

(2006) 09 DEL CK 0210

In the Delhi High Court

Case No : CM (M) No. 1384 of 2006, CM No's. 12006 and 12010 of 2006 and
Caveat No. 78 of 2006

Haqikat Rai Nanda

APPELLANT

Vs

Sh. Ram Lal Bansiwal and Others

RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Delhi Rent Control Act, 1958 — Section 14(1)

Citation : (2006) 09 DEL CK 0210

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Rajat Aneja, for the Appellant; S.K. Bhadhuri, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.

Caveat No. 78 of 2006

learned Counsel for the respondent has entered appearance. Thus caveat is discharged.

CM No. 12006/2006

Allowed subject to just exceptions.

CM (M) No. 1384 OF 2006 and CM No. 12010/2006

1. Respondent No. 1/landlord filed a petition against the petitioner/tenant u/s 14(1)(b) of the Delhi Rent Control Act, 1958 (herein-after referred to as the "said Act") on grounds of subletting of the tenanted premises to respondent No. 2 herein. The tenanted premises consists of a shop on the ground floor of premises No. 8736-A, Roshanara Road, Delhi with a monthly rent of Rs 70/-. The Additional Rent Controller in terms of an order dated 24.09.2002 dismissed the petition, but the appeal filed against the same by respondent No. 1 before the

Additional Rent Control Tribunal has been allowed in terms of the impugned order dated 10.08.2006.

2. The petitioner was stated to be carrying on business as a sole proprietor under the name and style of M/s Haqikat Rai Nanda and Company and was alleged to have parted possession to respondent No. 2. The petitioner and respondent No. 2 filed a joint written statement refuting the allegation and claiming that the petitioner is having the physical and legal possession of the tenanted premises. It was stated that since the business of sole proprietorship was not running smoothly, a partnership was formed by the petitioner herein with his son Sh. Anurag Nanda in 70:30 ratio in the loss and profit of the firm. In case of dissolution of the partnership, the sole and absolute tenant was to be the petitioner alone. Thus the petitioner was stated to be a dominant partner in the partnership firm under the name and style of respondent No. 2 herein.

3. The respondent No. 1 entered the witness box to prove his case while the petitioner and one Sh. Jagdish Chandra, a local shop keeper adduced evidence on behalf of the petitioner. In the course of evidence, it transpired that though the allegation was that the respondent No. 2 was a partnership firm, the son of the petitioner Sh. Anurag Nanda was operating the bank account of respondent No. 2 as its sole proprietor. This was however sought to be explained by the petitioner as a matter of business convenience as he was not highly educated. This Explanation was accepted by the Additional Rent Controller.

4. In order to appreciate the rival contention, it is necessary to re-produce the relevant section of the said Act, which is as under:

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 favor of the landlord 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, 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;

5. The conspectus of the judgments, which have been discussed in the impugned order, shows that subletting means transfer of exclusive right to enjoy the property in favor of a third person in lieu of payment of some compensation or rent coupled with parting with legal possession. It is, however, not easy to always establish this aspect of legal possession since the landlord is normally kept away from such an arrangement. The judicial pronouncements are to the effect that once a third person is found in the premises, it is for the tenant to

explain the status of such a third person being a stranger. In a recent judgment of the Apex Court in *Joginder Singh v. Amar Kaur* 2005 Rajdhani Law Reporter 84 it has been held that the proof of rent charged is not an essential condition as the scene is enacted in secrecy and clandestinely and landlord has no direct evidence of same. Thus it has been held that the landlord is not required to prove it by affirmative evidence and it is for the court to draw its conclusions from inferences. The said judgment has referred to the earlier judgment of the Apex Court in *M/s. Bharat Sales Ltd. Vs. Life Insurance Corporation of India*, to the same effect.

