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Nirmal Kishore Jain Vs Sunpack India

Court: Delhi High Court

Date of Decision: Feb. 2, 2012

Acts Referred: Constitution of India, 1950 â€" Article 227
Delhi Rent Control Act, 1958 â€" Section 14(1), 38
Slum Areas (Improvement and Clearance) Act, 1956 â€" Section 19

Citation: (2012) 4 AD 455 : (2012) 187 DLT 221

Hon'ble Judges: Indermeet Kaur, J

Bench: Single Bench

Advocate: P.N. Bhardwaj, for the Appellant; Sudhir Nandrajog with Mr. Fanish K. Jain, for the Respondent

Final Decision: Dismissed

Judgement

Indermeet Kaur, J.
Order impugned before this Court is the order dated 23.04.2007 passed by the Additional Rent Control Tribunal

(ARCT) which has endorsed the finding of the Additional Rent Controller (ARC) dated 28.03.2003 whereby the eviction petition filed by the

landlord Mirmal Kishore Jain seeking eviction of his tenant M/s Sunpack India on the ground contained in Section 14(1)(a)(b)(c) & (j) of the

Delhi Rent Control Act (DRCA) had been dismissed. These are two concurrent findings of fact by the two courts below.

2. Record shows that the premises in dispute is a suit property bearing No. 1063-64, Bazar Piawalan, Jama Masjid, Delhi which as per the

averments contained in the eviction petition is a property comprising of two doors having an height of 16 feet rented out to the tenant at a monthly

rent of `300/-; this was vide a written lease deed dated 12.11.1986 (Ex.AW-1/1); the purpose of letting was for dealing in paper, board and allied

business only. The contention of the landlord is that the tenant is a habitual defaulter in payment of rent; he was in arrears of rent w.ef. 01.04.1989

which he had failed to tender inspite of demand notice dated 14.03.1994 (Ex. AW-1/4). Further contention is that the property has been

sublet/assigned/parted with possession in favour of M/s Ankit Trading Company and Hans Raj Goel without obtained the permission in writing of

the landlord; the sub-lessees are carrying out their business in the suit premises for which the tenant is charging a huge amount from them; they have

also started manufacturing activity in the unauthorized portion which is in their possession; because of this activity, a lot of vibrations amounting to a

nuisance has occurred to the landlord and other residents of the area; inspite of notice dated 14.03.1994 (Ex.AW-1/4) served upon the tenant this

activity has not stopped; grounds for eviction u/s 14(1)(b)(c) & (j) were also prayed for.

3. Written statement was filed by the tenant disputing all the aforenoted contentions. Contention was that the tenant has paid up to date rent i.e. up

to 30.09.2000 which the landlord had accepted without any objection; thereafter also the tenant has been paying rent regularly; ground u/s 14(1)

(a) is not made out. Qua the other grounds it was contended that what has been let out to the tenant right from the inception of the tenancy was

one shop with two tands which are existing from the inception of tenancy and the landlord is well aware of this; there is no person by the name of

Ankit Trading Company which is carrying out any business there; further contention in the written statement is that Hansraj Goel is the Managing

Director of the tenant for last several years and is looking after the business of the tenant; no ground of subletting u/s 14(1)(b) is made out.

Contention with regard to clause "c" and "j" of Section 14(1) is that the premises had in fact been let out for the purpose of paper, board and

other allied business; the tenant is using the premises for the same purpose only; the allied business is conversion of paper into consumable sizes

which is not a manufacturing activity; no nuisance has been created by the activity of the tenant; grounds u/s 14(1)(c) & (j) are also not made out.

4. Oral and documentary evidence was led. On behalf of the landlord beside the landlord (examined as AW-1) four other witnesses were also

examined. AW-2 was the witness from the Competent Authority who had produced the summoned record from the Slum Department. Relevant

would it be at this stage to state that prior to the filing of this eviction petition which was on 01.07.2000, since the suit premises are located in a

slum area, necessary permission u/s 19 of the Slum Areas (Improvement and Clearance) Act had to be obtained for which proceedings u/s 19 of

the said Act had been initiated on 13.09.1994. Written statement was filed by the tenant in those proceedings Ex. AW-1/14 dated 28.02.1995;

affidavits by way of evidence Ex. AW-1/15 & Ex. AW-1/16 were also filed by the tenant and finally permission was granted by the Competent

Authority on 28.04.2000. Contention of the petitioner/landlord before this Court is that the stand of the tenant in those proceedings (Ex.AW-14 to

Ex. AW-1/16) is contrary to the written statement filed in the present eviction petition. To cut short the controversy, the said documents have been

examined at this stage and this Court is of the view that there is no such contradiction. In fact the written synopsis filed by learned counsel for the

petitioner detailing the aforenoted contradictions which as per him are contrary to the stand taken up by the tenant in his earlier written statement

and his subsequent written statement as also his deposition on oath in Court has been examined. Perusal of these documents (Ex.AW-1/14 to Ex.

