

Pushpa Sharma Vs. V.V. Gujral and ors.

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Court : Delhi

Decided On : Jan-30-2014

Judge : Rajiv Sahai Endlaw

Appellant : Pushpa Sharma

Respondent : V.V. Gujral and ors.

Judgement :

*IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision:

30. h January, 2014. + RFA2502013, CMs No.8072/2013 (for stay) & 8073/2013 (u/O41R-27 CPC). PUSHPA SHARMA Through: Appellant Mr. Jagdeep Kumar Sharma, Adv. Versus V.V. GUJRAL & ORS. Respondents Through: Mr. Akshay Makhija & Ms. Mahima Bahl, Advs. CORAM :HONBLE MR. JUSTICE RAJIV SAHAI ENDLAW RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree (dated 14th February, 2013 of the Court of the Addl. District Judge (Central)-08, Tis Hazari Courts, Delhi in CS No.33/2004 filed by the respondents against the appellant) of ejection after determination of tenancy of the appellant from Shop No.P-4, Connaught Place, New Delhi and of recovery from the appellant of mesne profits/damages for use and occupation at the rate of Rs.40,000/- per month w.e.f. 1st November, 2003 till the delivery of possession, with interest at 9% per annum.

2. Notice of the appeal was issued and the Trial Court record requisitioned and subject to the deposit of the entire decretal amount in this Court and the appellant/defendant further continuing to deposit further amounts month by month as ordered in the impugned judgment and decree, execution was stayed. The appellant/defendant subsequently applied for being relieved from the condition of deposit of the decretal amount but which application was dismissed. The appellant/defendant is not reported to have deposited the decretal amount as directed. The counsels have been heard.

3. The respondents/plaintiffs, on 30th January, 2004, instituted the suit from which this appeal arises, pleading:(a) that they are the owners/landlords of the Shop No.P-4, Connaught Place, New Delhi; (b) that the appellant/defendant was a tenant in the said shop for the last more than 30 years; (c) that the appellant/defendant/tenant had entered into a tenancy agreement dated 4th June, 2003 though termed as a Licensorcum-Supervision Agreement, with one Shri Bhupendra Kumar Bagla; the possession of the entire shop was of the said Shri Bhupendra Kumar Bagla exclusively and the said Shri Bhupendra Kumar Bagla was paying rent of Rs.40,000/- per month to the appellant/defendant/tenant; (d) that in view of the above, the premises were outside the purview of the Delhi Rent Control Act, 1958; (e) that the respondents/plaintiffs/landlords had vide notice dated 22nd September, 2003 terminated the tenancy of the appellant/defendant/tenant of the said shop; and, (f) that the appellant/defendant/tenant had however not vacated the premises. In the circumstances, the relief of ejection of the appellant/defendant/tenant from the shop premises and of recovery of mesne profits/damages for use and occupation w.e.f. 1st November, 2003 till delivery of possession at the rate of Rs.40,000/- per month was claimed.

4. The suit, besides against the appellant/defendant/tenant was also against her son Shri Ajay Sharma impleaded as the defendant no.2 and who is impleaded as respondent no.6 in this appeal.

5. The appellant/defendant/tenant and her son Sh. Ajay Sharma filed a joint written statement to the plaint, signed by the said Shri Ajay Sharma also as the attorney

of the appellant/defendant/tenant, contesting the suit on the grounds:(i) denying that Shri Bhupendra Kumar Bagla was the sub-tenant in the shop; (ii) pleading, that the appellant/defendant/tenant, to expand her business had entered into a Licensor-cum-Supervision Agreement dated 4th June, 2003 with the said Shri Bhupendra Kumar Bagla; (iii) that the said Shri Bhupendra Kumar Bagla had however committed a breach of the said Licensor-cum-Supervision Agreement dated 4th June, 2003 and had also filed a suit against the appellant/defendant/tenant and in which suit also the appellant/defendant/tenant had denied having sub-let the premises to the said Shri Bhupendra Kumar Bagla; (iv) admitting the receipt of the legal notice but denying that the respondents/plaintiffs/landlords were entitled to determine the tenancy; and, (v) denying that the respondents/plaintiffs/landlords were entitled to the reliefs claimed.

6. The respondents/plaintiffs/landlords filed a replication to the written statement aforesaid reiterating that the Licensor-cum-Agreement dated 4th June, 2003 was nothing but a camouflage for an agreement of sub tenancy at the rate of Rs.40,000/- per month.

7. On the pleadings aforesaid of the parties, the following issues were framed in the suit on 6th July, 2004:- 8.

1. Whether the suit of the plaintiff is maintainable?.

2. Whether the plaintiff is entitled to the relief of possession claimed in the suit?.

(OPP) 3. Whether the plaintiff is entitled to recover mesne profits/damages @ Rs.40,000/- per month w.e.f. 1.11.2003?. (OPP) 4. Whether the licensors cum supervision agreement dt.4.6.03 is a tenancy agreement, if so, its effect?.

5. Relief.

The respondents/plaintiffs/landlords examined their attorney as the sole witness in support of their case. Shri Ajay Sharma son of the appellant/defendant/tenant appeared in his defence and also examined two other witnesses.

