

(2005) 04 DEL CK 0103
In the Delhi High Court
Case No : CM (M) 293 of 2005

Mrs. Asha Rohtagi and Others

APPELLANT

Vs

Erstwhile New Bank of India

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 — Section 9, 9
Companies Act, 1956 — Section 391, 394, 396
Constitution of India, 1950 — Article 226, 227
Delhi Rent Control Act, 1958 — Section 14(1), 15(4), 5, 7
ESSO (Acquisition of Undertakings in India) Act, 1974 — Section 5, 5(1), 7
Foreign Exchange Regulation Act, 1973 — Section 29

Citation : (2005) 119 DLT 538 : (2005) 82 DRJ 12

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : Sandeep Sethi and P.S. Bindra, for the Appellant; Dhruv Mehta, Y.P. Chandana and Hrshvardhan Jha, for the Respondent

Final Decision : Dismissed

Judgement

O.P. Dwivedi, J.—This petition under Article 227 of the Constitution of India is directed against order dated 15.2.2005 passed by Shri S.M. Chopra, Additional Rent Control Tribunal whereby tenant's appeal was allowed and the eviction order u/s 14(1)(b) of Delhi Rent Control Act (for short the " Act") passed by learned ARC vide order dated 24.11.2004 in eviction petition No. E-288/2004 was set aside.

2. Briefly narrated, facts leading to this petition are that on 3.10.96 the petitioner herein filed an eviction petition u/s 14(1)(a)(b) of the Act against New Bank of India through General Manager and Punjab National Bank seeking their eviction from premises K-16, Chaudhary Building, Connaught Circus, New Delhi on the ground of non-payment of rent and sub-letting contemplated under clause (a) and (b) of proviso to sub section (1) of section 14 of the Act. It was alleged

in the eviction petition that the demised premises were let out to New Bank of India for commercial purposes and the respondent has failed to pay arrears of rent from October 1993 till date despite service of demand notice dated 10.10.94. It was further stated that respondent No. 1 has sublet, assigned or parted with the possession of the tenanted premises to the respondent No.2 through respondent No.3 without obtaining the written consent of the petitioner. The eviction petition was contested by respondent No. 2 and 3 who are Branch Manager and General Manager of the PNB. There was no appearance on behalf of respondent No.1. Respondent No. 2 and 3 in their written statement took the stand that respondent No.1 is no more a legal entity, the same having been amalgamated in Punjab National Bank under the Govt. of India notification dated 4.9.93 issued by Government of India u/s 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 under clause 4(2) whereof tenancy rights have been conferred on the Punjab National Bank. It was thus alleged that there has been no subletting, assignment or parting with the possession. Rather Punjab National Bank is a statutory successor of New Bank of India. The allegation regarding arrears of rent and service of demand notice was also denied. After considering the evidence led by the parties and the case laws cited at the Bar, learned ARC vide order dated 24.11.2004 held that the demand notice dated 10.10.94 was duly served and the respondents failed to clear the arrear of rent within two months from the service of notice and as such there was default in payment of rent. Learned ARC further came to the conclusion that there is no relationship of landlord and tenant between the petitioner and respondent/ PNB who are sub leases or assignee and the original tenant NBI ceased to exist. Therefore, petition u/s 14(1)(a) of the Act was dismissed. As regards grounds contemplated u/s 14(1)(b) of the Act, learned ARC came to the conclusion that the merger/ amalgamation of NBI with PNB vide notification dated 4.9.93 issued u/s 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 amounts to subletting, assignment or parting with possession of the demised premises. In coming to this conclusion, learned ARC relied upon various authorities namely *Singer India Ltd. Vs. Chander Mohan Chadha and Others*, *Parasram Harnand Rao Vs. Shanti Parsad Narinder Kumar Jain and Another*, ; 1988 (2) RLR 449 titled as *M/s Cox and Kings Agencies Ltd and Anr. v. Smt. Chander Malhotra*; 1986 (2) All I R C J 413 titled as *General Radio and Appliances Co. Ltd. and Ors. v. M.A. Khader* by LRs. Feeling aggrieved by the eviction order, the respondent preferred appeal before learned Tribunal being RCA No. 609/2004 Learned Tribunal set aside the order being of the view that in this case tenancy rights have been conferred on the PNB by the statute because the scheme promulgated by Govt. of India vide notification dated 4.9.93 issued u/s 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 is legislative in character whereas the merger of the two companies in other cases namely *Paras Ram Harnand Rao v. Shanti Prasad Narinder Kumar Jain*; *Cox and Kings Agencies Ltd and Anr. v. Smt. Chander Malhotra*; *General Radio and Appliances Co. Ltd. and Ors. v. M.A. Khader* by LRs. was not legislative but under the provisions of companies Act. According to the learned Tribunal

conferring of tenancy rights on PNB by a statute as successor to NBI does not amount to sub letting, assignment or parting with possession within the meaning of section 14(1)(b) of the Act. Accordingly, learned Tribunal set aside the eviction order. Aggrieved thereby, the landlord preferred this petition under Article 227 of the Constitution of India.

