

DELHI HIGH COURT

Vishwa Nath

Vs.

Chaman Lal (Delhi)

S. A. O. No. 128 of 1974.

(Avadh Behari Rohatgi, J.)

19.3.1975

JUDGMENT

Avadh Behari Rohatgi, J.

1. This is a tenant's appeal from the order of the rent control tribunal dated April 30, 1974.

2. The facts are these. The appellant No. 1 Vishwa Nath carried on the business of advertising under the name and style of Interads International Advertising Agency. He was the sole proprietor of this business. On November 1, 1962, he took one room 9 X 20 feet on the back side in a building bearing No. 6/4 Asaf Ali Road, Delhi, on a monthly rent of Rs. 100/-. This room is being used as an office. Chaman Lal Khanna, Advocate and his three sons are the landlords of that building. They are respondents 1 to 4.

3. Vishwa Nath thought of expending his business. In 1964 he formed a limited company. He called it Interads Advertising (P.) Limited ("the company"). From 1962 till the beginning of 1964 he paid rent in the name of Interads International Advertising Agency. After the formation of the company in 1964 the company started paying rent. Rent was being paid by pre-receipted cheques. At the reverse of the cheque a receipt was printed. The receipt is in these terms:

"Received from M/s. Interads Advertising (P.) Ltd. the sum stated on the other side of this cheque

Signature of Payee.....

Date.....

Note : The above Signatures are intended to be a receipt only."

4. In the beginning Vishwa Nath. appellant No. 1, and later on the company, appellant No. 2, used to send the pre-receipted cheques to the landlords. Mr. Chaman Lal Khanna , respondent No. 1, would sign the cheques on the reverse and obtain payment thereof. The cheques used to be returned to the company so that these may serve as receipts.

5. On January 25, 1969. the Landlords brought a petition for ejectment of Vishwa Nath, appellant No. 1, and Interads Advertising (P.) Limited, respondent No. 2, mainly on the ground that Vishwa Nath had sub-let, assigned and parted with the possession of premises in favor of the company. In the ejectment petition other grounds were also taken. The landlords also alleged that Vishwa Nath had sub-let the premises to Stereo-craft and Admanas Studio (respondent No. 5). It was further alleged that Vishwa Nath had caused substantial damage to the premises.

6. Before the rent controller it was conceded by the counsel for the landlords that except for unauthorized subletting by Vishwa Nath to the company no other ground of eviction was proved in the case. The landlords, therefore, claimed ejectment of the tenant Vishwa Nath and the company he had formed on the ground that he had sublet the premises to the company.

7. Ground (b) to proviso to Section 14 (1) of the Delhi Rent Control Act, 1958 ("the Act") is in these terms:

"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."

8. The case was fought on this ground and no other. Vishwa Nath and the company filed a joint written statement. Their defence was that it was the company which was the tenant and not Vishwa Nath. The company was in exclusive possession, they said. Vishwa Nath said that he was the chief executive of the company. In a word they denied that there was subletting.

9. On August 11. 1969. the company moved a petition under Section 45 of the Act. The company alleged that in addition to the room they were entitled to the

use of a bathroom situated in the premises. The landlords had closed the bathroom. The company complained of deprivation of an essential amenity and sought an order against the landlords directing them to restore the amenity. To this application the defense of the landlords was that the company was not their tenant. They said only Vishwa Nath was their tenant. On merits it was said that they had never allowed the use of the bathroom to the tenant.

10. The rent controller tried the ejectment petition and the application under Section 45 together. By judgment dated May 17, 1971, he ordered the ejectment of Vishwa Nath and the company. The application of the company under Section 45 of the Act was dismissed.

11. The findings of the controller may be summarized as follows:

1. That the premises were let to Vishwa Nath and not the company.
2. That Vishwa Nath and not the company is the tenant
3. That the tenancy of Vishwa Nath was validly terminated.
4. That Vishwa Nath had parted with the possession of the room in favour of the company.
5. That the bathroom was not included in the tenancy.
6. That only one room was let. No essential supply was withheld.

12. On these findings he ordered ejectment under clause (b) as I have said. The petition under Section 45 was dismissed with an additional finding that the company was not competent to make the petition as it was Vishwa Nath who was the tenant and only a tenant could move an application for restoration of amenity.

