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BAJAJ AUTO LIMITED

v.

BEHARI LAL KOHLI

AUGUST 8, 1989

B [LALIT MOHAN SHARMA AND N.D. OJHA, JJ.]

Delhi Rent Control Act, 1958: Section 14(1) Proviso (b)—Eviction of tenant on ground of sub-letting—Whether lessee entitled to create sub-lease—Lease deed inadmissible for non-registration—Term of the lease deed regarding sub-lease—Whether could be relied upon.

C **The respondent let out his premises to the appellant by way of an unregistered lease deed which *inter alia* stated that without the permission of the landlord the premises should not be sub-let except to associate concerns, and the lessee was liable for payment of rent. Alleging that the appellant, a manufacturing company of automobiles, had** D **sub-let the premises to M/s United Automobiles without his consent, the respondent initiated eviction proceedings.**

The appellant contended that M/s United Automobiles, being the authorised dealer and distributor of the products manufactured by it, has been in occupation of the premises in that capacity and cannot E **therefore be described as a sub-tenant. Alternatively, in view of the specific term in the lease deed, the arrangement with the associate concern was not a sub-lease without the consent of the respondent, it was contended. The respondent took the stand that the term cannot be looked into, as the document was not registered and that M/s United Automobiles cannot be assumed to be an 'associate concern' within the** F **meaning of the term. Both the Rent Controller and the appellate authority held that the term of the lease was not inadmissible, but ordered eviction on the ground that M/s United Automobiles was inducted in the premises as a sub-lessee.**

The appellant filed a second appeal before the High Court which G **dismissed it in limine. Hence this appeal by special leave.**

Dismissing the appeal,

HELD: 1. The appellant has created a sub-lease in favour of its dealer, and has thus parted with the possession within the meaning of s. H **14(1) Proviso (b) of the Delhi Rent Control Act. The appellant-Com-**

pany has a separate legal entity and has nothing to do with M/s United Automobiles except that the latter is the dealer-distributor of some of its manufactured articles. M/s United Automobiles is not a licensee and is not in possession of the premises on behalf of the appellant. The monetary benefit available to the dealer is confined to the commission it receives on the sale of every vehicle; and does not include the right of enjoyment of the premises. The dealer pays a fixed sum as rent to the appellant and the rent is not related or dependant on the sale of any vehicle. The fact that this amount is same as what is paid by the appellant to the respondent does not appear to be material. [733E-G] A B

2. The question whether a lessee is entitled to create a sub-lease or not is undoubtedly a term of the transaction of lease, and if it is incorporated in the document it cannot be disassociated from the lease and considered separately in isolation. If a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. The appellant cannot, in the present circumstances, be allowed to rely upon the clause in the unregistered lease deed. [734C-D] C D

Sachindra Mohan Ghose v. *Ramjash Agarwalla,* A.I.R. 1932 Patna 97; referred to.

3. In the instant case, a perusal of the clause relied on by the appellant would show that it contains the respondent's consent in general terms without reference to M/s United Automobiles. As a matter of fact M/s United Automobiles came to be inducted as a sub-tenant much later. Such a general permission cannot be treated to be the consent as required by s. 14(1) Proviso (b) of the Act. Since consent of the respondent was not obtained specifically with reference to the sub-letting in favour of M/s United Automobiles, the clause in the lease deed cannot save the appellant, even if it be assumed in its favour that the clause is admissible and the sub-lessee is appellant's associate concern. [734E-G] E F

M/s Shalimar Tar Products v. *S.C. Sharma,* [1988] 1 SCC 70; relied on. G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2443 of 1980.

From the Judgment and Order dated 8.9.80 of the Delhi High Court in S.A.O. No. 339 of 1980. H

A Mukul Mudgal for the Appellant.

Rajinder Sachhar and Mrs. J. Wad for the Respondent.

The Judgment of the Court was delivered by

B **SHARMA, J.** This is a tenant's appeal against the decree for his eviction from certain disputed premises passed by the Rent Controller, Delhi and confirmed in appeal and second appeal.

2. The respondent, the owner of the premises, let it out to the appellant in 1961 as a monthly tenant. An unregistered deed of lease C was executed on that occasion containing the following statement as one of the clauses:

> "That they will not assign or underlet or part with the premises hereby demised without the permission in writing of the landlord subject however to this proviso that they D shall be entitled to assign or otherwise part with the possession of the said premises or any part thereof to their associate concerns without such consent but in any event the lessees shall be liable for the payment of the rent during the term hereby granted."

E 3. The appellant is a manufacturing company of Scooters, Pick-up Vans and Auto-Three-Wheelers. Alleging that the appellant had sub-let the premises to M/s. United Automobiles without his consent, the respondent contended that the ground mentioned in S. 14 (1) Proviso (b) of the Delhi Rent Control Act, 1958 was made out and the appellant was liable to be evicted.

