

Bench: S K Kaul

Smt. Lalita Gupta vs Modern Trading Company And Ors. on 28/9/2006

JUDGMENT

Sanjay Kishan Kaul, J.

1. A petition was filed by the appellant against the respondents under Section 14(1)(b) and (j) of the Delhi Rent Control Act, 1958 (hereinafter to be referred to as, 'the said Act') inter alia alleging that respondents No. 1 to 5 had sub-let the tenanted premises to respondent No. 6. The petition was dismissed by the Additional Rent Controller (for short, ARC) in terms of the judgment dated 20.07.2002 and the appeal filed against the same was also dismissed by the Additional Rent Control Tribunal (for short, 'the Tribunal') vide judgment dated 04.02.2003 albeit on slightly different grounds. The present case is a second appeal, which would only arise on a question of law.

2. The factual matrix is limited. There is no dispute that respondent No. 1 is a partnership firm of respondents No. 2 to 5 as partners. The tenancy was originally created in favor of respondent No. 1 firm. A document was subsequently executed on 13.09.1968 between the parties in the present petition stating that the appellant agrees that the office of respondent No. 6 be located in the tenanted premises as it is a family concern consisting only of respondents No. 2 to 5 with the said persons as shareholders and Directors.

3. There were initially allegations made of induction of a third-party, but it transpired during the proceedings that it is respondent No. 6, who is the franchisee and there is no case made out of sub-letting to a third party. Respondent No. 6 was held to be a tenant. However, this finding was interfered with by the Tribunal in coming to the conclusion that it is respondents No. 2 to 5, who are actually tenants and the user of the premises by respondent No. 6 would not amount to sub-letting. The Tribunal came to the conclusion that the physical possession vested with the said respondents No. 2 to 5 and there was no assignment of tenancy as to divest themselves of the rights as a tenant. It was found on the basis of evidence on record in the form of letters and pleadings that respondents No. 2 to 5 had expressed their animus domini in favor of respondent No. 6 being the tenant, but there was no element of corpus possessionis.

4. Learned Counsel for the appellant seeks to contend by reference to the various communications addressed by respondents No. 2 to 5 either to the appellant or to the municipal authorities or in the pleadings filed by the respondent in different suits filed by the appellant as well as the evidence led in the matter that the own case of respondents No. 2 to 5 is that respondent No. 6 is the tenant.

5. Learned Counsel states that there could never be such an understanding in the teeth of the document dated 13.09.1968 which clarified that respondent No. 6 was only given permission to run its office and, thus, there was no question of any tenancy being created in favor of respondent No. 6. In fact, the whole case is argued only on the basis of allegations of assignment, which is one of the ingredients as set out under Section 14(1)(b) of the said Act, which reads as under:

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 any court or Controller in favor 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:

(b) That the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of premises without obtaining the consent in writing of the landlord.

6. A perusal of the order of the Tribunal itself also shows that the case has been argued only on the basis of an assignment. Learned Counsel in this behalf has also referred to the judgment of the Apex Court in Ram Saran v. Pyare Lal and Anr. to contend that where such an assertion is made by the tenant, that itself would suffice for an assignment to take place.

7. I am unable to accept the plea of learned Counsel for the appellant.

8. The document dated 13.09.1968 itself clarifies that all the parties to the present proceedings clearly understood that respondents No. 2 to 5 would remain the tenants, but respondent No. 6 can run its business from the said premises. The document also records that respondent No. 6 is only a family concern of respondents No. 2 to 5, they being the only shareholders and Directors. It is really not even in dispute that if a limited company is only an alter-ego of the partners, there would be no sub-tenancy. In this behalf, the judgment of learned Single Judge of this Court in Vishwa Nath and Anr. v. Chaman Lal Khanna and Anr. may be referred to. In the factual matrix of that

case, the tenant was the sole proprietor of a concern, which was formed into a private limited company in which he had controlling interest and it was held that there is no sub-letting or parting with possession by the tenant to the company. This judgment stands approved by the Apex Court in Madras Bangalore Transport Company (West) v. Inder Singh and Ors. .

9. There is no dispute that respondents No. 2 to 5 did seek to contend that respondent No. 6 is a tenant. The said contention has not been accepted and rightly so. However, the mere assertion itself cannot imply that there is an assignment which has taken place. The Tribunal rightly considered this aspect while making a distinction between a case where both the animus domini and the corpus possessionis exist as against a case where such corpus possessionis is absent. It is only in a case where both the elements are present, that an assignment would be made up.

10. The judgment of the Apex Court in Ram Saran's case (supra) would not apply to the facts of the present case. The factual matrix in that case cannot be ignored where a single person was running a business where the son was inducted as a partner. Thereafter, a society was created inducting a number of other family members as partners and to carry on divergent business. It is in that context that the observations were made by the Supreme Court.

11. In the present case, however, it is only respondents No. 2 to 5 who were the partners of respondent No. 1, who set up respondent No. 6 and, this fact is acknowledged and consented to by the appellant by reason of the document dated 13.09.1968. It is, thus, not even open to the appellant to plead otherwise in the teeth of the said document.

12. I am of the considered view that the impugned order of the Tribunal cannot be faulted. The appeal is without any merit and is dismissed leaving the parties to bear their own costs.