SUPREME COURT OF INDIA

Cox & Kings Ltd.

Vs.

Smt.Chander Malhotra

(K Ramaswamy, S Majmudar and G Nanavati JJ.)

12.12.1996

ORDER

The following order of the Court was delivered: This appeal by special leave arises from the judgment of the Delhi High Court dated July 27, 1983 dismissing the Second Appeal No.630/85 confirming the decree of eviction passed against the appellants under Section 14(1)(b) of the Delhi Rent Control Act.

The admitted facts are that the premises in question was demised to Cox & Kings (AGENTS) Limited, a company incorporated under the United Kingdom Companies Act [for short, "Foreign Company"], tenant of Smt. Jagdish Rani Sethi who subsequently sold the property to Smt. Chander Malhotra by a registered conveyance. Mrs. Rani Sethi had filed eviction petition on diverse grounds. Smt. Chander Malhotra, the respondent, after getting impleaded, amended the patition and also pleaded sub-letting to the appellant, an Indian Company. The Rent Controller found that premises had been sub-let by the Foreing Company and, therefore, ordered eviction. That was confirmed in appeal. As stated earlier, the second appeal was also dismissed. The principle question that arises for consideration, on reference to this Bench, is: whether involuntary transfer of the leasehold interest from Foreign Company to the Indian Company is not sub- letting within the meaning of Section 14(1)(b) of the Act? The said section reads under:

"... that the tenant has, on or after the 9th day of June, 1952, sub-let, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord".

The Contention of Shri R.F. Nariman, learned senior counsel for the appellants, is that after the Foreign Exchange Regulation Act, 1973 [for short, the "FERA"] had come into force, by operation of Section 29 of the Act, the Foreign Company was required to obtain, to carry on the business, written permission of the Reserve Bank of India. Accordingly, it had applied for permission but the Reserve Bank had refused permission to continue the same business. As a consequence, the India company was floated in which Foreign Company, though sought to have 100% shares, on refusal of the permission, had only 40% share in the business to which approval was given by the Reserve Bank of India. Consequently, the Indian company has been carrying on the business in the same premises. since the transfer of the leasehold interest from the Foreing Company to the Indian

Company is by compulsion, it is an involuntary one and thus is not a case of "sub-letting" within the meaning if Section 14(1)(b) of the Act. Therefore, the view taken by the court below is not correct in law. We find it difficult to give acceptance to the contention. It is true that under Section 29 of the FERA, without prejudice to the provisions of Section 28 and Section 47 and notwithstanding anything contained in any other provision of the Act or the provisions of the Companies Act, 1956, a person residing outside India (whether a citizen of India or not) or a person who is not a citizen of India but a is resident in India, or a Company (other than a Banking Company) which is not incorporated under any law in force in force in India or in which the non-resident interest is more than 40% or any branch of such Company shall not, except with the general or special permission of the Reserve Bank of India, (a) carry on in India, or establish in India a branch office or other place of business for carrying on any activity of a trading , commercial or industrial nature, other than an activity for the carrying on of which permission of the Reserve Bank has been obtained under section 28...": (b) every application made under clause (a) shall be in such form and contain such particulars as may be specified by the Reserve Bank; and (c) where an application has been made under clause (a), the Reserve Bank may, after making such inquiry as it may think fit. either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose or reject the application. It is not in dispute that such an application came to be made and the Reserve Bank had passed an order directing the Foreign Company to wind up its business. Subsequently, an application was made for permission to incorporate Indian Company with 100% share held by the Foreign Company which was refused. Thereafter, Indian Company came to be incorporated in which the Foreign Company claimed to have to 40$% share in the business. Thus, The Indian Company was incorporated under the Indian Companies Act, 1956 and was doing business under FERA with the permission of Reserve Bank. The question then is: whether the Foreign Company sub-let the demised premises within the meaning of Section 14(1) (b) of the Act? It is seen that under FERA, there is no compulsion that the premises demised to the Coreign Company should be continued or given to Indian Company. On the other hand, the conveyance executed between the Foreign Company and the Indian Company reads as under. " An agreement was executed was executed on July 4, 1980 between the English Company. The English Company is termed as Assignor and Indian Company has been termed as Assignee. The last part of the preamble indicates that whereas the assignor has agreed to assign and the assignee has agreed to take over for consideration and upon the terms and conditions here in after set out the business carried on by the assignor in India hereinabove recited as a going concern together with all the assets and liabilities of the said business as appearing in the Audited Balance Sheet of the assignor relating there to as on the 30th day of September, 1976. Clause (1) specifically mentioned that on and from the date including the transfer date the said business shall become and be deemed to have been owned by and assigned to the Assignee, i.e. Indian Company. Clause (2) envisages that assignment was received for consideration Clause 7(1)(b) indicates as regards the leaseholds , subject to payment of the rent reserved and the observance of all the covenants and conditions contained in the Leases or Agreements for Leases under which the same are hold. Clause 7(ii) indicates that incidental to the assignment of the said business as a going concern; the Assignor shall, in so for as it is within its power to do so, assign or cause to be assigned the monthly and other tenancies of all rented premises of the Assignor in India".

