

M/s Bajaj Auto Limited

Vs

Behari Lal Kohli

Civil Appeal No. 2443 of 1980

(L. M. Sharma, N. D. Ojha JJ)

08.08.1989

JUDGMENT

SHARMA, J. -

1. This is a tenant's appeal against the decree for his eviction from certain disputed premises passed by the Rent Controller, Delhi and confirmed in appeal and second appeal.

2. The respondent, the owner of the premises, let it out to the appellant in 1961 as a monthly tenant. An unregistered deed of lease was executed on that occasion containing the following statement as one of the clauses :

That they will not assign or underlet or part with the premises hereby demised without the permission in writing of the landlord subject however to this proviso that they shall be entitled to assign or otherwise part with the possession of the said premises or any part thereof their associate concerns without such consent but in any event the lessees shall be liable for the payment of the rent during the term hereby granted.

3. The appellant is a manufacturing company of scooters, pick-up vans and auto-three-wheelers. Alleging that the appellant had sublet the premises to M/s United Automobiles without his consent, the respondent contended that the ground mentioned in section 14(1) Proviso (b) of the Delhi Rent Control Act, 1958 was made out and the appellant was liable to be evicted.

4. The eviction proceeding was defended by the appellant on the ground that the M/s United Automobiles are the authorised dealer and distributor of the product manufactured by the appellant and has been in occupation of the premises in that capacity and cannot, therefore, be described as a sub-tenant. It was alternatively argued that in view of the term of the lease as quoted above the arrangement with the M/s United Automobiles cannot be condemned as a sub-lease without the consent of the respondent. The stand of the respondent has been that the abovementioned term of the lease cannot be looked into as the document was not registered and further the M/s United Automobiles cannot be assumed to be an 'associate concern' within the meaning of the term. The Rent Controller, as well as the appellant authority held that the aforementioned term of the lease was not inadmissible and the appellant was entitled to rely upon the same, but ordered eviction on the ground that M/s United Automobiles was inducted in the premises as a sub-lessee. The High Court dismissed the appellant's second appeal in limine, and in this situation the present appeal by special leave has been filed.

5. It has been strenuously contended by the learned counsel for the appellant that as, (i) the United Automobiles is a distributor of the product manufactured by the appellant on the basis of commission, (ii) it pays the same amount to the appellant as the rent of the premises payable by the appellant to the respondent, and (iii) is entitled to be in possession only as long as it continues to be a distributor, it should be held to be an 'associate concern' within the meaning of the aforementioned term of the lease. In reply to the respondent's contention that the term cannot be taken into consideration as the deed is not a registered one, it was urged that the appellant, in view of the provisions of Section 49 of the Registration Act, is entitled to rely upon the term for 'collateral purpose'. The argument is that the document may not be admissible for the purpose of proving the existence of a lease or the terms therefore, but as the aforementioned clause does not come within that category, inasmuch as, it merely amounts to a written permission to the appellant to create a sub-lease, it cannot be excluded from consideration on the ground of non-registration.

6. There is no dispute that the appellant has put M/s United Automobiles in possession of the premises and has thus parted with the possession within the meaning of Section 14(1) proviso (b) of the Act. The appellant-company has a separate legal entity and has nothing to do with M/s United Automobiles except that the latter is the dealer-distributor of some of its manufactured articles. M/s United Automobiles is not a licensee and is not in possession of the premises on behalf of the appellant. The monetary benefit available to the dealer is confined to the commission it receives on the sale of every vehicle; and does not include the right of enjoyment of the premises. The dealer pays a fixed sum as rent to the appellant and the rent is not related or dependent on the sale of any vehicle. The fact that this amount is same as what is paid by the appellant to the respondent does not appear to be material. The irresistible conclusion is that the appellant has created a sub-lease in favour of its dealer. The question now is whether the clause in the lease mentioned above amounts to the respondent's consent in writing.

7. The contention of the learned counsel for the respondent that the aforesaid clause cannot be looked into for want of registration of the lease deed appears to be correct. Reliance has been placed on the observations of Fazl Ali, J. in *Sachindra Mohan Ghose v. Ramjash Agarwalla* (AIR 1932 Pat 97) that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose.

8. The learned counsel for the appellant attempted to meet the point by saying that so far the consent of the landlord permitting sub-letting is concerned, it does not require registration and the clause, therefore, must be excepted from the requirement of registration and consequent exclusion from evidence. We do not see any force in this argument. The question whether a lessee is entitled to create a sub-lease or not is undoubtedly a term of the transaction of lease, and if it is incorporated in the document it cannot be dissociated from the lease and considered separately in isolation. If a document is inadmissible for the non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It follows that the appellant cannot, in the present circumstance, be allowed to rely upon the clause in his unregistered lease deed.

9. There is still another reason to hold that the aforesaid clause cannot come to the aid of the appellant. A perusal of its language would show that it contains the respondent's consent in general terms without reference to M/s United Automobiles. As a matter of fact M/s United Automobiles came to be inducted as a sub-tenant much later. Can such a general permission be treated to be the consent as required by Section 14(1) Proviso (b) of the Act? It was held by this Court in *M/s*

Shalimar Tar Product v. S. C. Sharma ((1988) 1 SCC 70) that Section 14(1) proviso (b) and 16(2) and (3) of the Delhi Rent Control Act, 1958 enjoin the tenant to obtain consent of the landlord in writing to the specific sub-letting and any other interpretation of the provisions will defeat the object of the statute and it, therefore, impermissible. Since it is not suggested that the consent of the respondent was obtained specifically with reference to the sub-letting in favour of M/s United Automobiles, the clause in the lease deed, which has been relied on cannot save the appellant, even if it be assumed in its favour that the clause is admissible and the sub-lessee is appellant's associate concern. The appeal, therefore, fails and is dismissed with costs.

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