M/S Puri Investments vs M/S Young Friends And Co. on 23 February, 2022

Author: Vineet Saran

Bench: Aniruddha Bose, Vineet Saran

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1609 OF 2022
(Arising out of Special Leave Petition (C) No. 6516/2019)

M/S PURI INVESTMENTS ....APPELLANT(S)

VERSUS

M/S YOUNG FRIENDS
AND CO. & ORS. ....RESPONDENT(S)

JUDGMENT

Leave granted.

2. The appellant, as the landlord, is the original applicant in an eviction proceeding instituted under Section 14 of the Delhi Rent Control Act, 1958 (hereinafter referred to as "the Act") seeking recovery of possession of a shop room located at Connaught Place in the central part of Delhi. The eviction proceeding was instituted in the year 1974. We shall henceforth refer to the shop room as "subject-premises". In that proceeding Rachna Date: 2022.03.08 16:42:48 IST Reason:

> instituted before the Rent Controller, Delhi, altogether three individuals and three firms were originally impleaded as respondents. In this appeal, however, only three respondents have been impleaded, being the firm-Young Friends & Co. and two individuals – Ashu Mohan Gupta and Shashi Gupta. They have been described as contesting respondents. On that count, however, no controversy has been raised before us. The appellant admittedly is the landlord of the subject-premises.
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> This was rented out to the then proprietor (since deceased) of the first respondent in the year 1936. The appellant became the landlord thereof on having purchased the

> subject-premises from its erstwhile owner in the year 1958. The main ground on which eviction was asked for was sub-letting without consent of the landlord.

3. The respondents run a retail outlet from the subject- premises and at the material point of time, the respondents were operating from there a chemist shop. The substance of allegations of the landlord was that the respondents had sub-let certain portions of the premises to three medical practitioners, (including one dentist) and two other firms. They were included as respondent nos. 2, 3, 4, 5 and 6 in the eviction application. By an order passed on 5th June, 1997, the Additional Rent Controller, Delhi dismissed the petition holding that the appellant had failed to show that there was any sub-letting, assignment or parting with possession of the tenanted premises in favour of persons/entities who were included in the array of respondents. So far as respondent no.5 (Young Friends & Co.) is concerned, finding was that it was an entity of the respondent tenant only. As regards the sixth respondent in the eviction petition, the Rent Controller held that no sub-letting, assignment or parting with possession of any portion of the subject-premises. Respondent no. 6 was found to be occupying a public verandah outside the tenanted premises. The appellant's plea for eviction was founded on certain other grounds as well, but those grounds also could not be established before the Rent Controller. It was held by the said forum that the respondent nos. 2 to 4 were not in exclusive possession of the subject- premises.

4. The Appellate Tribunal, however, reversed the decision of the authority of the first instance, and passed an order of eviction on the ground of sub-letting. The Tribunal tested the appellant's case on the basis of allegations pertaining to sub- letting to the three medical practitioners. The Tribunal accepted the appellant's stand that the facts of the case disclosed sub- letting of the subject-premises in favour of respondent nos. 2 (Dr. Pradip Jayna), 3 (Dr. S. S. Pant) and 4 (Shri K. N. Mehta). We find from the judgment under appeal that the landlord had pressed the petition on account of respondent nos. 2, 3 and 4 having been inducted as sub-tenants without the consent in writing by the landlord.

5. The respondents, thus, invoked the provisions of Article 227 of the Constitution of India before the Delhi High Court assailing the order of the Tribunal. The respondents were successful in that proceedings. The High Court, in the judgment delivered on 14th November, 2018 allowed the application under Article 227 of the Constitution of India, inter alia, holding:-

> "51. The prime conclusion of ARCT that the user of the space by R-2 to R-4 during the period they were in their respective clinic renders it they being in "exclusive possession" is not supported by any evidence, it being a conclusion based on surmises. As observed earlier, in the proceedings before the ARC, the landlord resting its case primarily on the evidence of its managing partner (AW-3) had failed to adduce such material, as could show a third party being in possession to the exclusion of the tenant. On the contrary, the evidence of the landlord, as indeed of the tenant, unmistakably show that the tenant has always been in full control and possession-physical and legal-of the tenanted premises. The presence of others was temporary, for a few hours of the day when the tenant would also be present, and clearly for permissive use, it having come to an end, such persons having left the

premises on their own when called upon to do so by the tenant.

