

Bhagwan Das

Vs

S Rajdev Singh

Civil Appeal No. 2320 of 1969

(J. C. Shah, K. S. Hegde JJ)

02.04.1970

JUDGMENT

SHAH, J. -

1. The respondent applied to the Rent Controller, Delhi, for an order evicting the appellant and Usha Sales (P) Ltd, from certain premises described as 55-G, Connaught Circus, New Delhi (let to the appellant) on the ground, amongst others, that the appellant had sublet the premises to Usha Sales (P) Ltd. The Rent Controller held sub-letting by the appellant of the premises proved and made an order evicting the appellant from the premises. The order was confirmed in appeal by the Rent Control Tribunal.

2. In the view of the Rent Controller and the Rent Control Tribunal the premises were occupied by Usha Sales exclusively under an authority conferred by the appellant and that the appellant was receiving Rs. 2,000/- per month as rent, and had no control over the premises.

3. The order of the Rent Control Tribunal was confirmed in second appeal by the High Court. With special leave, the appellant appeals to this Court.

4. Mr. A. K. Sen contends that under the terms of the agreement between the appellant and Usha Sales the former was appointed an agent for displaying and selling the products of Usha Sales, and the appellant was in occupation of the premises on his own behalf for the purpose of his business as an agent.

5. We have carefully read the terms of the agreement between Usha Sales and the appellant. The agreement is a curious mixture of inconsistencies. It is plainly a clumsy attempt to camouflage the sub-tenancy which was intended to be created thereby. The principal provisions of the agreement are

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(1) that the premises were to be used for carrying on the business of Usha Sales;

(2) that the goods to be sold in the premises were to belong to Usha Sales and the appellant was to have no interest therein. Neon signs and sign-boards displayed were to be of Usha Sales;

(3) that control over the sale of goods and premises was to be of Usha Sales and the staff employed was also of Usha Sales;

(4) that price of the goods sold was to be recovered by Usha Sales and it was expressly

agreed that it was not to be collected by the appellant. Sales were to be made by the employees of Usha Sales appointed by them;

(5) that a portion of the premises set apart for conducting a sewing school was to be in the control of Usha Sales; profits made therein were to enure to Usha Sales; all report and accounts were to be submitted to the Usha Sales in respect of the sewing school;

(6) that Usha Sales were to maintain the accounts of the business; and

(7) that no remuneration was fixed for payment to the appellant; it was to depend upon the "discretion" of Usha Sales. These covenants prima facie show that Usha sales carried on the business of selling sewing machines and accessories, and the sewing school conducted in the premises and that the appellant did not carry on business or conduct the sewing school as agent of Usha Sales. The High Court has found that on the evidence it was clear that the keys of the padlock applied to the premises remainde with Usha Sales and their employees used to open the premises every morning and to lock up every evening. It is true that there are convenants in the agreement which provide that Usha Sales had to hand over the machines for sale to the appellant; that the appellant was to have supervision over the staff of Usha Sales; that the appellant was to "remain in complete control and supervision of the premises"; and that the appellant was not to sublet, assign or part with possession of the premises. But on a consideration of all the terms, the oral evidence, and the circumstances, the Rent Courts and the High Court have come to the conclusion that an attempt was made to camouflage the real agreement between the parties to give it the form of an agreement of agency, whereas in truth it was intended to be an agreement of sub-letting.

6. Reliance was placed upon somewhat obscure statement made by the High Court that the relationship between the appellant and Usha Sales was :

"more analogous to a partnership than to an agency; and that the appellant was in the nature of a sleeping partner, who provided the premises to the partnership, while Usha Sales was the active partner who carried on the business in the premises".

But the High Court has clearly found that by the agreement the Usha Sales had the right of exclusive use of the premises for its own business.

7. A second appeal lies to the High Court against the decision of the Rent Control Tribunal under Section 39(2) of the Delhi Rent Control Act, 1958 only if the appeal involves some substantial question of law. The Rent Controller and the Rent Control Tribunal, on a consideration of the relevant terms of the agreement and oral evidence and the circumstances found that a clear case of subletting was established. On that finding no question of law, much less a substantial question of law, arose.

8. The appeal fails and is dismissed with costs.

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