9. At that stage the appellant/defendant/tenant moved an application pleading that she had neither been served with the summons of the suit nor was aware of the pendency thereof and her son Shri Ajay Sharma had forged her signatures and in which regard she had also filed a complaint with the Police and seeking a copy of the plaint, to be able to file a written statement thereto.

10. The said application of the appellant/defendant/tenant was dismissed vide detailed order dated 7th September, 2007.

11. The appellant/defendant/tenant preferred CM(M) 1385/2007 in this Court impugning the order aforesaid. The said CM(M) petition was dismissed by this Court vide judgment dated 11th October, 2007 holding that the appellant/defendant/tenant was served in accordance with law through her another son Sh. Mukesh Sharma and was contesting the suit through her son Sh. Ajay Sharma and the allegations made against Sh. Ajay Sharma were make belief as the appellant/defendant/tenant had not pursued the complaint against him and the application filed was dilatory and the appellant/defendant/tenant was working in cahoots with her son Sh. Ajay Sharma. The said order has attained finality.

12. The learned Addl. District Judge thereafter proceeded with the suit; however vide judgment dated 3rd December, 2007 dismissed the suit of the respondents/plaintiffs/landlords on the ground that the onus to prove the main issues was on the respondents/plaintiffs/landlords and the respondents/plaintiffs/landlords having chosen not to appear as witness and having examined only their attorney, who could not have deposed in their behalf, were not entitled to any relief.

13. The respondents/plaintiffs/landlords preferred RFA No.82/2008 to this Court which was allowed vide judgment dated 5th July, 2011 observing that in the facts and circumstances of the case, the testimony of the attorney of the respondents/plaintiffs/landlords could not have been discarded and the suit was remanded to the Trial Court for decision afresh on merit. During the pendency of the said appeal, the respondents/plaintiffs/landlords sought permission to lead additional evidence and which was also allowed.

14. The counsel for the respondents/plaintiffs/landlords on remand, stated before the Trial Court that no additional evidence was to be led by the respondents/plaintiffs/landlords. The Trial Court, after hearing the counsels for the parties, has vide the impugned judgment decreed the suit as I. that though the rent payable by the appellant/defendant/tenant to the respondents/plaintiffs/landlords was Rs.56/- per month, making the provisions of the Delhi Rent Control Act, 1958 applicable to the premises, but if the rent payable by the sub tenant to the tenant were to be found to be Rs.40,000/- as contended by the respondents/plaintiffs /landlords, the premises as per the dicta in P.S. Jain Co. Ltd. Vs. Atma Ram Properties 65 (1997) DLT308 and Atma Ram Properties Vs. Pal Properties 91 (2001) DLT438 would be outside the Rent Act; II. that for making out a case of subletting, it is essential to establish that the tenant has parted with possession of the tenanted premises in favour of a third party in lieu of some payment or compensation; III. that the agreement dated 4th June, 2003 between the appellant/defendant/tenant and M/s. Juice Zone India through its partner Mr. Bhupendra Kumar Bagla was an admitted fact; IV. though the said agreement was executed by Shri Ajay Sharma son of the appellant/defendant/tenant on behalf of the appellant/defendant/tenant and it was the plea of the appellant/defendant/tenant that her son Shri Ajay Sharma was not authorized to do so but the said argument was in contravention of the admissions in the written statement of the execution of the said agreement by Shri Ajay Sharma as attorney of the appellant/defendant/tenant; V. that it is well settled principle of law that it is not the title of the document but the clauses of the document as well as surrounding circumstances which have to be taken into consideration to determine the nature thereof; VI. that the various clauses of the agreement dated 4th June, 2003 clearly showed that the exclusive possession of the shop had been delivered to M/s. Juice Zone India through its partner Shri Bhupendra Kumar Bagla and even the maintenance of the premises was left to M/s. Juice Zone India; VII. that the business in the shop was to be carried on by M/s. Juice Zone India at its own risk and the appellant/defendant/tenant was to get Rs.40,000/- per month which too was payable in advance; VIII. that the appellant/defendant/tenant had also received an amount of Rs.2,40,000/- as security deposit from M/s. Juice Zone India; IX. that clause 23 of the agreement dated 4th June, 2003 clearly showed

that the possession of the shop was delivered to M/s. Juice Zone India and they had started their business from the premises; X. that from the clause in the agreement dated 4th June, 2003 that the appellant/defendant/tenant could terminate the agreement only by giving at least three months notice to vacate also, it was evident that possession of the premises was of M/s. Juice Zone India; XI. once it is established that M/s. Juice Zone India was in possession, it was for the appellant/defendant/tenant to show that they were not the sub tenant and appellant/defendant/tenant had failed to do so; the XII. that the other two witnesses examined on behalf of the appellant/defendant/tenant were not even aware of the facts; XIII. that the relationship between the appellant/defendant/tenant and M/s. Juice Zone India was thus of a tenant and sub tenant at a rent of Rs.40,000/- per month and the premises were outside the purview of the Rent Act; and, XIV. that the service of the notice of the tenancy was admitted. thus a decree for ejection and for recovery for mesne profits as aforesaid was passed.

