

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

The Hon'ble Mr. Justice Subrata Talukdar

**CO 321 of 2014
Arun Chorone Roqitte & Anr**

-Vs-

Oriental Venetian Blinds & Anr

For the Petitioner : *Sri Sabyasachi Chowdhury;*
Sri Anirban Kar;
Sri Sounak Bhattacharyya;
Sri Vikas Baidya;
Sri Shiladitya Bose;
Sri Lal Ratan Mondal

For the Opposite Parties : *Sri Sabyasachi Bhattacharyya;*
Sri Ranabir Roy Chowdhury;
Sri Debjit Mukherjee

Heard on : *03/03/2014, 26/03/2014, 28/03/2014,*
14/08/2014

Judgement on : *27/11/2014*

Subrata Talukdar, J.: By this application under Article 227 of the Constitution of India the petitioners challenge Order No. 16, dated 30th April, 2013 passed by the Learned 11th Bench, City Civil Court at Calcutta in Title Suit No. 1751 of

2011 in the matter of Oriental Venetian Blinds versus Trust Estate of Amulya Charan Roqitte and Ors.

The short case of the petitioners is as follows:-

- a)** That the petitioners are the owners of premises during 19A, 19B, 19C and 19D, BB Ganguly Street, Kolkata 700012 (hereinafter referred to for short as the suit premises). Sri Amulya Charan Roqitte was the original owner of the suit premises and by registered Deed of Trust executed on 31st July 1963, the suit premises were settled in favour of the present petitioners. The present petitioners are now acting as trustees. By the Trust Deed dated 31st July, 1963 the suit property stood retained with the present petitioners as beneficiaries. Thereafter by Deed of Release dated 12th January, 2007 the suit premises stood released in favour of the petitioners.
- b)** That the Title Suit No. 1751 of 2011 under reference was instituted by the Opposite Party No. 1 (OP-1)/plaintiff claiming a decree of declaration that the proforma opposite party/defendant No. 1 was bound to issue rent receipts in favour of the plaintiff. A further declaration was prayed for to the effect that the plaintiff is in possession of the suit premises as the lawful tenant under the proforma OP/Defendant No. 1 and is lawfully entitled to use and enjoy the suit premises.

Further reliefs were prayed for directing the defendants and their men and agents not to disturb the peaceful possession of the plaintiff over the suit premises along with the relief of permanent injunction, receiver, costs etc.

- c)** It is the case of the present petitioners/defendants that the plaintiff has disclosed several documents including rent receipts which have been issued in the name of Oriental Electric and Engineering Company. The said Oriental Electric and Engineering Company (for short the Company) was inducted as a tenant in respect of the suit premises and the plaintiff, i.e. Oriental Venetian Blinds claims to be a division of the Company which was taken over by the plaintiff in and around 7th January, 1975 to 11th July, 1975.
- d)** The petitioners/defendants filed an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure (CPC) praying for rejection of plaint. According to the petitioners/defendants the plaint is liable to be rejected under Section 69(2) of the Partnership Act, 1932. It is the further case of the petitioners that the plaint is liable to be rejected for non-joinder of necessary parties.
- e)** The petitioners/defendants have also contended that the plaintiff is not a bonafide tenant and there has been no intimation to the petitioners of the purported transfer of tenancy from the name of the Company to that of the plaintiff, which is a partnership firm.

The learned Trial Court by its order impugned no. 16, dated 30th of April 2013 recorded as follows:-

- i)** That from the averments in the plaint and the materials on record it will appear that the suit premises was the trust property of Amulya Charan Roqitte and that the plaintiffs No. 2 and 3 were the trustees of such property.

- ii)** That the Company was the tenant in respect of the Schedule property under the defendant No. 1. By the Deed of Release of the year 2007 the suit property has lost the status of a trust property.
- iii)** It is an admitted fact that the disputed tenancy stands in the name of the Company. However, the partnership business under the name of M/s Oriental Venetian Blinds is now run from the disputed tenancy. The Partnership Deed of 1974, inter alia, provides that such partnership was between one Madhusudhan Jatla and Jyoti Jatla. Thereafter, the names of the original partners were deleted and the name of one Nawal Kumar Jhunjhunwala and Kamal Kumar Jhunjhunwala has been inserted as the partners of M/s Oriental Venetian Blinds.
- iv)** The learned Trial Court therefore found from the documents on record that the possession of the suit premises has changed from the Company to an unregistered partnership firm. It also found that no documents have been filed by the OP-1/plaintiff in support of the contention that the Company got merged with the plaintiff or that the plaintiff was a division of the Company.

Therefore, the learned Trial Court was of the view that the present possession of the plaintiff in the suit premises, whether legal or illegal, can be only decided after taking evidence in the trial.

