

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(OS) 85/2009**

M/S NEW HOWRAH TRANSPORT
COMPANY

.....Appellant

Through: Mr.Ashok Bhasin, Senior
Advocate with Mr.Sunklan
Porwal, Mr.Anubhav Bhasin
and Mr.Arav Kapoor,
Advocates.

versus

M/S D.M.H.P. SALES LTD.

..... Respondent

Through: Mr.M.Dutta, Advocate.

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Date of Decision : 09.09.2013

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J

1. We are constrained to adopt a rather unusual way to deal with the present RFA by not giving a brief summary of facts but by extracting para 1 to 11 of the plaint. The purpose is to enable us and the reader of this judgment to assimilate the facts as pleaded without any editing by the authors of this judgment.

2. The Plaintiff company M/s D.M.H.P. Sales Ltd. filed a suit bearing CS(OS) No.1701/2003 against M/s New Howrah Transport Company – Defendant No.1 (Appellant herein) and Rajdhani Interstate Transport Co. (Regd.) – Defendant No.2, praying for a

decree of possession in respect of portions shown as red and green in the site plan of property bearing No.1, Old Municipal No.1616 (Front and Rear) and new Municipal No.1704 allotted to the front portion of the said property which is situated at S.P.Mukherjee Marg, Queens Road, Delhi-110006. Further the Plaintiff company also claimed a money decree for a sum of Rs.32,18,400/- towards damages and mesne charges. The facts of the case as contained in paras 1 to 11 of the plaint read as under :-

'1. That the Plaintiff company is a private limited company and duly registered with the Registrar of Companies under the Indian companies Act having its office/Head Officer at 1629, S.P.Mukherjee Marg, Delhi-110006. Sh. Subhash Jain is one of the Directors of the Plaintiff company and is duly authorised to sign, verify, institute and file the present suit.

2. That the Plaintiff company is the owner of property bearing No.1, Old Municipal No.1616 (Front and Rear) and new Municipal No.1704, allotted the front portion of the said property which is situated at S.P.Mukherjee Marg, Queens Road, Delhi-110006.

3. That the Plaintiff purchased the said property from Sh.Suresh Chandra Jai Narain Gupta son of Sh.Jai Narain Gupta vide Regd. Sale deed dated 22.07.1975.

4. That the aforesaid property was mutated in the name of the Plaintiff company in the Municipal House Tax record vide their two separate offer letters dated 28.04.1989 issued in respect of two different portions i.e. front and rear. The Plaintiff company deposited the transfer charges amounting to Rs.10,000/- vide receipt dated 27.08.1990 as demanded by the MCD by their aforesaid letter dated 28.04.1989.

5. *That prior to the purchase of the said property it was held by M/s P.S.Jain and Sons and M/s. D.M.HP. Sales Ltd. in the name and style of M/s P.S.Jain and Sons as tenant under the previous owners. In or about the year 1971 M/s. P.S. Jain and Sons got merged in M/s Universal Industries Pvt. Ltd. and in both the companies Sh.R.C.Jain was one of the directors. The Defendant No.1 was inducted as tenant in the said premises by Sh.R.C.Jain on behalf of the Plaintiff company and its sister concern. M/s P.S. Jain and Sons being sister concern of M/s D.M.H.P. Sales Ltd. its tenancy rights got merged in the ownership rights to M/s. D.M.H.P. Sales after its purchase of the property in the year 1975.*

6. *That the Defendant No.1 was a tenant in respect of one Godown-cum-office situated on the ground floor having an area of about 1590 sq.ft. and on the mezzanine floor having an area of 195 sq.ft. in the property bearing No.1616 (front and rear) Old, and 1704, new at S.P.Mukherjee Marg, Delhi-110006 as shown in red colour in the site plan initially at a monthly rent of Rs.200/- per month which was later on enhanced to Rs.3600/- per month with the mutual consent of the parties rent. The said premises has entry only from the S.P.Mukherjee Marg, whereas the entry to the basement floor to the said property is from the rear side of the road know as Nahar Shahdat Khan.*