15. The counsel for the appellant/defendant/tenant has argued:A. that the question for adjudication is, whether a tenant otherwise protected by the Rent Act, by granting a license of the tenancy premises to another at a rate of more than Rs.3,500/- per month, loses the protection of the Rent Act; B. that the son of the appellant/defendant/tenant had no right to enter into the agreement with M/s. Juice Zone India; C. that none of the respondents/plaintiffs/landlords appeared in the witness box and adverse inference has to be drawn against them and the testimony of their attorney cannot be read and is no evidence; D. that the finding of the learned Addl. District Judge of the appellant/defendant/tenant having parted with possession of the tenancy premises is erroneous as the attorney of the appellant/defendant/tenant had admitted having always found appellant/defendant/tenant or her son in the shop; E. that since the rent payable by the appellant/defendant/tenant to the respondents/plaintiffs/landlords is Rs.56/- per month, the eviction of the appellant/defendant/tenant from the premises is protected under the Rent Act; F. that Shri Ajay Sharma son of the appellant/defendant was in bad company; G. that M/s. Juice Zone India was planted by the respondents/plaintiffs/landlords only; H. possession of the tenancy premises was never given by the appellant/defendant/tenant to M/s. Juice Zone

India; I. a criminal complaint filed by M/s. Juice Zone India against the appellant/defendant/tenant and her son was dismissed; J.

all this happened when the appellant/defendant/tenant was in Canada; K. that the appellant/defendant/tenant had authorized her brother Shri O.P. Sharma in her absence; L. that one Shri Gandharv Saini also claims that Shri Ajay Sharma son of the appellant/defendant/tenant had given possession of the shop to him; M. that the said Shri Gandharv Saini also filed a suit against the son of the appellant/defendant/tenant and in pursuance to an ex parte decree therein has taken possession of the shop and at present the said Shri Gandharv Saini is in possession of the shop; N. that the appellant/defendant/tenant filed objections in the execution aforesaid in which Shri Gandharv Saini took possession of the shop and which objections of the appellant/defendant/tenant were allowed and the appeal of Shri Gandharv Saini thereagainst is pending adjudication before another Bench of this Court; O. that though the respondents/plaintiffs/landlords had in RFA No.82/2008 earlier filed by them had taken permission to lead additional evidence but chose not to lead such additional evidence; P. that though the appellant/defendant/tenant had filed before the Trial Court a copy of the judgment allowing her objections in the execution filed by Shri Gandharv Saini aforesaid but the said fact has not been discussed by the learned Addl. District Judge; Q. that the impugned judgment is merely on the basis of the terms of the Agreement dated 4th June, 2003 entered into by Shri Ajay Sharma son of the appellant/defendant/tenant with M/s. Juice Zone India; and, R. reliance was placed on *Celina Coelho Pereira (Ms) Vs. Ulhas Mahabaleshwar Kholkar* (2010) 1 SCC217 laying down the principles for proof of subletting.

16. Per contra, the counsel for the respondents/plaintiffs/landlords argued:(a) that admittedly monies were received by the appellant/defendant/tenant under the agreement dated 4th June, 2003 with M/s. Juice Zone India through its partner Shri Bhupendra Kumar Bagla; (b) that the summons of the suit were received on behalf of the appellant/defendant/tenant not by her son Shri Ajay Sharma but by her another son Shri Mukesh Sharma; and (c) attention is invited to the cross examination recorded on 21 st February, 2005 of Shri Ajay Sharma son of the appellant/defendant/tenant to contend that the essentials of subletting are borne

out therefrom.

17. that The counsel for the appellant/defendant/tenant in rejoinder has argued even as per the License Agreement between the appellant/defendant/tenant and M/s. Juice Zone India through its partner Shri Bhupendra Kumar Bagla, the possession of the shop was to remain with the appellant/defendant/tenant and M/s. Juice Zone India was allowed to only carry on business therein.

18. The appellant/defendant/tenant along with this appeal has filed an application under Order 41 Rule 27 of the CPC to place on record the entire proceedings in complaint case titled Sanjay Daksha Vs. Pushpa Sharma and has filed before this Court (i) a certified copy of the complaint dated 12th September, 2003; (ii) pre-summoning evidence recorded on 8th December, 2003 of Shri Sanjay Daksha partner of M/s. Juice Zone India; and, (iii) order dated 1st October, 2012 of the Court of the Metropolitan Magistrate of dismissal of the complaint for non-appearance of the complainant.

19. The counsel for the respondents/plaintiffs/landlords has given his no objection to the said documents being considered while adjudicating this appeal.