3. I have heard learned counsel for the parties and perused the record.

4. In General Radio and Appliances Co. Ltd. and Others Vs. M.A. Khader (Dead) by Lrs., , the facts were that demised premises were let out by the respondent to M/s General Radio and Appliances Co. Ltd., first appellant on the basis of rent agreement dated 12.1.59. Clause 4 of the said agreement prohibits sub letting of the demised premises without written consent of the landlord. The landlord filed an eviction petition on the ground of sub letting, assignment or parting with the possession to appellant No.2. The appellant denied the allegation . Their case was that first appellant was amalgamated with the second appellant company by operation of law under the amalgamation order of High Court of Bombay under sections 391 and 394 of the Companies Act. It was contended on behalf of tenant that judgment of the High Court was judgment in rem and it was binding on the landlord even through he was not party to the proceedings. It was further contended that all property, rights and powers of every description including tenancy right, held by M/s General Radio and Appliances Co. Ltd., had been blended with M/s National Ekco Radio and Engineering Co. Ltd., and as such there was no sub letting, assignment or parting with possession. The trial Court held in favor of the landlord and passed eviction order. In appeal, Judge, City Small Causes Court, Hyderabad held that though appellant No. 1 company voluntarily sponsored the scheme of amalgamation, the ultimate power to sanction or not to sanction it rested with the High Court. It was, Therefore, held that the transfer of assets and liabilities including the leasehold interest of appellant 1 company to appellant 2 company took place by virtue of the order of the Court. It was held that such a transfer of assets being an involuntary act, did not amount to assignment of lease by appellant 1 company to appellant 2 company and as such it did not violate the terms of the lease. Against this judgment and order, a revision was filed in the High Court of Andhra Pradesh, which was allowed and it was held that amalgamation of appellant 1 company with appellant 2 company on the basis of application made by the appellant 1 company by submitting a scheme which was duly approved and sanctioned by the High Court of Bombay was not an involuntary act and this order of amalgamation resulted in transfer of tenancy rights without any notice or opportunity to the landlord. It Therefore amounted to sub letting, assignment or parting with possession u/s 10 (ii) (a) of the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960. The tenant preferred an appeal to the Supreme Court. Supreme Court observed that the order of amalgamation is based on the petition made by the appellant No.1 to the High Court of Bombay and Therefore it cannot be said to be an involuntary transfer of tenancy rights effected by the order of the Court. Since the scheme of amalgamation was

proposed by the appellant No.1 and confirmed by the High Court it was held that it cannot be said to be an involuntary transfer of tenancy rights by appellant No.1 and Therefore the eviction order passed by the High Court was upheld. The appeal was dismissed. In this very judgment Supreme Court also took the note of earlier decision in the case of Parasram Harnand Rao v. Shanti Parsad Narinder Kumar Jain and Anr.. In that case appellant/ landlord executed a lease dated 1.4.42 in favor of respondent No. 2 Bank for three years . Subsequently Bombay High Court ordered the bank to be wound up and in the winding up proceedings, the said High Court appointed an Official Liquidator who on February 16, 1961 sold the tenancy rights to respondent No.1. This sale was confirmed by the High Court on the same date and as a result thereof respondent No. 1 took possession of the premises on February 24, 1961. The landlord/ appellant filed an application under the Delhi Rent Control Act for eviction of Laxmi Bank. An order for eviction was passed in favor of the landlord/ appellant. Respondent No. 1 filed a suit for declaration that he has become a tenant under of the landlord/ appellant. This suit was dismissed for non-prosecution and the appeal against that order also failed. Thereafter, respondent No.1 filed an application for recalling the warrant of possession issued by the Court in pursuance of the eviction order. Matter ultimately went to the Supreme Court and it was observed by the Supreme Court that Official Liquidator stepped into the shoes of tenant Laxmi Bank and Therefore selling of tenancy right by Official Liquidator was an Act done on behalf of the Bank which amounted to sub letting, assignment or parting with possession. In the case of Cox and Kings Ltd. and Another Vs. Chander Malhotra (Smt), , the facts were that demises premises were let out to the Cox and Kings Ltd., a company incorporated in the United Kingdom Companies Act. The landlady filed an eviction petition on the ground of sub letting and an eviction order was passed by the learned ARC . It was upheld by the High Court. Tenant approached the Supreme Court. The question which arose for consideration was whether involuntary transfer of lease rights from the foreign company to the Indian Company amounted to sub letting within the meaning of section 14(1)(b) of the Act. It was found on facts that the foreign company namely Cox and Kings Ltd., incorporated under the companies act of the United Kingdom was required u/s 29 of the FERA Act 1973 to obtain written permission from the RBI to carry on business. The said permission was sought for but was refused. As a consequence Indian Company was incorporated which carried on business from the same premises. It was contended that since the transfer of lease interest from the foreign company to Indian company was under compulsion, it is involuntary one and thus it is not a case of sub letting within the meaning of section 14(1)(b) of the Act. Supreme Court negated/ repelled this argument. It was observed that the Indian Company was incorporated on refusal by RBI of permission to the foreign company to carry on business. Thus the Indian Company was incorporated under the Indian Companies Act 1956 and was doing business under FERA with the permission of the RBI. It was observed that there was no compulsion that premises held by the foreign company should be continued or given to the Indian Company, The assignment of lease right to