13. Both Vishwa Nath and the company went in appeal to the rent control tribunal. While the appeal was pending an application under Order 6 Rule 17 of the Code of Civil Procedure was made on January 14, 1974, by the appellants. In this application written statement was sought to be amended. In their original written statement Vishwa Nath and the company had taken the stand that the company was the tenant. Since in evidence before the controller it had been proved that the premises were in fact taken by Vishwa Nath in his own name in 1962 it seemed necessary to the appellants to amend their written statement.

Now they wanted to plead that the premises were taken on rent by Interads of which Vishwa Nath was the sole proprietor and that the possession of the premises was exclusively with Vishwa Nath except that Interlards was converted into Interlards Private Limited who are now carrying on business of advertisement in the room. It was said that the amendment sought is in respect of a matter which is admitted by the parties and the original written statement had been filed under a *bonafide* mistake.

14. The tribunal dismissed the application for two reasons Firstly; it said that the amendment introduced a new case. Secondly, the application was *mala fide* since it was made after the tribunal had heard the arguments on the appeal itself.

15. Agreeing with the findings of the controller the tribunal dismissed the appeal on April 30, 1974. The tribunal came to the conclusion that the tenant was Vishwa Nath and not the company. Since Vishwa Nath's own case in the written statement was that the company was in exclusive possession of the premises the tribunal held that it was a case of sub-letting as the possession had passed to the company from Vishwa Nath. The tribunal was of the view that the company was a juristic personality and was distinct from the share-holders and directors. It was a body corporate and was different from Vishwa Nath. Since admittedly the company was in possession of the room there was parting with possession, the tribunal said.

16. Vishwa Nath and the company appeal to this Court.

17. It has been proved in evidence that Vishwa Nath on November 1. 1962, took the room in his own name as the chief executive of Interads. On November 10, 1962. he wrote a letter to the landlords (A-3) saying

"I have taken on rent from you the Garage premises in your building. 6/4 B-Asaf Ali Road, New Delhi, at a rent of Rs. 100/- (Rupees One hundred only per month) from 1st November, 1962.

The said premises will be used by me for office or go down of my firm known as INTERADS. of which I am the Chief Executive."

... ..

18. This letter was signed by Vishwa Nath, Chief Executive. INTERADS, New

Delhi and was written on a letterhead of 'interads'. The draft rent note (A-4) was also proved which is signed by Vishwa Nath as the sole proprietor and chief executive of the concern known as INTERADS. This is a concurrent finding of fact by both the authorities under the Act.

19. After the premises were taken on rent what happened was this. Interads Advertising Agency continued business till 1963. In 1964 the company was formed. Then the company started paying rent, as I have said. Pre-receipted cheques were issued and on the reverse the landlord, respondent No. 1. signed the cheques acknowledging that he received the amount from Interads Advertising (P.) Limited. This state of affairs continued right from 1964 till 1968. Towards the end of 1968 the landlords stopped accepting rent though the company tendered it time and again. The landlords brought a petition for ejectment in January, 1969. They alleged subletting. The case of the tenant was that there is no subletting. The company is the tenant and the company is in the possession of the "premises, they said. The controller and the tribunal both found that the tenant was Vishwa Nath and he was the sole proprietor of Interads in 1962 when he took the premises on rent. They found that the company was never the tenant. Since in the written statement it was admitted that the company was the tenant and was in possession of the premises both the controller and the tribunal held, as a matter of syllogistic reasoning, that the case of parting with possession was proved on the tenant's own premises. In other words the authorities under the Act proceeded thus: Vishwa Nath took the premises on rent. Now admittedly the company claims to be the tenant. Admittedly the company is in the possession of the room. They treated the company as in exclusive occupation and therefore in possession and concluded that Vishwa Nath must have Parted with the possession of the room in favour of the company. The flaw in this reasoning is that the occupation is merely that of a licensee. Such an occupation is not necessarily exclusive. The tenant has not completely effaced himself. He is in legal possession. He has a controlling interest in the company. (See the observations of Scrutton L. J. in *Chaplin v. Smith*, ¹.

