

(1982) 09 DEL CK 0017

Delhi High Court

Case No: Suit No. 1011 of 1982 and Interim Application No. 2668 of 1982

Capital Stores

APPELLANT

Vs

Batra Saree Emporium and
Another

RESPONDENT

Date of Decision: Sept. 16, 1982

Citation: (1983) ILR Delhi 142

Hon'ble Judges: D.R. Khanna, J

Bench: Single Bench

Advocate: M.C. Bhandare, D.K. Kapur, K.G. Bhagat and N.K. Handa, for the Appellant;

Judgement

D.R. Khanna, J.

(1) The controversy which arises for determination as an interim measure at this stage is whether the plaintiff was appointed as a commission-agent simplicities for the sale of sarees" belonging to defendant No. 1 and ready-made garments of defendant No. 2, as asserted by the plaintiff, or the real relationship between the parties was that the two defendants were admitted as tenants by the plaintiff in a portions of the shop bearing No. 7-F. Connaught Place, New Delhi.

(2) The plaintiff firm is a tenant of the said shop at a rent of about Rs. 200 per month from mid-forties. It had been carrying on its wine business in the shop but the same ended in about 1977 as a result of certain prohibition measures introduced by the Government. At present the plaintiff is carrying on some export business in handicrafts, some items of which are displayed in a portion of the shop. The plaintiff's office for this business is located on a mezzanine plaintiffs office for this business is located on a mezzanine existing inside the shop itself.

(3) The main entrance of the shop is from the Connaught Place side. On its back side, there is also a door but the same is not of the nature that customers can come from there. It has a steel shutter door and behind that there is another wooden door which is opened during the day time in order to facilitate the flow of light in the

interior of the shop.

(4) At present there are three other businesses in different portions of this shop. Their names are M/s. Batra Saree Emporium, M/s. Batra Garments and M/s. India Carpet Corporation. The manner in which they have come in there is uniform. Each of them wrote letter at different time to the plaintiff showing interest in getting their goods sold at the reputed store of the plaintiff. In replies the plaintiff wrote that their goods could be kept for sale on consignment basis at the shop and the entire sales would be conducted by the plaintiff, though they could provide guidance in that direction. No other competitive products were to be sold there. The plaintiff was made entitled to 10 per cent commission on sales made. The entire sale proceeds, collected by the plaintiff after the deduction of commission and sales-tax were to be deposited in the bank accounts of these concerns. The goods were to be insured by the plaintiff but the premiums were recoverable from them.

(5) Each of these concerns signed the letter so sent by the plaintiff containing these terms, in token of acceptance. We are concerned in this suit with the first two of these concerns.

(6) The aforesaid arrangement with defendant No. 1, M/s. Batra Saree Emporium was arrived of on 8-6-1977. The same with defendant No. 2, M/s. Batra Garments, the partners of which are relations of the partners of the first concern, was arrived at on 1-7-1977.

(7) The arrangement with M/s. India Carpet Corporation was brought into operation about a year back.

(8) The position as prima facie discussable of the actual state of affairs at the spot is that though there are no partitions existing in the shop, (which has an area of 24 1/2 X 5 meters), there are a sort of working demonstrations of the portions where the goods of each of these three concerns are displayed and sold. The partners of both the defendants work there and they have their salesman also employed there. From the employees registers placed on record, it appears that the plaintiff is having a Cashier, an Account and about two helpers. The customers make payments of the bills prepared by each of these concerns to the plaintiff's Cashier. In the evening the plaintiff hands over the respective daily proceeds to these concerns or deposits them in their bank accounts after deduction of 10 per cent commission and the sales-tax. According to the defendants, the so-called helpers are mere name-sakes as they are domestic employees of the plaintiff whose salaries are debited to the business. This is disputed by the plaintiff.

(9) The material on record prima facie shows that the two defendants are primarily conducting sales of their respective goods: in the shop. There are a number of photographs showing this. The employees registers maintained by the defendants also show that while defendant No. 1 has five employees there, the defendant No. 2 has three employees. These are apart from the partners. The defendant No. 1 has

its main shop in Karol Bagh, New Delhi.