20. The counsel for the appellant/defendant/tenant, after the judgment had been reserved, has filed written arguments along with copies of the following judgments:(i) M/s. Delhi Stationers and Printers Vs. Rajendra Kumar AIR 1990 SC1208 (ii) Resham Singh Vs. Raghbir Singh AIR 1999 SC3087 (iii) Dipak Banerjee Vs. Smt. Lilabati Chakraborty AIR 1987 SC2055 (iv) Gopal Saran Vs. Satyanarayan AIR 1989 SC1141 (v) Man Kaur (Dead) by LRs. Vs. Hartar Singh Sangha (2010) 10 SCC512 (vi) Ramji lal Ram Saroop Vs. Bombay Goods Carriers (P) Ltd. 44 (1991) DLT383 and, (vii) Hazari Lal Vs. Giasi Ram 8 (1972) DLT85 21. The counsel for the respondents/plaintiffs/landlords has also since filed copy of written submissions filed before the Trial Court, relying on:A. Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd. (2005) 2 SCC217 B. Delta International Ltd. Vs. Shyam Sunder Ganeriwalla (1999) 4 SCC545 C. Smt. Rajbir Kaur Vs. M/s. S. Chokosiri & Co. AIR 1988 SC1845 D. Bharat Sales Ltd. Vs. Life Insurance Corporation of India (1998) 3 SCC1 and, E. Dudabhai @ Dadubhai Karsandas Patel Vs. Sulochanaben Gopaldas Kothari AIR1995 Gujarat 68.

22. I have considered the rival contentions.

23. The contention of the counsel for the appellant/defendant/tenant, of the present being a case of no evidence on behalf of the respondents/plaintiffs/landlords for the reason of the testimony of the attorney of the respondents/plaintiffs/landlords being not admissible in evidence, is not open for consideration. Though the learned Addl. District Judge, on an earlier occasion had dismissed the suit of the respondents/plaintiffs/landlords accepting the said plea of the counsel for the appellant/defendant/tenant but the said judgment as aforesaid was set aside by this Court in judgment dated 5th July, 2011 in RFA No.82/2008 preferred by the respondents/plaintiffs/landlords, holding that as per the principles laid down in Man Kaur supra, the evidence of the attorney of the respondents/plaintiffs/landlords could not be thrown out. The said arguments cannot be re-agitated.

24. Similarly, the arguments of the counsel for the appellant/defendant/tenant, of the appellant/defendant/tenant being not bound by the written statement filed by her son Shri Ajay Sharma on her behalf and/or being not bound by the testimony of the said son and of the other witnesses examined at that time, is also no longer available to the appellant/defendant/tenant. As aforesaid, the appellant/defendant/tenant, after the conclusion of evidence before the Trial Court and just before the final arguments had filed an application taking such pleas and which application as aforesaid was dismissed vide order dated 7th September, 2007 by the learned Addl. District and CM (M) No.1385/2007 preferred by the appellant/defendant/tenant thereagainst was also dismissed by this Court.

25. Thus the appeal now has to be decided on the basis of the evidence aforesaid led before the Trial Court.

26. It is also significant to note that the appellant/defendant/tenant has not even appeared in her defence.

27. The controversy, if I may say so, is in a narrow compass i.e. whether the appellant/defendant/tenant had sublet the premises in her tenancy to M/s. Juice Zone India at rent in excess of Rs.3500/- per month. If the answer is in affirmative,

the legal position is not res integra, that notwithstanding the rent payable by appellant/defendant/tenant to the respondents/plaintiffs/landlords being only Rs.56/- per month, the premises would be outside the purview of the Rent Act and the determination of tenancy being also admitted, the appellant/defendant/tenant would be liable to be ejected from the premises and for mesne profits for unauthorized possession. On the contrary, if it were to be held that the agreement dated 4 th June, 2003 was entered by the appellant/defendant/tenant only to expand her business in the tenancy premises and the appellant/defendant/tenant retained control and domain over the tenancy premises, the premises, the rent thereof being Rs.56/- per month, would be governed by the Rent Act and the Civil Court would have no jurisdiction to order ejectment of appellant/defendant/tenant therefrom.

28. In the written statement filed by Shri Ajay Sharma son of the appellant/defendant/tenant for himself appellant/defendant/tenant and with and which as attorney written of the statement the appellant/defendant/tenant as aforesaid is now bound, the execution of the Licensor-cum-Supervision Agreement dated 4th June, 2003 by the said Shri Ajay Sharma as attorney of the appellant/defendant/tenant with Shri Bhupendra Kumar Bagla was admitted. The said agreement was subsequently proved as Ex.PW1/3. In the said agreement, the appellant/defendant/tenant is described as the First Party and M/s. Juice Zone India through Shri Bhupendra Kumar Bagla as the Second Party. The relevant part of the said agreement is as under:

Whereas the First Party has Showroom on Ground Floor at P-4, Connaught Circus, New Delhi 110 001 with various facilities including electrical installations, sanitary fittings in bathroom of Ground Floor etc. And Whereas at the request of the Second Party the First Party has agreed to grant to Second Party the Licence for opening of an outlet for sale of fresh juice and other eatables and food products on the ground floor showroom approx. 330 sq. ft. covered area on Licence Cum Supervision cum Technical know how knowledge and on Commission basis @5% on sales of business to be carried by the Second Party or Minimum Guarantee of Rs.40,000/- per month. Now the said agreement mutually agreed between the First Party and the Second Party witnesseth as follows:1. That the Total Space to

be provided to the Second Party by the First Party shall be approx.330 sq.ft. covered area at Ground floor Premises P-4, Connaught Circus, New Delhi 110 001 and 100 sq.ft. on mezzanine floor to conduct & carry on the business of selling fresh juices, soft drinks and other eatables as well as fast food or for any other commercial purpose by way of License cum Supervision and technical know how basis only for a period of 3+3 years. During this three years period both the party shall not have any right and power to terminate this agreement.