Thus, It could be seen that under the consequence of agreement the Foreign Company and the Indian Company, the Indian Company became the assignee with all rights and liabilities and subject to observance of the terms and conditions of all the tenancy rights contained in the leases or agreements for lease under which the same are being held by the Foreign Company. It would, thus, be clear that it is a case of assignment of the leasehold right, had from the respondent in favour of

India Company, subject to the observance of the leasehold covenants contained in the lease held by the Foreing Company. The question, therefore, is: whether it is a sub-letting or assignment? It is seen that sub-section (b) of Section 14, in clear terms envisages that the tenant shall not, after June 9, 1952, sub-let, assign, or otherwise part with the possession of the whole or any part of the premises, without obtaining the written consent of the landlord. It is seen that though by operation of FERA the Foreign company had wound up its business, it assigned, under the agreement, the leasehold interest in the demised premises to the Indian Company which is carrying on the same business in the tenanted premises without obtaining the written consent of the landlord.

The respondent-landlord is not bound by such assignment, induction of the appellant-Company against her wishes. Her written consent is a pre-condition, as envisaged under sub-section (i)(b) of Section 14 which was not obtained. Therefore, it is a clear case of sub-letting. Even otherwise, it would be an assignment, as admittedly agreed in the agreement referred to herein before between the Foreing Company and the Indian Company. In P.H. Rao v. S.P.N.K. Jain & Anr. [(1980) 3 SCR 444], the landlord had executed a lease in respect of the demised premises in favour of the Laxmi Bank on 1.4.1942; the Bank went into liquidation. the liquidator sold leasehold right to the respondent and the Court confirmed the same. An application for eviction come to be filed and it was contended that it being an involuntary transfer it was not a case of sub- letting under Section 14(1)(b) of the Act. This Court had negatived the contention holding thus: " As regards point No.3, the High Court relying on a decision of Calcutta High Court in Krishna Das Nandy vs. Bidhan Chandra Roy [AIR 1959 Cal. 1811] has found that as the transfer in favour of respondent No. 1 by the official liquidator was confirmed by the Court, the status of the tenant by respondent No.1 was acquired by operation of law and, therefore, the transfer was an involuntary transfer and the provisions of Rent Control Act would not be attracted. After careful perusal of Calcutta case, in the first place it appears that the section concerned has not been extracted and we are not in a position to know what the actual language of the Section of the Bengali Act. Secondly, in our opinion, the official liquidator had merely stepped into the shoes of Laxmi Bank which was the original tenant and even if the official liquidator had transferred the tenancy interest to respondent No.2 under the orders of the Court, it was on behalf of the original tenant. It was undoubtedly a voluntary sale which clearly fell within the mischief of Section 14(1)(b) of the Delhi Rent control Act. Assuming that the sale by the official Liquidator was an involuntary sale, then it undoubtedly become an assignment as provided for by s.14(b) of Delhi Rent Control Act. S.14(b) runs thus:-

"14(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 the premises without obtaining the consent in writing of the landlord."

The language of s.14(b) is wide enough not only to include any sub- lease but even an assignment or any other mode by which possession of the tenanted premises is parted. In view of the wide amplitude of s.14(b) we are clearly of the opinion that it does not exclude even an involuntary sale. Fore These reasons, therefore, we are unable to agree with the view taken by the High Court. The appeal is accordingly allowed, the judgment and decree of the High Court are set aside and the plaintiff's application under s.25 of the Delhi Rent Control Act is dismissed. "premises without obtaining the cons.

The above ratio is clearly on the point in issue involved in the present case, In Venkatarama Iyer v. Renters Ltd. [(1951 II MLJ 57], K. Subba Rao, J., as he then was, has to consider a similar question under the Madras Buildings (Lease and Rent) Control Act. There was an assignment between the

two companies and considering the effect thereof it was held that if a company doing business in a particular premises taken on lease, transfers its business as a going concern to another company and also the net assets for consideration and thereafter the transferer company takes over the business and carries on business in the premises let out to the former company, it cannot be said that there was no transfer of the right of the former company under the lease to the latter company. On such transfer, the tenant is liable to be evicted as a sub- tenant. The above judgment is clearly on the point in issue before us. In General Radio & Appliances Co. Ltd. v. M.A.. Khader (dead) by Lrs. [(1986) 2 SCR 607 at 620] a three- Judge Bench had approved the above ratio. Two companies having been amalgamated, eviction against the amalgamated company came to be filed. On consideration of all the decisions referred to above hereinbefore, the irresistible conclusion followed that there had been a transfer of the tenancy interest of appellant No.1 in respect of the premises in question to the appellant No.2, subsequently, renamed appellant No.3, M/s. National Radio Electronics Co. Ltd. Accordingly, their eviction was upheld under Section 10(ii)(a) of the Andhra Predesh Buildings (Lease, Rent and Eviction Control Act, 1960. The facts in Madras Bangalore Transport Co. (West) v. Inder Singh & Ors. [(1986) 3 SCC 62] relied upon by Shri R.F. Nariman, are clearly distinguishable. In that case, a partnership firm was divided between the partners and two separate firms came to be formed with a distinct area of operation and one of the companies was to retain possession of the tenanted premises. After 10 years, application for eviction came to be filed on the ground of subletting of the premises. Considering the constitution of the companies, its operation and the nature of the incidence that flowed therefrom, this Court had held that the limited company and the partnership firm were two only on paper but were one for practical purposes There was substantial identity between the limited company and the partnership firm. On the basis of those findings, it was held that there was no sub-letting. The ratio has no application to the facts in this case. In view of the findings recorded above, viz., there was a clear assignment between the Foreign Company and the Indian Company of the demised premises without any written consent of the respondent-landlord, it is a case of "sub- letting" within the meaning of Section 14(1)(b) of the Act. The courts below, therefore, have not committed any illegality in reaching those findings warranting interference.

The appeal is accordingly dismissed. No costs.