



2026:DHC:6884



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

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*Reserved on: 14th May, 2026
Pronounced on: 13th August, 2026*

CNR No: DLHC010002472024

+ **RSA 4/2024, CM APPL. 981/2024 & 15067/2024**

1. **SMT. SARITA**
W/o Late Sh. Chander Bhan.

2. **KULDEEP**
S/o Late Sh. Chander Bhan.

3. **KIRAN**
D/o Late Sh. Chander Bhan.

All R/o 10497, Chowk Hari Chand,
Manakpura, Karol Bagh, New Delhi.

.....Appellants

Through: Mr. Manu Sishodia, Ms. Hina Rajput
and Ms. Ishika, Advocates.

versus

GULNAR BEGUM
W/o Sh. Sharif Ahmed,
R/o H. No.6496, Bara Hindu Rao, Delhi.

.....Respondent

Through: Mr. S. S. Nizami and Mr. Saad Sharif,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular Second Appeal under Section 100 of CPC has been filed by the Appellants, against the Judgment dated 07.12.2023, whereby *learned Additional District Judge, Delhi* has upheld the Judgment and Decree of learned Civil Judge dated 01.07.2023, *vide which Suit of the Plaintiff /*

RSA 4/2024

Page 1 of 22



2026:DHC:6884



Respondent for Possession, Recovery of Mesne Profit/Damages and Permanent Injunction has been **decreed against the Appellants.**

2. The Plaintiff / Respondent had filed **Civil Suit No. 300/2016** seeking **Possession, Mesne Profits / Damages** in the sum of Rs.1,36,800/- @ Rs.3,800/- per month and **Permanent Injunction** for restraining the Defendants / Appellants from creating any third-party rights, in the suit property.

3. **The brief facts**, as stated in the Complaint, are Appellant / Plaintiff Smt. Gulnar Begum was the owner of the Property No.10496-98, Chowk Hari Chand, Manakpura, Karol Bagh, New Delhi (*hereinafter referred to as 'the suit property'*), by virtue of **Registered Sale Deed dated 25.03.1992.**

4. **Late Sh. Chander Bhan**, Husband of Defendant No.1 and father of Defendant Nos.2 and 3, was inducted as a tenant *in respect of one room and one veranda on the Ground Floor of the Suit Property on a monthly rent of Rs.10/- per month excluding water and electricity charges.* Thereafter, Late Sh. Chander Bhan unauthorizedly constructed one room / the roof of Ground Floor with *pucca* staircase, without the permission and consent of the Plaintiff.

5. The Plaintiff filed a Petition under Section 14(1)(e) read with 25-B Delhi Rent Control Act, for eviction of the tenant on the ground of *bona fide* requirement. The relationship of ownership and land-lordship in respect of the suit property was established, **but the Petition was dismissed on the technical ground of not fulfilment of bona fide requirement of the Plaintiff.**

6. Plaintiff asserted that Late Sh. Chander Bhan was confined to bed due to his long ill health and was not able to work. His wife Smt. Sarita and



his son and daughter (Defendants) were not financially dependent upon Late Sh. Chander Bhan, who in fact, was being financially taken care of by his wife Smt. Sarita; he had no independent source of income.

7. She had terminated the tenancy of Late Sh. Chander Bhan *vide Legal Notice dated 22.07.1994*, which was duly served upon him. Late Sh. Chander Bhan even sent the Money Order for the rent, as claimed in the Notice.

8. Sh. Chander Bhan died as a statutory tenant and the tenancy rights did not devolve upon the Defendants, as per the Judgment of Constitutional Bench of the Hon'ble Supreme Court in Gian Devi case.

9. It was claimed that after demise of Sh. Chander Bhan, *Defendants became unauthorized and illegal occupants and had no right, title or interest to occupy and reside in the suit property*. The Plaintiff stated that on 25.01.2016, through her husband G.P.A. Holder, she intimated the Defendants to vacate the Suit Property and pay the *Mesne* Profit, but they flatly refused to do so. Instead, they threatened to further sub-let, aside, transfer or otherwise part with the possession of the Suit Property to a third-party on a huge *pagree* amount. However, their endeavour to do so, on 31.01.2016, was thwarted by the Plaintiff due to timely intervention.

10. Furthermore, they are liable to pay damages, *Mesne* profits and user charges of Rs.3,800/- per month, which is the prevailing market value of the suit property.

