

(2015) 03 RAJ CK 0044
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8605/2014

Nand Kishore

APPELLANT

Vs

Manohar Lal and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 03 RAJ CK 0044

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Arpit Bhoot, for the Appellant; J. Gehlot, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Bhansali, J.—An application has been filed by the applicants-Manish and Nitin, both sons of Nand Kishore under Article 226 of the Constitution of India seeking substitution as petitioners in the present writ petition.

2. The present writ petition was filed by Nand Kishore S/o. Late Shri Binj Raj aggrieved against the judgments passed by the Rent Tribunal, Jodhpur Metropolitan and the Appellate Rent Tribunal. The writ petition was admitted on 25.11.2014 and an interim order was passed on certain conditions.

3. It is, inter alia, indicated in the application that the petitioner Nand Kishore died on 13.12.2014 leaving behind his spouse, two sons and two daughters, the applicants had been carrying on the business with the petitioner-Nand Kishore in the suit premises, as member of the family upto his death and as such they may be impleaded as parties-petitioner in the present writ petition.

4. A reply to the application has been filed by the respondent-landlord, inter alia, questioning the plea raised by the applicants and indicating that the applicants were not carrying on business with Late Shri Nand Kishore as his family members till his death.

5. A rejoinder has been filed by the applicants, wherein certain documents i.e. a authorization letter signed by the original petitioner Nand Kishore addressed to UCO Bank authorizing both the sons to draw cheques etc. on behalf of the said Nand Kishore has been given, Form-VAT-02 indicating the declaration of Business Manager, wherein both the applicants have been declared as Business Managers w.e.f. 01.07.2006 by the Proprietor, a letter of authority given by the deceased Nand Kishore to Syndicate Bank again to honour the cheques signed by the applicants, a partnership-deed dated 26.02.2014 executed between both the applicants subsequent to death of their father Nand Kishore, a Specimen Signature Card with the UCO Bank, wherein alongwith Nand Kishore, both the applicants have been shown as persons authorized to sign and the date of opening of account has been indicated as 07.07.1999 and a Newspaper Article dated 12.07.1998 indicating the status of their business, wherein it has been stated that the business at the shop was being conducted by Nand Kishore alongwith his sons.

6. A further affidavit has been filed by the respondents disputing the documents filed by the applicants and producing the rent-notes as well as provisions of the Rajasthan Shops and Commercial Establishment Act, 1958.

7. It is submitted by learned counsel for the petitioner that in view of the documents submitted by the applicants read with definition of "tenant" as contained in Section 2(i)(ii)(b) of the Rent Control Act, 2001 ("the Act"), the applicants fall within the definition of tenant and, therefore, they may be impleaded as parties-petitioners in the present writ petition.

8. Learned counsel for the respondents vehemently opposed the application. Referring to the documents filed by the applicants, it was submitted that from the documents, it is not apparent that the applicants were doing business with the deceased Nand Kishore, inasmuch as, they have been shown as Business Manager and the state of business has been shown as Proprietorship business with 100% interest in the business with Nand Kishore and, therefore, it cannot be said that the applicants were carrying on business with the deceased-petitioner at the time of his death. It was further submitted that the execution of partnership subsequent to the death of Nand Kishore is of no avail to the applicants and the Newspaper Article are wholly meaningless for the purpose of coming to the conclusion as to whether the applicants were doing business with the deceased-petitioner. It was submitted that in view of law laid down by this Court in the case of *Chiman Lal and Anr. v. Narendra Kumar*: 1995 DNJ (Raj.) 563, it is required of the applicants to carry on the business with the deceased from the beginning of the business upto his death and not any time in between and, therefore, the applicants are not entitled to be impleaded as parties-petitioners to the present writ petition.

9. I have considered the submissions made by learned counsel for the parties.

10. The definition of tenant as contained in Section 2(i) of the Act and so far as

the same is relevant reads as under:-

"(i) "tenant" means-

(i) the person by whom or on whose account or behalf rent is, or but for, a contract express or implied, would be payable for any premises to his landlord including the person who is continuing its possession after the termination of his tenancy otherwise than by an order or decree for eviction passed under the provisions of this Act; and

(ii) in that even of death of the person referred to in sub-clause (i),-

(a) in case of premises let out for residential purposes, his "surviving spouse, son, daughter, mother and father who had been ordinarily residing with him in such premises as member of his family upto his death;

(b) in case of premises let out for commercial or business purposes, his surviving spouses, son daughter, mother and father who had been ordinarily carrying on business with him in such premises as member of his family upto his death;"

11. A bare look at the definition reveals that in the event of death of a tenant, in case of premises let out for commercial or business purposes, his surviving spouse, son, daughter, mother and father, who had been ordinarily carrying on business with him in such premises as member of his family upto his death, are included within the definition of tenant.