- v)** With reference to Section 69(2) of the Partnership Act the Ld. Trial Court found the suit by an unregistered firm not to be barred under section 69(2) if a statutory right or a common law right is sought to be enforced.

However, no suit by an unregistered firm will lie for enforcement of any right arising out of a contract entered into by an unregistered firm *qua* third parties.

The learned Trial Court held that since the plaintiff has sought relief against the defendant No.1-Company under the common law of the land, Section 69(2) of the Partnership Act has no application to the facts of the present case.

Accordingly, the learned Trial Court rejected the application of the petitioners under Order 7 Rule 11 CPC.

Aggrieved by such order of rejection Sri Sabyasachi Chowdhury learned Counsel appearing on behalf of the petitioners has powerfully argued as follows:-

A) First, if a contractual right is asserted in the plaint, Section 69(2) of the Partnership Act stands as a clear bar to assertion of such a right. Placing the language of Section 69(2) of the Partnership Act before this Court Sri Chowdhury points out that from the four corners of the plaint it will be transparent that the tenancy claimed by the plaintiff is under a contract. Such a contract is not enforceable by an unregistered firm. In such view of the matter Order 7 Rule 11(d) CPC will apply and the plaint deserves to be rejected.

B) In connection with the above argument Sri Chowdhury places for consideration of this court Paragraphs 1, 5 and 8 of the plaint. According to him a plain reading of the said paragraphs will show that there has been a transfer of tenancy from the original tenant, that is the Company in favour of an unregistered Partnership firm. The original tenancy being one under a

contract it must be presumed that the transfer of such tenancy is also under a contract.

Strong attention of this Court has also been drawn to the reliefs claimed in the plaint. Sri Chowdhury asserts that the presumption of contractual tenancy has been adopted by the plaintiff by seeking a declaration to the effect that the petitioners are bound to issue rent receipts in favour of the plaintiff and also bound to respect the possession and peaceful enjoyment by the plaintiff as a lawful tenant.

C) Elaborating his above arguments Sri Chowdhury, therefore, submits that if the plaintiff presumes to claim relief on the basis of an existing tenancy, the same must flow from a contractual right. It is not heard of in law that the tenancy under common law can be recognised.

The next limb of Sri Chowdhury's submission is a corollary to the first part of his submission. He argues that if the plaintiff is admittedly an unregistered firm it is out of the pale of the contract. Section 69(2) of the Partnership Act will operate and the suit must fail. According to Sri Chowdhury, the learned Trial Court perversely arrived at the finding that the tenancy claimed by the plaintiff can be said to be recognised under the common law.

D) Sri Chowdhury fortifies his above submission by referring to Section 34 of the Specific Relief Act, 1963. He argues that to claim a relief under Section 34 the plaintiff is required to assert a legal character and it is obvious on a plain reading of the plaint that tenancy has been claimed on the platform of such a legal character. In that view of the matter there can be no legal character

ascribed to the plaintiff *de hors* a contract. Therefore, in any view of the matter the plaint is soaked in the dyes of a contract and imbibing such colour of contract the plaint cannot be allowed to proceed under Section 69(2) of the Partnership Act.

- E)** In the alternative, another argument of Sri Chowdhury is that assuming but not admitting that the view taken by the learned Trial Court is correct, viz. that the tenancy of the plaintiff is protected under the common law then the plaint cannot be held to disclose a cause of action. Again drawing the attention of this Court to the reliefs in the plaint, Sri Chowdhury argues that such reliefs cannot be raised on a lack of assertion in the plaint of any legal character as such legal character is bestowed only under a contract and not under the common law.
- F)** Elaborating the above argument further Sri Chowdhury submits the even an unregistered firm is barred from suing under a contract against a third party. At the same time an unregistered firm is barred from asserting any relief under the common law without defining its legal character to do show.
- G)** Sri Chowdhury concludes his submission by relying on an authority reported in ***AIR 1961 Rajasthan 286 paragraphs 2 and 3***. The said paragraphs read as follows:-

“2) The plaintiff is an unregistered firm. The suit was resisted by the landlords inter alia on the ground that in view of the provisions of S. 69 of the Partnership Act the present suit is not maintainable. The trial court upheld this objection and dismissed the suit. On appeal the learned District Judge

relying on Sreemannarayanamurthy v. Arjanadu, AIR 1939 Mad 145 held that S. 69 of the Partnership Act was not applicable as the suit was not to enforce a right arising out of any contract but was a suit for enforcing a right conferred by the Rajasthan Premises (Control of Rent and Eviction) Act. 1950.