11. Plaintiff thus, **filed the Suit for recovery of Possession, *mesne* profits at the rate of Rs.3,800/- per month and also for restraining the Defendants from creating third party interest in the suit property.**



12. Defendants contested the Suit and in their Written Statement, took the *preliminary objection* that the Suit was barred under Section 50 of Delhi Rent Control Act. Sh. Chander Bhan / original tenant died as a contractual tenant and after his demise, the contractual tenancy has been inherited by Smt. Sarita (his wife) Sh. Mohandas (now deceased with no LRs) and Sh. Kuldeep Singh (two sons), Smt. Kiran and Smt. Kamlesh (two daughters). All the Legal Heirs of Late Sh. Chander Bhan have the protection against eviction under Delhi Rent Control Act and that the Court had no jurisdiction to try and entertain the Suit for possession.

13. It was claimed that the Plaintiff had filed Revision Petition bearing R.C. Rev. No.15/2005 in this Court, against Sh. Chander Bhan on dismissal of the Eviction Petition under Section 14(1)(e) of Delhi Rent Control Act and on the demise of Sh. Chander Bhan, the Plaintiff herself had impleaded the aforesaid Legal Heirs of late Sh. Chander Bhan, in the Revision Petition. **The Suit is bad for non-joinder of the necessary parties, i.e. Sh. Kuldeep Singh and Smt. Kiran and is liable to be dismissed on this ground.**

14. It was further asserted that Sh. Kuldeep Singh and Smt. Kiran are the owners of one room and *veranda* on the First Floor and the staircase leading thereto, having inherited the ownership rights by adverse possession from late Sh. Chander Bhan.

15. **On merits**, it was admitted that late Sh. Chander Bhan was inducted as a tenant with respect of one room and one *veranda* on the Ground Floor of the suit property, on a monthly rent of Rs.10/-. However, the remaining contentions made in the Plaint were denied.

16. It was claimed that late Sh. Chander Bhan had constructed a separate staircase leading to the First Floor and had constructed a *pucca*



2026:DHC:6884



room and a *veranda* on the First Floor, in the year 1970, without the consent of late Sh. Manak Chand, but within his knowledge, to which no objection was taken by him and he did not initiate any legal action for dispossession of late Sh. Chander Bhan. Accordingly, after passing of 12 years, Defendants have acquired ownership by adverse possession in the staircase as well as the room and *veranda* constructed on the first floor, since the year 1983.

17. It is further submitted that after demise of Sh. Chander Bhan, Defendants namely Sh. Kuldeep Singh and Smt. Kiran have become the owners of the said portion, by law of inheritance.

18. Plaintiff had purchased the suit property on 25.03.1992 *vide* the registered Sale Deed, by which time, Sh. Chander Bhan had already become owner by adverse possession in 1983, in respect of the portion on the First Floor and the staircase. There was no question of the Plaintiff having acquired any ownership in respect of the said portion, of which Sh. Chander Bhan had already acquired ownership by adverse possession.

19. It is denied that the Eviction Petition was filed immediately after the construction was raised on the First Floor. *It was submitted that the Eviction Petition No. E-229/2000 under Section 14(1)(e) read with 25-B of Delhi Rent Control Act, may be perused for its true scope and purpose.*

20. Defendants further denied that Sh. Chander Bhan had received any Legal Notice dated 22.07.1997 or that his tenancy was terminated or that he became a statutory tenant. It is also denied that he was not working on account of long ill health. It is asserted Shri Chander Bhan, during his lifetime till his death, was employed in a factory and was the sole bread



earner for the entire family. The contention that Smt. Sarita (wife of Sh. Chander Bhan) was financially supporting him, was also denied.

21. It is claimed that Smt. Sarita has been financially dependent upon her son Sh. Kuldeep Singh, who is employed in some factory and is also dependent upon her married daughter Smt. Kiran and her husband, who is doing tailoring job from the room and *veranda* on the First Floor of the suit property.

22. It is denied that late Sh. Chander Bhan died as a statutory tenant or that the Defendants have not inherited the contractual tenancy rights from him. Further, the Defendants denied liability to pay mesne profits/damages at Rs.3,850 per month, contending that the contractual rent continued at Rs. 10/- per month and that her occupation remained lawful as a co-tenant.

23. It was therefore, submitted that the Suit of the Plaintiff was liable to be dismissed.

24. *Plaintiff in the Replication* reaffirmed the assertions as made in the Plaint and denied the allegations made in the Written Statement.

