

**(1991) 04 DEL CK 0072**

**In the Delhi High Court**

**Case No : Second Appeal No. 150 of 1976**

Ramji Lal Ram Saroop

APPELLANT

Vs

Bombay Goods Carriers (P) Ltd.

RESPONDENT

**Date of Decision : 22-04-1991**

**Acts Referred:**

Delhi Rent Control Act, 1958 — Section 14, 14(1)

**Citation : (1991) 44 DLT 383**

**Hon'ble Judges : Sunanda Bhandare, J**

**Bench : Single Bench**

**Advocate : B.L. Rawal, Sunil Agrawal and V.K. Makhija, for the Appellant;**

## **Judgement**

Sunanda Bhandare, J.

(1) The appellant who is the landlord of premises of property bearing no. 3073-3077 has filed this second appeal challenging the order of the Rent Control Tribunal (hereinafter referred to as the Tribunal dated 28th August 1976.

(2) A petition for eviction was filed against the respondent under clause (a), (b) and (e) of proviso (1) of Section 14 of the Delhi Rent Control Act (hereinafter referred to as the Act). The respondent-tenant is a private limited company and the demised premises were let out to the respondent for non- residential purpose by the appellant-landlord herein which is a partnership concern. It was alleged by the appellant in the petition that the premises were let out for commercial purpose but the respondent had started using the mezzanine floor of the said premises for residential purpose which is a source of nuisance to the appellant who is residing on the upper floor of the said premises. It was further alleged that the respondent had sub-let the premises to M/s Bombay Goods Transport Corporation without the consent of the appellant. The respondent filed the written statement and contested the petition. The Additional Rent Controller (hereinafter referred to as the Controller) did not accept the ground of eviction u/s 14(1)(e) of the Act but allowed the petition on the ground of sub-letting u/s

14(1)(b) and on the ground of non-payment of rent u/s 14(1)(a) of the Act and ordered eviction of the respondent. As far as the eviction u/s 14(1)(a) of the Act was concerned since it was a case of first default, benefit u/s 14(2) of the Act was given.

(3) An appeal was filed by the respondent-tenant before the Tribunal. However, excepting the ground u/s 14(1)(b) of the Act, no other ground was pressed and the Tribunal allowed the appeal against which the present second appeal has been filed by the landlord-appellant.

(4) A preliminary objection was raised by the respondent-tenant at the hearing of the case that the appellant being a partnership firm could not maintain the petition for eviction in view of the fact that the provisions of Order 30 of the CPC (hereinafter referred to as the Code) are not applicable to the Act. It was submitted that since Order 30 of the Code is not applicable, the petition for eviction could not be filed in firm's name because the firm is merely a compendious name for the partners Constituting it and it is only by virtue of the provisions of Order 30 of the Code that the firm can sue and be sued in its own name without the partners being imp ledged. Learned counsel relied on the judgment of the Supreme Court in Chhotelal Pyarelal, The Partnership Firm and Others Vs. Shikarchand, in support of this contention.

(5) On the other hand, learned counsel for the appellant submitted that the judgment of the Supreme Court in Chotey Lal's case (supra) is not applicable. Learned counsel relied on the judgment of this Court in Dr. Dhiren Kiri v. M/s Suraj Balram Sawhney and Sons 1974 76 PLR 196 and submitted that the provision embodied in Order 30 of the Code is only procedural in nature and such a provision is attracted by Section 37(2) of the Act and thus the provisions of Order 30 would be available even to petitions filed under the Act.

(6) I find no merit in the preliminary objection regarding maintainability of the petition. Section 37(2) of the Act reads thus :

"37. Procedure to be followed by Controller (1) xxxxxx (2) Subject to any rules that may be made under this Act, the Controller shall, while holding an inquiry in any proceedings before him, follow as far as may be the practice and procedure of a court of small causes, including the recording of evidence." (3) xxxxxx Section 37 of the Act specifically provides that the Controller shall while holding an inquiry in any proceedings before him follow as far as may be the practice and procedure of a court of small causes including the recording of evidence. Since there is a specific provision in the Act itself which enables the Controller to follow the same procedure as a court of small causes when a provision in the Code deals with the procedure and does not affect the substantial provision incorporated in a suit it is available to the parties even in petitions filed under the Act. I find that the judgment of the Supreme Court in Chotey Lal's case (supra) is based on purely on the provisions of the Cp and Barar Act where a provision like Section 37 of the Act does not exist. Thus, the Supreme Court judgment in

Chotey Lal's case (supra) is not applicable to the present case.