20. In my opinion the deductive reasoning adopted by the controller and the tribunal was faulty. Both of them were of the view that the tenant's own admission in the written statement that (1) the company was the tenant and that (2) the company was in possession of the premises, was proof enough of parting

with possession. They proceeded on the tenant's written statement. They did not pay regard to what was proved on the record. On the record it was proved that the tenant was not the company. Vishwa Nath was the tenant. At the time of letting he carried on business under the name and style of Interads as its sole proprietor. In 1964 he formed a private limited company. In his statement before the controller Vishwa Nath said:

"I am the managing director-chairman of the concern known as Interads Advertising (P.) Ltd

... ..

Cent per cent assets and liabilities of Interads were taken over by Interads Adv P. Ltd."

21. As regards the constitution of the company, he said ;

"Including myself there are six shareholders of Interads Adv. P. Ltd. Besides myself Sh. S. P. Chopra. Mr. K. D. S. Bali, my wife, my two sons Anil Kumar and Sunil Kumar are the shareholders of the said concern. The afore referred Sh. Chopra and Sri Bali are not my relations."

22. If an individual takes the premises on rent and then converts his sole proprietorship concern into a private limited company in which he has the controlling interest he cannot be evicted from the premises. On the proved facts this is the inevitable conclusion. The person who took the premises on rent remains in possession though he forms a company and ceases to be the sole proprietor. He does not cease to be in possession. He has not parted with the possession with anyone. He has changed the form of his business. In Interads Vishwa Nath was the sole proprietor. In Interads Private Limited he has the controlling interest and his wife and his two sons are the other shareholders alone with two other strangers. He was all in all in his proprietorship concern. Now also he is the chief executive, chairman and the managing director of the company. It is true that the company is a juristic person but in each case what we have to see is whether possession has been parted with and whether there is an ouster of the tenant. If the company is a facade concealing the true facts it may be necessary for the Court to pierce the corporate veil.

23. In (1926) 1 KB 198 (supra) a lessee had covenanted with his lessor that he will not assign or underlet or part with possession of the demised premises or

any part thereof. The lessee then assigned his business to a company of which he was a managing director and in which he held a controlling interest. Subsequently a second company was formed of which the lessee was a managing director and it was stipulated that he should remain in possession as actual tenant of the demised premises. The Court of Appeal held that no interest in the demised premises passed to the companies or either of them and that there had been no breach of the lessee's covenant not to Part to with possession of the premises or any part thereof.

24. Bankes L. J. said:

"And if the true facts are as I think they are that the appellant and the successive companies came to terms on the basis that he neither could nor would part with possession, but would at all costs remain in possession himself and allow the company's business to be conducted on the premises while he remained in possession of them, then in my view of the authorities there was no parting with possession."

25. Warrington L. J. said:

"On these facts did the appellant part with possession of the premises? Certainly he never meant to do so. Must he nevertheless be held in law to have done so? In the absence of authority I should say that a man may abstain from parting with possession of premises although he allows another to use them, and that then he does not commit a breach of this covenant. In the circumstances of this case seeing that the appellant remained in control of each of the companies the facts show that he was really and truly carrying on the business of others on his own premises which remained his from first to last. If so, he never parted with possession of them."

26. Scrutton L. J. referred the following passage in Foa on Landlord and Tenant as a correct statement of law :

"The mere act of letting other persons into possession by the tenant, and permitting them to use the premises for their own purposes, is not, so long as he retains the legal possession himself a breach of the covenant."

27. The Court of Appeal referred to *Jackson v. Simons*.² and *Peebles v. Crosthwaite*.³ These authorities hold that if the lessee retained the legal possession of the premises he did not commit a breach of the covenant against

parting with possession by allowing other people to use the premises or by sharing the possession with another. Peebles's case (supra) was followed by the Court of Appeal. Jackson's case (supra) was approved by them. In this Court we followed these cases recently in *C. D. Chaudhary v. Anand Sarup*,⁴

28. Chaplin's case (1926) 1 KB 198 (supra) was decided 50 years ago. Its correctness has never been questioned or doubted so far as I know. It applies fully to the present case. In this Court it has been followed in a recent decision *Gurdial Singh v. Brij Kishore*,⁵

29. Vishwa Nath is in possession as managing director having a controlling interest in the company. No doubt he has let the company into possession but he has not parted with the possession himself and so long as it is true in fact Vishwa Nath has not contravened the law. He has not gone out of possession. Possession has been retained by him. If he has allowed the company to use the premises while he himself has remained in possession of them as managing director and chief executive of the company I cannot accede to the argument that he has parted with possession. He has not assigned nor has he sublet.