(10) Outside the main entrance of the shop in dispute, there are separate sign-boards of each of the defendants as well as of the India Carpet Corporation. Above them, there is a large separate sign-board of the plaintiff, below which the words "Sarees and shawls" are as well written.

(11) The defendants are not having any manufacturing activity. The goods which are sold in the shop are like those obtained by any retail dealer from whole-saler or manufacturer as the case may be.

(12) In the Income Tax returns of the respective parties, the ten per cent commission paid to the plaintiff is shown. The same amounts to about Rs. 10,000 per month from the defendants alone. The plaintiff is also registered as a dealer with the Sales-tax Department.

(13) The plaintiff-firm asserts that the overall control of the shop is with it and the key of the other lock also remains with it. Besides no exclusive possession has been given of any portion of the shop to any of the defendants. Initially the insurance of the goods lying there used to be effected by the plaintiff but now from a year or two the same have been obtained by the defendants. From the export business in handy-crafts which the plaintiff has in the mezzanine of that shop, the stairs of which go from inside the shop itself, it appears that the same is not on large scale. In one year, the sales were worth about Rs. 8,000. In some other years the average is around Rupees, one lac or above. The electric and water bills are paid by the plaintiff and the telephone installed there also belongs to it. The cash memos mostly issued of sales contain the name of the plaintiff and they also mention the agency of one defendant or the other. In the shop itself, on different shelves where the goods are lying, the name, of the defendants printed on cartons are affixed. The plaintiff has also presented photo copies of some challans showing the delivery of different teams of sarees etc. to it by the defendants with prices mentioned therein.

(14) The defendants on their part have referred to a large number of documents and the course of conduct in order to show that the so-called commission agency arrangements were subterfuges enacted by the plaintiff in order to circumvent the provisions of the Delhi Rent Control Act and have eviction for subletting. They have pointed out that for all intent and purposes, it is they who are conducting their businesses there. According to them, the plaintiff had let out portions of the shop to them at the rent of Rs. 8,000 per month and this was adjustable against the ten per cent commission in which the plaintiff deducted on the sales. In case of excess realisations, they were to be adjusted after the lapse of a period of ten years. The entire arrangements according to them have been shrewdly and in settle manner enacted by the plaintiff in order to camouflage them with the semblance of agency business.

(15) The defendants have pointed out that the defendant No. 2 alone has spent about Rs. 10,000 on the furniture and the pictures in the shop as is shown in its balance-sheet ending 31st March, 1981. The yearly salary bills of each of the defendants of their employees in the shop range between Rs. 20,000 to Rs. 35,000. "A large number of bills, cash memos etc. of purchaser affected by them of their goods with the address of the shop in dispute have been produced. They also show that they have been buying emergency lights and other electric fittings, getting paper bags and printings effected with the same address. The employees registers as required by the Shop and Establishment Act are also maintained there and even registration of the shop is accordingly obtained by them under that Act. They have their bank accounts with address of the shop in dispute and have been getting considerable posts at this address. Letters from the Reserve Bank and the Employees State Insurance Corporation have also been addressed to them at this shop. "They were also challenged with the address of this shop by the New Delhi Municipal Committee for violating the advertisement tax and displaying goods outside the shop. They paid the advertisement-tax too. Two bags of cement were also obtained by one of the partners of defendant No. I from the Commissioner of Food & Supplies, Delhi for the shop in dispute. From the present year, the defendants have also registered themselves with the New Delhi Traders Association as having their business in this shop. They also obtained newspapers at this shop and have been paying to the chowiddar as well. Car parking slips of F Block, Connaught Place, New Delhi have further been produced and so also certain donation receipts issued by charitable institutions. Supplies of sarees and other merchandise by different business concerns were affected in defendants' names with the address of the shop in dispute. Postal envelops and magazines received with address of the shop in the names of the defendants have besides been referred to. The defendants have also produced figures of daily sales as maintained in their accounts covering several years. They show deduction of ten per cent commission.

(16) With the sides have filed affidavits of neighbouring shop-keepers. Those by the plaintiff are to the effect that the business in the shop is run by the plaintiff while the others produced by the defendants support their various.

(17) The plaintiff has also sought to lay before the Court that his son's concern "Hastkala Exports" has also started E operating in a portion of this shop and its turn-over during 1981-82 was about Rs. 4.62 lacs. There is however no signboard of this business at any place in the shop.

