

15

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ R.C.S.A.  
CIVIL MISCELLANEOUS-MAIN 28/2001

% Reserved on : March 02, 2006

Date of Decision: March 22<sup>nd</sup> 2006

# MRS.KAMLA DEVI .... Petitioner  
! Through Mr.G.P.Thareja, Advocate.

versus

\$ M/S HAJI AMIR MOHD.MIR AHMED .... Respondent  
^ Through None.

CORAM:

\* HON'BLE MR. JUSTICE R.S. SODHI

1. Whether Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to the Reporter or not? ✓ YES
3. Whether the judgment should be reported in the digest? ✓ YES

## JUDGMENT

**R.S.SODHI J:**

1. R.C.S.A.28/2001 seeks to challenge the order dated 10.05.2001 of the Additional Rent Control Tribunal, Delhi in

[R.C.S.A. 28/2001]

[PAGE 1 OF 11]

Signature Not Verified

Digitally Signed By: AMULYA  
Signing Date: 08.02.2024 10:07  
Certify that the digital file and physical file  
have been compared and the digital data is as  
per the physical file and no page is missing.

RCA No.110/2000 whereby the learned Tribunal has allowed the appeal setting aside the order of eviction passed by the learned Additional Rent Controller, Delhi vide its judgment dated 01.05.1993 under Section 14(1)(b) of the Delhi Rent Control Act.

**2.** Brief facts of the case as noted from the written submissions of counsel for the petitioner are as follows:-

"The appellant preferred an eviction petition against the respondent on 3.5.1985 under Section 14(1)(b) of the Delhi Rent Control Act, 1958 (hereinafter referred to as 'the Act'). The appellant pleaded that the respondent was inducted as tenant by the predecessor of the appellant Shir Pooran Chand on 1.7.1969 in a godown measuring about 23'3 X 15'3" and a kolki on the ground floor of property bearing Municipal Number 567, Ishwar Katra Khari Baoli, Delhi. An agreement dated 1.7.1969 was executed on behalf of the respondent. The appellant purchased the said property on 22.2.1980 and became the owner landlord by operation of law.

The appellant claimed in the petition that the respondent has sublet, assigned or parted with the possession of whole or part of the premises under their tenancy without the written consent of the owner landlord to (1) Messers.Haji

17

Mohammad Rahim Mohammad Amin, (2) Messers Syed Mohammad Shah Noor Mohammad Shah and (3) Messers Haji Saleb Mohammad Noor Ahmad. The possession of the tenanted premises is with various firms which are the sub tenant. The respondent does not have the possession of the premises. The subtenant/occupants are carrying on business from the demised premises.

A requisite permission was obtained from the Competent Authority Slum under the Slum Area (Improvement and Clearance) Act, 1956. The eviction petition was contested by the respondent. The respondent denied that the respondent has sublet and or parted with the possession of the premises or any part thereof to M/s. Haji Mohammad Rahim Mohammad Amin or any firm M/s Syed Mohammad Shah Syed Noor Mohammad Shah or to any firm M/s Haji Saleb Mohammad Noor Mohammad. It was pleaded that none of the firms have ever done any business in the suit premises in which only and solely the respondent is carrying on his dry fruit and spices business. Only merchandise of the respondent and no other thing is being stored and sold from there. None of the firms have any thing to do with the possession of the suit premises or its tenancy. The suit premises are in exclusive possession of the respondent. The respondent is not aware if at any

18

point of time any of these firms may have given their postal address at the respondent's shop. The respondent is not aware if at any point of time on account of any reason (except business dealings) and in this view of the matter creation of any sub tenancy does not arise. At no point of time the respondent has divested itself from the occupation and possession of the suit premises and any part thereof.

In replication to the written statement the appellant reiterated that the three firms were carrying on business from the premises in question to the exclusion of the respondent. The respondent has allotted definite and specific space to M/s Haji Mohammad Rahim Mohammad Amin, M/s. Syed Mohammad Shah Syed Noor Mohammad Shah and M/s Haji Saleb Mohammad Noor Mohammad for carrying on their business. Said firms do have possession of the premises."

