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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 1010/2019 & CM APPL. 30175/2019**

M/S N RAM AVTAR & CO & ORS Petitioners

Through: Mr. Tanmaya Mehta, Mr. Rajesh
Bhatia, Mr. Shivam &
Mr. Naveen Thakur, Advocates.

versus

**M/S SOHAN LAL MEHTAB
CHAND JAIN (HUF) & ORS** Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **08.07.2019**

CM. Appl. 30176/2019(exemption)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM(M) 1010/2019 & CM APPL. 30175/2019

1. Issue notice, returnable for 25.09.2019.
2. The petition is in respect of an eviction order dated 25.01.2011 under Section 14(1)(b) of the Delhi Rent Control Act, 1958, which has been upheld by the order of the Appellate Court dated 12.03.2019.
3. Mr. Tanmaya Mehta, learned counsel for the petitioner states



that the original tenant was a partnership firm and has been in possession of the suit property, since atleast 1971. He submits that the transactions pleaded in the eviction petition do not constitute sub-tenancies as they were a result of reconstitution of the partnership firm, inasmuch as some partners left the partnership and others continued. It is stated that there was no wholesale reconstitution of the partnership, as atleast one of the partners remained part of the partnership firm throughout. The other ground upon which sub-letting has been alleged is that some other entities, stated to be sister concerns of the partnership firm, were also permitted to operate from the suit premises. He argues that the possession of the premises was always with the original parties, and new partners inducted subsequently , and sister concerns of the partnership firm were only allowed use of the premises. In this connection, my attention has been drawn to the cross-examination of AW-1 wherein it was stated that the partnership company is running business in half of the premises, and other entities have also been permitted to operate from the same portion of the premises. As far as the other half of the premises is concerned, the same is said to have been locked.

4. Reliance is placed upon the judgment of the Supreme Court in *Amar Nath Agarwalla vs. Dhillon Transport Agency* (2007) 4 SCC 306 and of this Court in *Shri Iresh Duggal vs. Shri Virender Kumar Seth and Ors.* 2015 (1) RLR 409, to contend that reconstitution of partnership firm does not amount creation of a sub-tenancy and that the permissive



use by other entities while retaining the legal possession in the hands of the tenant also does not amount to a sub-tenancy.

5. In these circumstances, learned counsel for the petitioner prays for stay of execution of warrants of possession which have been apparently been issued today.

6. There is *prima facie* merit in the contentions raised by the petitioner. In view of the fact that the petitioner has been in occupation of the suit premises since 1971, the warrants of possession shall not be executed until the next date of hearing.

7. A copy of the order be given *dasti* under the signatures of the Court Master.

PRATEEK JALAN, J

JULY 08, 2019

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