25. **The issues on the pleadings were framed on 12.09.2019, which are as under:**

“(1) Whether the plaintiff is entitled to decree of possession as prayed for in prayer (a) of the plaint? OPP

(2) Whether plaintiff is entitled to decree of damages/mesne profits/ user charges, in favour of the plaintiff and against defendants? If yes, to what amount? OPP

(3) Whether the plaintiff is entitled to decree of permanent injunction as prayed for in prayer (c) of the plaint? OPP



2026:DHC:6884



(4) *Whether the suit of the plaintiff is not maintainable U/S 50 of DRC Act? OPD*

(5) *Relief.*”

26. PW-1 Sh. Sharif Ahmed tendered his evidence by way of affidavit Ex. PW-1/A and proved the copy of GPA dated 27.04.1994 Ex. PW-1/1 (OSR), copy of Sale Deed dated 25.03.1992 Ex. PW-1/2 (OSR), Site Plan Ex. PW-1/3, copy of Legal Notice dated 22.07.1994 Ex. PW-1/4 (OSR), Postal Receipts and AD Card Ex. PW-1/5 (colly.), and copy of Money Order Coupon Ex. PW-1/6 (colly.) (OSR).

27. PW-2 Sh. Ballu Ram, Public Relations Inspector, Office of GPO, Kashmiri Gate, Delhi, produced the Letter showing that the Summoned Record stood weeded out *vide* Order Ex. PW-2/1.

28. PW-3 Sh. Shivajit, Delhi Archives Department, brought the copy of the Sale Deed dated 25.03.1992, Ex. PW-3/A.

29. Defendant Smt. Sarita, as DW-1 tendered her evidence by way of Affidavit Ex. DW-1/A.

30. *Learned Civil Judge observed* that the contention of the Defendants that they became owners of the construction raised by them on the First Floor of the Suit Property by adverse possession was not tenable in view of Section 108(d) of Transfer of Property Act, which provides that if during the continuance of the lease, any accession is made to the Property, such accession shall be deemed to be comprised in the lease. Therefore, the First Floor of the Suit Property also became the part of tenanted premises, as let out to Sh. Chander Bhan.

31. It was further held that Legal Notice dated 22.07.1994 was duly proved to have been served upon Sh. Chander Bhan and therefore, upon his



demise, he became a statutory tenant and the tenancy got inherited by the Defendants only as statutory tenants. Furthermore, the burden of proving that Smt. Sarita (wife of late Sh. Chandra Bhan) was financially dependent upon her husband, was on her. Though, she had admitted that her husband was working in Lovely Box Factory and left the work in the year 2005 and was getting a salary of Rs.5,000/- to Rs.6,000/-, but no document in support of thereof had been produced by her. Therefore, it was held that in the absence of substantial proof of income of late Sh. Chandra Bhan, his wife / Defendant No.1 cannot be held to be financially dependent upon the deceased Defendant / her husband Sh. Chander Bhan, at the time of his death. It was thus held that Sh. Chandra Bhan died as a statutory tenant and the jurisdiction of learned Civil Court was not barred by Section 50 of Delhi Rent Control Act.

32. It was further held that Plaintiff was entitled to recovery of possession as well as *mesne* profits at the rate of Rs.3,800/- per month for a period of three years before filing of the Suit, i.e. Rs.1,36,800/- and further damages at the rate of Rs.3,800/- per month till the handing over of the possession by the Defendants, who were also restrained from creating any third-party rights in the Suit Property.

33. *Aggrieved by this Judgment and Decree dated 01.07.2023*, Defendants filed Regular First Appeal bearing **RCA DJ No.93/2022** before the learned Additional District Judge, who on a re-appreciation of all the facts, *upheld the findings of the learned Civil Judge* on all aspects **and dismissed the First Appeal as being without merit, on 07.12.2023.**

34. *Aggrieved by this Judgment dated 07.12.2023*, Appellants have filed the **present Regular Second Appeal.**



35. *The grounds of challenge* are that the impugned Judgment and Decree is against the mandate of the principles of law, as laid down by Supreme Court of India and this Court. It is submitted that alleged Legal Notice was served on 22.07.1994, while late Sh. Chander Bhan died on 21.06.1996. The rent was being accepted, even after the issuance of alleged Notice, thereby reflecting that the Notice had become infructuous and Sh. Chander Bhan remained the contractual tenant. The Court fell in error in holding that the Legal Notice terminated the tenancy and Sh. Chander Bhan became a statutory tenant.