6. In the present case, the tenancy in favor of the petitioner is not disputed and if respondent No. 2 is really a partnership between the petitioner and his son where the petitioner is holding exclusive physical and legal possession then certainly no case of subletting would be made out. No doubt Sh. Anurag Nanda, the other alleged partner, is the son of the petitioner but that relationship itself would not imply that there can be no subletting. Learned Single Judge of this Court in *Kulwant Kaur etc. Vs. S.P. Bawa*, has held that even where there was a close relationship between the tenant and the alleged sub tenant, who was the son-in-law of the tenant, the exclusive possession of the son-in-law was held to be tantamount to subletting.

7. learned Counsel for the petitioner referred to the judgment of the learned Single Judge of this Court in *Chander Kishore Sharma and Another Vs. Kampa Wati*, to emphasize that the lifestyle prevalent in our country of the father and his progeny living together as members of a family, earning together and spending their separate earnings for each other and the family is a material fact, though the mere relationship of father and son could not be a presumption in that behalf. learned Counsel also referred to the judgment of the learned Single Judge of Punjab and Haryana High Court in *Om Parkash v. Kailash Chander* 2000 (1) RLR 89 to contend that the findings arrived at before the Additional Rent Controller could not be categorized as absurd for the Tribunal to interfere with the same.

8. In my considered view it is in view of the aforesaid legal position that the impugned judgment has to be scrutinized as also the testimony considered by the courts below. However, such scrutiny must be within the parameters of Article 227 of the Constitution of India and it is only in case of a patent error or erroneous exercise of jurisdiction would an interference be called for.

9. The petitioner in his testimony denied maintaining any records or bank accounts of the firm, but later on admitted that there was account of the respondent No. 2-firm which was operated by his son Sh. Anurag Nanda as its sole proprietor. The only Explanation given for this is that the same was done on account of the fact that petitioner is not very well educated. However, learned Counsel for the petitioner, on being asked, states that the petitioner is a higher secondary pass. The petitioner is also an income tax assessed, but failed to produce any returns to substantiate how the income from the business of the

firm was being assessed. In my considered view the appellate court rightly held that the petitioner withheld the best evidence from the court; neither was any income tax returns of the petitioner produced nor of the respondent No. 2-firm. The petitioner is not even certain of the status of respondent No. 2 as in his testimony there is a flip-flop-flip. The petitioner stated that respondent No. 2 was his concern and that he was the sole proprietor. At the same time, he pleaded that the respondent No. 2 is a firm of two partners. A case was also sought to be made out that M/s Haqikat Rai Nanda and respondent No. 2 are interchangeable and used for business convenience. All this was said along with the testimony which came on record that the son of the petitioner was operating the account of respondent No. 2 as its sole proprietor. Such testimony would hardly evoke any confidence.

10. There is undoubtedly presence of a stranger albeit the son of the petitioner. The business is being run by the son of the petitioner and contradictory statements have been made in respect of the status of that stranger.

11. In my considered view there can be no doubt that once the presence of the stranger is there, onus shifts on the tenant to explain the status of that stranger. In *Kailash Kumar and Others Vs. R.L. Kapur*, it has been held that the question of subletting or parting with possession would depend on the peculiar facts of each case and the basic principle enunciated even by the Supreme Court is that once it is proved that a particular portion of the demised premises has been given in exclusive possession to a stranger, then the onus shifts on the tenant to show in what capacity the stranger is in exclusive possession of that portion and on the failure of the tenant to explain presence of such person in exclusive possession of that said portion of the demised premises, presumption would arise that the portion was sublet or parted with possession in favor of the stranger by the tenant. The aforesaid judgment has been discussed in a recent judgment of this Court in *R.C.S.A No. 390 of 1980 Sh. Kishan Chand v. Sh. Sri Chand* decided on 18.07.2006.

12. The impugned judgment discussed these aspects in detail and has rightly come to the conclusion that a case of subletting and parting with possession has been made out in favor of the respondent No. 2 which is apparently a sole proprietorship concern of the son of the petitioner.

13. In view of the aforesaid, I find no patent error or erroneous exercise of jurisdiction by the trial court so as to call for interference by this Court under Article 227 of the Constitution of India.

14. Dismissed.