

(2012) 05 DEL CK 0548

Delhi High Court

Case No: CM (M) 107 of 2008

Vijay Swarup Singhal

APPELLANT

Vs

Prem Gupta and Others

RESPONDENT

Date of Decision: May 3, 2012

Acts Referred:

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

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: Shiv Charan Garg, for the Appellant; Arun Kumar Verma, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.

The impugned judgment is dated 28.09.2007. This was an order passed by the Additional Rent Control Tribunal (ARCT) which has reversed the finding of the Additional Rent Controller (ARC) dated 01.03.2007. The ARC had decreed the eviction petition of the landlord Vijay Swarup Singhal filed by him u/s 14(1)(b) of the Delhi Rent Control Act (DRCA) i.e. on the ground of sub-letting. The impugned judgment i.e. order of the ARCT had reversed this finding. Record shows that the landlord has filed this present petition u/s 14(1)(b) of the DRCA. Premises have been described as one room plus kitchen on the ground floor of property bearing municipal No. 6719 (now known as E-23, Kamla Nagar, Delhi-110007); the original tenant was one Dr. Jage Ram,, premises have now been sublet to one Tota Ram who was earlier working as his compounder; Jage Ram has since died but his legal representatives (respondents No. 1 to 6) are not in possession of the suit premises; possession is with the sub-tenant namely Tota Ram; ground of sub-letting was accordingly made out in favour of the landlord. Further averment in the eviction petition discloses that Jage Ram was running his clinic till February, 1999 when he expired; during his lifetime, Tota Ram was working as his compounder; after his death his legal heirs have given an exclusive possession of the premises; Tota Ram has now given

prescriptions to the persons who now visit the clinic; eviction petition had accordingly been filed.

2. Written statement had been filed. It was denied that any ground of sub-letting was made out.

3. Attention has been drawn to para 5 wherein it was denied that Tota Ram ever worked as a compounder in the clinic or that he was authorized to issue any prescription; this submission is false. Learned counsel for the petitioner has drawn attention of this Court to the legal notice which had been issued by the landlord to the tenant on 01.08.2001 wherein the contention was that the premises have been sublet to Tota Ram by the legal representatives of Jage Ram from where Tota Ram is running his business. Attention has been drawn to the reply of the aforementioned legal notice wherein the tenant has denied the ground of sub-letting; in this reply, it has been contended that Tota Ram was working as a compounder for Dr. Jage Ram during his lifetime; vehement contention of the learned counsel for the petitioner is that this reply filed by the tenant to the legal notice is clearly contrary to the averments made by him in his written statement; whereas in the reply to the legal notice he has admitted that Tota Ram was working as compounder of Jage Ram yet in the written statement he has denied this factum. Submission of the petitioner/landlord being that ground of subletting has clearly been made out and the ARC had returned a correct fact finding which could not have been interfered with by the ARCT who has committed a fallibility.

4. The respondent has disputed these submissions. The evidence on record supports the case of the tenant; the case of sub-letting is clearly not made out. Three witnesses had been examined on behalf of the plaintiff of whom the landlord was examined as PW-1. PW-1 was Vijay Swarup Singhal; he had reiterated the averments made by him in the eviction petition; certain extracts of his cross-examination are relevant and they have been highlighted in the order of the ARCT. PW-1 in his cross-examination has stated that he had visited the clinic i.e. premises in dispute about 3-4 years ago; this witness had come into the witness box in May, 2004 meaning thereby that he had visited the premises sometime in the year 2001. Eviction petition has been filed in the year 2003. Further cross-examination of PW-1 reveals that PW-1 has admitted that he had seen respondent No. 1 (son of deceased Dr. Jage Ram) practicing as Doctor in the suit premises and a sign board of his clinic was also fixed outside. This admission of PW-1 in his cross-examination is by itself sufficient to hold that no case of subletting is made out. Even as per the case of the landlord the son of deceased Jage Ram was running his doctor clinic in the suit premises and his name board was also affixed there. This admission of PW-1 was noted in the correct perspective by the ARCT who had noted that a perversity had been committed by the ARC constraining the ARCT to reverse the finding of the ARC. The impugned order of the ARCT had appreciated the evidence in the correct perspective. Merely because the photograph Ex. RW-1/X

has depicted Tota Ram sitting inside the shop does not by itself mean that Tota Ram is in exclusive possession of the suit premises and the original tenant has divested himself of complete control over the suit premises which is the settled position of law to make out a case of sub-letting in favour of the landlord.

5. In [Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others](#), the Apex Court had noted that to constitute a sub-letting, there must be a parting of legal possession i.e. possession with the right to include and also right to exclude other and whether in a particular case, there was sub-letting or not was a question of fact. Impugned judgment in no manner suffers from any infirmity. Petition is without any merit. Dismissed.