

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : DELHI RENT CONTROL ACT

Date of Judgment: 06.03.2012

CM(M) 1489/2007 and CM Nos. 15811-15813/2007 & 5657/2009

SUBHASH CHAND SAINI & ORS. Petitioners
Through Mr. Manu Nayar, Mr. Amitabh Kirshan and Mr. Amar, Ad.

versus

VED PRAKASH & ORS. Respondents
Through Mr. R.K. Jain, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The impugned order is dated 27.09.2007 passed by the Additional Rent Control Tribunal (ARCT); by way of this order the matter had been remanded back to the Additional Rent Controller (ARC) to decide afresh the issue of sub-letting by giving an opportunity to the landlord to re-examine AW1-Rakesh Kumar with right to the tenant to cross-examine the witness and also to lead additional evidence. This order was passed to entitle the tenant to rebut the case sought to be set up by the landlord by way of amendment of the plaint; the amended plaint had been taken on record by the ARCT.

2. Record shows that the present eviction petition has been filed by the landlords (21 in number) against three respondents. The grounds were raised under Section 14(1)(b) & (c) of the Delhi Rent Control Act (hereinafter referred to as DRCA). The averments made in the eviction petition are to the effect that the petitioners are the owners/landlords of the shop bearing No. 1446, Ward IV, Dariba Kalan, Delhi. Respondents are the tenants in respect of one shop (depicted in red colour in the site plant filed in the Trial Court). The premises had been let out for running a tailoring shop at a monthly rent

of Rs. 18 which was subsequently enhanced to Rs. 55/-; the original tenant was Roshal Lal; tenancy was terminated during his life time by a legal notice dated 20.03.1973 served by registered AD on him; tenancy was terminated with effect from 31.05.1973; after the death of Roshan Lal, the respondents have inherited the tenancy rights of Roshal Lal as joint tenants. In August, 1990, the respondents without the consent of the landlord have parted with possession/sub-let/assigned this shop in favour of one Mahipal who has started a halwai shop/sweet house which is without the permission of the petitioners; no licence for running a halwai shop has also been obtained; in spite of legal notice dated 28.10.1990 having been served upon the respondents, the mis-user has not stopped; eviction petition was accordingly filed under the grounds as aforementioned.

3. Written statement was filed by the respondents denying these averments. Contention was that earlier two eviction petitions filed by the landlord had also been dismissed; neither the ground of sub-letting nor the ground under Section 14(1)(c) of the DRCA was made out.

4. Oral and documentary evidence was led by the respective parties. Rakesh Kumar appeared as AW1; his deposition was to the effect that Mahipal was in possession of the shop and has been carrying on a halwai business in the said shop. The landlord was examined as AW4. The tenant had appeared in the witness box as RW1 and reiterated the averments made on oath; contention being that the earlier eviction petitions filed by the landlord had been dismissed; suit for possession filed by him against the legal heirs of Roshal Lal had also been dismissed on 25.02.1997. Two other witnesses i.e. RW2 and RW3 had also come into the witness box.

5. On the basis of this oral and documentary evidence, the ARC had decreed the eviction petition under Section 14(1)(b) as also 14(1)(c) of the DRCA.

6. An appeal against the order of ARC had been filed under Section 38 of the DRCA before the ARCT. Impugned order had remanded the matter back to the ARC for recording the testimony of AW1; the court was of the view that the order of the ARC was largely based on the statement made by Rakesh Kumar but notwithstanding the fact that although permission had been granted to the plaintiff to amend the plaint yet the amended plaint had not been taken on record. Court had also noted that the amended written statement had been filed. In this scenario amended plaint was taken on

record by the first appellate court and the matter was remanded back for reconsideration of the issue of sub-letting after recording a fresh statement of AW1 (Rakesh Kumar) with right to the respondents to cross-examine the witness as also to lead further additional evidence, if any. The appeal of the tenant was disposed of in the aforementioned terms.