7. *That the Plaintiff company had been dealing as an authorised transport contractors for M/s TELCO for a number of years. Sh.N.Annaswamy Iyyer was working as Sales Manager with M/s TELCO and during the process of dealing with him friendly relations developed between the families of partners and Directors of M/s P.S.Jain and Sons and DMHP Sales Ltd., and Sh.A.Annaswamy Iyyer. At the time Sh.R.C.Jain for and on behalf of M/S DMHP Sales Ltd., inducted the Defendant No.1 as tenant in the suit property through Sh.Raja Ram Iyyer who is the son of late Sh.S.N.Annaswamy Iyyer.*

8. *That the Defendant No.1 did not pay any rent after 31.12.1982 despite several requests made by the Plaintiff to pay the rent. The Plaintiff company, therefore, terminated the tenancy of Defendant No.1 and requested the Defendant No.1 to hand over the premises to the Plaintiff company. However, the Defendant No.1 avoided to hand over the suit property to the Plaintiff company on one pretext for the other despite the promise being made that the suit property will be handed over to the Plaintiff company.*

9. *That the Defendant No.1 instead of handing over the suit property to the Plaintiff company parted with the suit premises and handed it over to the Defendant No.2 who is carrying on the business of transport under the name and style of Rajdhani Interstate Transport Company.*

10. *That the Defendant No.2 who is in illegal occupation of the premises in question took over the wrongful and illegal possession of another portion in the same property on the lower ground floor i.e. basement having area of about 1200 sq.ft. It is pertinent to mention here that this portion was handed over to the Plaintiff company by another tenant namely M/s Ganpat Rai Vijay Kumar on 24.05.1993. Said M/s Ganpat Rai Vijay Kumar made a statement in the court of Sh.D.K.Malhotra, the then Sub Judge, Delhi to the effect that it has handed over the tenanted property in its possession to the Plaintiff company. The Plaintiff company came to know about the illegal breaking of the lock and taking possession of the portion of the property in question on 01.07.2003. Thereafter the Plaintiff company requested the Defendant No.2 many a times for delivery of the possession of the portion illegally taken by them as particularly shown in green colour in the site plan, but the Defendant No.2 did not pay any heed to the request of the Plaintiff company. A police complaint was also lodged.*

11. *That the Defendant No.2 is in illegal and unlawful*

occupation of Plaintiff's property shown in red and green colour in the site plan annexed herewith. The Plaintiff is entitled to recover the possession of the property in question and Defendants are liable to put the Plaintiff in physical possession of the same.'

3. In paras 12 to 16 of the plaint, averments for claiming damages at the market rate prevailing in the area and liability of the Defendants to pay the same, accrual of cause of action, valuation of the suit and that the property being situated in Delhi, this Court having territorial jurisdiction over the subject matter, have been made.

4. In the prayer clause, the Plaintiff prayed for a decree of possession in respect of the portion shown red and green in the site plan annexed with the plaint as well money decree in the sum of Rs.32,18,400/- towards damages/occupation charges/mesne charges.

5. The suit was contested by both the Defendants by filing separate written statements. In the written statement, the Appellant denied the relationship of landlord and tenant between the parties and pleaded to have become owner by adverse possession in the suit premises. Appellant also claimed to have been inducted by Mr.R.C.Jain in the said premises in the year 1959 as they were having common business interests as well friendly relations. The Appellant also denied having ever paid rent to the Plaintiff either at the rate of Rs.200/- per month initially or the same being increased to Rs.3600/- per month or termination of tenancy by the Plaintiff.

6. Defendant No.2 filed the written statement claiming to be inducted as sub-tenant at the rate of Rs.700/- per month by Meena Gupta who had entered into the agreement with the Plaintiff for

having tenancy rights with further right to induct sub-tenant.

7. On the pleadings of the parties, following issues were framed by learned Single Judge :-

‘(i) Whether the Defendant No.1 has become owner of the portion of the suit premises shown in red colour in the site plan annexed to the plaint, having 1590 sq.ft. area on Ground Floor and 195 sq.ft. area on mezzanine floor by way of adverse possession? OPD-1.