30. So long as the lessee retains the legal possession of the whole of the premises he does not commit a breach of law against parting with the possession by allowing other people to use the same. A tenant cannot be said to part with the possession of any part of the premises unless his agreement with the licensee wholly ousts him from the legal possession of that part. If there is anything in the nature of a right to concurrent user there is no parting with possession : See *Stening v. Abraham*,⁶ and *G. D. Chaudharv v. Anand Sarup*,⁷

31. Clause (b) of the proviso to Section 14 (1) uses three expressions, namely, 'sublet', 'assign' and 'otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord'.

These three expressions deal with different concepts and apply to different circumstances. In subletting there exists the relationship of landlord and tenant as between the tenant and his sub-tenant and all the incidents of letting or tenancy have to be found, namely, the transfer of an interest in the estate, payment of rent and the right to possession as against the tenant in respect of the premises sublet. In assignment the tenant has to divest himself of all the rights that he has as a tenant. The expression "parted with possession" undoubtedly postulates parting with legal possession. Parting with possession

means giving possession to persons other than those to whom possession has been given by lease and "parting with possession" must have been by the tenant. The mere user by other persons is no parting with possession so long as the tenant retains the legal possession himself or in other words, there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. The divestment or abandonment of the right to possession is necessary in order to invoke the clause of parting with possession: See *Hazari Lal v. Gian Ram*.⁸

32. In Wood fall on 'Landlord and Tenant' 27th Edition Volume 1 page 523 it is said :

"A covenant against parting with the possession of the demised premises is not broken, so long as the lessee retains legal possession, by allowing other people to use the premises, either under a license or under a declaration of trust....."

And again:

"a lessee cannot be said to part with the possession of any part of the premises unless his agreement with his licensee wholly ousts him from the legal possession of that part."

33. On the defense raised in the written statement the authorities under the Act thought that there was parting with possession. The tribunal rejected the application for amendment. The tenant's own written statement was held to be the basis of his ejection. It became a trip wire of procedure. This resulted in miscarriage of justice.

34. Under a *bonafide* mistaken belief Vishwa Nath thought that the company was the tenant. This idea which Vishwa Nath entertained cannot be said to be entirely unfounded. He formed the company in 1964. He started paying rent from 1964 in the name of the company. RW. R3 R4 and R1 are all cheques issued by the company to which are appended receipts at the back signed by Chaman Lal khanna acknowledging the receipt of rent from the company. Vishwa Nath, therefore; thought that his landlords have accepted and recognised the company as a tenant. In his evidence, he said:

"When my sole proprietorship was converted into private concern in 1964. it was within the knowledge of Chaman Lal petitioner "

I cannot persuade myself to believe that the landlords never knew that Vishwa Nath had formed a company. Rent was accepted from the company with full knowledge for four years or so.

35. The counsel for the landlords says that though the company had been formed the landlords continued to recognize as before only Vishwa Nath as their tenant. A rent receipt (AW 3/1) issued in the name of Vishwa Nath was proved. It was submitted by Vishwa Nath to the electricity undertaking for getting an electric connection in his own name on December 24, 1966. On this basis it is contended that Vishwa Nath remained the tenant throughout as is shown by the receipt. This receipt was issued at the request of Vishwa Nath because he wanted a connection in his own name. Apart from this receipt no other receipt has been proved on the record. The landlords stated that even after this receipt they have been issuing receipts in the name of Vishwa Nath. They filed counter-foils (A20 to A49). Vishwa Nath in his evidence has denied the issue of separate receipt in his own name after the formation of the company except the one which he submitted to the electricity undertaking. He said in his evidence:

"It is incorrect that the petitioner use to send regular separate rent receipts to me."

I should have imagined that there was no need of issuing separate receipts. The pre-receipted cheque is a receipt in itself. Why should separate receipts be issued ? If that was the landlords' case they should have declined to accept rent by Pre-receipted cheques issued by the company requiring them to acknowledge receipt of rent from the company.

