A LABANYA NEOGI THROUGH LRS., POWER OF ATTORNEY HOLDER SHRI DR. SUBHASIS NEOGI

v.

W.B. ENGINEERING COMPANY

SEPTEMBER 7, 1999

B

[V.N. KHARE AND S.N. PHUKAN, JJ.]

Rent Control and Eviction:

C *West Bengal Premises Tenancy Act, 1956: Section 14.*

Sub-letting—Proof of—Landlord inducted partnership firm as tenant for residential purposes—Employee of said firm, who was also the son-in-law of one of the partners, occupied the house as tenant right from the inception of tenancy—Later said firm dissolved and employee became its sole owner—
D *Held: To establish sub-letting abandonment or transfer of tenancy must be proved—Since this is not the case, sub-letting not established—Further, the fact that tenant is the son-in-law is of no consequence since he is not claiming tenancy as a son-in-law but as owner of the firm—High Court rightly dismissed second appeal as no substantial question of law involved.*

E **The respondent-partnership firm was a tenant of the suit premises belonging to the appellant-landlady. The tenancy was for residential purposes. T, who was an employee of the firm and also the son-in-law of one of the partners, was in occupation of the suit premises right from the inception of the tenancy. Subsequently partnership firm was dissolved and T became the**
F **sole owner of the firm and continued to reside in the suit premises with his family.**

The appellant filed a suit for eviction on the grounds of personal use and occupation and sub-letting. The Trial Court decreed the suit on the ground of personal use and occupation only. The ground of sub-letting was
G **rejected. However, the first appellate court set aside the decree on the ground that the appellant failed to prove that the suit premises were required for personal use and occupation. The High Court dismissed the second appeal on the ground that no substantial question of law was involved. Hence this appeal.**

H **Dismissing the appeal, the Court**

HELD: 1.1. To establish sub-letting, the landlady has to prove abandonment or transfer of interest in favour of another person. In the instant case, the tenancy was between the landlady and the respondent which was originally a partnership firm and from the records of this case, it transpires that T became the sole owner. The original tenancy was for the purpose of residential accommodation of the firm and right from the inception of the tenancy T was in occupation of the suit premises. Therefore, there was no abandonment or transfer of the tenancy by the respondent-firm, the tenant. [232-C-D] A B

1.2. Further, T is not claiming tenancy in his capacity as a son-in-law but as an owner of the firm. The High Court rightly dismissed the second appeal as no substantial question of law was involved. [232-G; 231-A] C

Pulin Beshari Lal **v.** *Mahadeseb Dutta,* **[1993] 1 SCC 629, referred to.**

S.A. Vengadamma **v.** *Jitendra Vora,* **[1997] 11 SCC 334, held inapplicable.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9127 of 1996. D

From the Judgment and Order dated 15.9.95 of the Calcutta High Court in S.A.T. No. 1654 of 1995.

Rakesh Dwivedi, Himanshu Munshi, Anip Sachthe and Braj Shiv Rajesh Roshan Agrajit for the Appellant. E

Hardev Singh and Ms. Madhu Moolchandani for the Respondent.

The Judgment of the Court was delivered by

PHUKAN, J. This appeal is by the landlady against the judgment and order of the High Court of Calcutta in SA No. 709 of 1995. By the impugned judgment, the High Court dismissed the second appeal filed by the present appellant against the judgment of the Lower Appellate Court namely Assistant District Judge at Sealdah in Title Appeal No. 58/91. F

The Lower Appellate Court set aside the judgment of the Trial Court namely Third Munsiff Sealdah in Title Suit No. 523/81. The Appellant filed a suit for ejectment and mesne profit against the respondent on the grounds of personal use and occupation, subletting and other grounds. In the present appeal only above two grounds have been urged, namely, subletting and *bonafide* requirement. G H

A The Trial Court decreed the suit on the ground that the suit premises were required for personal use and occupation by the landlady. The ground of subletting was rejected .

The Lower Appellate Court reversed the findings of the Trial Court on the ground that the landlady failed to prove that the suit premises were B required for personal use and occupation. It may be stated that a cross appeal was also filed by the landlady in respect of the findings of the Trial Court regarding subletting, which was dismissed.

The High Court took note of the fact that the Lower Appellate Court has recorded that the family of the landlady consists of four members and one C child and total rooms in the occupation of the landlady were nine. The High Court also took note of the fact that the Lower Appellate Court extensively dealt with the question of user of the above rooms and the fact that an alternative accommodation was available to the landlady adjacent to the suit property. Regarding the question of subletting the High Court refused to D interfere with the findings of the courts below as there was no substance to hold in favour of the appellant landlady on the ground of subletting . The High Court was further of the opinion that no substantial question of law was involved and therefore, dismissed the appeal.

