(2006) 01 DEL CK 0109

In the Delhi High Court

Case No : LPA 756 of 2003

Mrs. Prem Lata Bhatia APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Companies Act, 1913 — Section 575
Companies Act, 1956 — Section 575

Citation : (2006) 134 CompCas 92 : (2006) 128 DLT 24 : (2006) 87 DRJ 688 : (2006) 143 PLR 1 : (2006) 3 RCR(Civil) 59 : (2006) 2 RCR(Rent) 8 : (2006) 71 SCL 142

Hon'ble Judges : Markandeya Katju, C.J;Madan B. Lokur, J

Bench : Division Bench

Advocate : Madan Gera, Jyoti, Mendiratta and Faisal, for the Appellant; Suresh Kait, for the Respondent

Final Decision : Allowed

Judgement

Markandeya Katju, C.J.—This Appeal has been filed against the judgment of the learned Single Judge dated 14.10.2003 by which the Writ Petition was dismissed.

2. Heard learned counsels for the parties and perused the record.

3. The facts of the case are that the Petitioner Mrs. Prem Lata Bhatia was allotted in perpetuity Shop No. 10, Asia House, Kasturba Gandhi Marg, New Delhi, by the Union of India in 1975 at a monthly rent of Rs. 901/-. Consequently, the petitioner came into exclusive possession of the shop. Clause 8 of the License Deed states as under:-

The Licensee (s) shall not permit the said premises or any part thereof being used by any other person for any purpose whatsoever without the previous consent in writing of the Government and in default thereof shall be liable for ejectment. The Licensee (s) shall not introduce any partner nor shall he/they transfer possession of the premises or part thereof or otherwise carry on the business in the premises with any other person or assign, transfer, change, otherwise alienate his interest in the premises.

4. The Petitioner incorporated a company called Romika World Travel Pvt. Ltd. in November 1976 wherein the petitioner along with her husband was holding more than 97.93% shares in the Company.

5. It is alleged that the shop continued to be managed by the petitioner through the aforesaid company which was running its business from the shop in question right from 1976 onwards to the knowledge of every one including the respondent with no objection. There had been no change on the shareholding of the petitioner and the petitioner continued to hold more than 97% shares with her husband. The petitioner continued to carry on her business of Travel in the said shop.

6. After a lapse of about 7 years, the respondent by letter dated 22.08.1983 called upon the petitioner to show the documents relating to the business being run in the premises. It was alleged that on inspection it was found that Romika World Travel Pvt. Ltd. was functioning in the premises. A true copy of the said letter is Annexure P-I to the writ petition.

7. The petitioner sent her reply and thereafter there was a complete silence by the respondent and the petitioner consequently believed that the respondents were satisfied that the premises were not being used by any other person other than the petitioner. At any event, it is stated that the respondent acquiesced in the petitioner''s Company carrying on business in the said shop.

8. After 1983 again the petitioner received no communication from the respondent till 1987. The petitioner received a communication dated 02.09.1987 informing her that there had been violation of the terms & conditions of the tenancy. The petitioner was not given any opportunity of hearing and the petitioner was informed that the tenancy would stand determined from October 1987 vide Annexure P-II.

9. The petitioner gave a reply to this communication, stating that she was not given any opportunity for hearing vide Annexure P-III. Thereafter, the respondent initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, against the petitioner. The Petitioner filed her objections to the same stating that she had not violated any terms and was not given any show-cause notice.

10. During these proceedings before the Estate Officer, the petitioner received another communication dated 21.04.1989 calling upon the petitioner to submit documents relating to the business. True copy of the said communication/letter is Annexure P-IV and reply is Annexure P-V.

11. However, the Estate Officer by his Eviction Order on 16.10.1990 ordered eviction of the petitioner. The relevant part of the said order states that the shop which was allotted to the petitioner was being run by Romika World Travel Pvt.

Ltd. without any authority. This is clearly a case of subletting as Mrs. Prem Lata Bhatia is doing business with another partner and hence she is an unauthorized occupant of the shop.

12. Aggrieved the petitioner filed an Appeal which was dismissed by the learned A.D.J. vide order dated 22.7.1992.

13. The Appellate authority has relied on Clause 8 of the License Deed which has already been quoted above. The learned ADJ observed that as a company it has got its separate legal entity, distinct and different from the petitioner and hence he dismissed the appeal. Aggrieved the petitioner filed the Writ Petition which has been dismissed by the learned Single Judge and hence this Writ Appeal.

14. A counter-affidavit was filed by the respondent and we have perused the same, wherein it has been stated that a surprise inspection of the premises was carried out by a team of two Assistant Directors of Estate on 19.2.1983 and it was found that M/s Romika World Travels Pvt. Ltd. were working in the premises.

15. A perusal of the counter-affidavit shows that the allegation in paragraph 3(g) in the Writ Petition that in November 1976, a company called Romika World Travel Pvt. Ltd. was incorporated in which the petitioner and her husband held more than 97.93% shares and that the petitioner runs the business from the shop has not been denied. The short question in this case is whether Clause 8 of the License Deed was violated by the petitioner/appellant or not.