52. The view taken by the ARCT, clearly, was erroneous, it being based on conclusions which are contrary to the evidence that was adduced, and by drawing inferences which were not permissible in law, the appellate power having been improperly exercised for substituting one subjective satisfaction with another without there being a justifiable reason to do so.

53. Consequently, the petition is allowed. The impugned judgment dated 29.08.2007 of the Additional Rent Control Tribunal is set aside. The judgment dated 05.06.1997 of the Additional Rent Controller stands restored and revived. In the result, the eviction case of the respondent stands dismissed."

6. This judgment of the High Court is under appeal before us. Main argument of Mr. Dhruv Mehta, learned senior counsel appearing with Mr. Jeevesh Nagrath, learned counsel appearing for the appellant has been that sub-letting had been proved before the final fact-finding forum (at the appellate stage) and the appellate forum had returned findings on facts. In such circumstances, the High Court in its supervisory jurisdiction ought not to have had upset the order of the Appellate Tribunal.

7. The legal point, which has been argued before us, is as to whether the act of the respondents in inducting the three medical practitioners constituted sub-letting or not. This point, no doubt, has to be determined on the basis of evidence adduced before the fact-finding forum. The dispute involved in this appeal does not give rise to any complex legal question. Thus, in exercise of our jurisdiction under Article 136 of the Constitution of India, scope of our interference would be limited to the issue as to whether the decision of the High Court in upsetting the order of eviction passed by the Appellate Tribunal suffered from any element of perversity or not. It has been urged before us on behalf of the appellant that the High Court ought not to have interfered in the matter as the order of the Appellate Tribunal was based on appreciation of evidence and bore no taint of perversity which would have warranted interference under Article 227 of the Constitution of India. Several authorities have been relied upon before us by the learned counsel appearing for the parties. These authorities mainly deal with the nature and scope of occupation in a rented property of persons not being tenant but inducted by the latter which would attract the mischief of sub-letting. These authorities relate to specific instances of induction of persons by the tenant based on the facts of each case. The appellant has cited the cases of:-

(i) Flora Elias Nahoum & Ors. v. Idrish Ali Laskar [(2018) 2 SCC 485]

(ii) Celina Coelho Pereira (Ms) & Ors. v. Ulhas Mahabaleshwar Kholkar & Ors. [(2010) 1 SCC 217]

(iii) Bharat Sales Ltd. v. Life Insurance Corporation of India [(1998) 3 SCC 1]

(iv) Smt. Rajbir Kaur & Anr. v. S Chokesiri & Co. [(1989) 1 SCC 19]

(v) Chimajirao Kanhojirao Shirke & Anr. v. Oriental Fire & General Insurance Co. Ltd. [(2000) 6 SCC 622].

Mr. Rana Mukherjee, learned senior counsel for the respondents, on the other hand, has cited the following authorities including the case of Flora Elias Nahoum (supra). These cases are:-

(i) Dipak Banerjee v. Lilabati Chakraborty [(1987) 4 SCC 161]

(ii) Jagan Nath v. Chander Bhan & Ors. [(1988) 3 SCC 57]

(iii) Shalimar Tar Products Ltd. v. H. C. Sharma & Ors.

[(1988) 1 SCC 70]

(iv) Ram Murti Devi v. Pushpa Devi & Ors. [(2017) 15 SCC 230].

In our view, the guiding principles which emerge from these authorities on the question which we are addressing in this judgment can be adopted from the following three decisions:-

(i) Ram Murti Devi (supra)

(ii) Flora Elias Nahoum (supra)

(iii) Bharat Sales Ltd. (supra)

8. In the case of Ram Murti Devi (supra), it has been held:-

"21.1. In a suit by the landlord for eviction of the tenant on the ground of sub-letting the landlord has to prove by leading evidence that:

(a) A third party was found to be in exclusive possession of the whole or part of rented property.

(b) Parting of possession thereof was for monetary consideration.