36. It is further stated that while it has been held that Smt. Sarita was not financially dependent upon her husband, but the contentions made in the Written Statement, were not considered. Plaintiff also did not lead any evidence to prove the in the plea of illness of Sh. Chander Bhan. Therefore, the Courts committed an error *in concluding that Smt. Sarita was not dependent upon late Sh. Chander Bhan at the time of her death and that bar of Section 50 of Delhi Rent Control Act was not applicable.*

37. It has been erroneously held that DW-1 Smt. Sarita did not depose anything about whether Sh. Chander Bhan started working again after leaving the job in the year 2005 or they were receiving any sort of pension from the workplace of Sh. Chander Bhan. It is asserted that neither Sh. Chander Bhan had pleaded that he was not working after leaving the job in the year 2005 nor any such suggestion was put to DW-1, and that the onus to prove this fact was on the Plaintiff, which she has miserably failed to prove.

38. An error has been committed in holding that the un rebutted evidence has been led by the Plaintiff, to prove the service of Legal Notice



through the AD and by observing that Defendant had not led any evidence to prove that the signatures on the AD were not that of Sh. Chander Bhan. However, Defendant No.1 Smt. Sarita had clearly deposed that her husband / Sh. Chander Bhan had not received any Legal Notice at the mentioned address, in the year 1994. Defendant No.1 was shown the signatures at point A on the AD Cards Ex.PW-1/5, but she had denied that the signatures on it was that of her husband. *The observation that Defendant had not led any evidence to disprove the signatures of her husband on AD Card, is incorrect.*

39. Therefore, the conclusion that the Legal Notice dated 22.07.1994 was duly served upon Sh. Chander Bhan, is factually incorrect. Hence, the conclusion that he died as a statutory tenant, is erroneous.

40. Moreover, though not admitted, even after the service of alleged Legal Notice, the Plaintiff had continued to receive her rent from Sh. Chander Bhan, thereby showing that the Legal Notice ceased to have any effect and Sh. Chander Bhan died as a contractual tenant. Therefore, the observations that Defendants were statutory tenant and Plaintiff was entitled to claim possession after one year of demise of Sh. Chander Bhan, is factually incorrect.

41. It is further stated that the *damages awarded @ Rs.3,800/- per month* is not supported by any evidence, which is self-contradictory and liable to be set aside.

42. Plaintiff alleged two incidents dated 25.01.2016 and 30.01.2016 in the Complaint, but no Report had been made by the Plaintiff to the Police, as is admitted by her. Moreover, Sh. Sharif Ahmed, husband of the plaintiff, in his cross-examination as PW-1, had stated that Sh. Chander Bhan was a



2026:DHC:6884



tenant in respect of Ground Floor of the suit property, however, due to typographical error it may have been mentioned as First Floor in the Sale Deed. He also admitted that no Rectification Deed was executed by the Seller, thereafter. Therefore, it is clear that the averments made in the Plaint were contradictory to the Sale Deed, that was relied upon by the Plaintiff.

43. Furthermore, PW-1 Sh. Sharif Ahmed, husband of the Plaintiff, during his cross-examination had admitted that GPA Ex.PW-1/1 had been signed by the witness, but not by him. He did not remember the name and address of the Notary, who attested the GPA. He also admitted that at the time of attestation of GPA, his wife Smt. Gulnar Begum as well as witness Mr. Khalil Ahmed and himself were present. However, he did not remember if the signatures of said persons were taken on the Register of Notary. He admitted that name of one witness was mentioned in the GPA. The Plaintiff being a *pardanashin* lady was unable to come to the Court, though she is fit and fine. She admitted that the Plaintiff has not visited the property mentioned in the Sale Deed.

44. It is submitted that these admissions in the cross-examination of the husband of the Plaintiff and the documents relied upon by them, are contradictory.

45. Furthermore, it has not been appreciated that the relief of possession is valued at Rs.120/-, i.e. Plaintiff herself has admitted the rate of rent as Rs.10/- per month, which again shows that the Suit is barred by barred under Section 50 of Delhi Rent Control Act.

