

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RC.S.A. 24/2000**

Reserved on : 29.11.2010
Date of Decision : 09.12.2010

VISHAL KIRTI Appellant
Through Mr. Akshay Makhija, Mr. Vikas,
Bhadoria, Ms. Amisha Gupta, Advs.

Versus

VIPIN KUMAR JAIN & ANR. Respondents
Through Mr. Yogesh Chhabra, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

: **MOOL CHAND GARG, J**

1. This appeal filed under Section 39 of the Delhi Rent Control Act 1958 (hereinafter referred to as "the Act") is directed against the order dated 4.5.2000 passed by the Rent Control Tribunal, Delhi, in RCA No. 210/1994, whereby the learned Tribunal has dismissed the appeal and upheld the order dated 5.03.1994 passed by the Additional Rent Controller, Delhi, whereby an eviction order has been passed in an Eviction Petition No 3/1988 filed under Section 14(1)(b) of the Act on the ground of the alleged subletting of the premises in question.

2. Briefly stated the dispute is in respect to one shop private No 1 in property No 5166, Ground floor, Kohlapur Road, Delhi (hereinafter referred to as premises). Appellant is the tenant who according to the case of the respondent sub-let the premises to one Shri Dinesh Kumar Jain after 9th June, 1952 without obtaining the consent of the respondent or their predecessor in interest while appellant himself is carrying on his business under the name and style of Adarsh Vastra Bhandar in another shop in building No 5165 and is carrying on his business under the name and style of Adarsh Vastra Bhandar. Shri Dinesh Kumar Jain in exclusive possession of the demised premises is carrying on his business under the

name and style of Jain Vastra Bhandar. Thus considering this act on the part of the deceased tenant as an act of assignment/transfer/subletting, the appellant filed eviction petition No 3/1988 before the Rent Controller Delhi under Section 14 (1) (b) of Delhi Rent Control Act 1958. The said eviction petition was allowed in favour of the respondent, Against the said order dated 05.03.1994, the appellant filed an appeal before the Rent Control Tribunal being (RCA No. 210/1994) primarily on the ground that Shri Dinesh Kumar Jain is the real brother of the appellant and that he was carrying on business in partnership with his wife and Shri Dinesh Kumar Jain. The appeal was dismissed. Both the Additional Rent Controller as well as Additional Rent Control Tribunal have given a concurrent finding that the partnership relied upon by the appellant to defend his possession was not genuine. The real purpose of the partnership was only to sublet which becomes a ground of eviction and accordingly both ARC as well as ARCT have given concurrent findings that it was a case of subletting.

3. In order to show that the exclusive possession has been handed over by the appellant to his brother Dinesh Kumar and partnership deed is just a camouflaged, the counsel for the respondent has referred to documents namely the form for obtaining telephone connection Ex Rw 1/Ax-1 and 2 which shows that it was Dinesh Kumar who had applied for telephone connection in his name and not in the name of the partnership firm. In the column of form soliciting information as to the names of the partners who are carrying on business in the said premises the information was given as 'nil '

4. The learned Tribunal observed as under:-

"It appears even from the partnership deed that partnership is nothing but a camouflage. Had there been an intention on the part of the tenant to have legal, actual and physical possession of the suit premises, there was no reason for him to continue his independent business at some other place. Moreover he only allowed his share to be 10% in the partnership and the statement of the appellant and his brother that it is the appellant who comes to open and close the shop is nothing but an effort to show that the appellant has control over the premises and has not parted with the possession.

Failure of the appellant to produce the accounts books is another circumstance that goes against the appellant and against the genuineness of the partnership deed, so much so in the midst of cross- examination the appellant was directed to produce books of accounts and the statement of profit and loss as well as his individual income tax assessment order etc. but inspite of these directions he could not produce any of these documents.

The application moved by Dinesh kumar for getting telephone connection in his own name is another circumstance that operates adversely.

It is not understandable as to what was the purpose of storing part of the goods of the business run by the appellant from different premises in his individual capacity as the sole proprietor of Adarsh Vastra Bhandar which is suit premises also. it is again nothing but a feeble attempt to show that he still has control over the premises. It very easy and convenient to get a partnership deed registered with the income tax or any other authorities. To prove that the partnership is a genuine is more difficult. Income tax record produced by the appellant pertains to the period subsequent to the filing of the eviction petition . This again shows that the appellant woke up only after the eviction petition was filed and started creating the evidence to show that it was a genuine partnership. So much so the income tax return of the years prior to the eviction petition have not been produced.