7. Record has been perused.

8. The RCT was hearing an appeal under Section 38 of the DRCA which has to confine itself only on a substantial question of law. In this context, a Bench of this Court in the judgment reported as 136 (2007) DLT 219, Shyam sunder Dawa vs. J.D. Kapoor & Another, had noted that where the reasoning of the ARC is based on the appreciation of evidence and no question of law has been raised, the Tribunal should not interfere with the finding of the Rent Controller.

9. It is in this background that the arguments addressed by the learned counsel for the parties have been appreciated.

10. Record shows that the present eviction petition had been filed by the landlord on the ground as contained in the provisions of Section 14(1)(b) and (c) of the DRCA. Four witnesses have been examined on behalf of the landlord; AW4 was Subhash Chand/the landlord. AW1 was Rakesh Kumar; his testimony was clear and categorical which was to the effect that his father (Sita Ram) used to sell vegetables from this very shop; Mahipal is presently in occupation of the shop where he is carrying on a halwai business. In his cross-examination, AW1 had admitted that his father used to pay rent to Dev Vrat. The tenant had examined himself as RW1. He had been subjected to a lengthy cross-examination. He was Ved Prakash, the elder son of the original tenant Roshal Lal; his elder brother was Dev Vrat; he has admitted that after the death of their father his elder brother Dev Vrat, another brother Brij Kumar and third brother had continued this tailoring business for six years; thereafter the halwai business was started; there was no partnership; accounts were not being maintained; halwai business was being run under the name of 'Honey Sweets'.

11. Oral and documentary evidence was appreciated by the ARC to return a fact finding that the ground of sub-letting under Section 14(1)(b) & (c) of the DRCA have been made out in favour of the landlord; petition was decreed. These reasoned fact findings were interfered by the RCT for no

reason whatsoever; the RCT has remanded the matter back to the Trial Court on the premise that the testimony of AW 1(Rakesh Kumar) has to be re-appreciated. However, why this contingency has arisen (when the testimony of AW1 was clear and categorical on all aspects) is not clear. Impugned judgment clearly suffers from an illegality as reasoned findings returned by the Trial Court on the oral and documentary evidence adduced before it could not have been interfered with without any cogent reason.

12. Relevant would it be at this stage to note that the plaint had in fact been amended by the petitioner in the Trial Court vide order dated 05.05.2001. Relevant would it to be also to state that the averments made in the amended plaint were about the other sub-lettings having been made by the tenant between the period 1960-1984. Thereafter an application had been filed by the tenant on 20.11.2001 seeking a recall of AW4 Subhash Chand; he did not wish to recall AW1 Rakesh Kumar for any purpose. AW4 has been cross-examined on all these counts.

13. RCT had noted that although the amendment of the plaint had been allowed and amended written statement had also been filed, since the amended plaint was not on record, this was a reason for the remand of the matter to the ARC. This was only a technical inadvertence which in no manner affected the merits of the controversy between the parties as the submission of the tenant on 20.11.2001 (after the amendment was allowed on 05.05.2001) sought a recall only of AW4; his grievance was that after the amendment, he wished to examine AW4; it was not his grievance that he wished to re-examine AW1 as well. Thus it was not as if the petitioner was unaware of the consequences of the amendment.

14. Thus on both counts, the order of the RCT suffers from an infirmity.

15. These findings of the ARC were as follows:-

“27. After hearing arguments and on perusal of the material placed on record following proved facts emerged:

a) initially demise shop was let out to Sh. Roshan Lal and he during his life time continued to run a tailoring shop. The factum of relationship of landlord and tenant is not denied. The rate of rent @ Rs. 18/- per month is admitted. The factum of termination of tenancy within the life time of Roshal Lal vide notice dated 20.03.1973 is also proved.

b) AW1 Sh. Rakesh Kumar clearly stated that his father used to sell vegetables in the tenanted shop. One Mahipal was also in possession of the

shop and has been carrying on Halwai business and during his cross examination he has specifically stated that his father used to pay rent to Sh. Devvert for his occupation over the tenanted shop.