46. It has also not been considered that the earlier Eviction Petition under 14(1)(e) of Delhi Rent Control Act, filed by the Plaintiff had been dismissed. During the pendency of the Revision Petition, the Legal Heirs /



Appellants were substituted in the Revision Petition without taking any objection of Section 2(1) Explanation II of Delhi Rent Control Act.

47. It is submitted that the impugned Judgment and Decree is bad in law and is liable to be set aside.

Submissions heard and record perused.

48. Substantial questions of law presented by the Appellants vide Order dated 20.02.2026, are as under:

“(i) Whether the Jurisdiction of Civil Court to be barred under Section 50 Delhi Rent Control Act?

(ii) Whether the Appellant is covered in Explanation 2 of Section 2 of DRC Act to be liable for Eviction?

(iii) Whether the Suit of the Respondent/Plaintiff was barred by Limitation?”

49. It was the case of the Plaintiff that she had purchased the suit property vide Sale Deed dated 25.03.1992 Ex.PW 1/2, a fact which is not denied by the Appellants.

50. At the time when the suit property was purchased by the Respondent in March 1992, Sh. Chander Bhan, the predecessor in interest of the Appellant, was admittedly a tenant in respect of one room and veranda on the Ground Floor i.e. the suit property at a monthly rent of Rs.10/- per month, since before 1970; a fact which is again not in dispute.

51. The Respondent/Plaintiff had proved the Legal Notice dated 22.07.1994 Ex. PW1/4 which had been duly served vide registered A.D. which is Ex. PW1/5.



52. The learned Civil Judge as well as the learned ADJ have considered the evidence *in regard to the service of Legal Notice through A.D. Card, and it was concluded that it was duly served upon Late Sh. Chander Bhan.* The assertion of the Appellant to question the service of Legal Notice, was held to be not proved by the evidence led by the Plaintiff. ***Sh. Chander Bhan thus, on service of Legal Notice, which is a finding of fact, became the statutory tenant in the suit premises,*** in terms of Section 2(l) of Delhi Rent Control Act.
53. Subsequent to the termination of his tenancy, Sh. Chander Bhan expired on **21.06.2006**, and at the time of his demise, he was occupying the suit premises only in the capacity of a statutory tenant. There is no dispute that the appellants were residing in and occupying the suit premises along with late Sh. Chander Bhan prior to his demise and continued to remain in occupation thereof, even thereafter as his successors.
54. The next question is, what is the protection granted to such successors, on the demise of statutory tenant. A reference in this regard, be made to **Explanations I & II to Section 2(l) of the Delhi Rent Control Act**, which states as under:

“Explanation I. [Substituted by Act 18 of 1976, section 2, for clause (1) (w.r.e.f. 1-12-1975)] - The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:



(a) firstly, **his surviving spouse**; [Substituted by Act 18 of 1976, section 2, for clause (1) (w.r.e.f. 1-12-1975)]

(b) **secondly, his son or daughter, or both, if there is no surviving spouse**, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death; [Substituted by Act 18 of 1976, section 2, for clause (1) (w.r.e.f. 1-12-1975)]

(c)

Explanation II. [Substituted by Act 18 of 1976, section 2, for clause (1) (w.r.e.f. 1-12-1975)] - If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, **was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.**”

55. The **Explanation I** provides that on demise of the statutory tenant, wife if alive, alone succeeds to the statutory tenancy. **Explanation II further states that** the person who acquires by succession a right to continue in possession after the termination of tenancy would be protected for a *limited period of one year*, if she was not financially



dependent on the deceased person on the date of his death. After the period of one year, it is an unauthorized occupancy.

56. In the present case, admittedly Sh. Chander Bhan died on 21.06.2006 as a statutory tenant and thereafter, only his wife Smt. Sarita inherited the tenancy rights, **as has been concurrently held by the learned Civil Judge as well as the learned ADJ in the Appeal.**
57. *The next aspect is whether she was not financially dependent on her husband, at the time of his demise, in order to ascertain the applicability of S.50 DRC Act.*
58. To decide the maintainability of the civil suit in light of Section 50 of the Delhi Rent Control Act 1958 and Explanation II to Section 2 clause 1 thereof, it is essential to examine the distinction between the burden of proof and the onus of proof under civil evidence jurisprudence.
59. The appellants contend that the suit is barred under Section 50 of the Act on the premise that the plaintiff failed to establish that defendant number 1 was not financially dependent upon the deceased statutory tenant, late Sh. Chander Bhan, at the time of his death.
60. To understand on whom the burden rested to prove the dependency of the Appellant on her husband, it becomes relevant to consider *the distinction between onus and burden of proof in civil proceedings*. As explained in **Sections 101 and 102 of** Indian Evidence Act, 1872. They read as under:

“101. Burden of Proof.—Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.



