

CASE NO.:
Appeal (civil) 1559 of 2008

PETITIONER:
Vaishakhi Ram and Ors

RESPONDENT:
Sanjeev Kumar Bhatiani

DATE OF JUDGMENT: 25/02/2008

BENCH:
TARUN CHATTERJEE & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO 1559 OF 2008
[Arising out of SLP [C] No.2478 of 2007]

TARUN CHATTERJEE, J.

1. Leave granted.
2. This appeal is directed against the final judgment and order dated 23rd of January, 2007 passed by the High Court of Delhi in CM [M] No.126 of 2007 whereby the eviction of the appellants from a shop bearing No. III-1/9, Gopi Nath Bazar, Delhi Cantonment, Delhi (in short "the suit shop") was affirmed on the ground of subletting under Section 14 [1] [b] of the Delhi Rent Control Act, 1958 (for short "the Act").
3. The appellant no.1 was inducted as a tenant in the year 1956 by the erstwhile owners of the suit shop, viz., Som Nath and Mohinder Nath. He was all along in continuous possession of the suit shop and was conducting the business from the same along with his brother Chunni Lal of Chunni Lal and Sons under the name and style of M/s Mitra Book Depot. The rent receipts issued by the landlord were in the name of M/s Mitra Book Depot as tenant at the rate of Rs.65/- per month. Subsequently, a business was started in a portion of the suit shop in the name of M/s. Mitra Stores and M/s. Lucky Confectioners. In the year 2000, Som Nath and Mohinder Nath sold the suit shop to one Anil Anand. However, the rent of the suit shop was continued to be paid to Som Nath and Mohinder Nath by the appellant no.1 upto the month of September 2000. Thereafter, the rent was deposited by the appellant no.1 in the court in different proceedings. On 20th of October, 2000, Anil Anand sold the suit shop to the respondent by a registered deed of sale. However, the appellant no.1 went on depositing the rent in the name of the original landlord. Finally, on or about 1st of February, 2002, the respondent filed an eviction petition under Section 14 [1][b] of the Act on the ground of subletting before the Rent Controller, Delhi. According to the respondent, although the tenancy was given to the appellant no.1 in the name of M/s Mitra Book Depot but subsequently, the appellant no.1 had sublet the suit shop to the appellant Nos. 2 to 4 who were carrying on the business in a portion of the suit shop in the name of M/s Mitra Stores and M/s Lucky Confectioners. Accordingly, the respondent sought for eviction of the appellants on the ground of subletting. A written statement was filed by the appellants denying the material allegations made in the eviction petition filed before the Rent Controller, Delhi by the respondent. After the issues were framed and the evidence was adduced, the Rent Controller held on facts that the appellant No.1 had sublet a portion of the suit shop in which the business in the name of M/s Mitra Stores and M/s Lucky

Confectioners was carried on by the appellant Nos. 2 to 4 and, therefore, the appellants were liable to be evicted under Section 14 [1][b] of the Act. The Rent Controller passed the order of eviction by holding, inter alia, that the case of subletting was duly proved as from the evidence on record, both oral and documentary, it was clear that an independent business was run by the appellant Nos. 2 to 4 and that they were in exclusive possession of a portion of the suit shop. Feeling aggrieved, the appellants filed an appeal before the Rent Control Tribunal, which also dismissed the same by affirming the findings of the Rent Controller. Against this order of the Rent Control Tribunal, the appellants filed a writ petition before the High Court of Delhi and the High Court by the impugned judgment also dismissed the same. Aggrieved by the aforesaid judgment and order of the High Court, the instant special leave petition has been filed, in respect of which leave has already been granted.

4. On behalf of the appellants, at the first instance, Mr. Rajesh Aggarwal contended that even if subletting was done by the appellant no.1 in favour of the appellant nos. 2 to 4, then also, the respondent was not entitled to an order of eviction on the ground of subletting under Section 14 [1] [b] of the Act for the simple reason that since the appellant nos.2 to 4 have been carrying on their business in the suit shop for a long time with the knowledge of the respondent as also the erstwhile owner, the ground of subletting for eviction of the appellants must be held to have been waived by the erstwhile landlord of the appellant no.1 and finally by the respondent as he had, at the time of his purchase, knowledge of the subletting. Therefore, Mr. Aggarwal contended that even if subletting was done by the appellant No.1 in favour of the appellant nos. 2 to 4, either in whole or in part, it must be held that the right to evict the appellants by the purchaser respondent on the ground of subletting was waived. It was next contended by Mr. Aggarwal that the appellant nos.2 to 4, being the family members of the appellant no.1 and carrying on business in the name of M/s. Mitra Stores and M/s. Lucky Confectioners in a part of the suit shop, the subletting as made out by the respondent for eviction cannot be said to have been proved. In any view of the matter, the question of subletting of the suit shop to the appellant Nos. 2 to 4 could not arise as the appellant No.1 had the exclusive possession and legal control of the same. It was lastly contended by Mr. Aggarwal that in any view of the matter, the respondent, who is a subsequent purchaser of the suit shop was not entitled to take advantage of the ground of subletting when the erstwhile landlord had not taken any steps to evict the appellants and therefore, had waived the right to evict the appellants on the ground of subletting. These submissions of Mr. Aggarwal were hotly contested by Mr. Ranjit Kumar, the learned senior counsel appearing on behalf of the respondent.

