

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

+ RSA 18/2013 & RSA 49/2013

%

15th May, 2014

+ **RSA 18/2013**

RAJDHANI INDUSTRIAL CORPORATION & ANR. Appellants
Through: Mr. Pawan Uppadhaya, Mr. Rajesh
Chhetri and Ms. Meenakshi Rawat,
Advocates.

VERSUS

VINOD KUMAR KALRA Respondent
Through: Mr. Sanjay Dewan, Adv.

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CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RSA 18/2013

1. This second appeal is filed under Section 100 CPC impugning the concurrent judgments of the courts below; of the trial court dated 22.12.2011 and the first appellate court dated 1.11.2012; by which the suit for recovery of possession and damages of the respondent-plaintiff has been decreed. The only issue which is argued before this Court, and which requires adjudication is whether the appellant is a tenant or a licensee with respect to the suit premises comprising of one shed and one room in the property no.Z-14, Gali No. 4, Anand Parbat Industrial Area, Rohtak Road, Delhi-5.

2. It is not disputed before me on behalf of the appellant that between the parties an agreement Ex.PW3/1 dated 21.4.1974 was entered into with respect to the first portion (open land) given on licence. This is an Urdu document and English translation of the same was filed before the first appellate court. This English translation is admitted to be a correct translation by counsel for both the parties and therefore I reproduce the translation of this document/agreement dated 21.4.1974 as under:-

“We, Shri Dayal Chand S/o Shri Jeewan Dass r/o, 2604m Basti
Punjabian, subzi Mandi, Delhi-Ist party and Shri Raj Kumar s/o

late Dewan Chand share holder and owner of M/s Rajdhani Industrial corporation, r/o, 14/B/25, Dev Nagar, Karol Bagh, New Delhi/II party.

1. That the Ist party having a plot no.Z/14, gali no.4, Anand Parbat, moza Sadhora khurd, Tehsil and Distt. Delhi which land measuring 200 sq. yds on behalf of Ram Jas society on lease hold basis. That the Ist party has installed tin shed on the above said plot, that the Ist party have relations with the second party and to built shed one piece of land measuring 12'x30' and I have given the said land to northside to the IInd party for running the Industry given the land from my land and the wall of the said had to North-west side is complete and remaining two walls have been prepared by the IInd party from his own funds, and when the IInd party shall had over possession to the Ist party his installed malba/superstructure shall be removed alongwith his rights and the IInd party shall have no rights to claim to the Ist party and the IInd party shall have rights to install machinery and the Ist party shall have no objection., That shri Vinod Kumar is the son of the Ist party who shall do work as part time with the IInd party and the IInd party shall pay Rs.200/- per month against his work and the IInd party required to remove to Shri Vinod Kumar the son of the Ist party then the IInd party shall serve one month written notice and after finish of stipulated period of notice the IInd party shall vacate the premises and the Ist party shall not deny the payment of the IInd party and if the Ist party deny the payment from the

IInd party then the IInd party shall send the said amount through money order, cheque, or draft and the payment shall construed as valid payment on behalf of the IInd party, and the parties shall abide by terms and conditions of this document and the Ist party shall have no transactions in respect of rent, hence this agreement has been written so that it become evidence, original agreement shall be retained by the Ist party and copy of which shall be retained by the IInd party, written on 21.4.74 at Karol Bagh, New Delhi.

s/o witness Madan Lal s/o, lala Vasudev r/o 14B/45, Dev Nagar, Karol Bagh, Delhi. sd/ English shri Dayal chand Ist party, sd/shri Raj kumar owner and share holder IInd party.

Sd/witness Mela Ram Sodhi 14B/7, Desh Bandi gupta road, The document has been read over, written by Uttam chand document writer registered no.111.