21.2. The onus to prove sub-letting is on the landlord and if he has established parting of possession in favour of a third party either wholly or partly, the onus would shift to the tenant to explain." In the case of Flora Elias Nahoum (supra) the question of burden to establish sub-letting has been discussed and it has been observed:-

"36. In our view, since the respondent had admitted the presence of Joynal Mullick in the suit shop, the burden was on him to prove its nature and the capacity in which he used to sit in the suit shop." In that case, plea of sub-letting was made on the allegation of inducting one Joynal Mullick in a shop room by the tenant.

9. On the question of onus to establish receipt of monetary consideration by the tenant from the person whose induction gives rise to cause of action based on sub-letting, it has been held in the case of Bharat Sales Ltd. (supra):-

"4. Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession over the demised property. It is the actual, physical and exclusive possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to the paid. It may have been paid in lump-sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub-let."

10. In the case before us, occupation of a portion of the subject-premises by the three doctors stands admitted. What has been argued by the learned counsel for the appellant is that once the Tribunal had arrived at a finding on fact based on the principles of law, which have been enunciated by this Court, and reflected in the aforesaid passages quoted from the three authorities, the interference by the High Court under Article 227 of the Constitution of India was unwarranted. To persuade us to sustain the High Court's order, learned counsel appearing for the respondents has emphasized that full control over the premises was never ceded to the medical practitioners and the entry and exit to the premises in question remained under

exclusive control of the respondent(s)-tenant. This is the main defence of the tenant. We have considered the submissions of the respective counsel and also gone through the decisions of the fact-finding fora and also that of the High Court. At this stage, we cannot revisit the factual aspects of the dispute. Nor can we re-appreciate evidence to assess the quality thereof, which has been considered by the two fact-finding fora. The view of the forum of first instance was reversed by the Appellate Tribunal. The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:-

(i) Erroneous on account of non-consideration of material evidence, or

(ii) Being conclusions which are contrary to the evidence, or

(iii) Based on inferences that are impermissible in law.

11. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court.

12. In our opinion, the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India in the judgment under appeal had gone deep into the factual arena to disagree with the final fact-finding forum. There is no dispute that the three medical practitioners were in occupation of part of the premises in question. The onus, under such circumstances, was on the respondents to establish the degree of control they were maintaining over the said premises for repelling the plea of sub-letting or assignment or parting with possession. From the passage of the judgment of this Court in the case of Bharat Sales Ltd. (supra) above, it transpires that it was also the respondents' obligation to demonstrate that there was no monetary consideration on the basis of which the medical practitioners were allowed to operate from the subject premises. Though, it was a chemist shop, evidence reveals that the portion of the premises of which the three medical practitioners were in occupation consisted of individual cabins and had separate telephone connections. These are the factors, on the basis of which, the Appellate Tribunal came to its conclusion against the respondents. The Appellate Forum found:-

"26. I may observe that the job of a doctor is basically to provide consultancy. He is not to sell any goods. He is only to examine the patients and prescribe treatment and

charge his fee. For doing so aforesaid, he only requires a place where he can sit, the client can come, the doctor may have privacy and is able to write a prescription to the client and, if required, to examine him either on a dental chair in the case of a Dentists or a bed in case of other patients and nothing else. All these facilities were being made available to the doctors who came to the suit premises and that also in exclusive portion, i.e., Mezzanine floor without any interference even by the tenant. Merely because the doctors had to come at fixed hours would not make their occupation merely that of a licensee and not of a sub-tenant, because now it is a matter of common sense and common knowledge that many buildings have a common central door where a lock is put by a guard who opens the same in the morning and closes the same in the evening while everyone occupying a portion of the building uses his own portion as and when they are required to come as also it is being done in the case of a lawyer. The lawyer also comes only in the office hours and in the day is not expected to remain in his chamber. However, in the case of a lawyer, he is required to maintain a library and records and might be using his library. But in the case of a doctor, he is not required to keep any lock because what he is required to do is to come, sit, provide consultancy and go. Thus, for the period for which he is in his clinic, he has exclusive possession thereof. It does not matter that before starting his practice and closing the same, the premises is not even locked by him. It is nobody's case that till such time, the doctors were permitted to run their practice in the polyclinic, they were asked to go back even during the hours fixed for opening the clinic. Merely because the first Respondent being a chemist was also being benefitted in selling his medicines will not permit a tenant to allow number of doctors to sit and run their own consultancy including the Dentist who otherwise may not have anything to do with the sale of medicine and is required to fix teeth which are prepared elsewhere and not by the first Respondent or by cleaning the teeth which is the major service provided by the Dentist. Moreover, permitting a Dentist to have his own chair in a clinic where visiting hours are limited, would not make the doctor only a licencee.