5. Having heard the learned counsel for the parties and after going through the impugned judgment of the High Court as well as of the courts below and the other materials on record, including the oral evidence, we are of the view that the concurrent findings of fact on the question of subletting can not be upset for the reasons herein after. Let us first deal with the question whether on account of the continuous exclusive possession of the appellant Nos. 2 to 4 in a part of the suit shop from the time of the original erstwhile landlord, the purchaser respondent was entitled to evict the appellants from the suit shop on the ground of subletting as the said right was waived by the erstwhile landlord or even by the subsequent purchaser respondent. Before deciding the question of waiver, we must look into the provision made in Section 14(1)(b) of the Act, which reads as under:-

"that the tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises

without obtaining the consent in writing of the landlord."

6. A plain reading of this provision would show that if a tenant has sublet or assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord, he would be liable to be evicted from the said premises. That is to say, the following ingredients must be satisfied before an order of eviction can be passed on the ground of subletting: -

(1) The tenant has sublet or assigned or parted with the possession of the whole or any part of the premises;

(2) Such subletting or assigning or parting with the possession has been done without obtaining the consent in writing of the landlord.

7. So far as these conditions are concerned, we find that in the facts of this case, the appellant no.1 has parted with the exclusive possession of a part of the suit shop in favour of the appellant Nos. 2 to 4 without obtaining the consent in writing, either of the erstwhile landlord or the purchaser respondent. Now the question is whether the respondent or the erstwhile owner of the suit shop had waived the right of evicting the tenant on the ground of subletting or not. As noted herein earlier, the appellant Nos. 2 to 4 were inducted in a part of the suit shop without obtaining the consent in writing, either of the original landlord of the suit shop or of the present respondent. Before deliberating further on this question, let us, at this stage, consider a short submission of the learned counsel for the appellants. According to Mr. Aggarwal, the learned counsel appearing on behalf of the appellants, since the appellant Nos. 2 to 4 are the family members of the appellant No.1, it cannot be said that the appellant Nos. 2 to 4 were inducted as sub-tenants under the appellant No.1. In *Kailasbhai Shukaram Tiwari Vs. Jostna Laxmidas Pujara & Anr.* [(2006) 1 SCC 524], while dealing with a case of subletting under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), this Court observed that the question as to whether a person is a member of the family of the tenant must be decided on the facts and circumstances of the case. It observed in paragraph 14 as follows :

"Apart from the parents, spouse, brothers, sisters, sons and daughters, if any other relative claims to be a member of the tenant's family, some more evidence is necessary to prove that they have always resided together as members of one family over a period of time. The mere fact that a relative has chosen to reside with the tenant for the sake of convenience, will not make him a member of the family of the tenant in the context of rent control legislation."

8. Admittedly, in this case, the appellant Nos. 2 to 4 are neither the spouse, brothers, sisters, sons or daughters of the appellant No. 1. Although they are related to the appellant No.1, there is nothing on record to show that the appellant Nos. 2 to 4 were residing with the appellant No. 1 for a considerable period of time as members of the family of the appellant No.1. Therefore, only because they were related to the appellant No.1, in the absence of the appellant Nos. 2 to 4 being residing with the appellant No.1, it cannot be said in the context of rent control legislation that they were residing as family members of the appellant no.1 and therefore, the question of subletting would not arise at all.

9. The three courts concurrently held on facts that the appellant No.1 had no exclusive possession in a part of the suit shop where the appellant Nos. 2 to 4 had been carrying on their separate independent business.

10. In view of the admission made by the appellant No.1 to the extent that he had got nothing to do with the firm M/s. Mitra Stores and M/s. Lucky Confectioners nor had any control and supervision

over the said business, the onus had shifted to the appellant No.1 to prove that there was no subletting and that the appellant No.1 had legal possession and control over the suit shop or that the appellant Nos. 2 to 4, being the family members, were assisting him in the business of M/s. Mitra Stores and M/s. Lucky Confectioners. Both the courts below, namely, the Rent Controller and the appellate authority, on consideration of the entire evidence on record, including the admission of the appellant No.1 in respect of the business carried on in a part of the suit shop in the name of M/s. Mitra Stores and in the name of M/s. Lucky Confectioners and in view of the onus having been shifted to the appellant No. 1, held that it could not be proved by cogent evidence that there was no subletting. The courts below were fully justified in holding that subletting as alleged was proved since the appellant No.1 had failed to prove that the appellant Nos. 2 to 4 were not conducting their business in the suit shop independently but in fact doing the business of the appellant No.1 or assisting him.

