**SUPREME COURT OF INDIA**

Munshi Lal

Vs.

Santosh

C.A.No.1327 of 2017

(S.A.Bobde and L.Nageswara Rao,JJ.,)

01.02.2017

**ORDER**

SLP(Civil) No.16096 of 2012

1. Leave granted.

2. This appeal has been filed by the landlord against the judgment and order of the High Court of Delhi in CM (M) No. 1574 of 2010. The High Court held that the respondent-tenant, Hakim Rai had not sub-let the premises to his son-in-law, Raj Kumar in pursuance of a partnership deed dated 20.05.1983 entered into between them.

3. Hakim Rai died and was substituted by¬respondent Nos.1 to 5 i.e. his widow and four daughters. The respondent No.1, Smt. Sumitra Devi, was deleted from the array of parties upon her death.

4. The landlord sought the eviction of the tenant on the ground that the tenant had sub-let the premises to his son-in-law in contravention of Section 14 of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'). The landlord had also sought eviction of the tenant on the ground of arrears of rent. As of now the only ground that survives is that of sub-letting the tenant having paid off the arrears according to law.

5. The tenancy was in respect of a Kirana shop at the monthly rent of Rs. 50/-. The tenant was an old and infirm man, incapable of running the business on his own. It has been found that the son-in-law sat in the shop and conducted business exclusively therefrom. The dispute was whether he was doing business along with his father-in-law or independent of him, i.e. whether he was doing business exclusively behind the fagade of a partnership or as a genuine partner. It is an uncontroverted fact before us that the landlord's permission in writing was not obtained before the tenant had allowed the alleged sub-tenant to occupy the shop.

6. The Rent Controller found that the partnership was a ruse and that it was the son-in-law who was in exclusive possession of the shop and running the business on his own. No books of accounts were maintained, no profit and loss accounts were maintained, and no stock registers concerning the goods in the shop were maintained, as required by the partnership deed. Moreover, the tenancy rights with respect to the lease of the shop were found to have been made property of the partnership firm. The evidence of the widow of the tenant who inherited the tenanted premises and claimed to be running the business along with her son-in-law was held incredible. She was unable to give any details of the amount invested in the shop, or any details of profit and loss. Thus, the Rent Controller clearly found that the son-in-law had been put in possession of the shop in pursuance of a sham partnership deed and was not merely assisting in the shop a a son-in-law.

7. With regard to the arrears of rent, it wasan undisputed position that the tenant had been granted the benefit of Section 14(2) of the Act, as it was a case of first default and the tenant had complied with the order passed under Section 15(1) of the Act.

8. The landlord contested the appeal on the only remaining ground of sub-tenancy. The Appellate Authority observed that it could not be said that there was a parting of possession

if an alleged sub-tenant was closely related to a tenant, orif he was a person whose assistance was a matter of necessity for the survival of the business of the tenant. Thus, since the alleged sub-tenant was a close relative i.e. a son-in-law of the tenant, there was no parting of possession and therefore no sub-letting. The appellate authority relied on *Smt. Krishnawati Vs. Shri Hans Raj*[1] in which it was held that in an arrangement where the premises was rented by the husband, and the wife was allowed to carry out business in a part of the premises, would not amount to sub-letting.

9. The High Court concurred with the finding of the appellate authority that the son-in-law had come to Delhi to assist his father-in-law in business for which a partnership deed had been executed between them, and he resided at the same premises as his father-in-law. The partnership was a genuine partnership as it could not be said that it had been entered into for the purpose of subletting. The father-in-law had not in any manner given the possession of the shop in question exclusively to his son-in-law thereby divesting himself of it. Thus the mere occupation of his son-in-law was not sufficient to establish a case of subletting.

10. Having heard the learned counsels for both parties, we find that a significant fact which has not been controverted by the respondents has been completely overlooked in the proceedings of the courts below. That fact is that no consent in writing was obtained from the landlord before the so called partnership was entered into between the tenant and the sub-tenant, and before the sub-tenant was allowed to occupy the premises.

11. Section 14(1) of the Act reads as under:-

> ” (14)(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 against a tenant:
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> 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:-
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> (a) That the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfer of Property Act, 1882;
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> (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".
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> Clause (b) of the proviso to sub-section (1) provides for the eviction of a tenant who has sub-let, assigned or otherwise parted with the possession of the premises without obtaining the consent in writing of the landlord.
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> Section 14 (4) reads as follows:-
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> ” (14)(4)For the purposes of 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."
> This sub-section provides that if a person is allowed to occupy the premises ostensibly as a partner of the tenant but really for the purpose of sub-letting it, such an arrangement would be deemed to be sub-letting. Therefore, if the tenant has allowed any person to occupy the whole or any part of the premises, actually for the purpose

> of sub-letting but speciously by entering into a partnership with him, such an arrangement shall be deemed to be subletting. In other words, subletting is not permitted by camouflaging it as a partnership. The combined reading of clause (b) of the proviso to Section 14(1) read with Section 14(4) makes it clear that before a tenant can sub-let, assign or part with the possession of any part of the premises or the whole, it must be preceded by the consent in writing from the landlord. In other words, the requirement of obtaining the consent in writing of the landlord is retained as a pre-requisite even for the purposes of sub-section (4). What is of importance is, in either case whether a person has been inducted genuinely as a partner and therefore allowed to occupy the premises or whether the partnership is a ruse, the requirement of consent in writing as in sub-section (1) is retained. In the present case, there is no evidence that the tenant obtained the consent in writing from the landlord before allowing the son-in-law to occupy the premises in pursuance of the Partnership deed.

12. We are satisfied that the respondents-tenants have been found to have inducted the son-in-law as a sub-tenant for the purpose of doing business under a partnership agreement. The arrangement between Hakim Rai and his son-in-law Raj Kumar was not a casual arrangement wherein the latter was requested to conduct business at the shop because the former was old and infirm. There was no need of entering into a partnership agreement in that case.

13. We find upon scrutiny of the evidence in this case that the learned Rent Controller was right in coming to the conclusion that the parties had not acted on the partnership which was shown, and that there was a parting of possession of the premises in which the son-in-law was allowed to occupy the premises and carry out business exclusively. There is no evidence on record that the account books were maintained and the profits were shared between the parties as partners. The son-in-law had accepted that he was carrying out a business of sale of merchandise from the shop.

14. It is not possible for us to appreciate the view of the appellate authority that there would be no parting of possession if the alleged sub-tenant is a close relative like a son-in-law. In this case, the relationship is not like that of a spouse being allowed to carry out a business in the same house. The relationship is of a son-in-law and father-in-law who had entered into a partnership agreement.

15. In any case, there was a failure to obtain consent in writing from the appellants which is a clear pre-requisite for allowing any person to occupy the premises. In other words, a tenant cannot be allowed to employ a subterfuge and permit another person to occupy the premises by claiming that he is a partner when the real intention is to sublet, without obtaining the consent in writing of the landlord.

16. In these circumstances, we find that the occupation of the shop by Raj Kumar amounts to a sub-letting within the meaning of Section 14(1) (b) read with Section 14(4) of the Act and the respondents are liable for eviction.

17. We accordingly, set aside the order of the High Court and direct that the respondents shall be evicted. However, time to vacate the scheduled premises is granted till 31st October, 2017 on filing the usual undertaking by them within four weeks from today. Till such a time, the rent at the rate of Rs. 10,000/- per month shall be paid by the respondents to the appellant.

18.The appeal is disposed of with above observations and directions.

Judgment Referred..

[1]*(1974) 1 SCC 0289*