(ii) Whether any agreement was executed between the Plaintiff and Mrs. Meena Gupta, D/o late Shri Prem Nath on 10.2.2000, with respect to the portion of the suit premises shown in green colour in the site plan annexed to the plaint? If this is proved, what is the consequence and effect of the said agreement? OPD-2.

(iii) Whether Mrs.Meena Gupta had any power to sub-let the premises, shown in green colour in the site plan annexed to the plaint, to the Defendant No.2? OPD-2

(iv) Whether the suit of the Plaintiff, in so far as it relates to the portion shown in green colour in the site plan annexed to the plaint, is barred by the provisions of Section 50 of the Delhi Rent Control Act, 1988? OPD-2.

(v) Whether suit of the Plaintiff is bad under the provisions of Order II of the Code of Civil Procedure, 1908? OPD-1 and 2.

(vi) Whether Defendant No.1 was inducted by predecessor-in-interest of the Plaintiff as a tenant in the portion of the suit property shown in red colour in site plan having 1590 sq.ft. area on Ground Floor and 195 sq.ft. area on mezzanine floor? OPP.

(vii) Whether the Defendant No.1 illegally handed over the aforesaid suit premises shown in red colour in the site

plan to the Defendant No.2? OPP.

(viii) Whether the Defendant No.2 forcibly took possession of the Lower Ground Floor/Basement portion of the suit property, shown in green colour in the site plan annexed to the plaint, and measuring 1200 sq.ft.? OPP.

(ix) Whether the Plaintiff is entitled to possession of the suit property bearing No.1, Old Municipal No.1616 (front and rear) and new Municipal No.1704, S.P.Mukherjee Marg, Queens Road, Delhi-110006 as shown in red and green in the site plan? OPP.

(x) Whether the Defendants are liable to be evicted from the suit premises? OPP.

(xi) Whether the Defendants are liable to pay damages to the Plaintiff for wrongful use and occupation of the suit property? If yes, at what rate and for what period? OPP.

(xii) Relief.'

8. The Respondent and Appellant adduced evidence to discharge the onus placed on them.

9. Vide impugned judgment dated 13.08.2009, learned Single Judge partly decreed the suit directing that the Defendants shall be evicted forthwith from the suit premises. However prayer for awarding damages/mesne profit was declined.

10. While Defendant No.2 Rajdhani Interstate Transport Co. (Regd.) preferred not to challenge the verdict, Appellant (Defendant No.1 in the Civil Suit), preferred RFA(OS) No.85/2009 challenging the findings of learned Single Judge on various grounds.

11. At the time of commencing arguments on the appeal, Mr.Ashok

Bhasin, learned Senior Counsel for the Appellant submitted before the Court that the Appellant is giving up the plea of having become owner by way of adverse possession.

12. We have heard learned counsel for the parties at length.

13. The only contention urged before us by learned counsel for the Respondent is that the case of the Respondent is that initially rate of rent was Rs.200/- per month which was later on increased to Rs.3600/- by mutual consent. The defence taken by Appellant was that the Appellant had never paid any rent to the Respondent. Since the plea of the Appellant of having become owner by adverse possession was rejected by learned Single Judge, therefore the suit filed by the Respondent has rightly been decreed.

14. Since from the pleadings we were unable to ascertain vital facts necessary for disposal of this appeal, we had to request learned counsel for the Respondent to read the plaint for us and assist in ascertaining the necessary details like date of induction of Defendant No.1 as tenant, when the rent was increased from Rs.200/- per month to Rs.3600/- per month by mutual consent, date of receipt of rent at the increased rate as well date of termination of tenancy on failure to pay the rent after 31.12.1982 (as per the rent receipt dated 31.12.1982, rate of rent was Rs.200/- per month), to confer jurisdiction on the Civil Court to grant a decree for possession in respect of the suit premises.

15. Unfortunately, as necessary facts have not been pleaded in the suit, learned counsel for the Respondent also expressed inability to provide the above details.

