

(2004) 11 DEL CK 0092

Delhi High Court

Case No: CM (M) 468 of 2004 and CM APPL 13080/13625 of 2004

Sanghi Industrial Printing
Corporation

APPELLANT

Vs

Virmani Industries (P) Ltd. and
Others

RESPONDENT

Date of Decision: Nov. 17, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Constitution of India, 1950 - Article 227
- Delhi Rent Control Act, 1958 - Section 14, 14(1)

Hon'ble Judges: R.S. Sodhi, J

Bench: Single Bench

Advocate: Y.P. Ahuja, for the Appellant; G.L. Rawal and Ashok Aggarwal, for the Respondent

Judgement

R.S. Sodhi, J.

This appeal is directed against the judgment of the Additional Rent Control Tribunal, Delhi (in short "the Tribunal") in RCA No. 808/1992, whereby the learned Tribunal vide its judgment dated 2nd July, 2003, has dismissed the appeal of the petitioner challenging the order dated 5th November, 1992 passed by the Additional Rent Controller, Delhi allowing the eviction petition on the ground u/s 14(i)(b) of the Delhi Rent Control Act.

2. The facts of the case, as has been noted by the Tribunal, arrears under :

""Respondent preferred a petition with respect to property No. 63 Najafgarh, New Delhi consisting of 2 rooms measuring 33"" X 25"" and 25""X 16"" marked red in the plan attached to the petition of portion of property No. 63, Najafgarh, New Delhi. Eviction as sought on the following grounds :-

18(a)-(i) Respond No. 1 the tenant is a habitual defaulter in the payment of rent. A sum of Rs. 13,960.19 stood as arrears towards rent up to the end of the month of September, 1975. When a legal notice was served on him. Respondent No. 1 did not make any payment except Rs. 250/- and now a sum of Rs. 14710.19 paise stands due from him up to the end of the month of January, 1975. The rent is due from 1st January, 1970 from the respondent till January 1975 which the respondent has neither paid nor tendered. His liable to ejectment as a defaulter inspire of notice.

(ii)- Respondent No. 1 has in an unauthorised manner without the consent, permission or knowledge of the petitioner has only recently sublet the whole of room no. A to respondent no. 2 and parted possession thereof. He has sublet portions of Room no. B i the aforesaid manner to respondent nos. 3 and 3 and parted possession thereof and is liable to ejectment Along with respondent nos. 2 to 4.'''

3. The petition was preferred in 1976.

4. The petition has been contested by the appellant. It was claimed that since respondent is a company duly incorporated under the Companies Act, eviction petition is not maintainable without a Resolution of the Board of Director. The premises were let out for running a factory for manufacturing purposes. The tenancy can be terminated only by serving six months notice. Since part of arrears of rent were accepted, the notice dated 15.10.75 was waived. Notice is, otherwise, illegal and invalid.

5. In answer to the ground of eviction appellant pleaded as follows:-

''Para no. 18(a)(i) is vague false, wrong and denied. The petitioner has not given the particulars of the period for which the said sum of Rs. 14,710.19 paise is claimed. The petitioner has also not stated as to whether the said sum is composed of arrears of rent only or sums under other heads have also been included in it. Taking the rate of rent as Rs. 3000/- per annum, the said sum of Rs. 14,710.19 paise obviously includes a large part which is barred by time and is not legally recoverable. It may be pointed out that in addition to the payments during the earlier period, even during the period 1973 to 1975, the answering respondent paid the following sums to the petitioner towards rent:-

| | |
|-----------|------------|
| 28.4.1973 | Rs. 250.00 |
| 26.6.1973 | 250.00 |
| 4.11.1973 | 250.00 |
| 25.12.73 | 500.00 |
| 15.3.74 | 500.00 |
| 20.12.74 | 500.00 |
| 6.1.75 | 250.00 |
| 12.3.75 | 500.00 |
| 17.3.75 | 500.00 |

| | |
|---------|--------|
| 1.5.75 | 250.00 |
| 28.5.75 | 250.00 |
| 23.6.75 | 250.00 |
| 26.7.75 | 250.00 |
| 13.9.75 | 250.00 |

.....It is submitted that no legally recoverable arrears or rent are due from the respondent No. 1 to the petitioner. It is denied that Rs. 14710.19 paise or any other sum is due from the respondent to the petitioner. It is false, wrong and denied that the respondent No. 1 has not paid the rent from January 1970. It is denied that the respondent No. 1 is liable to ejectment as a defaulter inspire of notice.