12. In the present case from the material available on record, it is apparent that in the premises in question, business in the name of Binj Raj and Sons was being conducted by deceased Nand Kishore as a Proprietor. In a business, which is being conducted in the status of a Proprietor and the children of such a Proprietor, if they join the business of their father/mother during his life time, the requirement of the Section is that they should be ordinarily carrying on business with such person in the premises as "member of his family upto his death".

13. The very fact that the provision contemplates status of spouse, son, daughter, father and mother as member of his (Tenant's) family and not in the legal status as a owner/partner or any other business form, necessarily means that the requirement is to be conducting the business alongwith the tenant upto his death.

14. There is no reasons to read the requirement of the applicant conducting the business as member of the family from the beginning of the business till the time of death of the tenant as the Section gives out the terminus quo as to what point of time, the applicant/spouse, son, father and mother should be doing the business, which is "upto his death" and it does not indicate the beginning of such a relation.

15. The plea raised by counsel for the respondents that the applicant should be part of the business with the deceased, has necessarily no basis, inasmuch as, in case the applicant was working as a part of business then the business would not

remain a Proprietorship concern and would then be either a partnership or any other form of business and in that case there would not be any requirement even for the applicants to get impleaded as legal representatives of the deceased tenant.

16. From the material placed on record i.e. Annex.-A/1 to Annex.-A/4 and Annex.-A/6, it is apparent that both the applicants Manish and Nitin were carrying on business in the suit premises with their father upto the time of his death. The very fact that the said applicants have been authorized to sign the cheques etc. on behalf of the Proprietorship concern and to act as Business Manager under the provisions of Rajasthan Value Added Tax, and have been operating the bank accounts of the firm, clearly indicates that they were conducting the business of the firm during the life time of their father alongwith him.

17. A bare look at the partnership-deed (Ex.-A/5) further fortifies the said aspect as immediately on the death of the petitioner Nand Kishore as soon as the applicants have succeeded to the business of their father, both the brothers Manish and Nitin have entered into partnership to conduct the business of the firm.

18. So far as the judgment of this Court in the case of Chiman Lal (supra) is concerned, the submissions made by learned counsel for the respondents are essentially based on misreading of the said judgment. Para-16 of the judgment, which is relevant for the present purpose, reads as under:-

"16. The term "ordinarily carrying on business with him in such premises as member of his family upto his death" makes it clear that protection of Sec. 3(vii) (b) of Act No. 17 of 1950 is extended to only those heirs and legal representatives of deceased-tenant who continued to do business along with the tenant upto his death. The person who carried on business with the tenant till his death only be treated as tenant under the Amended Act No. 14 of 1950. If the heirs and legal representatives of deceased-tenant Mangi Lal were not carrying on business along with the deceased-tenant at the time of his death, they would not be treated as tenants under the aforesaid Act. All heirs and legal representatives of deceased-tenant will not become ipso facto statutory tenant under the Act. In fact, only those heirs and legal representatives who are members of the family plus who carried on business with the original tenant upto his death are entitled to get benefit of Sec. 3(vii)(b) of the Act. Subsequently, carrying on business after death of original tenant in the premises will not make such heir and legal representative as tenant under the Act."

(Emphasis Supplied)

19. This Court clearly held that carrying on business after death of the original tenant in the premises will not make the heir and legal representative as tenant under the Act. The fact that the person starts business after the death of original tenant would not fall within the requirements of Section 2(i) of the Act, wherein the requirement is carrying on business upto the death and not after the death of

tenant.

20. In view of the above discussion, the application filed by the applicants seeking impleadment as party-petitioners is allowed. The applicants are impleaded as legal representatives of the deceased-petitioner Nand Kishore.

21. Learned counsel for the petitioner to file the amended cause title within a period of two weeks.