16. The pleadings are so vague that we would like to note here the

decision of the Supreme Court in the case of *Maria Margarida Sequeria Fernandes & Ors. vs. Erasmo Jack De Sequeria (Dead) through LRs AIR 2012 SC 1727* wherein Supreme Court emphasised that a party should give all necessary details and matter should not be sent for trial on vague pleadings. The relevant observations contained in the report are :

‘78. The Court must ensure that pleadings of a case must contain sufficient particulars. Insistence on details reduces the ability to put forward a non-existent or false claim or defence.

79. In dealing with a civil case, pleadings, title documents and relevant records play a vital role and that would ordinarily decide the fate of the case.’

17. The learned Single Judge had accepted the case of the Respondent to the extent that from Appellant rent was being collected at the rate of Rs.200/- per month even as on 31.03.1991 (learned counsel for the parties submitted that infact the correct year is 31.03.1981 and that this is a typographical error). With a view to understand the case from the perspective of Respondent (Plaintiff), learned counsel for the Respondent was requested to address this Court on following aspects of the matter :

- (i) As per averments made in para 5 of the plaint, since prior to becoming owner on 22.07.1975 the Plaintiff was a tenant in the suit property, in which year Appellant was inducted as tenant ?
- (ii) Whether Appellant was inducted as tenant by Mr.R.C.Jain in his individual capacity or on behalf of company?
- (iii) Any resolution by the Plaintiff company in favour of

Mr.R.C.Jain authorising him to induct Defendant No.1 as tenant.

(iv) In the context of averments in para 6 of the plaint, to apprise as to for what period the rent was paid @ Rs.200/- per month, when it was enhanced to Rs.3600/- per month and whether the mutual consent of the parties to increase the rent was oral or written, whether rent was ever paid at the rate of Rs.3600/- per month and any rent receipt was issued for that.

(v) In the context of averments in para 8 of the plaint, if the rent was not paid after 31.12.1982 despite several request by the Plaintiff company, when the tenancy was terminated and proof thereof.

(vi) When Appellant had handed over the possession of the portion of the premises in his tenancy as shown in red in the site plan to Defendant No.2 as pleaded in paras 9 and 10 of the plaint, and how decree for possession had been prayed against Appellant, who as per the Respondent was not in possession?

(vii) How the suit for possession is maintainable before a Civil Court when the learned Single Judge held the rent of the suit premises to be proved at the rate of Rs.200/- per month as in that circumstance, recovery of possession can be ordered only by Rent Controller on the grounds enumerated under Section 14 of the Delhi Rent Control Act, 1958.

18. In response to the various queries raised by us, Mr.M.Dutta, learned counsel for the Respondent submitted that in the plaint, there is a specific averment that initially the rate of rent was Rs.200/- per month which was increased to Rs.3600/- per month. The Defendant No.1 denied the relationship of landlord and tenant and claimed

himself to be owner by adverse possession. Learned Single Judge has held the Defendant to be a tenant in the suit premises and his plea for becoming owner by way of adverse possession has been rejected. He urged that once the Plaintiff has discharged the onus by proving that Defendant No.1 was tenant in the suit premises at the rent of Rs.3600/- per month, the impugned judgment need not be interfered with and the appeal may be dismissed.

19. Learned counsel for the Respondent was requested to establish from evidence as to how the Respondent proved that rate of rent was Rs.3600/- per month in the absence of any agreement/receipt regarding payment of rent at the rate of Rs.3600/- as even the date, month or year when the rent was enhanced is not specified despite claiming that no rent was paid after 31.12.1982. It was also pointed out to learned counsel for the Respondent that even date of termination of tenancy is not available on record, notice terminating the tenancy was never given and after 31.12.1982 till filing of the present suit in August 2003 i.e. for about 21 years no demand notice was ever sent claiming arrears of rent.