11. It is well settled that the burden of proving subletting is on the landlord but if the landlord proves that the sub-tenant is in exclusive possession of the suit premises, then the onus is shifted to the tenant to prove that it was not a case of subletting. Reliance can be placed on the decision of this Court in the case of Joginder Singh Sodhi vs. Amar Kaur [(2005) 1 SCC 31]. Therefore, we are in full agreement with the High Court as well as the courts below that since the appellant Nos. 2 to 4 had been in exclusive possession of the suit shop and the appellant No.1 could not prove that it was not a case of subletting, the suit shop had been sublet by the appellant no. 1 in favour of the appellant Nos. 2 to 4. Therefore, no interference can be made with the findings arrived at by the High Court as well as the courts below on the question of subletting.

12. Let us now revert to the question whether long exclusive possession of the appellant Nos. 2 to 4 in the suit shop would invite the court to hold that the respondent or the erstwhile owner of the suit shop had waived the right to evict the tenant on the ground of subletting. As noted herein earlier, an order of eviction can be passed under Section 14(1)(b) of the Act only if the ingredients enumerated herein earlier are satisfied. In order to prove subletting, it must be shown that the appellant Nos. 2 to 4 were inducted without the consent in writing of the landlord. In this case, admittedly, no consent in writing, either of the erstwhile owner of the suit shop or of the respondent, who was the subsequent purchaser of the same, was taken in writing. It is now well settled that to constitute waiver of benefit conferred by provisions of the Act, conscious relinquishment of such benefit must be proved. In the case of Duli Chand (Dead) by Lrs. Vs. Jagminder Dass [(1990) 1 SCC 169], this Court while dealing with a case of subletting and waiver on the part of the landlord, emphasized that the consent in writing of the landlord for subletting or parting with possession was essential under Section 14(1)(b) of the Act. The view expressed in the aforesaid decision was also the view of this Court in the case of Pulin Behari Lal vs. Mahadeb Dutta & Ors. [(1993) 1 SCC 629] in which this Court reiterated the principle that in the absence of conscious relinquishment of right to eviction, the question of waiver on the ground of subletting for eviction by the landlord did not arise at all. It is not in dispute in the present case that the respondent had purchased the suit shop from the erstwhile owner of the same. The sale deed dated 20th of October, 2000 evidencing the purchase of the suit shop by the respondent from the erstwhile owner of the same was exhibited. A perusal of the sale deed would show that the appellant No.1 was a tenant in respect of the suit shop and there was no mention that the appellant Nos. 2 to 4 were also in possession of the suit shop, either in its entirety or in a part of it. That being the position and in the absence of any evidence on record to show that there was any conscious

relinquishment of the benefit conferred by the provisions of the statute, we do not find any reason to hold otherwise to the extent that the subletting made in favour of the appellant Nos. 2 to 4 by the appellant No.1 was proved and the right to eviction was not waived, either by the erstwhile landlord or by the respondent.

13. Mr. Aggarwal, the learned counsel appearing on behalf of the appellants had strongly relied on a decision of this Court in the case of United Bank of India vs. Cooks and Kelvey Properties (P) Limited [(1994) 5 SCC 9] and submitted that since the appellant No.1 was in exclusive possession and legal control of the suit shop, the case of subletting could not be proved. In our view, that decision of this Court has no manner of application in the facts and circumstances of the present case. In that case, although the tenant appellant bank had inducted the trade union in the tenanted premises for carrying on the trade union activities, the bank had not received any monetary consideration from the trade union which was permitted to use and enjoy the same for its trade union activities. The bank had retained its power to call upon the trade union to vacate the premises at any time and the Union had also given an undertaking to vacate the same when required. In that decision, the bank was maintaining the premises at its own expense and also paying the electricity charges consumed by the trade union for using the demised premises. Basing on the aforesaid facts, it was held in that case that the bank had retained its control over the trade union whose membership was only confined to the employees of the bank and, therefore, the court held that the inference that could only be drawn was that the appellant had retained the legal control and possession of the suit premises in that case. As noted herein earlier, this is not the situation in the present case. The findings of the three courts were that the appellant no.1 had no legal control over the suit shop and also that the appellant nos.2 to 4 were in exclusive possession of the suit shop or at least, in a portion of the same and were carrying on a different independent business in the suit shop. Such being the position and in view of the fact that the appellant nos.2 to 4 were conducting their independent business in the suit shop and had exclusive possession of the same and that the appellant No. 1 had no legal control or possession over the suit shop, the aforesaid decision of this Court, as relied on by Mr. Aggarwal, could not be taken to be of any help to the appellants. Accordingly, these submissions of the learned counsel for the appellants have no legs to stand upon and thus rejected.

14. For the reasons aforesaid, there is no merit in this appeal and the appeal is, therefore, dismissed. However, considering the facts and circumstances of the case, the appellants are given time to vacate the suit shop by 30th of June, 2008 subject to filing of usual undertaking before this Court within a period of four weeks from this date. There will be no order as to costs.