The ld trial court rightly came to the conclusion that the appellant has failed to prove that the partnership entered into by him with his brother and wife was a genuine partnership and also failed to prove that he is having actual , physical ad legal possession over the suit premises. Thus the partnership deed produced and proved by the appellant is nothing but a piece of paper and not a genuine partnership and as such it is a case of sub-letting.

On the contrary appellant submits that Jain Vastra Bhandar is his business which he is carrying on in partnership with his wife and his younger brother Dinesh Kumar Jain who are all his family members and are included in the ration card of the appellant as his family members and are included in the ration card of the appellant as his family members.”

5. The concurrent findings returned by the ARC and ARCT are that the oral evidence led by the appellant is totally unreliable more so when the appellant was having another ship at building No. 5165 and is carrying on

his business in the style ad name of M/S. Adarsh Vastra Bhandar. The account book of the business have not been produced. The bank account of the firm can be operated by any of the partner that means the sub-tenant is entitled to operate the partnership account. The share in the partnership given to the appellant is only 10%. The evidence also goes to show that Shri Dinesh Kumar Jain who is naturally a third person is in exclusive possession of the tenanted shop. In these circumstances when it is established that Shri Dinesh Kumar Jain is functioning in the property and there is nothing to show that the appellant did any business from the shop in dispute the conclusion of sub-letting or parting with the possession are obvious. One can draw support from the judgment delivered by a Ld. Single Judge of this Court in the case of Amar Singh Trilochan Singh Vs. Smt. Jasoti 105 (2003) DLT 499. In the same judgment having quotes to sub-Section 4 of Section 14 of DRC Act which reads as under:

“For the purpose of Clause (b) of the proviso to Sub-section (1), any premises which have been let for being used for the purposes of business or profession shall be deemed to have been sub-let by the tenant, if the Controller is satisfied that the tenant without obtaining the consent in writing of the landlord has, after the 16th day of August, 1958, allowed any person to occupy the whole or any part of the premises ostensibly on the ground that such person is a partner of the tenant in the business or profession but really for the purpose of sub-letting such premises to that person.”

6. In the light of the concurrent findings returned by the ARC and ARCT holding that it was a case of subletting and the analysis of the evidence done by the Tribunal as quoted above, there was no occasion for this Court to cause any interference in the orders passed by the ARC and ARCT in this appeal filed under Section 39 of the Act, however, during the pendency of this appeal, the appellant raised a legal objection as to the maintainability of the suit itself by taking recourse to the provisions of the Slum Areas (Improvement and Clearance) Act, 1956 (hereinafter referred to as “the Slum Act”) as amended. On the strength of the aforesaid Act and in particular Section 19 thereof it was contended that the eviction suit filed in this matter could not have been instituted without obtaining prior permission of the slum authorities for the institution of the suit inasmuch as, the area in question falls under the slum area and, therefore, the tenant was fully protected under the provisions of the said Act and could

not have been effected once the area was covered under the Slum Act without the permission of the competent authority under the Act.

7. To appreciate the contention, it would be appropriate to refer to the provisions contained under Section 19 of the Slum Act, which reads as under:-

19. Proceedings for eviction of tenants not to be taken without permission of the competent authority:-

(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,--

(a) Institute, after the commencement of the Slum Areas (Improvement and Clearance), Amendment Act, 1964 (43 of 1964) any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or

(b) Where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

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8. In view of the aforesaid objection raised by the appellant, firstly, with regard to coverage of the area under the Slum, which was disputed by the respondent, a direction was given to the Additional Rent Controller vide order dated 12.10.2000 to decide as to whether the suit premises fall within the slum area or not.

9. Pursuant to the aforesaid direction, the Additional Rent Controller vide order dated 10.12.2000 held that the suit premises was situated in slum area. Later on, under the directions of this court to also decide the application already moved by the respondent for granting permission, permission was also granted to the respondent vide order dated 4.12.2002.

10. On 29.11.2010 the appellant raised a preliminary objection regarding the maintainability of the suit itself. The arguments were then directed to be addressed by both sides on this issue. The matter kept on adjourning from time to time as per the request of the parties for various reasons. Finally, the arguments were heard and both sides have been called upon to file written submissions, which have been filed by them.

11. As far as the appellant is concerned, relying upon a judgment of a Single Judge of this Court delivered in the case of *Albein Plywood Ltd. & RC.S.A. 24/2000*

Anr. Vs. Janak Kapur & Ors. by Justice P.K.Bahri which is based upon a judgment of the Supreme Court in *Civil Appeal No. 1906/1987* titled as *Mohd.Usman & Ors. Vs. Mohd. Siddque & Anr.*, decided on 26.08.1987, it is submitted on behalf of the appellant that obtaining of permission being anterior to institution of the suit, the suit for eviction itself was bad. It has been submitted that it was not material as to whether the eviction was sought on the ground of sub-letting or on any other ground. It is also submitted that consequently the eviction decree itself being bad, it cannot be executed.

