitration.

11. The prime contention coming from the side of the tenants is that it was only a “creation of license” in favour of DTTDC and creation of license cannot be equated with “creation of tenancy”. It is contended that the legal possession remained all along with the tenants and DTTDC was merely running business of selling of wine from the suit premises and such running of business cannot be equated with the creation of a sub-tenancy.

12. As already observed, though this Court cannot go much deeper into evaluation of the evidence, fact remains that the abovesaid aspect has been very appropriately considered by the learned Tribunal while observing that mere use of words would not be descriptive of the intention of the parties. The learned Tribunal also made reference to the arbitration proceedings which took place between the tenants and DTTDC and when one OMP 303/2006 had been filed before this Court, this Court, while dealing with the aforesaid OMP, also came to



a specific conclusion that the relationship between the tenant and said Corporation was akin to 'month to month tenancy' and said order was also extracted by the learned Tribunal in its order. It will be useful to make reference to paragraph Nos.9, 10, 11 and 14 of the impugned order, which read as under:-

"9. Mere use of words in this License Agreement without intention to follow the same will not convert (sic) a month to month tenancy between the appellant and DTTDC to a License Agreement and Ld. Trial Judge was right in reaching to a conclusion that even the legal possession of the premises was not with the appellant/tenant. Even it has been submitted on behalf of the respondent that possession has been taken over by the respondent in December, 2015, but sub-tenancy during the earlier period cannot be condoned on this ground.

10. There are two documents Ex.RW/P-1 and RW/P-2, which are certified copies of the order of Hon'ble High Court of Delhi in the arbitration proceedings filed by appellant Anil Kumar Kalra/tenant against M/s DTTDC in which Hon'ble High Court in its order dated 12.09.2012 in OMP No. 303/2006 has come to a conclusion that relationship between the present appellant/tenant and DTTDC was of month to month tenancy as mentioned in para 3 of the order, which is quoted hereinunder:

"Even taking the case of the respondent at the highest, it cannot insist on retaining the premises beyond the date of expiry of the current L-2 license. The Petitioner on his part has, following the previous Award dated 17th September 2001, issued notices to the Respondent under Section 106 of the Transfer of Property Act, 1882. This was because both parties had accepted that the said Award and had understood that there was a month-to-month tenancy vis-a-vis the premises in question."

11. Consequent to order dated 12.09.2012, the order dated 01.10.2012 was passed by Hon'ble High Court of Delhi in the said OMP. The said sub-tenant/DTTDC filed an affidavit undertaking to vacate the premises on or before 01.04.2013 and in view of the said undertaking of DTTDC the impugned award dated 11.05.2006 was set aside, which was challenged by the



present appellants/tenants before Hon'ble High Court of Delhi. Once the Hon'ble High Court has come to a conclusion after hearing the present appellants/tenants and M/s DTTDC that relationship between them was a month-to-month tenancy, now the appellants/tenants cannot take a contradictory stand before this court that M/s DTTDC was merely a licensee and not a sub-tenant. It is pertinent to note that order dated 12.09.2012 was duly acted upon and was never challenged by the appellants/tenants before any higher forum and the said order is binding on the present appellants/tenants as he has taken benefit of the said order and as a consequence thereof DTTDC had vacated the premises and handed over the possession of the premises in dispute to the present appellants/tenants. The appellants/tenants cannot blow hot and cold in the same breath and cannot take a contradictory stand before Hon'ble High Court and Ld. ARC as he had accepted before Hon'ble High Court of Delhi that DTTDC was his tenant, but in the court of Ld. ARC the stand of the appellants was that DTTDC was merely a licensee and not a tenant/sub-tenant.

14. There is no dispute as to the ratios laid down in the judgments cited on behalf of the appellants and respondent. However, the judgments cited on behalf of the appellants are not applicable to the facts of the present case as Hon'ble High Court of Delhi in the arbitration proceedings filed by appellant Anil Kumar Kalra/tenant against M/s DTTDC in its order dated 12.09.2012 in OMP No. 303/2006 had come to a reasoned conclusion that relationship between the appellant/tenant and DTTDC was a month to month tenancy. Hence, it was a clear cut case of subletting. It is pertinent to note that the said order was duly accepted, acted upon and never challenged by the present appellants."