102. On whom the burden of proof lies.—*The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*

61. In *Sarkar's Commentary on the Indian Evidence Act, 1872* the scheme of Section 101 and Section 102, has been explained in the following words:

*“The expression burden of proof is used in two distinct senses. In the first sense, it means the **legal or persuasive burden of establishing a case**, which rests upon the person who substantially asserts the affirmative of the issue and never shifts. In the second sense, it signifies the **evidentiary burden** of adducing evidence, which shifts continuously from one party to another during the evaluation of evidence.”*

62. Section 101 incorporates the first sense, establishing a static legal burden that remains constant throughout the proceedings upon the party asserting the affirmative. On the other hand, Section 102 incorporates the second sense, providing the *dynamic evidentiary onus* of adducing evidence which *shifts* continuously from one party to another as evidence is evaluated by the court.
63. In the case of Addagada Raghavamma v. Addagada Chenchamma AIR 1964 SC 136, the Supreme Court held that there is an essential distinction between burden of proof and onus of proof, where burden of proof lies upon the person who has to prove the fact and which never shifts, while onus of proof shifts continuously during the evaluation of evidence.



64. This principle was affirmed in the case of Anil Rishi v. Gurbaksh Singh 2006 5 SCC 558, where the Supreme Court held that the elementary rule in Section 101 is inflexible and that under Section 102, the initial onus lies on the plaintiff, and if the plaintiff discharges that onus to make out a case, the onus shifts to the defendant.
65. The appellants placed heavy reliance upon the decision in Bundu Khan deceased through LRs v. Sneha Mehta 293 2022 DLT 660, to contend that the primary burden of proving Explanation II to Section 2 clause 1 of the Delhi Rent Control Act rests on the landlord invoking the exception.
66. While it is accepted that under Section 101 the initial legal burden lies on the plaintiff to show that the bar of Section 50 does not apply by proving that statutory protection stood extinguished, this principle cannot be read in isolation or as displacing the settled rules governing how that initial burden is legally discharged.
67. The principle in the Bundu Khan (supra) must be harmonized with Section 106 of the Indian Evidence Act, 1872 which enacts that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Financial means, personal income, and the actual state of financial dependence are facts uniquely within the special knowledge of the legal representative claiming statutory succession.
68. The mechanism through which this initial burden is legally satisfied was authoritatively articulated by the Supreme Court in R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami (2003) 8 SCC 752, wherein it was observed that in civil cases, a plaintiff is not



expected to prove their case beyond all reasonable doubt. A **high degree of probability** lending assurance to the plaintiff's claim is sufficient to shift the evidentiary onus onto the defendant. The Apex Court explicitly held that once the plaintiff succeeds in creating such a high degree of probability so as to shift the onus, if the defendant **does not succeed in shifting back the onus**, the plaintiff's burden of proof can safely be deemed to have been discharged.

69. This principle was further affirmed in Smriti Debbarma v. Prabha Ranjan Debbarma (2023) 19 SCC 782, reiterating that while the legal burden under Section 101 of the Indian Evidence Act, 1872 remains static, the dynamic evidentiary onus under Section 102 shifts continuously once the plaintiff establishes a **prima facie case** raising a high degree of probability, leaving it to the defendant to adduce rebuttal evidence.
70. Applying the principles laid down in Venkatachala Gounder (*supra*) and Smriti Debbarma (*supra*) to the present case, the plaintiff successfully discharged the initial evidentiary onus under Section 102 by adducing oral evidence through PW 1, who categorically deposed that the original tenant, late Sh. Chander Bhan, was bedridden, ailing, and had no independent source of income, while defendant number 1, Smt. Sarita, was earning her own livelihood by working in households. This unrefuted baseline created a high degree of probability that late Sh. Chander Bhan was not supporting defendant number 1 financially, at the time of his demise on 21.06.2006.
71. While a landlord under Section 101 must assert non-dependence to exclude the bar under Section 50, the law does not demand that a



landlord prove a negative with absolute certainty when the underlying facts rest exclusively within the knowledge of the legal representatives of the tenant.