**3.** Counsel for the petitioner submits that the learned Rent Controller after giving careful consideration to the evidence on record returned a finding that the premises in question had been sublet and that the case under Section 14(1)(b) of the Act was made out. He contends that the Tribunal was wrong in reversing a well reasoned judgment without appreciating that the original

tenant has no interest in the business run by his so-called attorney and his son. In view of this admitted position, it cannot be said that the attorney of the tenant is running his partnership on behalf of the tenant when the tenant is not even a partner in the concern.

4. Respondent no.1 who did not argue the case but filed his written arguments submits that the High Court has no jurisdiction to entertain the second appeal unless the appeal involves substantial question of law. He submits that the Additional Rent Controller went wrong in holding that a case had been made out under Section 14(1)(b) of the Act and that the tribunal has rightly held that the shop in question remains in occupation of Haji Mohd.Rahim who is the General Power of Attorney of the tenant.

5. I have heard counsel for the petitioner and gone through the written submissions submitted by counsel for both the parties. The question of law that has emerged for consideration is whether the tenant who appointed Hazi Mohd.Rahim as General Power of Attorney continues to be in possession of the premises

in question when Mohd.Amin has set up a partnership concern, M/s Haji Mohd.Rahim Mohd. Amin and none of the partners of the original tenant have any interest or control over the said firm.

6. It is the admitted position before me that M/s Haji Mohd.Rahim Mohd. Amin, of which attorney, Haji Mohd Rahim and his son Mohd.Amin are partners are carrying on business from the premises in question.

7. AW-1, Shri.J.N.Jain, UDC deposes on record that M/s Haji Mohd Rahim Mohd.Amin is registered with the Sales Tax Office, as a firm with effect from 31.10.1972, at the address 567, Katra, Ishwar Bhawan, Khari Baoli, Delhi.

8. The aforesaid firm also filed a copy of the partnership deed dated 07.02.1976 before the authorities. AW-1, Shri.J.N.Jain, also deposes on record that the firm M/s Syed Noor Mohd. Shah, is registered with the Sales Tax Authorities and Certificate of the said firm was issued on 17.04.1980 at the address 567, Katra, Ishwar Bhawan, Khari Baoli, Delhi which is a proprietorship concern owned by Syed Noor Mohd.Shah.

**9.** AW-3, Shri P.K.Sofat, Record Clerk of Sales Tax Department  
deposes to the effect that:-

"The firm M/s.Haji Saleh Mohammad Noor Mohammad is registered with the Sales tax at the address 567 Katra Ishwar Bhawan Khari Baoli Delhi since 20.4.1970. As per our record there are two partners named Shri Hazi Saleh Mohammad and Noor Ahmad in the firm. The said firm sales tax number was cancelled on 7.1.1988..."

**10.** AW-2, Shri Jai Gopal, the son and attorney of the petitioner  
herein deposes to the effect that:-

"....There are three firms which are carrying out business in the suit premises namely M/s Haji Mohamad Rahim Syed Mohammad Shah Syed Noor Mohammad Shah and Haji Saleh Mohammad Noor Ahmad. The firms are functioning in three separate apartment having wooden partitions which can be locked separately. The three firms are in separate possession of their respective portions. The main gate of the premises is opened by different persons at different times....."

**11.** RW-7, Haji Mohammad Rahim, the attorney of the tenant in  
his cross-examination deposed as follows:-

" M/s Haji Mohammad Rahim Mohammad Amin is a partnership firm of my son with me. It is correct that the said firm is doing business from the premises in dispute. Haji Mohammad Rahim Mohammad Amin has other premises at 26 Katra Ishwar Bhawan Delhi. The premises is with the said firm for past 3/4 years. It is wrong to suggest that all the business of the said firm is carried on from the premises in dispute. The said firm is in business since 1972. Since 1972 whatsoever business is used to do was from the premises in dispute. It is correct that Mohammad Amin my son does not have any authority or any thing from the respondent firm. There is no condition at the time of letting that only respondent firm could carry the business from the premises in dispute.