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4. The eviction proceeding was defended by the appellant on the ground that the M/s. United Automobiles are the authorised dealer and distributor of the product manufactured by the appellant and has been in occupation of the premises in that capacity and can not, therefore, be described as a sub-tenant. It was alternatively argued G that in view of the term of the lease as quoted above the arrangement with the M/s. United Automobiles can not be condemned as a sub-lease without the consent of the respondent. The stand of the respondent has been that the above-mentioned term, of the lease can not be looked into as document was not registered and further the M/s. United Automobiles can not be assumed to be an 'associate a concern' H within the meaning of the term. The Rent Controller, as well as, the

appellate authority held that the afore-mentioned term of the lease was not inadmissible and the appellant was entitled to rely upon the same, but ordered eviction on the ground that M/s. United Automobiles was inducted in the premises as a sub-lessee. The High Court dismissed the appellant's second appeal in limine, and in this situation the present appeal by special leave has been filed.

5. It has been strenuously contended by the learned consel for the appellant that as, (i) the United Automobiles is a distributor of the product manufactured by the appellant on the basis of commission, (ii) it pays the same amount to the appellant as the rent of the premises payable by the appellant to the respondent, and (iii) is entitled to be in possession only as long as it continues to be a distributor, it should be held to be an 'associate concern' within the meaning of the afore-mentioned term of the lease. In reply of the respondent's contention that the term can not be taken into consideration as the deed is not a registered one, it was urged that the appellant, in view of the provisions of S. 49 of the Registration Act, is entitled to rely upon the term for 'collateral purpose'. The argument is that the document may not be admissible for the purpose of proving the existence of a lease or the terms thereof, but as the afore-mentioned clause does not come within that category, in as much as, it merely amounts to a written permission to the appellant to create a sub-lease, it can not be excluded from consideration on the ground of non-registration.

6. There is no dispute that the appellant has put M/s. United Automobiles in possession of the premises and has thus parted with the possession within the meaning of S. 14(1) Proviso (b) of the Act. The appellant-Company has a separate legal entity and has nothing to do with M/s. United Automobiles 'except that the latter is the dealer-distributor of some of its manufactured articles. M/s. United Automobiles is not a licensee and is not in possession of the premises on behalf of the appellant. The monetary benefit available to the dealer is confined to the commission it receives on the sale of every vehicles; and does not include the right of enjoyment of the premises. The dealer pays a fixed sum as rent to the appellant and the rent is not related or dependant on the sale of any vehicle. The fact that this amount is same as what is paid by the appellant to the respondent does not appear to be material. The irresistible conclusion is that the appellant has created a sub-lease in favour of its dealer. The question now is whether the clause in the lease mentioned above amounts to the respondent's consent in writing.

7. The contention of the learned counsel for the respondent that

A the aforesaid clause can not be looked into for want of registration of the lease deed appears to be correct. Reliance has been placed on the observations of Fazal Ali, J. in *Sachindra Mohan Ghose* v. *Ramjash Agarwalla,* A.I.R. 1932 Patna 97 that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a B document for the purpose of proving an important clause in the lease is not using it as a collateral purpose.

8. The learned counsel for the appellant attempted to meet the point by saying that so far the consent of the landlord permitting sub-letting is concerned, it does not require registration and the clause, therefore, must be excepted from the requirement of registra- C tion and consequent exclusion from evidence. We do not see any force in this argument. The question whether a lessee is entitled to create a sub-lease, or not is undoubtedly a term of the transaction of lease, and if it is incorporated in the document it can not be disassociated from the lease and considered separately in isolation. If a document is inad- D missible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It follows that the appellant can not, in the present circumstances, be allowed to rely upon the clause in his unregistered lease deed.

9. There is still another reason to hold that the aforesaid clause E can not come to the aid of the appellant. A perusal of its language would show that it contains the respondent's consent in general terms without reference to M/s. United Automobiles. As a matter of fact M/s. United Automobiles came to be inducted as a sub-tenant much later. Can such a general permission be treated to be the consent as required by S. 14 (1) Proviso (b) of the Act? It was held by this Court F In *M/s. Shalimar Tar Products* v. *S.C. Sharma,* [1988] 1 SCC 70; that Ss. 14(1) Proviso (b) and 16(2) and (3) of the Delhi Rent Control Act, 1958 enjoin the tenant to obtain consent of the landlord in writing to the specific sub-letting and any other interpretation of the provisions will defeat the object of the statute and is, therefore, inpermissible. Since it is not suggested that the consent of the respondent was G obtained specifically with reference to the sub-letting in favour of M/s. United Automobiles, the clause in the lease deed, which has been relied on can not save the appellant, even if it be assumed in its favour that the clause is admissible and the sub-lessee is appellant's associate concern. The appeal, therefore, fails and is dismissed with costs.

H G.N. Appeal dismissed.