(ii)-Para No. 18(a)(ii) is wrong and denied. It is false, wrong and denied that the respondent No. 1 in an unauthorised manner without the consent, permission or knowledge of the petitioner has only recently sublet the whole of room No. A to the respondent No. 1 and parted with possession thereof. Without supplying the copy of the plan the allegation is vague and ambiguous. It is submitted that in the suit premises, the rooms are neither marked alphabetically nor numerically. It is false, wrong and denied that the respondent No. 1 has sublet any room in the suit premises to the respondent No. 2.

.....It is submitted that the respondent No. 2 is tenant of the petitioner in respect of another premises located on the said plot No. 63. The respondent No. 1 rented the suit premises from the petitioner and installed a number of machines in various parts of it. In the room measuring 33' X 26' the respondent No. 1 installed a Grinder, two pulverises, 1 emulsifier, conveyer belt, shafts, pulleys and filtration plant etc. The respondent No. 1 also set up a laboratory in the said room. The respondent No. 1 as using the said machines for the manufacture of fine Chemicals under the name and style of Sanghi Industrial Corporation and M/s John Mooire (I) P. Ltd. In March 1975, the respondent No. 1 permitted the respondent No. 2 to use, Along with the respondent No 1, only the said emulsifier, 2 pulverises and the weigh scale mentioned above. The respondent No. 1 continued to have actual physical possession of the whole of the said room and all the machines installed therein. This arrangement worked satisfactorily and smoothly for a few months. Then in order to create a ground for eviction and to evict the respondent No. 1 the petitioner joined hands with the respondent No. 2 and instigated Sh. K. Kalla partner in the respondent No. 2 against the respondent No. 1. As a result of the conspiracy between the petitioner and the respondent No. 2, the said S.K. Kalla in September, 1975, in the absence of Sh. Tekchand (proprietor of the respondent No. 1) on account of illness, illegally, forcibly and wrongfully (a) dismantled the English make Pulveriser from its foundation; (b) pulled down and broke into pieces the conveyer equipment and pulleys; and (g) A broke into pieces the laboratory equipments and apparatus. After causing the above destruction the said Sh. K. Kalla Partner in the respondent No. 2, on instigation by the petitioner forcibly, illegally and wrongfully

took possession of the said room. The petitioner has all along connived at the aforesaid illegal acts of the said Sh. S.K. Kaila. Thus the respondent No. 1 has no sublet, assigned or parted with possession of the said room or any other part of the suit premises. On the contrary it is the petitioner who has abetted the respondent No. 2 in the destruction of various machines and in illegal, wrongful and forcible dispossession of the respondent No. 1 from the said room. Under the circumstances the petitioner by its own act and conduct is estopped from setting up or pleading ground of subletting, assigning or parting with possession of the said room.

.....From the facts set out above it is clear that the respondent No. 1 has not sublet, assigned or parted with possession of the said room to the respondent No. 2 to use 1 emulsifier, 2 pulverises and 1 weigh scale installed in the said room. It is false, wrong and denied that the respondent No. 1 has sublet portions of room B in the aforesaid number to the respondents No. 3 and 4. So far as the respondent No. 1 knows, the respondents nos. 3 and 4 are absolutely fictitious persons. The answering respondent does not even know the respondent nos. 3 and 4."''