Indian Company was under an agreement between two companies which would thus be a voluntary transfer. In this judgment the apex court took the note of case of General Radio (Supra).

5. It may be noticed that in all these cases the tenant, some how was found to be instrumental in bringing about the amalgamation and transfer of tenancy rights. In the present case, transfer of tenancy rights from NBI to PNB has been effected by clause 4 sub clause 2 of notification dated 4.9.93 issued u/s 9 of the Banking Companies (Acquisition and Transfer Undertaking) 1980 which reads as under:

" where any property is held by the transferor bank under any lease the transferee bank shall on any from the date of commencement of the scheme be deemed to have become the lessee in respect of such property as if the lease in relation to such property had been granted to the transferee bank and thereupon all the rights under such lease shall be deemed to have been transferred to, and vested in, the transferee bank:

Provided that on the expiry of the term of any lease referred to in this sub-clause such lease shall, if so desired by the transferee bank, be renewed on the same terms and conditions on which the lease was held by the transferor bank immediately before the date of commencement of this scheme."

6. This scheme is legislature in character. It has been so held by the Supreme Court in the case of New Bank of India Employees Union and another Vs. Union of India and Others, . The situation in the instant case is analogous to the one in the case of Hindustan Petroleum Corporation Ltd. and Another Vs. Shyam Co-operative Housing Society and Others, . In that case the Esso Eastern Inc., a American company was carrying on business of distributing and marketing petroleum products manufactured by Esso Standard Refining Company of India Ltd, and for that purpose had established various places of business in India. The premises in question was taken on rent by Esso Eastern Inc., in Greater Bombay on license basis vide agreement dated 26.11.68. The said flat formed part of the Shyam Co-operative Housing Society. License was renewed from time to time up to 30.9.73. In the meanwhile, the State legislature of Maharashtra enacted Act 17 of 1973. which introduced section 15A in the Bombay Rent Act conferring tenancy right on all those licenses whose license were subsisting on the appointed day i.e 1.2.73. Undoubtedly, the Esso Standard Inc. was in occupation of the flat in question as on 1.2.73 as licensee and thus acquired the status of a tenant u/s 15A of the Act.

7. Then on 13.3.74 the foreign company was taken over by the Central Government under the provisions of Esso (Acquisition of Undertakings in India) Act, 1974 and u/s 5 of the Act the Central Government became tenant of the said flat. Landlady filed an application u/s 91(1) of the Maharashtra Co-operative Societies Act before the 3rd Co-operative Court, Bombay for eviction of the HPCL which was the Government Company incorporated as successor to the company.

