

SUPREME COURT OF INDIA

G.K. Bhatnagar (D) By Lrs.

Vs.

Abdul Alim

(R.C. Lahoti and Ruma Pal JJ.)

21.03.2002

ORDER

1. Late G.K. Bhatnagar, who has expired during the pendency of these proceedings and whose legal representatives have been brought on record in his place as the appellants, owned a suit shop let out to the tenant-respondent on 1/5/1966 on payment of Rs. 50/- by way of rent and Rs. 6/- by way of electricity charges. For the purpose of convenience we would refer to Late G.K. Bhatnagar as 'landlord' and the respondent as 'tenant'. On 28/5/1979 proceedings for eviction were initiated by the landlord by filing a petition before the rent controller on the ground under clause (b) of sub-section (1) of section 14 of the *Delhi Rent Control Act, 1958* (hereinafter 'the Act', for short) alleging that the tenant had, without the permission of the landlord, sub-let the premises and parted with possession of the whole of the premises in favour of one Jagdish Chander. According to the tenant-respondent, there was no sub-letting: Jagdish Chander was taken into partnership by him in his pre-existing business run in the suit shop under 'deed of partnership' dated 13/10/1978.

2. The rent controller found that there has been no sub-letting of the premises and, therefore, directed the petition to be dismissed. The landlord preferred an appeal which was allowed by the appellate authority, which reversed the finding of the rent controller and directed the petition for eviction to be allowed. The tenant preferred a second appeal before the High Court under section 39(2) of the Act. The appeal has been allowed. The High Court has set aside the judgment of the appellate authority and restored the one by the rent controller.

3. In the evidence adduced by the parties on behalf of the landlord, the landlord alone (late G.K. Bhatnagar) appeared in the witness box and produced no other witness. The respondent-tenant examined himself and also produced Jagdish Chander, the alleged sub-tenant, in the witness box deed of partnership dated 13/10/1978 was exhibited in evidence by the respondent-tenant. This Deed of partnership when tendered in evidence before the rent controller, was accompanied by a general power of attorney of the same date executed by the respondent-tenant in favour of Jagdish Chander. This power of attorney, though not formally tendered in evidence and neither formally proved nor exhibited, has nevertheless been taken into consideration and read in evidence inasmuch as the same was produced in court by the respondent-tenant and could have been, in the opinion of the appellate authority, relied on by the landlord for the purpose of substantiating his case.

4. Clause (b) of sub-section (1), and subsection (4), of section 14 of the Act are relevant for our purpose and are reproduced hereinbelow:

"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 favour of the landlord and 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 :-

(a)

(b) 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:

(4) For the purposes of the clause (b) of the proviso to sub-section (1) any premises which have been let for being used for the purposes of business or profession shall be deemed to have been sub-let by the tenant, if the controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to that person."

5. A conjoint reading of these provisions shows that on and after 9th June, 1952, sub-letting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord. However, inducting a partner in his business or profession by the tenant is permitted so long as such partnership is genuine. If the purpose of such partnership may ostensibly be to carry on the business or profession in partnership, but the real purpose be sub-letting of the premises to such other person who is inducted ostensibly as a partner, then the same shall be deemed to be an act of sub-letting attracting the applicability of clause (b) of sub section (1) of section 14 of the Act.

6. In the present case, the partnership is evidenced by written deed, According to the contents of the partnership deed, it was the tenant who was carrying on business under the name and style of M/s DP. Zenith Sanitary & Engg. Works in the suit premises. He was short of finance and other resources and on his request Jagdish Chander, has agreed to join the tenant as a partner. The share in the profit and loss of the partnership is 50% for each of the two partners. The partners shall maintain a bank account which can be operated by either of the

two partners. The possession over the tenancy premises shall continue with the tenant and on the determination of the partnership, the possession shall revert back to the tenant alone with no right or interest left in Jagdish Chander. Both the partners agreed to look after the business diligently. The general power of attorney, accompanying the deed of partnership, recites the tenant having authorised the other partner to do several acts relating to tenancy premises and the business run therein in partnership with the tenant. It appears that prior to the filing of the present eviction proceedings, the two partners had filed a suit for injunction against the landlord seeking a permanent injunction restraining the landlord from constructing a wall and therein both the partners had stated themselves to be the tenants. It appears that at least at two stages of the proceedings, one before the rent controller and the other before the High Court, the landlord had sought for the assistance of the court for the production of the passport of the tenant-respondent so as to find out for how many times and for what duration the tenant-respondent had remained away from the country and gone to Iraq. However, this passport was not produced on the plea that it was lost. An adverse inference against the tenant-respondent from non-production of passport cannot be drawn unless it is held that the same was held back, that is, not produced though available. None of the authorities below nor the High Court has held so. It cannot be held, on the material available, that the tenant had left the country and parted with possession in favour of Jagdish Chander outwardly projecting him as partner.

7. The learned rent controller and the High Court have believed the testimony of the tenant-respondent and Jagdish Chander, the alleged sub-tenant. So far as the landlord himself is concerned, his testimony is practically of no assistance. He admitted during the course of his deposition that he had not made any inquiries of himself to find out who were the partners in the business and how and in what manner the business was being carried on in the suit premises. He stated that it was from the wife of the respondent that he had learnt about the respondent-tenant having left India for going abroad and then having returned. No inference relevant to the issue arising in the suit, could have been drawn from the statement of the landlord.

8. The learned rent controller discussed all the evidence and recorded the finding of fact. With the assistance of the learned counsel for the appellant we have gone through the judgment of the learned rent controller, of the appellate authority, as also of the High Court and we find that the approach adopted by the appellate authority was very superficial in nature and mostly the appellate authority went by surmises and conjectures for the purpose of reversing the judgment of the rent controller. At least at one place the appellate authority has belaboured under a factual misapprehension when it stated that on the very date of entering into partnership the respondent-tenant had left India for Iraq. In fact the respondent-tenant did not leave India on the date of partnership; he left much thereafter and actually on the date on which his statement was recorded by the rent controller. In such facts and circumstances, the High Court has not erred in reversing the judgment of the appellate court and restoring that of the trial court.

9. It is true that an appeal under section 39(2) of the Act before the High Court lies only on the substantial question of law. However, the appellate authority in this case reversed the

well considered and well reasoned judgment of the rent controller by resorting to conjectures and surmises. There is no material available to hold the partnership a sham or nominal one and to hold that the partnership was brought into existence for disguising a sub-letting in reality. A substantial question of law, therefore, arose before the High Court justifying interference in second appeal with the judgment of reversal recorded by the appellate authority. In addition, the case involved interpretation of the partnership deed and general power of attorney so as to see whether on a totality of the interpretations of recitals contained therein, read in the light of the other facts and circumstances, a case of sub-letting disguised as partnership was made out and needless to say, such interpretation of deeds is a question of law - substantial one in the facts and circumstances of the case.

10. For the foregoing reasons, we do not find any infirmity in the judgment of the High Court. The appeal is, therefore, held liable to be dismissed and is dismissed accordingly but without any order as to costs.