I do not know whether Hazi Saleh Mohammad Noor Ahmad is a partnership or a prop ship firm. Noor Mohd is father in law of my son. I do not know if the said firm is registered with the Sales tax or Income tax at the premises in dispute.....

Syed Mohd.Shah Syed Noor Mohammad are two brothers.....I do not remember if M/s.Syed Mohd Shah Syed Noor Mohammad Shah has been doing business from the premises in dispute....."

**12.** AW-4 Roshan Lal, employee of the respondent admitted in the cross examination as follows:-



".....It is incorrect that at the place Haji Mohammad Rahim Mohammad Amin and Haji Saleh Mohammad Noor Ahmad works. Volunteered but postal address is used. It is correct that in these two firms Haji Amir Mohammad Mir Ahmad respondent have no concern.....It is correct hat employees of Haji Mohammad Rahim and Syed Mohammad Shah Noor Ahmad are separate.....Earlier posts of these two firms was received at the address. Now it is not received. Since when it is not received I do not know....."

**13.** From the above, it appears that Haji Mohd.Rahim is carrying on independent trade from the tenanted premises in the name of Haji Mohd. Rahim Mohd. Amin, of which he and his son Mohd.Amin are partners.

**14.** AW-4, Roshanlal, admits that the partners of the tenant, namely, Haji Amir Mohd.Mir Ahmad have no concern with the said business of the attorney. Further, from the sale tax records RW-4/3 to R-W-4/10, it appears that the original tenant did no business since 1978. It is apparent that the firm of the attorney, namely, Hazi Mohd.Rahim Mohd. Amin is carrying on trade from the premises in question. The other firms which are carrying on

gm

business from the premises in question, admittedly are independent persons who are not partners of the original tenant. The law regarding requirements under Section 14(1)(b) of the Delhi Rent Control Act have been enunciated in **Roop Chand Vs. Gopi Chand Thelia** 1989 (2) SCC 383; **Ram Aran Vs. Pyare Lal and Anr.**, AIR 1996 SC 2361; **Kailash Chander Vs. Om Prakash and Anr.**, (2003) 12 SCC 728.

**15.** There is no doubt that the High Court ought not to entertain a second appeal unless there is a substantial question of law but in the present case, such a question has been formulated and is being examined. The law cited by learned counsel for the respondent is of no consequence. The other judgments cited by counsel for the respondent are on their own facts and do not advance the case of the respondent since, in the present case, there is little or no doubt that the so-called General Power of Attorney is doing business being a partner of a concern which is wholly independent of the original tenant. To contend that a General Power of Attorney would continue to hold the premises

on behalf of the Contractual tenant is not justified since no business is being conducted in the premises on behalf of the tenant and the tenant has no share or interest in the premises which is being exclusively held by the so-called General Power of Attorney to the exclusion of the original tenant.

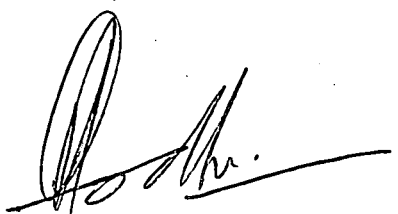
**16.** The Tribunal has erred in upsetting the findings of the learned Additional Rent Controller by holding that because the attorney is in possession of the premises, the tenant has not lost legal control.

**17.** Having re-examined the matter, as noticed above, this court is of the view that the order under challenge cannot be sustained. The same is set aside. The order of the Additional Rent Controller is restored.

**18.** RCSA 28/2001 is allowed and disposed of.

March 22<sup>nd</sup>, 2006  
bp

**[R.C.S.A. 28/2001]**

  
**[R.S. SODHI]**  
**JUDGE**

**[PAGE 11 OF 11]**