20. Learned counsel for the Respondent preferred to refer the plea taken by the Appellant in the written statement. Learned counsel for the Respondent conceded that except the four rent receipts Ex.PW1/10 to Ex.PW1/13 placed on record showing the rate of rent to be Rs.200/- per month, no receipt showing the rate of rent to be Rs.3600/- per month has been placed and proved on record. He urged that oral statement of PW-1 Mr.Subhash Jain, Director of the Plaintiff company is sufficient to prove the rate of rent to be Rs.3600/- per month as well

as the termination of tenancy of the Defendant No.1 on his failure to pay the rent after 31.12.1982.

21. Since from para 5 of the plaint, it was difficult to discern as to in which year the Appellant was inducted as tenant, after merger of the two companies in the year 1971, by Mr.R.C.Jain, Director common to both the companies, we were informed that Appellant was inducted as tenant in the year 1971.

22. On being further questioned by us that how the Respondent Company being a tenant in the year 1971, could induct the appellant as a tenant, learned counsel for the Respondent submitted that it was never the case of the Respondent that Appellant was inducted as sub-tenant. No further light could be thrown by him on this issue.

23. The pleas raised in the plaint and in the replication as well the documents exhibited by the Respondent have been scrutinised by us. In the replication, while replying para 6 of the written statement of Appellant, the following averments have been made :

*'It is wrong and denied that the Defendant No.1 was inducted by Sh.R.C.Jain in the year 1959 as they were having common business and friendly relations. In fact, **Sh.R.C.Jain inducted the Defendant No.1 in the suit premises as a tenant in the year 1971 as has already been averred in the plaint.**'*

24. The Respondent became owner of the suit property in the year 1975 and prior to that the status of the Respondent was that of a tenant. In that circumstance, the Appellant could have been inducted as sub-tenant only.

25. It is said that man may lie but the documents do not. Four rent

receipts are placed on record and exhibited as Ex.PW1/10 to Ex.PW1/13. The rent receipt Ex.PW1/10 is dated 31-12-1980 showing cash payment of Rs.400/- as rent for two months without specifying the months. Ex.PW1/11 is the receipt dated 31-12-1981 showing cash payment of Rs.200/- as rent. Similarly receipts Ex.PW1/12 dated 31-12-1982 for a sum of Rs. 600/- and Ex.PW1/13 dated 31st March, 1981 for a sum of Rs.600/- show payment of rent of three months (without specifying the months for which it was paid), thus proving the rate of rent to be Rs.200/- per month.

26. The inspection reports contained in Inspection Register of MCD conducted for assessment of property tax from the year 1959-60 provide the necessary details about the owner/occupiers of the suit property. First we consider the Inspection Report Ex.PW1/8 (photocopy) for the year 1959-60 in respect of the suit property. As per this report, in the column - name of the owner, Smt.Gauri Devi w/o Late Jai Narain has been mentioned as owner. The details of the occupiers are given as:

<i>Sl. No.</i>	<i>Name of Occupier</i>	<i>User</i>	<i>No. of rooms and approximate area of rooms or frontage in case of shops</i>	<i>Actual rent P.M.</i>	<i>Estimated fair-rent P.M.</i>
1.	Vijay Kumar Ganpat Rai	Commercial	Godown		Rs.50/-
2.	Sh.Harbhajan Singh	Commercial	One shop	Rs.20/-	Rs.20/-
			Total Rent P.M.		Rs.70/-

27. Ex.PW1/9 is the photocopy of the Inspection Report in respect of the suit premises for purpose of assessment of tax for the assessment year 1970-71. The name of the owner is recorded as Smt.Gauri Devi, W/o Late Jai Narain. The details of the occupiers are given as :

<i>Sl. No.</i>	<i>Name of Occupier</i>	<i>Commercial or residential use</i>	<i>No. of rooms and approximate area of rooms or frontage in case of shops</i>	<i>Actual rent P.M.</i>	<i>Estimated fair-rent P.M.</i>
1.	Ganpat Rai Vijay Kumar	Commercial	Godown	Locked	Rs.50/-
2.	Bhagat Ram	Commercial	One shop	Rs.6.50/-	Rs.6.50/-
3.	Union Motors	Commercial	One shed	Rs.6/-	Rs.6/-
4.	M/s P.S. Jain & Sons and New Howrah Transport	Commercial (GF)	Two shed Godown and office	Rs.82/-	Rs.82/-
				Total rent	Rs.144.50