12. On the other hand, the respondents relying upon various judgments of this court, including a Full Bench judgment argues that in a case of sub-letting, the sub-lettee not being a tenant for the purpose of Slum Act, the decree can be executed as it is not to be seen whether the sub-letting was created in the slum area or not. It is submitted that under the Slum Act, the word used is 'occupier' and not 'tenant'. Reference is made to the following judgments:-

- (i) *Siri Kishan & Anr. Vs. Mahabir Singh & Ors.*, AIR 1972 Delhi 196;
- (ii) *Raj Rani Vs. Dwarka Dass & Ors.*, AIR 1972 Delhi 208;
- (iii) *Punnu Ram & Ors. Vs. Chiranjilal Gupta & Ors.*, AIR 1982 Delhi 431;
- (iv) *Kailash Chand (Deceased) Thr. LRs Vs. Ganpat Rai*, 38 (1989) DLT 318;
- (v) *Vibha Mehta & Anr. Vs. Society of National Institute of P.E. & Sports* 2003(67) DRJ 472; and,
- (vi) *Kunnannal Vs. Joseph Sam & Ors.*, 605 MLJR 1997.

13. Both parties have also filed written synopsis, which have been considered by this Court. It may, however, be observed that the judgment delivered in the case of *Mohd.Usman (supra)* has not been distinguished by any of the judgments cited by the respondent at bar. The relevant observations are reproduced hereunder:-

“Section 19 of the Act confers a protection on the tenant. Permission is a pre-requisite for institution of the proceeding for eviction. The permission which had been obtained on the earlier occasion was on the basis of a set of facts then prevailing; on a consideration of those facts, and after hearing parties, permission had been given. That permission must be taken to have been exhausted when the earlier proceeding was taken. Admittedly there has been a

gap of few years between that permission and the institution of the present eviction proceeding. If opportunity had been given to the tenant before the appropriate authority under the Act in the matter of grant of permission it would have been open to the tenant to satisfy the authority that circumstances had changed and permission should not be granted. Since legislation intends to confer a protection on the tenant and makes permission a condition precedent to the institution of the eviction proceeding, we are inclined to agree with the counsel for appellant that a fresh permission should have been obtained before the second eviction proceeding was initiated. Learned counsel for the respondent relied upon the decision of the Delhi High Court in Hari Rajkishore Aggarwal vs. Raj Kumar (1978(2) Rent Control Reporter 680)-where a contrary view has been taken. For the reasons we have indicated above, we do not think that the decision lays down the correct law.

Since permission had not been obtained before initiation of the eviction proceeding out of which this appeal arises, the eviction proceeding was not maintainable. We allow the appeal and set aside the order of the eviction passed by the Controller and the two appellate judgments upholding eviction. We direct the parties to bear their own costs throughout.”

14. The judgment in the case of *Mohd.Usman (supra)* has been fully relied upon by Justice (Retd.) P.K.Bahri in the case of *Albein Plywood Ltd.(supra)*, wherein the learned Judge has observed as under:-

“(4) The learned counsel for the appellant has referred to judgment of the Supreme Court given in Civil Appeal No. 1906 of 1987 *Mohd Usman & Others Vs. Mohd. Siddique* 4 Another decided on August 26.1987 wherein it has been new categorically laid down that the permission to initiate eviction proceedings is a pro-requisite as provided in Section 19 of the said Act. He has then referred to *Puran Chand Vs. Nathu @ Nathauli & Others* S.A.O.No. 60 of 1970 decided on April 26, 1974 wherein it has been held by this Court that 17 unless the requisite permission as contemplated by Section 19 of the Slum Areas (Improvement & Clearance) Act 1956 is obtained for initiating the proceedings of eviction under the provisions of the Delhi Rent Control Act, the Controller under the Act would have no jurisdiction to try such a petition and if eviction order is passed in absence of such permission such an order would be nullity and the objection with regard to order being nullity passed by the court which has no jurisdiction to deal with the matter can be raised even in the execution proceedings. There legal propositions are not being disputed by the learned counsel for the respondent before me and rightly so.

(5) The learned counsel for the respondent has however drawn my attention to the provisions of the Slum Areas

(Improvement & Clearance) Act, 1956 particularly its preamble which lays down that the said Act is enacted for the improvement and clearance of slum areas in certain union territories and for protection of tenants in such areas from eviction. It is argued that in the present case a finding of fact has been given by the two courts below that the tenant had not been in physical possession of the premises at any point of time and thus such a tenant was not meant to be protected by the objects laid down in the preamble of the said Act. He has argued that where the facts are as have been proved in the present case that the tenant has never been in physical possession of the premises located in the slum area there could arise no occasion for considering as to whether he would or would not create a slum if evicted from the premises located in the areas to which provisions of the Slum Areas (Improvement & Clearance) Act apply. He has argued that Section 19 should be read in consonance with the objects of the Act contained in the preamble.