c) The photographs which were produced before the respondent, on seeing the photographs respondent clearly stated that photographs belong to the tenanted shop and he also submitted that adjacent to the tenanted shop there is another sweet shop in the name of Khurchan Bhandar and he also admitted that there is sign board showing Shrinagar Compnay i.e. clearly visible on the gate of the shop but the respondent failed to explain how the board was came into existence and who was the proprietor of the Shrinagar Company. The respondent also failed to place any evidence in rebuttal that the tenanted shop was not partly occupied by Sh. Sita Ram who used to sell vegetables and also used to pay rent to one Sh. Devvert. Notice was required under Section 14(5) of DRC Act was also served upon Sh. Vinod Kumar, Ved Prakash and Sh. Brij Kumar requesting thereby to stop the misuser of the property which is Ex. As PW4/9 postal receipt is Ex. PW4/10 to 14 and the AD cards are Ex. PW4/15 to Ex. PW4/20 also placed on record. The complaints filed by the petitioner to police and also to the MCD are Ex. PW4/21 is also placed on record and the complaint was duly served by the competent authorities. The site plan is not disputed hence proved.

29. In view of the proved fact came out as discussed above and on perusal of the observation made by our lordships on the aforesaid decided case, I am of the considered view that sufficient grounds of parting with the possession of the tenant shop has been placed on record by the petitioners but the respondent failed to rebut the evidence adduced by the petitioners. Respondent also failed to lead any evidence in rebuttal that Sh. Sita Ram was not inducted in the portion of the shop as sub tenant and they were never received any rent from him. However, in view of the observations made in the aforesaid decided case and on perusal of the provisions of Section 102 to 105 of the Indian Evidence Act the onus lies upon the respondent to prove that the tenanted premises was not parted with the possession and was not sublet to any other person except the legal heirs of original tenant and is of the considered view that the petitioners succeeded in proving their case to get the benefit of Section 14(1)(b) of the DRC Act.

30. It is the admitted fact that initially the tenanted premises was beign used for tailoring business and thereafter it was let out for selling vegetables as proved by Sh. Rakesh Kumar (AW1). The board of Shrinagar Company admitted displayed on the shop but the respondent failed to explain who was the proprietor of the Shrinagar Company and how that board came into existence. It is also admitted that the respondents started doing Halwai

Business in the said shop. The notice under Section 14(5) of DRC Act duly served and despite the service of notice they have not stopped misusing the tenanted shop. The notice issued by the MCD with regard to stoppage of misuser and the reply filed by the petitioners again goes to show that the tenanted premises was being misused by the respondent. In view of the observations made by our lordship in Ram Swaroop vs. Janaki Dass 1976 RCR 576 wherein it is clearly established that the distinction between commercial purpose and industrial purpose has been clearly interpreted and manufacturing sweets in the shop cannot be treated as equal as to the tailoring business/another kriyana shop etc. therefore in view of the facts and circumstances of this case as well as observations given by their lordships as discussed above and on perusal of the material placed on record. I am of the considered view that petitioners also succeeded in proving their case under Section 14(1)(c) of the DRC Act also.

31. I accordingly, pass an order of eviction of the tenanted shop under both the clauses i.e. 14(1)(b) and (C) of the DRC Act in favour of the petitioners and against the respondents.”

16. These findings were based on cogent and coherent evidence adduced before it had come to a reasoned finding that the grounds under Section 14(1)(b) & (c) of the DRCA had been made out; eviction petition decreed by the ARC did not in any manner call for any interference. The order of the RCT having reversed this finding being an illegality is accordingly set aside. Order of the ARC is revived. Eviction petition stands decreed under Sections 14(1)(b) and (c) of the DRCA.

17. Petition disposed of in above terms.

Sd/-
INDERMEET KAUR, J

MARCH 06, 2012