72. It was held by the **Division Bench**, in the case of Krishna Prakash v. Shanta Sinha Chenoy 1980 2 ILR Del 854, that the relevant consideration is whether on the date of the tenant death, the heir was substantially in a position to maintain herself without financial assistance from the deceased tenant, and that the burden of establishing such financial dependence, where the financial means are within the heir special knowledge, lies upon the heir.
73. Upon the creation of this high degree of probability, the evidentiary onus under Section 102, operating alongside Section 106 Indian Evidence Act, 1872 shifted entirely onto defendant number 1 as DW 1 to produce evidence uniquely within her special knowledge to prove that she was indeed financially dependent upon her deceased husband on the date of his death.
74. The Defendant, Sarita in her testimony as DW1 deposed that her husband was working in Lovely Box Factory, though he *left the work* in the year 2005. He was paid a salary of Rs. 5000/- to Rs. 6000/-. However, there was no documentary or any cogent evidence led to prove about his working.
75. Even otherwise, that Sh. Chander Bhan expired on 21.06.2006, meaning thereby that he was not working in the year 2006. Whereas, as stated by the Defendant herself in the Written Statement, *she was dependent upon her son, who was working in a factory.*



76. The perusal of the testimony of DW 1, demonstrates that she failed to discharge this shifted onus or shift it back onto the plaintiff. DW1 admitted in cross-examination that her husband left his employment at Lovely Box Factory in 2005 and was not working during the year preceding his death in June 2006. She produced no documentary or cogent evidence whatsoever to demonstrate that late Sh. Chander Bhan possessed any independent income or gainful employment at the time of his demise. She admitting in her Written Statement that she was financially dependent upon her son who was working in a factory, thereby establishing that she was not dependent upon her husband, as rightly observed by the learned ADJ.
77. In the present case, the defendant failed to discharge that onus and does not succeed in shifting back the onus, the plaintiff's burden of proof can safely be deemed to have been discharged.
78. Consequently, both the Trial Court and the First Appellate Court correctly applied Explanation II to Section 2 clause 1 of the Delhi Rent Control Act. Upon the demise of Sh. Chander Bhan on 21.06.2006, defendant number 1 acquired a right to continue in possession for a limited period of one year, whereafter her status stood reduced to that of an unauthorized occupant.
79. The bar under Section 50 of the Act was rightly held inapplicable; the concurrent judgments decreeing possession and mesne profits, suffer from no legal or jurisdictional infirmity.
80. **The second main contention** that was raised by the Appellant was that **the Suit was barred by limitation**. Term tenant is defined under S.2(1) as under:



S.2 ...

(I) "**tenant**" means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes -[*Substituted by Act 18 of 1976, section 2, for clause (1) (w.r.e.f. 1-12-1975)*]

(i) a sub-tenant; [*Substituted by Act 18 of 1976, section 2, for clause (1) (w.r.e.f. 1-12-1975)*]

(ii) any person continuing in possession after the termination of his tenancy;

81. Therefore, from the definition itself, it emerges that even if the tenancy is terminated, the tenant who becomes a statutory right, continues to have the protection of the Rent Act. However, on his demise, the protection devolves to his legal heirs and its extent is defined under Explanation I and II to S.2(I).
82. This has been explained in the case of Mukesh Kumar (deceased) through LRs and Anr. Vs. Saini Co-operative Thrift and Credit Society Ltd. 156 (2009) DLT 550 That the right to sue accrues against the financially independent legal heir of a statutory tenant, after expiry of one year of the demise of the tenant, when he becomes an unauthorized occupant and not from the date of issuance of Notice.
83. Therefore, it was only on demise of Chander Bhan, the statutory tenant, that the appellant had the protection of Rent Act for one year, after which she ceased to have any protection and *became the unauthorized occupant, amenable to eviction under general law.*



2026:DHC:6884



84. Therefore, the limitation against the appellant commenced when Sh. Chander Bhan died in the year 2006. The Suit has been filed in 2016 i.e. within a period of 12 years and, therefore, **not barred by limitation, as rightly held by the two Courts.**

Conclusion:

85. There is no infirmity in the findings of the learned Trial Court which has been re-affirmed by the learned First Appellate Court. **The grounds which have been agitated in the Second Appeal, therefore, have no merit and the Appeal is hereby dismissed.**
86. The Appeal stands disposed of along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 13, 2026/R