28. Inspection register maintained by MCD for purpose of assessment of property tax is a public document. The inspection report Ex.PW1/9 in respect of the suit property records possession of M/s. P.S. Jain & Sons (Respondent) as well New Howrah Transport (Appellant) within the same bracket. The rent payable by the two companies M/s. P.S. Jain & Sons (Respondent) and New Howrah Transport (Appellant) has been recorded as Rs.82/- per month. The

total rent realised from all the tenants has been recorded as Rs.144.50p. This is sufficient to falsify the case of the Respondent that Appellant was inducted as tenant @ Rs.200/- pm in 1971.

29. The inspection report Ex.PW1/9 has proved suicidal for the Respondent as it demolished the case of relationship of landlord and tenant between the parties since 1971 at the rate of Rs.200/- per month in its entirety. There is no documentary evidence to prove that by mutual consent, the rent was subsequently increased from Rs.200/- per month to Rs.3600/- per month. It is the admitted case of the Respondent that the rent was lastly paid on 31.12.1982 (vide rent receipt Ex.PW1/12), even that receipt reflects the rate of rent to be Rs.200/- per month.

30. The rate of rent is the determining factor to confer jurisdiction on Civil Court in a suit for possession. By Act 37 of 1988 w.e.f. 01.12.1988 clause (c) was inserted in Section 3 of Delhi Rent Control Act, 1958, (DRC Act) whereby the provisions of DRC Act were not to apply to any premises, whether residential or not, if the monthly rent exceeds Rs.3500/-. Thus, after the above amendment in the DRC Act w.e.f. 01.12.1988 the tenant paying rent below Rs.3500/- per month can be evicted only on the grounds enumerated in clauses (a) to (l) of Section 14 of DRC Act. Section 14 of DRC Act provides protection to tenant against eviction and starts with the non-obstante clause that “notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any Court or Controller in favour of the landlord against a tenant”. A proviso is added to this Section whereby

on one or more of the grounds contained in clause (a) to (l), the Controller may on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises.

31. The learned Single Judge in his finding on issue No.12 has returned the finding to the following effect :-

'The Plaintiff has not been able to adduce any evidence as regards damages. However, the Plaintiff has placed on record the rent receipts marked as PW1/10 to PW1/13. Although the Plaintiff has claimed that the rent of premises was increased from Rs.200/- per month to Rs.3600/- per month, no rent receipt has been placed on record in support of this fact. The four rent receipts placed on record only show that even as on 31st March 1991, the rent of Rs.200/- was being collected. No other document has been placed on record in support of the claim for mesne profits. Admittedly, the rent was last paid only on 31st December, 1982. The Plaintiff has also not placed any evidence to prove the present market value of the premises in question. Consequently this issue is decided against the Plaintiff and in favour of the Defendants.'

32. The rate of rent of the suit premises once held by learned Single Judge to be Rs.200/- per month then obviously the Civil Court lacked necessary jurisdiction to evict the tenant having protection under DRC Act. The embargo created by Section 14 of DRC Act hits the claim of the Respondent seeking a decree of possession from Civil Court. The jurisdiction of Civil Court is barred under Section 50 of DRC Act where the monthly rate of rent is below Rs.3500/-. Since the learned Single Judge had held the Appellant to be a tenant in the suit premises, the Respondent having failed to prove the rate of rent to be Rs.3600/- per month, suit for possession against the Appellant was liable to be

dismissed.

33. The relief seeking damages/mesne profits has been declined by learned Single Judge. No appeal was preferred against rejection of claim for damages/mesne profits.

34. In view of above discussion, the appeal is allowed. The decree of possession passed against the Appellant in respect of the portion in his possession is set aside and the suit of the Respondent qua Appellant is hereby dismissed with costs.

**PRATIBHA RANI, J
JUDGE**

**REVA KHETRAPAL, J
JUDGE**

September 09, 2013
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