27. At this juncture, I may observe that user of the property by licencees are those cases where family members, a wife, or a son have been permitted to use a portion of the suit property along with the tenant who happens to be either the father or the husband or a near relative which is not the case here.

28. As a matter of fact, the arrangement which was being followed between the tenant and the doctor, namely Respondent nos. 2 to 4, makes it explicit that that user of the suit premises that too of Mezzanine floor was exclusive for the time they were permitted to run their practice and must have been under a secret arrangement between the tenant and the doctors to which the landlord cannot have access and he can only infer that some kind of consideration must have passed by the sub-tenant in favour of the tenant which must be the only reason as to why the first Respondent permitted user of portion of suit property to Respondent nos. 2 to 4 on regular intervals and also permitted them to put their names outside the polyclinic including

> the timings of their coming. The tenant even allowed them to have their own telephones installed in the suit premises so as to facilitate the clients to have the consultancy at a time convenient to the doctor and the patient without any interference of the tenant in this regard. Such kind of arrangement cannot be termed as mere licence and must be treated as exclusive possession though for a short period and would certainly furnish a ground for eviction under Section 14(1)(b) of the Delhi Rent Control Act. Accordingly, the Trial Court has not appreciated this fine distinction of law and, therefore, the findings returned by the Trial Court suffer from material irregularity and calls for interference by this appellate court."

13. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum's decision was perverse and the manner in which such finding was arrived at was itself perverse.

14. For these reasons, we set aside the judgment of the High Court and restore the Appellate Tribunal's findings.

15. On conclusion of the dictation of this judgment, which was pronounced in open Court, Mr. Rana Mukherjee, learned senior counsel prayed for some time to enable the respondents to vacate the premises in question. We are also apprised that the respondents had paid occupation charges at the rate of rupees thirty thousand per month from 15.05.2009 till 14.11.2018. It is an admitted position, as confirmed by the learned counsel for the appellant as well as the respondents, that subsequent to that date payment of occupation charges at the rate of rupees thirty thousand per month has been stopped. It has been stated by Mr. Mukherjee that the respondents were remitting rupees ninety per month thereafter, being the original rent, but the appellant had refused to receive the same.

16. We accordingly direct that the appellant would be entitled to occupation charges rupees thirty thousand per month from 14.11.2018 till the subject-premises are vacated by the respondents, and the respondents must vacate the premises within a period of 53 weeks from date. A sum of rupees one lac shall be remitted to the appellant within one month from date and rupees twelve lacs within six months from date. So far as the occupation charges for the period of 53 weeks from today is concerned, by which period the respondents shall vacate the premises, the respondents shall remit to the bank account of the appellant the said sum of rupees thirty thousand per month by the last date of each month and if any further sum is found due on computation made in the manner indicted above, such additional sum shall also be remitted within the aforesaid period of six months.

17. The period permitting the respondents to continue in occupation shall remain unconditional for a month from today, by which time the respondents shall give an undertaking that they would vacate the premises in question on or before 28.02.2023 and shall handover the peaceful and vacant possession to the appellant also by that date, i.e., on or before 28.02.2023. Such undertaking shall be in the form of an affidavit. This undertaking shall be filed in this Court within a period of one

month from date. The respondents or any one of them shall not create any third-party rights qua the premises in question in the meantime.

18. The appeal stands allowed in the above terms.

19. There shall be no order as to costs.

....., J (VINEET SARAN) ....., J (ANIRUDDHA BOSE) NEW DELHI;

23rd February, 2022