AW-1/16) show that even before the Competent Authority, the tenant had contended that the respondent firm had taken on rent a shop having

mezzanine floor with two doors in property No. 1063-64 Bazar Piawalan, Jama Masjid, Delhi at a monthly rent of `300/-; the same stand adopted

in his affidavit by way of evidence Ex.AW-1/15 and Ex. AW-1/16. The reply sent by the tenant to the legal notice of the landlord (Ex. AW-1/7)

dated 12.04.1994 also shows that this was the very same stand which was taken by the tenant; in this reply filed by the tenant, he has stated that

the shop which has been let out to him is having two doors and a mezzanine; the word ''mezzanine'' has been explained as two tands which were

inside the shop since the inception of tenancy; this has been reiterated in the subsequent paras where he has again used the word two tands in an

interchangeable terminology; contention of the tenant being that from the very beginning his stand was that what has been let out to him is a shop

with two tands which in different terminology may be referred to either as a ''mezzanine'' or a ''tand''; contention being this is only a difference in the

language. In this context the testimony of RW-2 is also relevant; he was an employee of M/s UP Paper Corporation Ltd. who was the tenant prior

in time to M/s Sunpack India. Record shows that M/s UP Paper Corporation Ltd. was earlier the tenant up to 11.11.1986 and thereafter w.e.f.

12.11.1986 M/s Sunpack India had become the tenant. In this context RW-2 an employee of M/s UP Paper Corporation has categorically on

record deposed that the premises which had been let out to M/s UP Paper Corporation Ltd consisted of a ground floor with two doors and a

shutter and also two pakka tands, one on the front side and other on the back side of the godown, joined with an iron jal and a pakka staircase

leading to the tand. This witness was an independent witness; there was no reason why he would depose falsely. Testimonies of RW-3, RW-4 &

RW-5 are also corroborative on this point. Thus this submission of the tenant that what has been let out to him was a shop with two tands which in

other words may be referred to as a mezzanine and this is also clear from Ex.AW-1/7 when the word mezzanine has been explained as two tands

has force. This is also the stand adopted by him which is a continuous stand right from the inception when he has used the mezzanine

interchangeable with the word ''tand''. The definition of ''tand'' and mezzanine floor placed on record by the learned counsel for the petitioner

(under the Building Bye-laws of Delhi, 1998) also does not advance his case any further; a ''tand'' has been described as a ''self-like'' projection

not wider than 0.9 meter and at a minimum height of 2.2 meter from the floor level whereas a "mezzanine floor" has been described as an

intermediate floor between two floors level. Even if this definition is accepted, one can inter-change the other; a tand is a projection having a

minimum projection and a minimum height; beside the fact that these Bye-laws are of the year 1998 which were much later in time than the stand

taken by the tenant (Ex.AW-1/7 is the reply dated 12.04.1994) even otherwise a layman dealing with an other layman is not supposed to be

conversant with the measurements legislated in statutory Bye-laws. Thus the submission of the petitioner that there are shifting and contrary stands

adopted by the tenant about the description of the suit premises which has been let out to him carries no weight. Both the concurrent fact finding

Courts have in fact dealt with this aspect in detail and have returned a finding that what has been let out by the landlord to the tenant was a shop

which contained two tands i.e. mezzanine floor which could be accessed through a staircase inside the premises itself. This has also been answered

by in photographs which were taken on record by the first appellate Court i.e. by the Court of Rent Control Tribunal.

5. Testimony of AW-1 is also relevant in this context. In his cross-examination, he has admitted that the tenanted premises is beneath the premises

where he is residing; although his contention is that this mezzanine floor has been constructed by the tenant by making a pucca staircase therein

containing iron girders and stone slaps but in his cross-examination it has bee elicited that he did not know about the construction or when it was

made; this admission was also noted in the correct perspective by the two courts below to return a finding that the landlord living in the same

premise which is above the tenanted portion and knowing about the heavy iron girders and stone slabs being a part of the alleged construction

activity being carried out by the tenant; thus this submission of the landlord was rightly noted to be false. In a further part of cross-examination,

AW-1 has admitted that the manufacturing means the cutting of heavy bundles of paper sheets and packaging; he has not categorically denied that

Hansraj Goel is not the Manager of the respondent; his answer is that he is not sure about the status of Hansraj Goel. On this count although

vehement submission of the learned counsel for the petitioner initially was that Hansraj Goel was introduced as an employee of the respondent firm

only in the examination-in-chief of RW-1 yet as rightly pointed out by learned counsel for the respondent (from the record) this is not substantiated.