(18) That plaintiff contents that by two telegrams dated 22-7-1982 which were also confirmed in letters sent to defendants on the same day, the defendants were informed that the arrangements with them had been terminated and they were required to stop sending of the goods any further in the shop. This resulted in precipitation of. crisis, as the defendants refuted that the arrangements were of commission agency, and instead asserted that they were in possession of their own

right having been let out their portions. The matters went before the police and the shop was sealed u/s 145 of the Code of Criminal Procedure. This sealing was later set aside by the Session Court on the ground of technical infirmity. The defendants also instituted a civil suit in Court of the Sub-Judge, Delhi for an injunction restraining the plaintiff from interfering in the running of their business there. They applied for an interim injunction which, however, was not granted and Therefore they withdrew the suit.

(19) In the present suit which the plaintiff brought on 26-7-1982, an interim injunction application stand's moved seeking restraint of the defendants from interfering in plaintiff's business. Notice of this was issued to the defendants. They have now appeared and vigorously opposed any restraint order prohibiting them from running their business in the shop. In the meanwhile, a commissioner was appointed at the instance of the parties for reporting the actual state of affairs at the spot. He has submitted his detailed report enclosing a large number of photographs and has as well sealed various documents lying in the shop in different trunks. The documents of the defendants are stated to be in three trunks while those of the plaintiff in one trunk. The shop is still lying closed with the keys of the same in possession of the Commissioner.

(20) It is in the background of these circumstances that the agreements on interim injunction application have been heard. The initial writings which were exchanged between the parties in the ear 1977 on the face of them brought out that the arrangements inter-se them were of commission agency on consignment basis. The merchandise was to be supplied by the defendants while the sales were to be effected by the plaintiff of the shop for which it was to charge 10 per cent commission. The normal presumption is that what is apparent is real. The Court has Therefore to start with the initial presumption of correctness of what was started in these writings, and the onus heavily rests upon the defendants for proving that in reality the arrangements were of different type. Such commission agency arrangements are not unusual in modern trade, and the manufacturers and bulk suppliers having significant trade-marks do avail the services of reputed concerns which have their premises in commercial areas and further have adequate sale expertise and facility. Apart from this there are no rent deeds or rent receipts issued inter-se parties which ex-facie nullify the presumption created of the commission agency arrangements No fixed amounts are besides payable to plaintiff every month nor it can be said that any exclusive possession of clearly demarcated portions of the shop were given to the different defendants. The over all control of the shop remains with the plaintiff as it keeps the keys. The arrangement with the India Carpet Corporation was also arrived at about a year back: by the plaintiff. The plaintiff own export business is also operated from there from the mezzanine existing within the shop. The sale-proceeds of the business run there are further paid by the customers or deposited with the cashier employed by the plaintiff and in the evening the respective daily proceeds are handed over to defendants after the

deduction of 10 per cent commission and sales-tax. The cash-memos and bills mention the name of the plaintiff though they also in smaller letters contain the names of one or the other defendant. These circumstances do cumulatively tend to corroborate the plaintiff's version that in actual practice also the arrangements were of commission agency.

(21) At the same time there are factors which can also not be lightly ignored. The defendants are not manufacturers of any of the merchandises sold there nor are marketing their goods under a particular trade name. Rather there are ample circumstances which show that the conduct of business of both the Sarees" and ready-made garments is carried on in the shop by the defendants themselves. This is very unusual in a commission agency arrangement. The principals do not conduct the sales themselves in the premises of the agents nor engage their own employees for conducting the business at the agent's premises. After all the agent is paid commission for effecting sales of the goods of the principal and not for doing nothing. In the present case the monthly commissions ranged around about Rs. 10,000 and it seems unusual that it is just being allowed because the plaintiff is employing the cashier and an accountant or one or two helpers who recover the sale proceeds and keep their record. The defendants too are maintaining their own accounts.

(22) Thus the plaintiff who has been paying nominal rent of about Rs. 200 per month for the entire shop is reaping an income of more than 10,000 per month from the defendants with almost nil investment attributable to their business and with .very nominal expenses of two or three employees. In case it is because of business acumen, no exception can be taken. However the court is not prevented in appropriate cases from lifting the veil and seeing the realities of the situation.