2. This Agreement shall be renewable after expiry of initial three years on the terms and conditions mutually agreed between the two parties with the increase of 15% to 20% of M.G.

3. That the First Party shall also provide light/power, technical know-how cum supervision in the Ground Floor Premises on 330 sq.ft. covered area on Ground Floor and approx. 100 ft. on the mezzanine floor.

4. That for the services provided by the First Party the Second Party has agreed and undertakes to pay to the First Party Rs.40,000/- p.m. (Rupees forty thousand only per month) in advance on or before 7th day of each English Calendar Month.

5. That the First Party will supervise the Jobs & Provide the technical know how to the best of his activities but the First Party will have nothing to do with assets & liabilities of the Second Party.

6. That all Legal Right Control, Physical Possession of the above premises, P-4, Connaught Circus, New Delhi & Mezzanine Floor and passage from Ground Floor to Mezzanine Floor alongwith Bathroom on Ground floor, Light, Power and Water connections, telephone standing on the name of First Party Companys shall always vest in him/Companys and Second Party shall never have any right, interest or title to the premises and the fittings/fixtures provided by the First Party. However the first party has a right to sit on the mezzanine floor.

7. The Second Party shall provide stock, machinery, airconditioning, staff, furniture and other fixtures, staff salary, water and electrical expenses and maintenance of premises will be borne by the Second Party.

8. The premises will be under the lock & key of the First Party or its personal staff & managers.
9. The stock, machinery, furniture, fixtures, airconditioning for their maintenance, sales liability will be legal responsibility of the Second Party and First Party will not be responsible for any liability whatsoever on account of this.
10. That the aforesaid business shall be carried out entirely by the Second Party at their own Risk & Cost. The First Party shall not be responsible for the same in any manner to the Second Party or anybody else and will have no concern with the gain or loss of the Second Party.
11. That the Second Party shall install their own Fans, Air Conditioners, Meters, Bulbs, Tube Lights, Exhaust Fans, Fixtures etc. The First Party will provide only the electrical points.
12. The Second Party will bear expenses towards the water, electrical power as per Meter/Sub-Meter. The charges to be paid directly to the First Party. If due to non-payment of the charges the connection provided by the First Party are disconnected the Second Party shall be responsible for any loss or damage on that Account.
13. That the Second Party shall not assign, transfer or allow to use in any manner the premises, would continue to be responsible to the First Party for the compliance of terms & conditions of this Agreement.
14. That the Second Party shall on expiry of this Agreement remove stock, machinery, staff, personal furniture, fixtures, air-conditioners from the premises forthwith subject to other terms and conditions of this agreement.
15. That the Second Party shall not damage the said premises of the fittings, fixtures therein and Second Party shall also not have the right to make any alterations of the said premises, but shall be entitled to make temporary wooden partitions & also install other fixtures, computers, accessories at their own cost & remove at their cost at the time of Expiry of this Agreement.

16. That the Second Party has also deposited an amount of Rs.2,40,000/- (Rupees two lacs forty thousand only) vide cheque No._____ dated 15.5.2003 drawn on ABN Amro Bank, New Delhi with the First Party by way of security for observance of the covenants of this deed by the Second Party. The said amount shall be kept with the First Party to be repaid without interest, only on the revocation or expiry of this agreement and after removal of its goods, computers and their accessories alongwith fixtures, fittings etc. from the premises by the Second Party subject to such deduction the First Party shall be entitled to as against the Second Party i.e. arrears of charges, on account of unpaid agreed monthly charges, electricity, water bills, pending maintenance or repair work, damages, caused to various facilities, license premises etc. or any other charges which are to be paid by the Second Party as per this Agreement.

17. That it is expressly agreed and made clear that even if no business or other activities are actually carried out by the Second Party in the premises, for any reason. Whatsoever, still the Second Party shall have legal liabilities to pay the monthly charges to the First Party during the continuance of this Agreement and that the First Partys right under this Agreement shall not be affected by the profit or loss, occurring to the Second Party. Further the supervision will be at the free will of the First Party.

18. The First Party explicitly agrees to ensure the said premises will be opened at 7.30 am to 8 pm and closed between 12 am to 1 am. If the timing specified are not adhered to, the First Party is liable to pay a compensation of Rs.10,000/- per day to the Second Party. The timing will apply on the commencement of the business.

19. That it is expressly agreed and understood that this writing shall never be considered as tenancy Agreement or Lease Agreement or otherwise creating any other interest/interest in the premises in favour of the Second Party, which is not at all the intention of the Parties. But on the contrary merely a license cum supervision cum know how agreement to enable the Second Party to conduct their business/carryout other activities are mentioned above under the supervision and guidance of the First Party.

20. That the premises shall be used by the Second Party only for its own of specified purpose under the specific name and style only and for the security and safety of the property of the Second Party, the Second Party shall have all right and power to deploy its security.

21. That in case of the default of non-payment of license cum supervision charges for two consecutive months this Agreement shall automatically stand terminated and the First Party shall have every right to enter into to use the premises. That in case the Second Party does not take out their machinery, goods etc. and handover the vacant possession of the Ground Floor premises on the expiry of this agreement the First Party shall charge Rs.10,000/- (Rupees Ten Thousand only) per day till the premises are vacated and handed over.