Sd/side Ist Page;- Dayal Chand Ist party

Sd/Shri Raj kumar IInd party.” (underlining added)

3. In addition to the first portion of the open land area admeasuring 12’x30’ which was given under the agreement dated 21.4.1974, subsequently in the year 1989 one room attached to this aforesaid portion was also given out to the appellant because appellant/defendant requested for giving of this additional room inasmuch as appellant was said to be constructing his own property which is adjacent to the property of the

respondent-plaintiff bearing no. Z-14, Gali No. 4, Anand Parbat Industrial Area, Rohtak Road, Delhi-5. Hence the disputed portion which is a subject matter of these proceedings is a shed built upon land given on licence, and one room forming part of the entire property being Z-14, Gali No. 4, Anand Parbat Industrial Area, Rohtak Road, Delhi-5. The second portion which was given on lease and licence in the year 1989 to the appellant by the respondent was room having an area of 12'x7.3'. The charges under the first agreement dated 21.4.1974 were a sum of Rs.1000/- and when on 1.4.1989 the room of 12'x7.3' was given to the appellant, another sum of Rs.200/- was payable as licence fee i.e in effect a sum of Rs.1200/-per month became payable by the appellant-defendant. Whereas the appellant-defendant claims that the payments made are rental charges, the respondent-plaintiff claims that relationship between the parties was only of a licensor and licensee.

4. Before me, counsel for the appellant urges only one aspect that since the relationship is of a landlord and tenant between the parties and the monthly charges are only Rs.1200/- per month, the premises will be governed by the Delhi Rent Control Act, 1958, since as per this Act all tenancies having rent of less than Rs.3500/- p.m are covered under this Act.

5. The contention of the appellant that the appellant is entitled to protection of the Delhi Rent Control Act, 1958 would help the appellant only

if the relationship between the parties is of a landlord and tenant. If however the relationship between the parties is not of a landlord and tenant under the Delhi Rent Control Act, then even if the rent is less than Rs.3500/- per month, the appellant will not have the protection of the Delhi Rent Control Act, 1958.

6. In the present case, admittedly, in terms of the agreement dated 21.4.1974 Ex.PW3/1 only a land measuring 12'x30' was given to the appellant-defendant and the appellant-defendant was given a right to construct on the same. As per the language of agreement Ex.PW3/1, when the appellant-defendant was to vacate the property, he was to remove his superstructure which he was to construct on the land admeasuring 12'x30'. Once the original area let out to the appellant is only land, the provisions of Delhi Rent Control Act, 1958 cannot apply and this has been held by me in the judgment in the case of *Sh. Sanjay Kumar Sharma Vs. Smt. Santosh & Ors. 176 (2011) DLT 575*. The relevant paras of this judgment is para-6 and which reads as under:-

“6. Learned senior counsel for the appellant very vehemently argued that the premises were covered by Delhi Rent Control Act, 1958 (hereinafter refer to as the ‘said Act’) and Section 50 of the said Act bars the jurisdiction of the Civil Court. It is contended that the appellant had raised construction and therefore he was entitled to protection under the said Act. I am unable to agree with the contention of the counsel for the appellant because admittedly what

was let out was only a plot of land. Delhi Rent Control Act, 1958 applies when what is let out is a constructed premises and not a plot of land. If the appellant has made any construction on a plot of land he is fully entitled to remove any construction made by him which in any case in the present case is just about one room. The other construction is said to be a boiler installed by the appellant in the suit land. Accordingly, in my opinion, the appellant cannot have any protection of the Rent Act and therefore the Civil Court's jurisdiction is not barred by Section 50 of the said Act. I may also note that no such plea was raised before the trial Court and nor has any issue been framed thereon. The impugned judgment also does not show that this case was argued on behalf of the appellant on this basis. Thus this issue, a mixed question of law and fact, cannot be raised for the first time in this Court. I have therefore dealt with the arguments of bar of jurisdiction of Civil Court only in deference to the arguments of the learned senior counsel for the appellant."

7. Another judgment which holds similarly is of a learned Single Judge of this Court in the case of *Sohan Lal Behl Vs. Chhotey Lal* 72 (1998) DLT 646. In this judgment, it has been held that where only vacant land is let out, Delhi Rent Control Act will not have any application. In this judgment it is also held that the fact that there is a tin shed which exists on the property also will not cause the property to be included under the Delhi Rent Control Act, 1958 because a tin shed is not a 'constructed' property. The relevant paras of this judgment are paras 7, 8 and 10 and which read as under:

"7. Whether tin shed as alleged was there at the time of letting cannot be accepted in view of the overwhelming documentary evidence on record, namely, the counter foils of rent receipts Exhibits P-1 to P-5 dated 5th December, 1966, 1st September, 1967, 22nd May, 1968,