In the Madras case a petition for adjudication of a debtor as an insolvent was moved by a creditor. It was resisted on the ground that the creditor being an unregistered firm the petition was not maintainable. The learned District Judge dismissed the insolvency petition on this ground but the High Court set aside the decision on the following reasoning:

“The learned District Judge has held that this insolvency petition is in reality a proceeding to enforce a right arising from a contract. We are unable to agree with the learned District Judge on this point. A petition for the adjudication of a debtor as an insolvent is not in our view a proceeding to enforce a right arising from a contract. It is no doubt the case that the creditors who apply for the adjudication of their debtors as insolvents hope to recover the whole or some portion of their debt in the distribution of the assets of the insolvent’s estate, but it cannot be said, we think, that the proceedings in insolvency are proceedings to enforce the rights of the creditors arising from the contracts between them and their debtors. The right which the creditor who files the insolvency petition against his debtor is seeking to exercise is the right of a creditor who finds his debtor in insolvent circumstances to have the assets of the debtor administered in insolvency and distributed for the benefit of the creditors as a body. This is a right which is conferred upon the creditors by statute and is

not a right arising out of a particular contract of loan between a petitioning creditor and a debtor”.

3) With all respect I am unable to agree with the above reasoning. Apart from the terms of a particular contract the parties who enter into it are also governed by other laws which create various rights and liabilities. The insolvency Act gives a right to a creditor to move a petition for the adjudication of a debtor as an insolvent. It is not open to a stranger to move an application for the adjudication of a person as insolvent on the ground that he has committed acts of insolvency. Although this right is conferred by statute only a person who is a creditor can enforce it. In this view of the matter it is a right arising out of a contract.”

Per contra Sri Sabyasachi Bhattachaya, learned Senior Counsel appearing for the OP-1 /plaintiff submits as follows:-

- I)** That the decision reported in ***AIR 1961 Rajasthan 286 at paragraphs 2 and 3*** must be understood on its own facts. In the ***AIR 1961 Rajasthan 286*** (supra) the suit was for reduction of rent fixed under a contract. Therefore, the suit was essentially fixed on a contract and in that view of the matter the principle of Section 69(2) of the Partnership Act was held to be applicable.
- II)** However, the facts of the present case, according to Sri Bhattacharyya, are different inasmuch as the present case claims reliefs of declaration. Such reliefs of declaration are claimed under the common law of tenancy. In such view of the matter Sri Bhattacharyya argues that the provisions of Section 69(2) are not a bar before the Id. Trial Court to examine such reliefs.

III) Sri Bhattacharyya further argues that this Court is required to examine the declaratory reliefs claimed by the OP-1/plaintiff under the common law in spite of the fact that the apparition of a contract looms in the background like a brooding omnipresence. According to Sri Bhattacharyya, at the stage of deciding an application under Order 7 Rule 11 CPC the Id. Trial Court is not required to determine the basis of the status between the parties which must be left to trial. Section 69(2) of the Partnership Act is not a bar to seek enforcement of a right of tenancy by operation of law.

Heard the Parties. Considered the materials on record.

This Court finds that the argument of Sri Chowdhury although attractive at the first blush, also calls for a searching analysis. Sri Chowdhury's principal submission is that the four corners of the plaint and the reliefs claimed have their basis in a contract. Reminding this Court of the maxim that there can be no tenancy without a contract, Sri Chowdhury has asserted that in the absence of a privity of contract between the plaintiffs and the defendants the legal foundation of a claim to tenancy is absent. Accordingly, the plaint deserves to be rejected under Order 7 Rule 11(d) CPC as being barred by law.

This Court finds that the Hon'ble Apex Court had occasion to consider the point that a tenancy may have its origins in a contract but may ripen into a status. Discussing whether the protection available to a statutory tenant who steps into a contractual tenancy by operation of law can be further extended to the heirs of such statutory tenants in both residential and commercial premises **Bhagwati J** in **Gian Devi Anand Vs. Jeevan Kumar and Others** reported in

1985 (2) SCC 683 while concurring with the majority judgment observed as follows:-

“The distinction between contractual tenancy and statutory tenancy is completely obliterated by the rent control legislation. Though genetically the parentage of these two legal concepts is different, they are equated with each other and their incidents are the same. If a contractual tenant has an estate or interest in the premises which is heritable, a statutory tenant should also be held to have such heritable estate or interest. In one case, the estate or interest is the result of contract while in the other, it is the result of statute. But the quality of the estate or interest is the same in both cases. Section 2(I)(iii) merely limits or circumscribes the nature and extent of the protection that should be available on the death of a statutory tenant in respect of residential premises. It does not confer a new right of heritability which did not exist aliunde.”