Record shows that even in the written statement filed by the tenant before the Competent Authority under the Slum Act (Ex.AW-1/14) his

consistent stand was that Hansraj Goel and Promod Goel were the employees of the respondent firm. In this regard the testimony of AW-4 is also

relevant; he has deposed that the telephone connection was in the name of Hansraj Goel; however he being an employee of the respondent does

not in any manner advance the case of the petitioner that Hansraj Goel was the sub-lessee. This vehement submission of learned counsel for the

petitioner is thus without any force.

6. Learned counsel for the petitioner in this context has also placed reliance upon the greeting cards marked "A", "B" and "C" which RW-4 has

admitted in his cross-examination are of M/s Sunpack India; vehement contention of the petitioner being that these documents clearly show that

M/s Ankit Trading Company was functioning from the respondent firm. The documents marked "A", "B" and "C" have been perused. Beside the

fact that these documents have not been proved; they have merely been marked but even otherwise a perusal of these documents show that M/s

Sunpack India and M/s Ankit Trading Company both have been mentioned in the aforenoted greeting cards; even presuming that name of M/s

Ankit Trading Company appears in these greeting cards and these documents are genuine documents, it may at best show that M/s Sunpack India

and M/s Ankit Trading Company are working together; it does not make a case of subletting/assigning/ parting with possession for which the law is

very clear that the landlord must show that the original tenant (M/s Sunpack India) had divested himself completely from the suit premises which

even as per marked "A", "B" and "C" is not made out. That apart RW-1 has vehemently denied the existence of these cards.

7. This Court is sitting in its powers of superintendence under Article 227 of the Constitution of India; unless and until there is a grave injustice or

manifest perversity which has occurred because of a jurisdictional error or there has been gross abuse of the process of the Court, interference by

this Court in its powers of superintendence is not called for. In the instant case, both the two fact finding courts have examined the evidence in

deep depth and detail and have returned a concurrent finding that the grounds u/s 14(1)(b) of the DRCA are not made out.

8. It is well settled that to make out a case for sub-letting or parting with possession, it means giving of possession to persons other than those to

whom the possession had been given by the original lessor and that parted with possession must have been made by the tenant; as long as the

tenant retains the legal possession himself, there is no parting with possession in terms of Section 14(1)(b) of the Act. The word "sub-letting"

necessarily means transfer of an exclusive right to enjoy the property in favour of the third party. 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 act. To establish this ground,

the landlord must show that the tenant has completely divested himself from the suit premises and has lost control over it; this is not borne out from

any angle. Ground u/s 14(1)(b) is clearly not established.

9. The ARC had noted that prior to filing of the eviction petition, the entire arrears of rent which were due in terms of the legal notice (Ex.AW-1/4)

had been paid by the tenant to the landlord; there is no dispute that the landlord has also accepted the said amounts without any demur or protest;

the ARC had returned a finding that there is a doubt about the maintainability of the said petition; at the same time, he had gone to return a finding

that the landlord had in fact waived of his right to claim enhanced rent; to that effect, the RCT had modified the order of the ARC on the ground

u/s 14(1)(a) of the DRCA. Both the courts below had rightly noted that since the payment of arrears of rent had been made at the time when the

eviction petition was filed by the tenant, ground u/s 14(1)(a) of the DRCA is not made out.

10. There are concurrent finding even on the ground u/s 14(1)(c) & (j) which relate to "misuser" and "substantial damage" to the premises. On

both these counts, the evidence has been examined in detail. Apart from the testimony of AW-1 and RW-1, testimony of RW-2, an employee of

earlier tenant M/s UP Paper Corporation Ltd was also considered; RW-2 had stated that the original tenancy comprised of one shop and two

tands with pucca staircase running from inside whereas in the mezzanine the same had been used. However, this witness not being aware about the

constructions of the suit premises, his testimony was held not credible; in this context AW-1 had also stated that he was no aware when the

mezzanine was constructed; he had stated that cracks had occurred in the staircase but he did not know about the cracks or where he made any

effort to get them repaired; it is also an admitted case that the landlord himself was living in the same premises which is over the tenanted premises

and he not knowing about the construction activity in the tenanted portion which as per his version consisted of cement slabs and iron girders was

an unimaginable miserable situation leading to none but one conclusion that the testimony of the landlord was a falsity; no substantial damage had

also been caused. There were findings of fact returned by the first finding court which was the ARC and thereafter affirmed by the RCT which

even otherwise has to examine an appeal under its jurisdiction u/s 38 of the DRCA only on a question of law.

11. As noted supra, this Court in its powers of superintendence will interfere only if there is a perversity noted in the impugned judgment. No such

perversity has been pointed out. The allied business which the tenant was carrying out in the premises was cutting of big papers into a consumable

size for the purpose of sale; this was in fact the purpose for which the premises had been let out to him. The petitioner has failed to establish his

case on any of the four grounds for which the eviction petition has been filed u/s 14(1)(a)(b)(c) & (j). On no count, the impugned judgment calls

for any interference. Petition is without any merit. Dismissed.