24th June, 1968 and 16th May, 1967 respectively which bears the signatures of the respondent. Reading of these exhibits shows that only vacant piece of land was let out to the respondent. Exhibits P-1 to P-5 i.e the counter foils read with Exhibit P-8 and the admission made by respondent in the original written statement amply proves the case of the appellant that vacant plot was let out to respondent. It was for the respondent to place on record the lease to contradict the stand of the appellant and to show that tin shed existed on this plot when the premises was let out to him. But the respondent failed to produce the lease. Reliance by respondent to the house tax assessment is of no relevance because that pertains to property bearing No. 5335, Kohla Pur road belonging to constructed portion in occupation of the appellant and other tenants but not of vacant land let out to the respondent. Had there been a tin shed and boundary walls in existence at the time of inception of lease nothing prevented this respondent of mentioning by the respondent that being illiterate the appellant got his signatures in one go on the counter foils Exhibits P-1 to P-5 does not appeal to reason. The suit was filed as far as on 30th October, 1968 and the receipts have been issued upto May, 1968. Prior to filing of the suit the appellant had served legal notice on the respondent claiming rent and then determining his tenancy. Suit was filed after the determining of his tenancy and receipt of legal notice, therefore, it does not appeal to reason that of the appellant in one go without looking into the contents of the same or signed on the dotted lines at the asking of the appellant. The site plan Exhibit P-13 also corroborates the fact that it was an open vacant land which was let out. However, respondent relied on Exhibit D-1, rent receipt to show that in this receipt it had not been mentioned "Vacant Land". To my mind this argument has no force. Mere non-mentioning of the words "vacant land" in the rent receipt would not mean that tin position then specific mention of the same ought to have been there in the rent receipt. The respondent

failed to produce rent receipts issued to him on flimsy grounds. Reliance on Exhibit D-1, therefore, was of no avail to the respondent nor it proves that tin shed existed on the premises in question when the land was let out to him. Exhibit D-1 is dated 23rd January, 1968 whereas Exhibit P-3 is dated 22nd May, 1968 on which it is mentioned that premises consisted of vacant piece of land. For this reason also no much significance can be attached of Exhibit D-1.

8. Chhotey Lal, respondent appearing as his own witness admitted that he raised construction over the vacant piece of land and also admitted that no lease was executed. Therefore, his defence in the written statement stood falsified. He has in fact failed to substantiate his plea that as per the term of lease he was authorized to raise construction or tin shed existed rather his admission that no lease was executed show that it was a sham defence taken by him in the written statement. From the documents placed on record coupled with the admission made by respondent in written statement as well as reply Exhibit P-8 show that premises when let out was a vacant land and that the tin shed or boundary walls were constructed by him. Since the construction was raised by the tenant hence the open land would not become premises within the meaning of Section 2(i) of the Act. Apex Court in the case of ***Prabhat MIG Society v. Banwari Lal***, 37(1989) DLT 437 observed that what the Rent Control Act contemplates is a building let out qua buildings, may be with appurtenant land but not a land let out for use as land merely because there may be a small building on it. Relevant question is what was the dominant subject matter of the allotment, land or the building? From the documentary evidence discussed above, it can be said that vacant land was let out. If the respondent had raised some structure or tin shed or boundary wall that would not change the dominant purpose for which the premises was let out. The respondent cannot take advantage of the existence of a tin

