

(1987) 10 BOM CK 0050

In the Bombay High Court

Case No : Writ Petition No. 2568 of 1987

Vikram Buty

APPELLANT

Vs

Ram Achal Tiwari and Another

RESPONDENT

Date of Decision : 09-10-1987

Acts Referred:

Citation : (1988) 2 BomCR 282

Hon'ble Judges : H.W. Dhabe, J

Bench : Single Bench

Advocate : A.Y. Lande, for the Appellant;

Final Decision : Dismissed

Judgement

H.W. Dhabe, J.—This is a writ petition arising out of the proceedings under Clause 13(3)(iii) of the C.P. & Berar Letting of Houses and Rent Control Order, 1949 (for short, "the Rent Control Order").

2. According to the petitioner/landlord the respondent No. 1 has inducted the respondent No. 2 as a sub-tenant who was carrying on the business of dealing in spare parts of motors and scooters etc. which was without the permission in writing of the petitioner landlord. The respondents resisted the said application by filing their written statement and their case was that they were doing the business in partnership with each other under the registered partnership deed. The parties led evidence. The learned Rent Controller thereafter granted permission to the petitioner landlord under Clause 13(3)(iii) of the Rent Control Order. By preliminary order, the learned Appellate Court in appeal preferred by the respondent/tenant directed that additional evidence should be recorded by the learned Rent Controller which should be submitted to him. Thereafter a final order was passed in appeal by the learned Additional District Magistrate, Nagpur. By his final order he set aside the permission filed by the petitioner landlord. The review application filed by the petitioner was also dismissed. Being aggrieved, the petitioner has preferred the instant writ petition in this Court.

3. The learned Counsel for the petitioner has urged before me that the alleged partnership business was sham and bogus and the business in fact was carried on by the respondent No. 2. He has urged that no capital was invested by the respondent No. 1 in the said business and he was not managing the same also. He has further urged that the respondent No. 1 was carrying on his own business of selling ghee in the same premises. It is clear from the impugned order of the learned Appellate Court that the respondents 1 and 2 were carrying on the business of selling motor-car and scooters on commission basis and therefore it was held by him that there was no question of investment of capital in the said business. The learned Counsel for the petitioner has urged that there was no bank account opened and the respondent No. 1 was only to get Rs. 1200/- per year as per the partnership deed. He has also urged that the respondent No. 1 was not to bear any loss in the business. It is, therefore, urged by him that the alleged registered partnership deed was bogus.

4. In my view there is no merit in any of the above submissions. It is clear from Clause 5 of the partnership deed that the firm had to open the bank account in the name of the firm which was to be operated by the respondent No. 2. As regards the question of share of profits and losses, it is clearly provided in Clause 6 of the partnership deed that the profits and losses of the firm have to be divided in the proportions mentioned therein. It is true that the sharing of profits and losses is not equal and only 5% share in the profit and loss is given to the respondent No. 1 subject to minimum payment of Rs. 1200/- per year to him. Even assuming that the loss was not to be shared by the respondent No. 1 it would not follow that it would not be a genuine partnership concern within the meaning of the Partnership Act. The above view is fully supported by the judgement of Supreme Court in the case of *Helper Girdharbhai Vs. Saiyed Mohmad Mirasaheb Kadri and Others*, . The above submissions on behalf of the petitioner deserve to be rejected.

5. As regards the business of the firm, it may be seen that as per Clause 4 of the partnership deed the sale and purchase of scooters and cars of its own and on behalf of the customers is also the business of the said partnership concern which in other words means that the partnership can earn commission by such sale and purchase of scooters and cars from its customers. It well settled that if a tenant carries on a business along with some other person in partnership with him it does not amount to sub-letting within the meaning of Clause 13(3)(iii) of the Rent Control Order. See the decision of the Supreme Court cited supra and also its decision in the case of *(Madras Bangalore Transport Co. (West) v. Inder Singh)* AIR 1936 S.C. 1564. The contentions raised on behalf on the petitioner in this regard, therefore, deserves to be rejected. No interference is thus called for in the impugned order of the learned Appellate Court.

6. In the result, the instant writ petition fails and is dismissed. However, in this circumstances, there would be no order as to costs.