The Court of the first instance dismissed the claim of the landlady, holding that foreign company was in occupation of the flat in dispute under subsisting license and thus gets the protection available to the licensee u/s 15A of the Bombay Rent Act and that protection cannot be taken away u/s 91(1) of the Maharashtra Co-operative Societies Act. The society went in appeal to the Maharashtra State Co-operative Appellate Court which allowed the appeal and decreed the claim of the society requiring petitioner 1 HCL to vacate the flat being of the view that license was personal in nature and Therefore stood extinguished on the take over of the foreign company by the Central Government. The petitioner moved High Court u/s 226 of the Constitution of India for quashing of the order of the appellate Court. This petition was transferred to the Supreme Court. Supreme Court took note of the definition of the licensee as given in section 4(a) of the Bombay Rent Act and also Section 15(A) of the said Act and held that foreign company acquires status of tenant u/s 15(A) of Bombay Rent Act as its license subsisted on 01.2.73. Therefore, by virtue of section 5(1) of Esso (Acquisition of Undertakings in India) Act, 1974, the tenancy rights of flat in question vested in the central government which ultimately vested the same in the HPCL. Under said section central government issued notification dated 14.3.73 directing that right, title or interest under the law of the foreign company in relation to is undertaking in India shall vest in Esso Standard Refining Company India Ltd with effect from 15.3.74. On 12.7.74 the Company Law Board in exercise of powers conferred u/s 396 of the Companies Act made an amalgamation order. Clause 3 thereof provides that from the appointed day the undertaking Blue India Ltd. Shall stand transferred to and vested in Esso Standard Refining Company India Ltd., and as a result of this amalgamation, the name of joint venture was changed HPCL the petitioner. It is thus clear that petitioner HPCL, a government company is successor in interest of the foreign company which acquired the status of the deemed tenant under the Act which right devolved on the central government u/s 5(1) of the Esso (Acquisition of Undertakings in India) Act) 1974 and ultimately on the petitioner. The eviction order passed by the appellate court was set aside. This case was considered by the three judge bench of the Supreme Court in the case of Singer India Ltd. Vs. Chander Mohan Chadha and Others, . where in the facts were that the landlord let out the demised premises to M/s Singer Sewing Machine Company, incorporated under the laws of the State of New Jersey, USA (hereinafter referred to as " the American Company). In the year 1982, the landlord filed an eviction petition on the ground, inter alia, that the American Company , without obtaining any written consent from the landlord, had parted with the possession of the premises in dispute in favor of Indian Sewing Machine Company Limited, incorporated under the Indian Companies Act. Eviction was sought u/s 14(1)(b) of the Act. The eviction petition was contested by the appellant on the ground, inter alia, that a direction was issued by the Reserve Bank to the American Company to reduce its share capital to 40 per cent in order to carry on business in India in view of section 29 of FERA. Accordingly, company petition bearing No. 66 of 1981 was filed by the Indian Company before the Bombay High Court under sections 391 and 394 of

the Companies Act which was allowed on 31.12.1981, and a scheme of amalgamation was sanctioned whereby the undertaking in India of the American company was amalgamated with the Indian Company. Under the scheme of amalgamation the whole of the business, property, undertaking, assets, including leases, rights of tenancy, occupancy, etc. stood transferred to and vested in Indian Sewing Machine Company. It was thus contended on behalf of tenant that Indian Company in the legal substitute of the American Company and in substance there is no case of sub-tenancy. The Additional Rent Controller, Delhi dismissed the eviction petition. But in appeal learned Tribunal set aside the judgment of learned ARC and passed the eviction order. The second appeal preferred by the tenant was also dismissed by the High Court. The tenant approached the Supreme Court. The Supreme Court dismissed the appeal and maintained the order of the Tribunal and High Court. The apex Court considered its earlier decision *M/s Parasram Harnand Rao (Supra)*; *M/s General Radio and Appliances Co. Ltd. and Ors. and Cox and Kings Ltd. And Anr. v. Chander Malhotra (Smt.)* and in para 11 of the judgment, the Supreme Court has observed as under:-

"11. These cases clearly hold that even if there is an order of a court sanctioning the Scheme of Amalgamation under sections 391 and 394 of the Companies Act where under the leases, rights of tenancy or occupancy of the transferor company get transformed and become the property of the transferee company, it would make no difference insofar as the applicability of section 14(1)(b) is concerned, as the Act does not make any exception in favor of a lessee who may have adopted such a course of action in order to secure compliance with law.

8. Commenting on the case of HPCL (supra), the Supreme Court in para 12 has observed as under: -

".....The position in *Hindustan Petroleum Corpn. Ltd. v. Shyam Coop. Housing Society* cited by learned counsel for the appellant has hardly any application here. It is not a case of amalgamation of two companies but acquisition of undertaking of a foreign company by the Central Government. Section 5 of the Esso (Acquisition of Undertakings in India) Act, 1974 provided that where any property is held in India by Esso under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to and vested in the Central Government. In view of this statutory provision, the Central Government, by operation of law became the tenant of all such properties which were being held by Esso under any lease or any right of tenancy. There is no statutory enactment here which may give any kind of protection to the appellant."