6. Parties led the evidence. Respondent examined H.R. Virmani as AW1 while appellant examined Sh. Tek Chand as RW1.

7. The court below considering the evidence passed the impugned order which has been questioned in the appeal.

8. Appellant in the appeal preferred a petition U/o 41 rule 27 CPC. Consequently, during the hearing of the appeal the relevant file from the Hon"ble High Court was summoned. The documents consisting of agreement, petition U/s 20, Order Sheet of the High Court, written statement of Bonanzo Along with affidavit, notice sent to the Arbitrator by the appellant were retained by way of photocopies for purposes of hearing without proof in accordance with law and cross-examination of witness if documents had been proved. The said proceedings have been made part of the appeal with the consent of parties.

9. During the course of hearing appellant died. The cause of action survived. Consequently, legal representatives of Tek Chand who was Proprietor of appellant were brought on record. M/s. Sanghi Industrial Printing Corporation appellant is now represented by (i) Raneer Sanghi, (ii) Narinder Sanghi, (iii) Smt. Kusum Gupta. Accordingly, appeal has been heard from counsel Sh. Y.P. Ahuja representing the appellant and Sh. Ashok Aggarwal representing the respondent.

10. The court below while passing the impugned order drew an adverse inference against the appellant with regard to the ground U/s 14(1)(a) DRC Act that the appellant had failed to prove on record the written agreement that took place between the appellant respondent No. 2. The court below observed, ""respondent No. 1 has admitted that a written agreement took place between respondent No. 1 and 2. Then it was for him to place written agreement on record. That was the best piece of evidence which could have thrown some light on the question as to

whether the agreement was just for the purpose of using the machinery or that this agreement tantamount to subletting but for the reasons best known to respondent No. 1. He was withheld that agreement." Since such observation was made by the court below and a petition U/o 41 rule 27 CPC was made before this court, the agreement which was filed in the proceedings before the Hon"ble High Court was called and has been taken note of. It will be relevant to copy out the whole agreement between the appellant and respondent. This document has not been proved in accordance with law before this court but I am taking note of it since the court below had drawn an adverse inference for with-holding this agreement and as ultimately I also come tot he conclusion that this document does not assist the appellant. The document reads as follows:-

AGREEMENT

This agreement is made this day the 1st of March, 1975 by and between Sh. Tekchand Sanghi s/o Sh. Murari Lal Sanghi Prop. M/s Sanghi Industrial Corporation, 63, Najafgarh road, New Delhi hereinafter referred to as the party of the 1st part, which expression shall be deemed to include all the successors, heirs, assigns etc. and Sh. SK Kalia partner of M/s Bonanzo enterprises for and on behalf of the firm M/s Bonanzo Enterprises which expression shall be deemed to include all successors, heirs and assignment hereinafter referred to as the Party of the Second Part.

Whereas the party of the 1st part has been carrying on the business of manufacturing fine Chemicals under the name and style of M/s Sanghi Industrial Corporation.

And Whereas the party of the 1st Part had installed equipment at the premises 63 Najafgarh road, New Delhi for the above said purposes.

And Whereas the party of the 1st Part has agreed to allow the party of the 2nd party the use of the hall measuring 7.5 meters by 10 meters and the machines which have been installed there for carrying the manufacturing activities by the party of the 2nd part.

And whereas the party of the 2nd part has agreed to use the said premises Along with the machines installed thereon.

And whereas it has been deemed fit and expedient to reduce the terms and conditions of this agreement into writing.

Now, Therefore, this agreement witnesses under

1. That the party of the 1st part shall make available to the party of the 2nd Party the Hall measuring 7.5 meters by 10 meters Along with the machines as list whereof is made annexure to this agreement for use by the party of the 2nd part for manufacturing activities.