13. During course of the arguments, it was also apprised that the possession of the tenanted premises has already been restored to the landlord, way back in December, 2015.

14. Be that as it may, the abovesaid creation of license is clearly suggestive of creation of a sub-tenancy and merely because it was labeled as license agreement, would not mean anything significant. For all purposes, the possession of the tenanted premises had been



parted with and merely because the nomenclature of the parties in said agreement was that of the licensor and licensee, it would not mean that there was no creation of sub-tenancy, detriment to the interest of the landlord.

15. The terms of the license have already been extracted above and though according to the tenants, there was never parting of 'legal possession', fact remains that for all purposes, the entire tenanted premises was being used by the licensee for selling liquor. The license fee was though based on some understanding and DTTDC had agreed to pay 12½ % of the gross profit as license fee but term used towards such license fee is "Rent Compensation". It is also mentioned in the license deed that the licensor i.e. tenants had guaranteed free access to the employees, agents and representatives of the licensee and its customers and the tenants shall have no right, control, supervision or interference in this regard.

16. The tenants also cannot shy away from the observations made by this Court while dealing with the arbitration matter between the tenants and DTTDC and, in no certain words, it was held that it was "*a tenancy on month-to-month basis*". Such finding has never been assailed by the tenants and since the same has been, virtually, accepted by the tenants, they cannot now be permitted to say that it was not a case of license.

17. No court should sway away by the mere nomenclature used in any such document.



18. At times, the Courts are required to lift the veil in order to gather the true and real intention of the parties.

19. Of course, there would be a very thin distinction between a lease and license but quite evidently in the present case, licensee seemed to have uninterrupted, continuous and long possession of the tenanted shop, to the exclusion of its licensor and the significance of the aforesaid aspect cannot be undermined.

20. Of course, it is a creation of interest in the immovable property that generally distinguishes a lease from license but at the same time, the Court has to see the real intention of the parties and to gather the same, Court is duty bound to take note of the surrounding and attendant circumstances as well as the conduct of the parties. It is quite evident that in the case in hand, the exclusive possession of the premises remained in the hands of DTTDC which is indicative of real intention of the parties. Mere declaration in such agreement that “legal possession” continues to vest with the licensor is of no avail as such phrase has been purposely used with the sole objective to avoid possible legal action, which they, eventually, had to face. If such contention was to be accepted then any tenant would get automatic handle to create subletting, with mere clever drafting of document. The initial onus, naturally, was upon the landlord but once above-said license deed was proved on record and it was shown that a wine shop was being run from there by DTTDC exclusively, the burden shifted on to the tenants to prove to the contrary, which they have failed to discharge.



21. Reference be made to *Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh*: AIR 1968 SC 933, *Delta International Ltd. v. Shyam Sundar Ganeriwalla and Another*: (1999) 4 SCC 545 and *Celina Coelho Pereira Vs. Ulhas Mahabaleshwar Kholkar*: (2010) 1 SCC 217 which also hold the ‘intention of the parties’ to be the prime test.

22. In view of the above, this Court, even otherwise, does not find any merit in the present petition.

23. Thus, there is no reason, much less a compelling one to invoke supervisory powers to interdict the concurrent findings given by the two Courts below, which seem to be in complete synchronization with the evidence adduced.

24. Before parting, learned counsel for the petitioner informs that the suit property actually vests with the Government of India and action is already under contemplation.

25. Learned counsel for respondent/landlord does admit that on 10.09.2021, an order had been passed by the concerned authority i.e. *Custodian of Enemy Property for India* whereby the property in question as a whole has been treated as ‘enemy property’. It is supplemented that such order has already been challenged by the respondent herein by filing WP(C) 11846/2021, which is pending adjudication before a Coordinate Bench of this Court.

26. Needless to say, this order, strictly speaking, is an order relating



to a dispute between landlord and tenant and thus, cannot and would not bind the Government of India in any manner whatsoever.

27. Petition is, accordingly, dismissed.

28. The stay granted earlier stands vacated.

(MANOJ JAIN)
JUDGE

SEPTEMBER 04, 2024/st