

MD. SALIM

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v.

MD. ALI SINCE DECEASED THROUGH HIS
LRS. MD. ASSIM & ORS.

AUGUST 26, 1987.

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[SABYASACHI MUKHARJI AND G.L. OZA, JJ.]

West Bengal Premises Tenancy Act, 1956—Definition of 'tenant' in section 2(4) thereof—Whether the petitioner was a sub-tenant not bound by decree of eviction against the tenant.

This petition for special leave to appeal was filed against the judgment and order of the High Court, whereby the High Court had held that the petitioner was not a sub-tenant and as such he was bound by the decree passed against the tenant for eviction. The petitioner challenged before this Court the finding of the High Court and contended that he was a sub-tenant with the knowledge and consent of the landlord and as such the decree of eviction passed against the tenant did not bind him because in the suit he had not been a party. He should have been made a party to the suit.

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Dismissing the petition, the Court,

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HELD: The High Court was right. The attention of the Court was drawn to an agreement of 1st September, 1966, with the contention that that was an arrangement of sub-letting and in that document one of the attesting witnesses was the landlord himself, and, therefore, the sub-letting was done with the knowledge and consent of the landlord and, as such, was valid. [1088G]

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One of the attesting witnesses to the said agreement was Md. Ali, the respondent herein, who was at the relevant time the landlord, now represented by his legal representatives in this petition. On a construction of the different clauses of the aforesaid document, the Court was of the opinion that this was an agreement of the business of the tenant. It was not and could not be construed as an agreement of sub-tenancy. There was no parting of possession of the premises. There was only a right to "manage" the business, looking after the existing business with fixed monthly payments and this could not be construed as an agreement of sub-tenancy. Therefore, though the landlord had knowledge of the document, it could not be said to be consent to an agreement

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A of sub-tenancy. The attention of the Court was drawn to section 2(4) on the expression 'tenant' in the West Bengal Premises Tenancy Act, 1956. That definition did not affect the position of the petitioner in this case as there was no sub-tenancy in the case. [1090C-E, G]

B The High Court was right in the view it took. [1088F]

B *M/s. Girdhar Lal & Sons v. Balbir Nath Mathur and others, [1968] 2 S.C.C. 237, referred to.*

C CIVIL APPELLATE JURISDICTION: Special Leave Petition No. 4120 of 1987.

C From the Judgment and Order dated 24.12.1986 of the High Court of Calcutta in Civil Rule No. 676 of 1985.

R.B. Mehrotra for the Petitioner.

D S.K. Bhattacharya for the Respondents.

The Judgment of the Court was delivered by

E **SABYASACHI MUKHARJI, J.** This is a petition for special leave to appeal against an order and judgment of the High Court of Calcutta dated 24th September, 1986. By the impugned judgment and order the High Court has held that the present petitioner was not a sub-tenant and as such he was bound by the decree passed against the tenant for eviction. The petitioner challenges that finding and contends that he was a sub-tenant with knowledge and consent of the landlord and as such it does not bind him because in the suit he was not

F a party. There should have been a separate suit according to him. He should have been made a party to the suit. The High Court has held against this contention. We are of the view that the High Court was right. Our attention was drawn by Mr. Kacker to the agreement of 1st of September, 1966, contending that this was an arrangement of sub-letting and in that document one of the attesting witness was landlord

G himself. Therefore, this is done with the knowledge and consent of the landlord and as such valid. The agreement states, *inter alia* as follows:

H "THIS MEMORANDUM OF AGREEMENT made this the 1st September 1966 BETWEEN ABDUR RAHMAN son of late Nabi Buksh by religion Muslim, by profession business of 51/I, Watgunj Street, P.S. Watgunj

District 24-Parganas, Calcutta-23, hereinafter called the FIRST PARTY OF THE ONE PART AND MD. SALIM son of Waris Ali, by religion Muslim by profession business residing at 2/3, Mominpore Road Police Station Ekbalpore District 24-Parganas, Calcutta-23 hereinafter called the SECOND PARTY OF THE OTHER PART WHEREAS THE FIRST PARTY having taken settlement of a shop room its landlord Md. Mea has been running a business with the stock-in-trade as described in the schedule below AND WHEREAS THE FIRST PARTY feels it inconvenient to look after and manage the same personally at present AND WHEREAS THE SECOND PARTY is willing to manage the said business on behalf of the FIRST PARTY on terms and conditions hereinafter appearing; NOW THIS MEMORANDUM WITNESSES:

That the first party will remain the proprietor of the aforesaid business and the business Licence shall stand in the name of the FIRST PARTY and the costs thereof shall be paid by the SECOND PARTY:

That house rent of the shop room shall be paid by the FIRST PARTY in his name; That the SECOND PARTY run the business in the shop room with the stock-in-trade supplied by the First Party as described in the schedule as also with other articles and stock-in-trade to be supplied by him and manage the affairs of the said business under his personal supervision for two (2) years with effect from 1.9.66 to 31.8.66 on behalf of the First Party and will restore the business alongwith the said articles in good condition with the expiry of the term of this contract; That the second party will pay to the First Party a sum of Rs.90 (Rupees Ninety) only per month payable within the 7th day of each month for which it becomes payable. That the SECOND PARTY will be entitled to appropriate the entire issues and profits arising out of the business in its entirely subject to the aforesaid payment to be made to FIRST PARTY and the costs of Licensee fees. That the SECOND PARTY SHALL not encumber the business in any way and shall not be entitled to raise any loan against the business and the business shall not be liable for any such, debt, if any, incurred by the SECOND PARTY That the SECOND PARTY shall also bear all incidental costs

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- A for carrying out the business properly. That if the SECOND PARTY fails or neglects to pay the dues reserved under this contract for two months or violates any of the conditions mentioned herein then this agreement shall be treated as cancelled and of no effect and the First party will be entitled to re-enter the shop room and business and to take khas possession of the same along with the articles mentioned in the schedule."
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One of the attesting witness to the said agreement was Md. Ali, the respondent herein, who was at the relevant time landlord and is now represented by his legal representatives to this application. On a

- C construction of the different clauses of the aforesaid document we are of the opinion that this was an agreement for management of the business of the tenant. It was not and cannot be construed as an agreement of sub-tenancy. There was no exclusive possession with the respondent. There was no parting of possession of the premises, there was only a right to "manage" the business, looking after the existing business with fixed monthly payments and this cannot be construed as an agreement of sub-tenancy. Therefore, though the landlord had knowledge of the document and as such can be said to have consented to the bargain it cannot be said to be consent to an agreement of sub-tenancy.
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- E Our attention was drawn to the decision of this Court in *M/s Girdhar Lal & Sons v. Balbir Nath Mathur and Others*, [1968] 2 SCC 237 where considering similar provision of Delhi Rent Control Act, 1958, it was held that where the landlord had in fact consented to the sub-tenancy and as such the sub-tenancy was valid and landlord was bound by it. But in the present case, there was no sub-tenancy created by the agreement mentioned herein. Hence the consent and knowledge of the landlord do not help. Our attention was also drawn to section 2(4) on the expression 'tenant' in West Bengal Premises Tenancy Act, 1956. That definition does not affect the position of the petitioner in the instant case as there was no sub-tenancy in the present case.
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In view of the above, we are of the opinion that the High Court was right in the view it took. The Special leave petition is accordingly dismissed. There will be no order as to costs.

S.L.

Petition dismissed.