22. The First Party shall not be responsible for theft, loss, pilferage, forced, damage of the goods and Second Party shall have no claim whatsoever from the First Party on this account, subject to the terms of this Agreement.

23. Subject to the other terms and conditions as mentioned and agreed by the parties to this Agreement, in case of non-observation of any of the clauses by the Second Party shall be treated as breach of agreement and in that event the First Party shall have free right to terminate the Agreement by giving at least three months notice and get the premises vacated to which the Second Party shall not have claim/objection of any nature whatsoever.

24. In case of any dispute whatsoever arising out of and in relation to this agreement, the same shall be referred to the Arbitration as per the provisions of the Arbitration and Constitution (sic Conciliation) Act, 1996.

25. The Second Party will use the Sales Tax No.of the first party and will pay the add on fees of the department to the first party and all the liabilities of the Sales Tax will be of second party, from the commencement of the business of the Second Party. Any dues pending before signing of this agreement shall be the liability of the first party.

26. The Food Licence will be in the name of M/s. New Man & Co. however Second Party will be responsible for all matters in connection with food inspection, sampling etc.

27. Any fine imposed by the concern authority on the said premises due to the business or renovation done by the Second Party shall be the responsibility of the Second Party.

28. All dispute shall be to the sole and exclusive jurisdiction of the Courts at Delhi.

29. way The attorney of the respondents/plaintiffs/landlords in his affidavit by of examination-in-chief deposed that though the appellant/defendant/tenant had entered into a tenancy agreement with Shri Bhupendra Kumar Bagla but had termed the same to be a Licensor-cumSupervision Agreement; that the possession of the entire tenancy premises was with Shri Bhupendra Kumar Bagla exclusively; that the appellant/defendant/tenant was being paid rent of Rs.40,000/- per month by the said Shri Bhupendra Kumar Bagla and that the appellant/defendant/tenant had also filed a suit for permanent injunction against Shri Bhupendra Singh Bagla and certified copy of plaint wherein was proved as Ex.PW-1/21.

30. The said attorney of the respondents/plaintiffs/landlords in cross examination on 12th January, 2005, besides stating that whenever I visited the shop I found Smt. Pushpa Sharma and her son Shri Ajay Sharma sitting in the shop also deposed presently the shop is in possession of Shri Ajay Sharma as per my information.

31. Shri Ajay Sharma son of the appellant/defendant/tenant in his affidavit by way of examination-in-chief as attorney of the appellant/defendant/tenant and in his capacity as the defendant no.2 deposed that their family was a tenant in the shop aforesaid since the year 1938 and carrying on their business in the name and style of M/s. New Man & Co.; that they had been depositing the rent in the bank account of the respondents/plaintiffs/landlords; that Shri Bhupendra Kumar Bagla was in collusion with the respondents/plaintiffs/landlords; that he had entered into the Agreement dated 4th June, 2003 supra with Shri Bhupendra Kumar Bagla in good

faith; that Shri Bhupendra Kumar Bagla had flouted the terms of the agreement owing whereto the agreement became null and void; that the appellant/defendant/tenant had never sublet the shop to Shri Bhupendra Kumar Bagla. He in cross examination, admitted, (i) receipt of Rs.2,40,000/under the agreement aforesaid from M/s. Juice Zone India; (ii) that M/s Juice Zone India started their business from the premises in question though he used to open and close the same; (iii) that the appellant/defendant/tenant had filed a suit for injunction against M/s. Juice Zone India and the copy of the plaint wherein was Ex.PW1/21; and denied that the agreement with M/s. Juice Zone India was in fact a tenancy agreement in the garb of a Licensorcum-Supervision Agreement; denied that the possession of the premises had been handed under the agreement aforesaid to M/s. Juice Zone India.

32. Need is not felt to discuss the testimony of the other two witnesses examined by the appellant/defendant/tenant as I agree with the finding of the learned Addl. District Judge that their testimony does not show them to be aware of the controversy aforesaid. The appellant/defendant/tenant in the plaint in the suit for injunction filed against M/s. Juice Zone India also admitted having entered into the agreement aforesaid with M/s. Juice Zone India and further pleaded that M/s. Juice Zone India had dismantled the shop and claimed the relief of permanent injunction restraining them from interfering in any manner with the peaceful possession of the appellant/defendant/tenant of the shop and from dispossessing the appellant/defendant/tenant from the said shop. In the said plaint the dimensions of the shop were described as 330 sq. ft. including 100 sq.ft. of mezzanine floor i.e. the entire area with respect to which the agreement was entered into with M/s. Juice Zone India.

33. There is thus no other evidence of the working of the arrangement between the appellant/defendant/tenant and M/s Juice Zone India except the agreement dated 4th June, 2003 itself and it has to be determined on an interpretation of the terms and conditions of the agreement itself, whether the same is of sub-tenancy, as contended by the respondents/plaintiffs/landlords or of business expansion, as contended by the appellant/defendant/tenant.