shed or the boundary walls. Thus Court in the case of ***Sobha Singh V. Sant Dass*, 35 (1998) DLT page 341** held that where a plot of land was leased out and if the tenant raises temporary structure on the same, removable on termination of tenancy, the plot of land did not become premises as defined in Section 2(i) of the Act. Thus a suit for possession in such circumstances will be triable by a Civil Court and not by the Rent Controller. The observations of this Court in the case of ***Sobha Singh (supra)*** squarely apply to the facts of this case. This Court in the case of ***S. Ajit Sinbgh v. Smt. Ram Swaroopi Devi*, 63 (1996) DLT 599** also took the same view. Even if tin shed existed and was appurtenant to the land still it would not fall in the definition of “premises”. Supreme Court in the case of ***Narayan Bhagwantrao Gosavi Balajiwale V. Gopal Vinayak Gosavi & Ors.*, AIR 1960 SC 100** and ***Basant Singh V. Janki Singh & Ors.*, AIR 1967 SC page 341** and observed that an admission is the best evidence that an opposing party can rely upon and though not conclusive is decisive of the matter, unless successfully withdrawn or proved erroneous. In this case, as already mentioned above, there is an admission on the part of the respondent made in this original written statement as well as reply Exhibit P-8 that vacant piece of land was let out to him. This admission is supported by the counter foils of rent receipts Exhibits P-1 to P-5 bearing respondent’s signatures showing that vacant piece of land was let out to him. Admission made by him in the documents quoted above as well as in his oral testimony is decisive in the matter. He has not been able to prove his admission as erroneous nor has at any time withdrawn the admissions made by him. Regarding tin shed and boundary walls he could not prove the same having been constructed by the landlord rather than confronted he had to admit that no lease was actually executed. He even failed to produce rent receipts, hence adverse presumption can be drawn against him. On the contrary counter foils Exhibits P-1 to P-5 falsify his stand. In fact

respondent miserably failed to show that the admission made by him vide his original written statement and in Exhibit P-8 were not correct or in what circumstances those were made. In the absence of which these admissions would remain binding on him.

10. So far as the witness produced by the respondent, namely Shri Sher Singh, DW-6 no much weightage can be attached to his testimony because he admitted that the property was not let out in his presence. Similarly DW-2 admitted that terms of lease were not settled in his presence nor he was present at the time when respondent took aforesaid premises on rent. It was the case of the respondent that Lakhi Ram had taken this premises on rent but said Lakhi Ram, had not been examined. So far as RDW-1 is concerned, he also admitted that the plot was vacant except a dairy, which was not even the case of the respondent. Therefore, no reliance can be placed on his testimony. Moreover he could not tell the name of the dairy. As far as the testimony of Om Prakash Goel, RW-2 is concerned, his testimony is contrary to the defence of the respondent. It was respondent's own case that boundary walls over the plot were constructed as per the lease in the year 1944-45. Whereas according to Mr. Om Prakash Goel the boundary wall was raised with the bricks of the year 1937. The testimony of Mr. Om Prakash Goel also does not help the case of the respondent."

8. Once what is let out originally by the agreement Ex.PW3/1 is a land, and which will not be covered under the Delhi Rent Control Act, subsequently giving of a room on 1.4.1989 only results in the second portion/room becoming a part and parcel of the original lease and license agreement Ex.PW3/1.

9. I may also note that as per the evidence led on behalf of the respondent-plaintiff, the two portions in possession of the appellant-defendant are only a small part of the entire factory of the respondent-plaintiff, and the control to the entry and exit to the factory is through the main gate which is under the control of the respondent-plaintiff. Once that is so, the relationship between the parties would only be of a licensor and licensee and not of a landlord and tenant, much less under the Delhi Rent Control Act, 1958.

10. It also requires to be noted that where there are two views possible with respect to the existence of the relationship of licensor and licensee between the parties or that the relationship was of a landlord and tenant, and which is in view of the fact that the receipts of payment mention the same as rent receipts, however, since there is the categorical language of Ex.PW1/3 dated 21.4.1974 showing that only land was let out, hence the conclusion of the courts below that there is no relationship of landlord and tenant under the Delhi Rent Control Act is one possible and plausible view which is not a perverse view. Once two views are possible, and the courts below have taken one possible and plausible view, there does not arise a substantial question of law under Section 100 CPC.

11. No other issue or aspect is urged before this Court.

12. From the facts which have come on record, it is clear that though the appellant-defendant has his own factory in an adjacent plot belonging to him, yet, the appellant-defendant obdurately and without valid reason is refusing to vacate the property of the respondent-plaintiff.

13. In view of the above, this appeal is without any merit and is accordingly dismissed with costs of Rs.50,000/-. Costs shall be paid within a period of six weeks from today.

RSA 49/2013

14. This appeal is filed against the judgment of the first appellate court with respect to mesne profits and it will stand covered against the appellant by the discussion and reasoning given while dismissing RSA 18/2013. This appeal is also therefore dismissed with costs of Rs.25,000/-, and which shall be payable within a period of six weeks from today.

MAY 15, 2014
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VALMIKI J. MEHTA, J.