36. As the landlords were accepting rent from the company Vishwa Nath thought that the company had become the tenant. He did not consider that the previous legal relationship between him and the landlords continued. He assumed not entirely without justification that now the company was the tenant. He said so in his written statement. The landlords proved the tenant's letter which he wrote at the inception of the tenancy and the draft rent note which he had signed. The rent controller came to the conclusion that Vishwa Nath was the tenant and that he had created an interest in favor of the company. In appeal the tenant wanted to retrace his steps and say what had been judicially found to be the true state of things. He wanted to plead by way of amendment that the tenant was Vishwa Nath and not the company. This was in consonance with the

findings of the controller. It was not a new case. That was the landlords' own case. It was the holding of the controller as well as the tribunal. The Courts do not punish the litigants for the mistakes they make. Courts of law are not Courts of penal jurisdiction. They exist for the sake of doing justice. If truth was as I think it was that Vishwa Nath was the tenant the tribunal should have allowed the amendment. Landlords own case was this. The tenant accepted that case in his application for amendment so that ejectment order is not passed against him on the ground of his own admission that the company is the tenant.

37. The counsel for the landlords cited an unreported decision in *Shyam Sunder v. Jaswant Rai Berry*,⁹ decided on November 14, 1968, by Mehar Singh, C. J. of Punjab and Haryana High Court. In that case the tenant had sublet the demised shop to a co-operative industrial society limited without the consent of the landlord. The tenant became the salaried officer of the society and the society was in occupation of the shop. The Court came to the conclusion that the tenant had sublet the shop to the society as the books of the society showed that the society was paying rent to the tenant. This was the distinguishing feature of that case. The facts of that case were substantially different from the present one.

38. The counsel then referred to another case : *Milkhi Ram v. Hans Raj*.¹⁰ I refuse to notice this case as it appears only, in short notes. I do not know what were the facts of that case.

39. Lastly it was said that the company filed the application under Section 45 which also showed that the company claimed to be the tenant. This was what Vishwa Nath thought to be the legal position and that is why the company filed the application. This will not alter the legal position found as a fact by the authorities under the Act.

40. A document of some importance is the notice dated December 6, 1968 (A-6) which was issued by Chaman Lal Khanna himself (respondent No. 1) to Vishwa Nath chief executive of M/s. Interads (P.) Ltd. The only complaint in this notice was that the premises had been sublet and possession thereof had been parted in favour of Admanas Studios. No complaint was made that Vishwa Nath had sublet or parted with the possession in favor of the company. This is how in fact the case began. Before the controller the landlords took three grounds of subletting. They said that the premises have been sublet to (1)

Stereo-craft (2) Admanas Studios and (3) Interads (P.) Ltd. They abandoned their case of subletting to Stereo-crafts and Admanas Studios and confined themselves to Interads (P.) Ltd. The authorities under the Act ordered ejection of the tenant on his own written statement in disregard of the true facts which they themselves had found on evidence.

41. To sum up : on the facts proved Vishwa Nath was the tenant. He took the premises on rent in November, 1962 in his own name. In 1964 he formed a company in which he had a controlling interest and of which he is the chief executive and the managing director. He is in possession of the premises. His sons and wife are the other shareholders with him. In my opinion there is no subletting or parting with possession.

42. As regards the application under Section 45 the controller and the tribunal both found that the tenant was not entitled to the use of the bathroom. They found no deprivation. This is a finding of fact which cannot be disturbed in second appeal. I must, therefore, confirm the order of the controller and the tribunal dismissing the application under Section 45 of the Act.

43. For these reasons I would allow the appeal and set aside the order of ejection. The parties will bear their own costs throughout.

Appeal allowed.

Cases Referred.

1. (1926) 1 KB 198).
2. (1923) 1 Ch 373
3. (1897) 13 TLR 198 (CA).
4. 1966 Delhi LT 28.
5. 1970 Delhi LT 592.
6. (1931) 1 Ch D 470
7. 1966 Delhi LT 28.
8. 1972 Ren CR 74 (Delhi).
9. Civil Revision No. 165 of 1967,

10. 1972 RCJ p 14 (SN 16) (Punj).