Heard Mr. Rakesh Dwivedi, Sr. Advocate for the appellant and Mr. E Hardev Singh, Sr. Advocate for the respondent.

Regarding requirement of personal use and occupation, we are of the opinion that this is a question of fact and we find from the judgment of the Lower Appellate Court that the Court not only considered the entire evidence on record but also report of the Commissioner appointed by the Court. The F Lower Appellate Court also took note of the fact that though according to the landlady one room in the building in question was in possession of another tenant but it was found that it was in the possession of her daughter.

The Lower Appellate Court has extensively discussed the evidence on G record and has come to the finding that the property in question is not required for the use and occupation of the landlady in as much as she has got sufficient accommodation. We hold that the High Court rightly refused to interfere with the findings on this point of the Lower Appellate Court. We may state here that learned Counsel for the appellant has drawn our attention to the judgment of the High Court wherein it has been recorded that nine H rooms were in occupation of the landlady which was not a fact and therefore,

High Court has misdirected itself. This contention has no force as High Court dismissed the appeal on the ground that there was no substantial question of law involved.

Regarding subletting drawing our attention on Section 14 of the West Bengal Premises Tenancy Act, 1956, it has been urged that as there was no previous consent in writing of the landlady there was subletting which was not taken note of by the Courts below.

We extract the same Section 14 of the Act which runs as follows:

S.14. Restriction of subletting - (1) After the commencement of this Act, no tenant shall, *without the previous consent in writing of the landlord*,-

(a) sublet the whole or any part of the premises held by him as a tenant; or (b) transfer or assign his rights in the tenancy or in any part thereof (c) (2) No landlord shall claim, demand or receive any premium or other consideration whatsoever for giving his consent to the subletting of the whole or any part of the premises held by a tenant.

(Emphasis supplied)

The question of subletting came up for consideration by this Court in *Pulin Beshari Lal* v. *Mahadseb Dutta and Ors.*, [1993] 1 SCC 629 and it was held that when there was no previous consent in writing of the landlord for creation of sub-tenancy, it shall be a ground for eviction in terms of Section 13(1) (a) of the Act. It was further held that mere knowledge and/or acceptance of rent cannot defeat the landlord's right to get a decree for ejectment on the ground of subletting. We do not find any reason to take a different view in view of the clear legislative mandate laid down in Section 14 of the Act.

Now the question is whether there was subletting in the case in hand?

There was a written agreement of lease for the tenancy with effect from 1.12.1965 between the landlady and a partnership firm, namely, M/s. W.B. Engineering Company Ltd. and the tenancy was for residential purposes of the above partnership firm. The agreement was marked as Exhibit -11. The allegations of the landlady was that there was sub-letting of the suit premises in favour of Mr. Tahilian, who was also son-in-law of one of the partners of the firm. The Trial Court noted that the said Mr. Tahilian joined the firm as an employee and since 1965 was residing in the suit premises. The Trial Court also noted that according to Mr. Tahilian (D.W.1) who was examined as a

witness, the partnership firm got dissolved and he became a proprietor of the firm and thereafter running the said firm. On these facts the Trial Court held that there was no subletting.

The first appellate court also took note of the fact that since inception of the tenancy D.W.1 has been residing with his family in the suit premises, as at that time he was an employee of the partnership firm. This fact was also admitted by the husband of the landlady, namely, P.W.1. Therefore, the first appellate court confirmed the findings of the Trial Court that the landlady failed to prove subletting.

To establish sub-letting, the landlady has to prove abandonment or transfer of interest in favour of another person. In the case in hand, the tenancy was between the landlady and M/s. W.B. Engineering Company, which was originally a partnership firm and from records of this case, it transpires that Mr. Tahilian (D.W.1) became the sole owner as stated above. The original tenancy was for the purpose of residential accommodation of the firm and right from the inception of tenancy Mr. Tahilian was in occupation of the suit premises. Therefore, there was no abondonment or transfer of the tenancy by the M/s.W.B. Engineering Company, the tenant.

Learned counsel for the appellant has drawn our attention to a decision of this court in *S.A. Vengadamma and Ors.* v. *Jitendra Vora and Anr.,* [1997] 11 SCC 334 in support of his contention that Mr. Tahilian, being son-in-law of one of the original partners, cannot be treated as a member of the family of the said firm.

In the above decision, this court while considering Karnataka Rent Control Act, 1961, particularly, Section 3(ff) of the Act, wherein the word 'family' has been defined, inter-alia, held that a brother not living with the tenant permissively cannot be treated as a member of the family.

In the present case, Mr. Tahilian is not claiming tenancy in his capacity as a son-in-law but as an owner of the firm, namely, M/s. W.B. Engineering Company. Therefore, the ratio laid down in that above decision is not applicable to the present case.

For the reasons stated above, the appeal is dismissed.

No costs.

V.S.S. Appeal dismissed.