(23) In this regard it need not essentially be said that in an arrangement of tenancy, the rent should be paid in a particular form or it should be fixed one. The demised premises need not next necessarily be demarcated by self-contained-enclosures. These can be of different portions of a wider complex, may that be a commercial complex or even an open space. With the rapidly growing cities and expanding commercial requirements, paucity of space is nothing unusual. Business people wanting space in central commercial localities have Therefore to woo others having commercial premises in those areas for accommodation in portions thereof in order to run their business. Not unoften the yare obliged to bow before the dictates of such persons. In the present case the defendants have pleaded that they have been victims as such, and they having started their careers as pavement hawkers have gradually established themselves in business, and wanted to concentrate in the Connaught Place commercial complex.

(24) The Delhi Rent Control Act makes provisions for ejectment in case a tenant sublets or parts with possession of a portion of the demised premises. Tenants Therefore have been from time to time arranging their affairs in such manner as to

circumvent these provisions and create camouflage partnerships, agencies etc. It depends upon the individual "tenant"s shrewdness how best he can avoid eviction and still make the best use of the premises even if he has to partly induct another in a portion thereof. The evidence in this regard for ascertaining the real state of affairs has necessarily to be circumstantial. There is little doubt that the plaintiff is taking full advantage of the premises held by him on lease in one of the most sought after commercial complexes of Delhi.

(25) One of the most significant circumstances brought out on record is that though the plaintiff is claiming to carry on the commission agency business by effecting sales of the merchandise of the principles, it is not having any regular salesmen. The employees registers maintained by the plaintiff do not show that such salesmen are amongst the employees. When the 10% commission earned by the plaintiff amounts to around Rs. 10,000 per month, it can be taken that the sales are fairly on large-scale .They are also not of very costly items as-to yield high sale proceeds on limited transactions of sales numbering one or two. Rather as observed above there are ample circumstances which prima facie show that the sales are being effected by the defendants themselves and they are having a sort of full-fledged establishment in this regard there. From recent years they have even started getting their goods insured and it is not shown by the plaintiff that corresponding insurance was effected for this period. The expenditure in the nature of furniture and fixtures by the defendants also tends to support their version that they are not mere suppliers of merchandise to plaintiff on commission agency business.

(26) At this stage of making an interim order, the rule is well-recognised that the Court has not to scrutinise in details the respective cases of the parties. Rather it should consider whether the version set up is worth-giving trial and calls for investigation. In considering balance of convenience human element, equities and welfare of parties should be given due weight in preference to technicalities or legal frame of documents. As observed by the Judicial Committee in 1865 L.R. (1) P. C. 50 if there is a question upon the point to be determined upon the hearing of the cause, it need not be outright at initial stage rejected. Anand J. of this Court as well in the cases of Gurmukh Singh v. Indraprastha Finance Company 1976 Rlr 1(1) and Sahib Dayal Chaman Lal v. M. C. D. 1976 RLR 50 observed that while deciding an application for interim injunction the trial court should determine the limited question whether the case requires investigation. It cannot transgress the limits by pre-judging the case. In the former case although one of the parties had documents in its favor showing the nature of transactions or hire-purchase agreement, still the other side was allowed opportunity to prove that they in reality were not so but were simple loan transactions.

(27) The question to be determined at this stage is whether the case set up by the defendants of tenancy in their favor deserves to be outright rejected. This would be the result in case the plaintiffs application for interim injunction is allowed

restraining the defendants from entering or interfering in the possession or business of the plaintiff in the shop. This would tantamount to decreeing the suit of the plaintiff without the defendants being allowed even a trial of their version. In my considered opinion this should not be allowed. The circumstances brought out by the defendants do call for giving a trial to their case of course the decision in the suit should be expedient, as early as possible.

(28) Considering Therefore the entirety of the circumstances I am of the opinion that let the arrangements as were already existing prior to the issue of notices dated 22nd July 1982 by the plaintiff to the defendants be allowed to subsist during the pendency of the suit. Let the parties abide by the same fully. The defendants should also make no endeavor to effect sales the proceeds of which do not pass through the cashier and the accountant of the plaintiff. The application shall accordingly stand disposed of.