(6) It is quite settled principle of law that if the language of the Section admits of no doubt and is clear then the objects given in the preamble need not be taken note of. Section 19 clearly lays down that notwithstanding anything contained in any other law for the time being in force no person shall except the previous permission in writing of the Competent Authority institute after the commencement of the Slum Areas (Improvement & Clearance) Amendment Act, 1964 any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in the slum area. It is quite clear from the language of the statute that no suit or proceeding can be initiated for obtaining any decree or order for eviction of a tenant. It would mean that question whether a tenant has been or has not been in possession of a particular building is not to be gone into for deciding whether a particular proceeding or suit could be instituted or not for eviction of a tenant from the building.

(7) The respondent in the present case has initiated proceedings seeking an order of eviction of the tenant from the building located in the slum area. Thus this language of Section 19 completely bars the initiation of such proceedings without obtaining necessary permission from the Competent Authority under the Slum Areas (Improvement & Clearance) Act..

(8) Under Section 19(4) of the said Act the Competent Authority has been enabled to take into account certain factors to decide whether a permission, should or should not be granted for initiating such proceedings by the landlord against a tenant. Where one of the conditions is whether the tenant has acquired alternative accommodation which is within the means of the tenant. There are various grounds of eviction given in proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act and one of such grounds is where the tenant has acquired or built another

residential accommodation. Another ground of eviction 18 is where neither the tenant himself nor his family members have been residing in the premises for more than six months preceding the filing of the eviction petition. In such cases also the tenant would be deemed to have means to obtain alternative accommodation. If the contention of the learned counsel for the respondent is correct, then in such cases also no permission should be necessary to be obtained from the Competent Authority under the Slum Areas (Improvement & Clearance) Act before initiating the proceedings for eviction. If the legislature intended so then the legislature would have provided in Section 19 itself that in such like cases no permission would be needed from the Competent Authority before initiation of eviction proceedings against a tenant.

(9) In absence of any such Explanation being provided in Section 19 in this manner it is not possible to hold that no permission would be required for initiating the eviction proceeding against a tenant if it is found as a matter of fact that tenant has never been in possession of the demised premises. It is already held by the Supreme Court that obtaining of permission under Section 19 is mandatory and is pre-requisite for initiating the eviction proceeding. In the present case as no such permission has been obtained under Section 19 of the Slum Areas (Improvement & Clearance) Act the Additional Rent Controller has no jurisdiction to proceed in the matter and thus could not have passed the eviction order.”

15. Now, coming to the judgments referred to by the respondent, it can simply be observed that in the light of the judgment of the Apex Court in the case of *Mohd.Usman (supra)* as quoted above and reference thereof being made in the case of *Albein Plywood Ltd.(supra)*, wherein it has been observed that Section 19 clearly lays down that notwithstanding anything contained in any other law for the time being in force no person shall except the previous permission in writing of the Competent Authority after the commencement of the Slum Areas (Improvement & Clearance) Amendment Act. 1964 institute any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in the slum area. It is quite clear from the language of the statute that no suit or proceeding can be initiated for obtaining any decree or order for eviction of a tenant. It would mean that question whether a tenant has been or has not been in possession of a particular building in not to be gone into for deciding whether a particular proceeding or suit could be instituted or not for eviction of a tenant from the building. It also takes care of the situation where the tenant is to be evicted even on the ground of subletting and does

not call for any confusion. The judgment of the Apex Court in the case of *Mohd.Usman (supra)* has not been discussed in any of the judgment cited by the respondents. Even the judgment delivered by Justice (Retd.) P.K.Bahri in the case of *Albein Plywood Ltd.(supra)* has neither been overruled nor distinguished in any of the judgments cited above. I may also mention here that the present was not a case where tenant was filing a case against the sub-tenant but it was a case where the landlord has filed a case against the tenant and, therefore, the issue is not of eviction of sub-tenant, but it is an issue of eviction of tenant may be on the ground of subletting. These arguments have not been discussed specifically in the other judgment relied upon by the respondent.

16. In view of the aforesaid, the appeal is allowed. The eviction order passed against the appellant by learned ARC as also the order passed by learned ARCT confirming the order passed by the ARC are accordingly set aside. Trial court record, if any, be sent back forthwith along with a copy of this order.

MOOL CHAND GARG, J

DECEMBER 09, 2010
'ga/dc'