16. It may be noted that the petitioner had not introduced any partner. She has not claimed that she has forwarded a partnership firm along with someone else to run the shop. She claimed that she has founded an incorporated company called Romika World Travel Pvt. Ltd., in which she along with her husband hold more than 97.93% shares. A company is different from a partnership and hence it is not a case of inducting a partner in the premises.

17. It is no doubt, true that a company is a distinct legal entity separate from its shareholders. However, the principle of piercing the veil of corporate personality'' is now a well-settled principle of Company law and in our opinion, this will apply in the present case.

18. This principle has been applied by the Supreme Court in Singer India Ltd. Vs. Chander Mohan Chadha and Others, ; Kapila Hingorani Vs. State of Bihar, ; Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, ; Subhra Mukherjee and Another Vs. Bharat Coking Coal Ltd. and Others, ; Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta, ; Delhi Development Authority Vs. Skiper Construction Company (P) Ltd. and another, ; and New Horizons Limited and Another Vs. Union of India (UOI) and Others, .

19. In Kapila Hingorani v. State of Bihar (supra) the Supreme Court observed (vide para 25):-

The principle behind the doctrine is a changing concept and it is expanding its horizon as was held in State of U.P. and Others Vs. Renusagar Power Co. and Others,

20. Applying the principle of piercing the veil of corporate personality'', in our opinion, Clause 8 of the License Deed has not been violated.

21. In our opinion, if an individual takes a premises on rent and then converts his sole proprietorship concern into a private limited company in which he has controlling interest he cannot be evicted from the premises, as the same person remains in possession though technically the company now runs the business. In such cases, in our opinion the persons does not cease to be in possession. He has not handed over the possession to anyone else, he has only changed the form of his business, and this is usually done when a business expands.

22. The learned Single Judge in the impugned judgment has observed vide para 12:-

12. The question Therefore is can the corporate veil be lifted in the present case to reveal the identity of the person or persons behind it? In all cases where courts have permitted the lifting of the corporate veil, it has been so done to reveal the ''true'' identity of the company and to expose those persons who sought to use the clock of corporate personality to hide and shun such exposure with a view to ''defeat public convenience, justify wrong, protect fraud or defend crime''. I have not come across any case where a shareholder himself seeks to remove the veil and say to the court - ''look, it is me, the company is only a observed. But, this is what the petitioner wants this court to do to enable her to wriggle out of her liability under Clause 8. As observed by the Supreme Court in Tata Engineering and Locomotive Co. Ltd. (supra), it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Yet, the common thread running through cases where lifting of the veil has been permitted is that such lifting has always been sought by persons outside the company and it has never proceeded from those within and who hide behind the veil. Essentially, lifting of the veil has been permitted to prevent persons from taking refuge behind the veil and thereby take advantage of the separate juristic identity of the company. The doctrine has Therefore been employed by the courts to prevent persons from taking advantage of their wrongs using the corporate entity as a shield. It cannot, Therefore, be employed for permitting the petitioner to take advantage of her wrong in not taking written consent of the Government before permitting the said company to use the said shop. If the corporate veil cannot be lifted the inevitable conclusion is that the petitioner and the said company are separate and distinct persons. Consequently, user by the said company of the said shop in the facts narrated above would be in violation of the terms and conditions of the License and, in particular, of Clause 8 thereof. Clearly, then, the cancellation of the license would be in order. The ''domino effect'' would be that the order of the estate officer and ultimately the judgment of the Additional District Judge upholding the eviction of the petitioner

would all be unassailable.

23. With respect we cannot share the view taken by the learned Single Judge. It is well known that it very often happens in the business world that when a person starts a business as a sole proprietor he later on converts it into a partnership firm along with some family member, and thereafter when the business further expands it is incorporated as a private limited company and thereafter on further expansion, it may also be made a public limited company. This is a very common feature in the business world.

24. In such cases, the doctrine of piercing the veil of corporate personality should be utilized. For instance, when a partnership firm converts itself into a private limited company with the partners in the firm becoming the shareholders and directors in the company it will not be a case of transfer of the property of the firm to the company, otherwise a huge amount of stamp paper and registration charges for the transfer of the property of the firm to that of the company will have to be paid, capital gains tax will have to be paid etc. In fact, it is well settled there is no transfer in such cases because in substance the owner remains the same though technically it becomes a different legal entity.

25. In such cases, the principle of piercing the veil of corporate personality should be utilized not to prevent somebody from doing any wrong, but merely in order to recognize the reality of the situation.

26. The above principle has been incorporated in Section 575 of the Companies Act, 1956 which corresponds to Section 263 of the Companies Act, 1913. This provision has been explained by the Andhra Pradesh High Court vide Vali Pattabhirama Rao and Another Vs. Sri Ramanuja Ginning and Rice Factory P. Ltd. and Others,

27. In the present case, there is no dispute that the petitioner along with her husband has incorporated a company and the shop is being run by that company. In these circumstances, applying the veil of piercing corporate personality'', in our opinion, Clause 8 has not been violated. The Appeal is allowed and the impugned judgment of the learned Single Judge as well as the judgment of the learned ADJ and Estate Officer are set aside. The prayers in the Writ Petition are allowed and the Respondents are directed not to dispossess the petitioner from the premises in question.