34. A reading of the agreement shows that thereunder: (a) the appellant/defendant/tenant had agreed to make available the entire tenancy premises to M/s Juice Zone India for a period of three years renewable for another three years; (b) M/s Juice Zone India was to use the tenancy premises to conduct and carry on therein the business of selling fresh juices, soft drinks, fast food and any other eatable or for any other commercial purpose; the business which M/s Juice Zone India was to carry on from the tenancy premises, was not the same as being earlier carried on by the appellant/defendant/tenant from the tenancy premises or ancillary or incidental thereto; (c) all the infrastructure viz. plant, stocks, machinery, furniture, fixtures and staff for the new business to be commenced in the tenancy premises was to be provided or brought into the tenancy premises by M/s Juice Zone India at its own cost and expense and the expense of electricity and water to be expended in carrying on the said business was also to be borne by M/s Juice Zone India; (d) the entire responsibility and risk of the new business to be commenced by M/s Juice Zone India from the tenancy premises was to be borne by M/s Juice Zone India; (e) the appellant/defendant/tenant was to be paid a minimum sum of Rs.40,000/- per month by M/s Juice Zone India (to be more if the earning of M/s Juice Zone India from the business in tenancy premises was more) irrespective of whether M/s Juice Zone India carried on any business activity from the tenancy premises or not and irrespective of whether the said business to be carried on by M/s Juice Zone India from the tenancy premises was in loss or profit.

35. From the aforesaid essentials of the agreement between the appellant/defendant/tenant and M/s Juice Zone India, I have wondered, what was the reason or consideration for M/s Juice Zone India to agree to pay a fixed sum of Rs.40,000/- per month to the appellant/defendant/tenant, irrespective of whether it carried on any business from the tenancy premises or not and irrespective of whether it earned from or suffered losses from the said business. The only reason I can fathom, is the use allowed by the appellant/defendant/tenant to M/s Juice Zone India of the premises in occupation of the appellant/defendant/tenant as a tenant under the respondents/plaintiffs/landlords. There could be no other reason for the said payment as there was to be no other contribution of the appellant/defendant/tenant to the business of M/s Juice Zone India in the tenancy

premises. The self serving clause in the agreement, of the appellant/defendant/tenant supervising the jobs and providing the technical knowhow to the best of his abilities, does not persuade me to hold the same to be the consideration for the said payment. The said clause is vague. It does not tell what the appellant/defendant/tenant was to supervise and what technical knowhow for the said business was available with the appellant/defendant/tenant. The business to be commenced and carried on by M/s Juice Zone India in the tenancy premises, as aforesaid, was not the same as being earlier carried on by the appellant/defendant/tenant therein and not even ancillary or incidental thereto. The question of appellant/defendant/tenant having any technical knowhow of the said new business thus did not arise. As far as supervision of jobs is concerned, as aforesaid, the staff even for carrying on the business, was to be of M/s Juice Zone India and not of the appellant/defendant/tenant. The semblance sought to be created in the agreement in this regard is however knocked down by the agreement also providing that the supervision will be at the freewill of the appellant/defendant/tenant. It is thus clear that the appellant/defendant/tenant was not bound to provide supervision of jobs. Not only so, the appellant/defendant/tenant was to be also not responsible for any theft/loss/pilferage, meaning that the supervision even if any provided by the appellant/defendant/tenant in his sole discretion, was to be without any corresponding duty or obligation. The consideration for payment of Rs.40,000/- per month, in the circumstances, could not be the supervision and technical knowhow and it has but to be held that the said clauses in the agreement are but a faade for the real reason or consideration for the said payment, to be used as a defense to the action if any instituted by the respondents/plaintiffs/landlords.

36. The next question which arises is, even if the appellant/defendant/tenant was receiving consideration of Rs.40,000/- per month from the M/s Juice Zone India, only on account of tenancy premises from which the appellant/defendant/tenant herself was paying Rs.56/- per month to the respondents/plaintiffs/landlords, whether it amounted to subletting or was merely a license. The law in this regard is far too well settled and need is not felt to burden this judgment therewith including a discussion on the judgments cited by the counsels.

37. The Rent Act, while granting protection from eviction to a tenant, prohibits the tenant from subletting, assigning or parting with possession of the tenancy premises without the consent in writing of the landlord. Admittedly there is no such consent of the respondents/plaintiffs/landlords permitting the appellant/defendant/tenant to sublet, assign or part with possession of the premises.

38. The family of the appellant/defendant as aforesaid is a tenant in the shop since the year 1938 i.e. now for the last nearly 75 years. Though the shop is situated in the prime commercial area of Delhi but owing to the archaic rent laws, the rent thereof payable by the appellant/defendant to the respondents/plaintiffs/landlords is still Rs.56/- per month though the market rent thereof, ten years ago, as evident from above was in excess of Rs.40,000/- per month. However the protection from eviction afforded under the Rent Act has been made personal to the tenant. The tenant is entitled to use the shop for his own purposes, earning profits at the prevalent value from the said business and the landlord has been restricted from seeking eviction or from increasing the rent to prevalent values.

39. By the amendment to the Rent Act of the year 1988, the provisions thereof were made inapplicable to the premises of which the rent was in excess of Rs.3,500/- per month. The Division Bench of this Court in P.S. Jain Co. Ltd. supra held that as long as the tenant is in occupation of the premises physically and is paying rent which is less than Rs.3500/- per month, he may be entitled to the protection of the Rent Act; however once he sublets the premises and such subletting fetches above Rs.3500/- per month, the premises become one whose monthly rent is in excess of Rs.3500/- and the tenant loses the protection from eviction under the Rent Act.