9. In the present case the tenancy rights have been conferred on the PNB by statute namely clause 4(2) of the notification dated 4.9.1993 promulgated by

Central Government u/s 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act 1980 which scheme is legislative in character. It does not amount to merger of two companies under the provisions of Companies Act. Therefore the ratio of *M/s Parasram Harnand Rao (Supra)*; *M/s General Radio and Appliances Co. Ltd. and Ors. and Cox and Kings Ltd. and Anr. v. Chander Malhotra (Smt.)* will not apply to the facts of the present case. One more decision which must be taken note of is a three judges bench decision in the case of *G. Sridharamurti Vs. Hindustan Petroleum Corporation Ltd.* and another, . The facts of the case were that an open space, was in the possession of Esso company pursuant to a lease dated 17.7.1969 granted by the appellant. Esso company was merged into respondent corporation on 14.3.197. The appellant filed eviction petition u/s 21(1)(f) of the Karnataka Rent Control on the ground of sub-letting, assignment parting with possession . The courts below dismissed the application on the ground that the Esso company had not sub-set the demised premises but by virtue of statutory provisions under the Esso Act, the respondent-corporation stood transposed as a tenant which is an involuntary act pursuant to section 7 of the Act and notwithstanding the specific embargo created u/s 21(1)(f) of the Act, it cannot be construed to be a case of sub-letting. The High Court also reached the same conclusion. In appeal Supreme Court upheld the order of the High Court and took note of section 5(1) of the Esso Act and observed that pre-existing tenancy rights held by Esso company with the appellant initially stood transferred and vested in the Central Government, and thereafter, by operation of section 7 of the Esso Act; the said rights in turn stood transposed and vested in the government company as if the government company initially became the tenant of the appellant- landlord. On the Esso Act coming into force, by operation of sections 5 and 7 of that Act, the respondent corporation became statutory tenant and thereby it cannot be construed to be an assignment of tenancy rights, which the appellant landlord had entered into with the Esso company. The ratio of *Parasram Harnand Rao (supra)* was distinguished with the observation that in that case the Official Liquidator had sold the tenancy rights in favor of the respondents and though the same was made in favor of the respondent through court, it amounted to transfer of an interest by the tenant.

10. It will thus be seen that consistent view of the Supreme court has been that take over of a company by the Central Government under a statute stands on a different footing then merger of two companies under the provisions of companies Act. Vesting of tenancy rights in the Central Government or a Government company by virtue of the provisions of the statute was upheld by the apex court in the case of *HPCL case (supra)* and this decision was cited with approval in the case of *Singer India Ltd. (Supra)*. Whereas in cases of later category i.e transfer of tenancy rights under an scheme of amalgamation under provisions of company Act has been consistently held to be sub letting, assignment or parting with possession, in cases falling in the former category viz. where tenancy rights of one company are taken over by the Government and

are conferred on some other government company under a statute have never been held to tantamount to sub letting, assignment or parting with possession. The case in hand falls in this category. As already noticed leasehold rights on PNB have been conferred by clause 4 (2) of the notification dated 4.9.93 issued u/s 9 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980 which scheme is legislative in character. It cannot fall in the category of any voluntary or involuntary transfer of interest by the tenant. Therefore, it does not amount to sub-letting assignment or parting with possession of tenancy rights by the tenant. The impugned order passed by the learned Tribunal Therefore does not call for any interference.

11. The petitioner had sought eviction on the ground of non payment of rent also and an order dated 29.9.97 u/s 15(4) of the Act was passed because there was dispute regarding existence of relationship of landlord and tenant as also about the arrears due. Since ARC came to the conclusion that there is no relationship of landlord and tenant between petitioner and PNB, the eviction petition filed u/s 14(1)(a) of the Act was dismissed as NBI had ceased to exists, having been amalgamate with PNB. Now, in view of finding of the Tribunal that relationship of landlord and tenant exists between the petitioner and the PNB, as affirmed by this Court the question of ground of non payment of rent will have to be examined afresh. This aspect seems to have escaped the attention of the learned Tribunal. Learned ARC will now examine whether the order dated 29.9.97 passed u/s 15(4) of the Act has been duly complied with or not and its effect in either case.

12. In the result eviction petition filed by the petitioner on the ground of sub letting, assignment or parting with possession contemplated u/s 14(1)(b) of the Act, will stand dismissed. As regards the ground for non payment of rent, whole issue will have to be re-examined by the learned ARC afresh in view of my finding that the relationship of landlord and tenant exists between the petitioner and PNB and pass appropriate orders in accordance with law.

13. Parties shall appear before learned ARC on 11th May 2005.