Discussing the provisions of the Delhi Rent Control Act the majority view of the Five-Judge-Bench in **Gian Devi Anand** (supra) held at **paragraph 34** as follows:-

“There is another significant consideration which, in our opinion, lends support to the view that we are taking. Commercial premises are let out not only to individuals but also to Companies, Corporations and other statutory bodies having a juristic personality. In fact, tenancies in respect of commercial premises are usually taken by Companies and Corporations. When the tenant is a Company or a Corporation or anybody with juristic personality, question of the death of the tenant will not arise. Despite the termination of the tenancy, the Company or the Corporation or such juristic personalities, however, will go on enjoying the protection afforded to the tenant under the Act. It can hardly be conceived that

the Legislature would intend to deny to one class of tenants, namely, individuals the protection which will be enjoyed by the other class, namely, the Corporations and Companies and other bodies with juristic personality under the Act. If it be held that commercial tenancies after the termination of the contractual tenancy of the tenant are not heritable on the death of the tenant and the heirs of the tenant are not entitled to enjoy the protection under the Act, an irreparable mischief which the Legislature could never have intended is likely to be caused. Any time after the creation of the contractual tenancy, the landlord may determine the contractual tenancy, allowing the tenant to continue to remain in possession of the premises, hoping for an early death of the tenant, so that on the death of a tenant he can immediately proceed to institute the proceeding for recovery and recover possession of the premises as a matter of course, because the heirs would not have any right to remain in occupation and would not enjoy the protection of the Act. This could never have been intended by the Legislature while framing the Rent Acts for affording protection to the tenant against eviction that the landlord would be entitled to recover possession, even if no grounds for eviction as prescribed in the Rent Acts are made out.”

From the facts of this case it transpires that the plaintiff claims to have stepped into the shoes of the original tenant namely, Oriental Electric and Engineering Company. From the averments in the plaint it further transpires that prior to 1975 the plaintiff was a division of M/s Oriental Electric and Engineering Company and in the year 1975 on the basis of transfer of the business the name and style of the original tenant company has been changed to the name and style of the present plaintiff. Admittedly further, the plaintiff has

been carrying on business from the tenanted premises for long since the year 1975 without any demur from the defendants till the cause-of-action for the suit arose on or about 30th of August 2011 and continued thereafter.

It is also averred in the plaint that in spite of the defendants being aware of such transfer continued to accept rent from the present plaintiff firm after 1975, however insisting on issuing the rent receipts in the name of the original tenant. The plaintiff firm had even installed an electricity meter in its name to the knowledge of the defendants besides paying the regular rents as aforesaid. In the premises above the plaintiff has sought a declaration of its tenancy status.

To the mind of this Court it is necessary to construe the declaratory reliefs sought for by the plaintiff to be recognised as a tenant who has stepped into the shoes of original tenant more so, being a business division or an integral part of the Company-tenant.

Being a business division of the original tenant who admittedly had a contractual relationship with the defendants the right of the present plaintiff to carry his succeeding interest to trial in the light of the observations of the Hon'ble Apex Court reported in **1985 (2) SCC 683** (supra) ought not to be nipped in the bud.

Having given its anxious consideration to the arguments advanced at the Bar this Court is of the considered view that the Ld. XIth Bench of the City Civil Court meant to indicate the claim to the tenancy by operation of law by the use of its 'common law' expression. It needs be also noticed that protection to a tenant stepping into the shoes of the original tenant in both residential and

commercial premises is recognised by the local law in the form of the premises tenancy statute. In the light of the observations in **1985 (2) SCC 683** (supra) the judicial pronouncement reported in **AIR 1961 Rajasthan Page 286** (supra) fails to take the colour of a inviolable principle.

Next noticing the argument of Sri Chowdhury that Section 69(2) of the Partnership Act bars a suit by an unregistered firm to enforce its rights arising from a contract does not apply with full force to the facts of this case in the light of the discussion made hereinabove in this judgment. As discussed the plaintiffs claim to declaratory reliefs may not have its direct basis on contract but on the succeeding tenancy interest claimed under the contract by operation of law and hence, Section 69(2) of the Partnership Act which bars a suit under a contract by an unregistered firm cannot apply as a bar to the present proceedings.

Similarly, the argument of Sri Chowdhury that the declaration of a relief entitling the plaintiff to any legal character as provided under Section 34 of the Specific Relief Act, 1963 is a condition precedent to such relief being founded purely on contract, this Court is of the opinion that the plaintiff is not barred from claiming its legal character or its rights as a successor-in-interest to the contractual tenancy.

In the opinion of this Court the principle of law needs no reiteration that nothing should be allowed to be done indirectly which cannot be done directly. In view of the fact that this Court finds prima facie substance in the locus of the plaintiffs to agitate their reliefs in the suit, to non-suit them at the threshold would result in grave miscarriage of justice.

In the backdrop of the above discussion CO 321 of 2014 fails. The order impugned No. 16 dated 30th April 2013 is not interfered with. It is however made clear that the observations in this judgment have been made only for the purpose of deciding the merits of the Order 7 Rule 11 CPC application and, the Ld. Trial Court shall be free to decide Title Suit No. 1751 of 2011 on its own merits.

CO 321 of 2014 is accordingly **dismissed**.

There will be, however, no order as to costs.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.

(Subrata Talukdar, J.)