2. That it has been decided between the parties to this agreement that the party of the 2nd part shall pay to the party of the 1st part monthly lease money calculated at the rate of Rs. 500/- per month. The said payment of Rs. 500/- per month shall be made by the party to the 2nd Part to the party of the 1st part before the 5th of every month.
3. That the party of the 2nd Part shall be entitled to use the machinery and the equipment installed in the said premises in such manner and for such purposes as may be deemed fit and expedient by them.
4. That the party of the 2nd Part shall be free to utilise the said machines and the entire said premises solely in which the machines have been installed, without any let or hindrance from the party of the 1st Part.
5. That it has been clearly understood by the parties to this deed that the lease agreement in question is a normal trade agreement and does not tantamount to subletting of the premises by the party of the 1st Part of the party of the 2nd part.
6. That the party of the 2nd part shall be entitled to make use of the power connection available at the said premises to the extent of 20 H.P. The party of the 2nd part shall be free to utilise the said connection subject to the payment of the electricity bills in respect of the power consumed by them.
7. That the party of the 2nd part shall be free to install such equipment as may be required by them for carrying their business activities.
8. That all fees which are payable by the party of the 1st part to the local or Central Government agencies or Corporation for carrying on the industrial undertaking shall continue to be paid by the party of the 1st part and the party of the 2nd part shall not be called upon at any time to discharge and liabilities of the party of the 1st part.
9. That the electricity connection is so far in the name of the Landlord namely M/s. Virmani Industries (P) Ltd. The party of the 1st part shall be liable to get the same transferred to his own name so as to allow the unhampered use of the electricity connection by the party of the 2nd part.
10. That the party of the 2nd part shall not be liable for damages either accidental or by the normal wear and tear to the machinery during the working of the name by the party of the 2nd part.
11. That the duration of the lease shall be for a period of 5 years at the expiry of which the party of the 2nd part shall be entitled to renew it on the same terms and conditions. If however, the party of the 2nd part wishes to terminate to terminate the lease at any time prior to the stipulated period of 5 years, he shall have to give at least 6 months prior notice of his intention to do so to the party of the 1st part at the expiry of which the agreement shall be deemed to have been terminated. The party

of the 2nd part shall not be entitled to take recourse of this termination clause unless some extenuating circumstances exist for the same.

.....Notwithstanding the stipulation contained in this clause, the parties to this deed shall be competent to terminate the lease by express mutual consent but not without given the other party at least six months notice of his intention to do so.

12. That in the event of there being any dispute regarding any of the terms and conditions of the agreement the same shall be settled by the sole arbitration of arbitrators Shri Y.P. Mahna Advocate and Shri Ved Parkash Gulhati r/o 63, Najafgarh Road, New Delhi.

....In witness whereof the parties to this agreement have set their respective hands unto these present on the day, month and year first above written. Witnesses Party of the 1st part 1, Party of the 2nd Part""

11. It is contended by counsel for the petitioner that possession of the premises in question was never handed over to the so-called sub-tenant and that he was only entitled to use the machinery installed in the premises measuring 7.5 X 10 meters. Counsel further submits that the respondent No. 2 had forcibly taken possession of the entire suit premises, necessitating the parties to go for arbitration. By the award of the Arbitrator the possession of the hall was delivered to the petitioner. He further submits that there was no parting of possession and/or subletting of the premises and Therefore, the legal possession always remaining with the petitioner, he could not be non-suited on the grounds of Section 14(i)(b) of the Delhi Rent Control Act.

12. Heard counsel for the petitioner and with his assistance have gone through the material on record, in particular, the agreement dated 1st March, 1975, which forms the basis for inducting respondent No. 2 into the portion of the premises measuring 7.5 X 10 meters. A bare reading of the agreement indicates that it is a lease for a period of five years of a portion of the hall measuring 7.5 X 10 meters at a monthly rent of Rs. 500/-, which agreement was extendable on the same terms and conditions at the opinion of the respondent No. 2. A bare reading of this document satisfies me that the courts below were right in their assessment that the premises in question has been sublet/parted with possession and Therefore, a decree u/s 14(i)(b) was in order. I find no grounds to interfere under Article 227 of the Constitution of India. CM(M) 468/2004 is accordingly dismissed. CM APPL. Nos. 13080/2004 and 13625/2004 are also dismissed.