(7) On merits, learned counsel for the appellant submitted, that a specific allegation was made in the petition for eviction that the respondent has sub-let, assigned or parted with possession of tenanted premises situated on the ground floor to M/s Bombay Goods Transport Bombay Corporation without the consent in writing of the landlord and the Bombay Goods Transport Corporation is in exclusive possession of the ground floor and carrying on transport business in the said premises. The respondent filed its written statement and took a contradictory stand that the Bombay Goods Transport Corporation had been the agent of the respondent and had been working for and on behalf of the respondent and it was also averred by the respondent that the Bombay Goods Transport Corporation was owned by the respondent. Shri Madan Lal Gupta, the partner of the appellant firm had made a specific allegation in his statement that the premises in question were in occupation of the Bombay Goods Transport Corporation since March 1969. The said firm was operating the lock on the premises for opening and closing it whereas the respondent company had shifted its business to Dhamani Market. Sita Ram Bazar. The respondent had admitted the presence of Bombay Goods transport Corporation in the premises and had failed to explain its presence in the premises. Learned counsel submitted that the whole case of the respondent is that the Bombay Goods Transport Corporation acted as the agent of the respondent in the premises from 1.2.69 to 31.5.70 and having accepted their presence for that period, the onus had shifted on the respondent to prove that the premises were not sub-let or assigned to the Bombay Goods Transport Corporation and that the respondent continued to be in legal possession of the premises. Learned counsel submitted that the respondent did not produce any agreement executed between the respondent and the Bombay Goods Transport Corporation appointing the Bombay Goods Transport Corporation as its agent nor did it produce the minute books to indicate that any resolution had been passed appointing the Bombay Goods Transport Corporation as its agent and that even the account books were not produced which could prove that as an agent, some commission was paid to the Bombay Goods Transport Corporation by the respondent. The respondent having failed to produce any documents had failed to discharge the onus placed on it. He submitted that in any event both the courts below had found that the respondent does not own the Bombay Goods Transport Corporation. Thus, when the presence of the Bombay Goods Transport Corporation was proved and the respondent had failed to give any. substantial Explanation for their presence, sub-letting was clearly proved. Learned counsel submitted that as per the Companies Act, names of all directors are mentioned in the records and particularly in the Articles of Association. Thus, it was incumbent upon the respondent to prove that Shri H.L. Mahajan was also the director of the Bombay Goods Transport Corporation. The respondent has put up a contrary stand. Whereas in one breath it is stated that the Bombay Goods Transport Corporation is the agent of the respondent in the second breath it is stated that the respondent owns the

Bombay Goods Transport Corporation. The respondent has neither proved agency nor has it provided that the Bombay Goods Transport Corporation was owned by the respondent. Learned counsel submitted that without any evidence to the contrary on record it has to be presumed that the Bombay Goods Transport Corporation was a sub-tenant of the respondent. Learned counsel laid great emphasis on the fact that in rent matters, issues are not required to be framed and thus if evidence is led beyond the pleadings by a party, then there is no opportunity for the other side to rebut the evidence which is contrary to the pleadings. Learned counsel submitted that the findings of the Tribunal are not based on the pleadings and thus deserves to be set aside.

(8) Learned counsel for the respondent however submitted that the legal possession always remained with the respondent inasmuch as Shri H.L. Mahajan who is the Managing Director of the respondent company was the sole proprietor of the Bombay Goods Transport Corporation and continued to operate from the premises in question even during the period of alleged subtenancy. Learned counsel submitted that the mere user of the premises by Shri H.L. Mahajan for the Bombay Goods Transport Corporation does not mean that the premises had been assigned or sub-let to the Bombay Goods Transport Corporation or that the respondent had parted with possession in favor of the Bombay Goods Transport Corporation.

(9) I find no merit in any of the submissions of the learned counsel for the appellant. It is well-settled that while considering the pleadings, court attaches more importance to substance than to form. On reading the written statement filed by the respondent I find that though the respondent has at one place stated that the Bombay Goods Transport Corporation was an agent of the respondent at another place the respondent has stated that the Bombay Goods Transport Corporation was owned by the respondent. On reading the whole of the written statement it is clear that what the respondent actually meant was that the Bombay Goods Transport Corporation has been working for and on behalf of the respondent and not in its independent capacity. The respondent has specifically denied that the Bombay Goods Transport Corporation was in exclusive possession of the ground floor of the tenanted premises or that the respondent had parted with possession of the same. It was not necessary for the respondent to give all the details regarding the constitution of the Bombay Transport Corporation in their written statement nor was it necessary to state who was the sole proprietor of the Bombay Goods Transport Corporation because that was a matter of evidence. In the evidence the respondent has clearly stated that Mr. H.L. Mahajan .who was one of the directors of the respondent was also the sole proprietor of the Bombay Goods Transport Corporation. In fact, it is not the case of the appellant that Mr. H.L. Mahajan had no concern with the respondent and, Therefore, he could not be in possession of the tenanted premises. It is well settled that if there is substantial identify between the tenant and the alleged sub-tenant, it does not amount to sub-letting so as to attract Section 14(1)(b) of the Act.

(10) From the facts on record it is clear that the respondent had never effaced itself though the Bombay Goods Transport Corporation was allowed to function for a short while from the said premises. It will be useful to refer to the judgment of the Supreme Court in *Madras Bangalore Transport Company v. Inder Singh and Another* 1986(2) Rcr 377. The Supreme Court in that case held that when the premises were occupied by a partnership firm as tenant and the firm established a private limited company and allowed it to function from the same premises but the firm also continued in possession of the premises it did not amount to sub-letting. The Supreme Court in that case had referred to the judgment in *Murli Dhar v. Chunni Lal and Others* 1969 Rcr 563 wherein Subha Rao, J. observed as follows :

"IT is clear from the aforesaid decisions that there cannot be a sub-letting unless the lessee parted- with legal possession. The mere fact that another is allowed to use the premises while the lessee retains the legal possession is not enough to create a sub-lease."

(11) In the present case Mr. Mahajan who was the younger brother of the managing director of the respondent and also one of the directors of the respondent was the sole proprietor of the Bombay Goods Transport Corporation. The Tribunal, in my view, has rightly not attached too much importance to non production of minute. books etc. On perusal of the evidence I find that though Bombay Goods Transport Corporation and the respondent were technically two different entities, in reality, their working was all mixed up because the persons who manned Bombay Goods Transport Corporation and the respondent were one and the same. From the evidence it is clear that the legal possession of the premises was always with the respondent though one of the directors of the respondent also used the premises for Bombay Goods Transport Corporation for some time.

(12) In the circumstances, there is no ground for interference. The second appeal is dismissed. However, parties are left to bear their own costs.