40. The question whether the admitted Agreement dated 4 th June, 2003 supra between the appellant/defendant/tenant and M/s. Juice Zone India through its partner Shri Bhupendra Kumar Bagla is of subletting or not is to be determined in the said background and context.

41. Though the business to be carried on in the tenancy premises, as aforesaid was exclusively of M/s Juice Zone India, the agreement does provide that the

possession of the tenancy premises will be of the appellant/defendant/tenant only who will open and close the same. However, the said clauses in the agreement are obviously of self serving nature. The real transaction between the appellant/defendant/tenant and M/s Juice Zone India peeps out from the agreement also providing, (a) that M/s Juice Zone India shall not assign, transfer or allow use of the tenancy premises to another: (b) M/s Juice Zone India have right and power to deploy its security at the tenancy premises; and, (c) upon default by M/s Juice Zone India in payment to appellant/defendant/tenant for two consecutive months, the appellant/defendant/tenant shall have every right to enter into use of the tenancy premises and if M/s Juice Zone India in such eventuality does not handover the vacant possession of the tenancy premises, it shall pay Rs.10,000/- per day till the premises are vacated and handed over.

42. I have wondered that if the control and possession of the tenancy premises was to be under the lock and key of the appellant/defendant/tenant, where was the need to restrain M/s Juice Zone India from transferring or assigning the tenancy premises to another or to permit M/s Juice Zone India to deploy its own security therein or to provide for M/s Juice Zone India handing over vacant possession of the premises appellant/defendant/tenant on termination of the agreement. to the The only inference is that the actual / real agreement was of M/s Juice Zone India being in possession and control of the tenancy premises.

43. A wholesome, pragmatic, common sense reading of the agreement leaves no manner of doubt that the said Agreement can by no stretch of imagination be said to be in expansion of the business being carried on by the appellant/defendant/tenant in the said shop. The clear intent of the said Agreement was to allow use of the shop to M/s. Juice Zone India in consideration of minimum Rs.40,000/- per month to be paid by them to the appellant/defendant/tenant. Being of course fully aware of the legal consequences of the transaction, while drawing up the formal agreement, the same provided that the appellant/defendant/tenant was to continue in occupation and physical possession of the shop and the tenor of the agreement was made to show the involvement of the appellant/defendant/tenant in the business to be carried by M/s. Juice Zone India in the said shop. However this Court is not to be fooled by such

attempts and mere clever legal drafting of such transactions cannot be allowed to come in the way of consequences which follow in law from the tenants entering into such transactions.

44. The Supreme Court in Delta International Ltd. supra relied upon by the counsel for the respondents/plaintiffs/landlords has held that where the landlord alleges that the tenant has sublet the premises and the tenant in support of his defence sets up a plea of a mere licensee and relies upon a deed entered into inter se between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed; and it is the duty of the Court to remove/lift the mask/veil and determine the true intention behind a facade of a self-serving conveniently drafted instrument.

45. I am therefore satisfied that there is no error requiring interference in this appeal, in the finding in the impugned judgment of the appellant/defendant/tenant having sublet the premises at a rent of Rs.40,000/- per month.

46. I have also examined the documents filed by the appellant/defendant/tenant by way of additional evidence. M/s. Juice Zone India in its complaint filed through its partner Shri Sanjay Daksha clearly stated that M/s. Juice Zone India was in pursuance of the Agreement to be in possession of the shop and the clauses in the Agreement to the effect that the shop will be under the lock and key of the appellant/defendant/tenant were to prevent the landlords from initiating action for eviction. It further stated that in pursuance to the Agreement M/s. Juice Zone India had come into possession of the premises on 9th June, 2003 and had commenced the work of renovations therein to make it suitable for its use. Merely because M/s. Juice Zone India did not pursue the said complaint and the same was dismissed does not persuade me to take any different opinion than taken by the learned Addl. District Judge.

47. The subsequent events, of the possession of the tenancy premises having been taken by Shri Gandharv Saini, also support the version, of the appellant/defendant/tenant not carrying on any business/activity of her own in the tenancy premises and being merely interested in commercially exploiting the potential of the premises in her tenancy at meagre rent. The protection from

eviction to tenants afforded by the Rent Act was/is clearly not intended for such situations. The conduct of the appellant/defendant/tenant in this litigation is also reprehensible. The appellant/defendant/tenant, after full trial, wanted to thwart the same by alleging that the contest till then by her son on her behalf was without her consent. Rather, the appellant/defendant/tenant claims to have been away from the country during that time and also alleged the dealings of her son with M/s Juice Zone India to be without her consent. Of course such stand of the appellant/defendant/tenant was not believed. RFA No.250/2013 nevertheless shows abandonment of tenancy premises by the appellant/defendant/tenant.

48. No merit is thus found in the appeal which is dismissed with costs.

49. Counsels fee assessed at Rs.20,000/-. Decree sheet be drawn up. RAJIV SAHAI ENDLAW, J.

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