

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

Judgment reserved on: 05.01.2016

% Judgment delivered on: 11.07.2016

+ RSA 58/2012 and C.M. No.13729/2012

CEPCO INDUSTRIES PVT LTD

..... Appellant

**Through: Mr. Brij Bhushan Gupta, Sanyar Khetrpal
and Jai Sahai Endlaw, Advocates**

versus

NARINDER PAL SINGH CHAWLA

..... Respondent

Through: Mr. K.K. Bhuchar, Advocate.

J U D G M E N T

VIPIN SANGHI, J.

1. The present regular second appeal under Section 100 is directed against the judgment and decree dated 20.03.2012 passed by the learned Additional District Judge (Central) 12, Tis Hazari Courts, Delhi in RCA No.15/2006 preferred by the appellant/ plaintiff. By the impugned judgment, the said first appeal under Section 96 of the CPC has been dismissed, and the judgment and decree dated 01.03.2006 passed by the learned Civil Judge, Delhi in Suit No.203/1998 of the appellant/ plaintiff – dismissing the suit for recovery of possession, has been upheld.

2. The appellant/ plaintiff, who is the owner of the suit property, had filed the said suit for possession against Smt. Ram Piari Chawla on

24.09.1983. During the pendency of the suit, the defendant passed away. Consequently, the suit was continued against the legal representatives. The said suit was premised on the plea that Smt. Ram Piari Chawla had inherited limited tenancy rights in respect of the suit property upon the demise of her late husband late Dr. Gopal Singh Chawla-the original tenant, by virtue of Section 2(1)(iii) of the Delhi Rent Control Act, 1958 ('the Act') and her limited tenancy right having come to an end, the plaintiff was entitled to evict the defendant. The material findings returned by the learned Civil Judge while dismissing the suit were that the contractual tenancy of the original tenant Dr. Gopal Singh Chawla had been validly terminated during his lifetime vide legal notice dated 19.10.1978; that the finding returned by the learned Rent Controller (RC) in his order dated 04.05.1968 passed in an earlier eviction petition filed by the landlord – with regard to the purpose of letting of the suit premises, operated as *res judicata* under Section 11 of the CPC; that the finding of the learned RC in the order dated 04.05.1968 (passed in the eviction petition filed by the landlord), was that the purpose of letting of the suit premises was residential-cum-commercial; that Section 2(1)(iii) of the Act was not applicable in the facts of the present case as the said provision applies only to residential premises in view of the judgment of the Supreme Court in ***Kamla Devi Vs. Satya P. Goel***, 1987 (33) DLT 151, that on the death of Dr. G.S. Chawla, all his legal heirs inherited the tenancy as per the ordinary law of succession; that the tenancy rights could not be deemed to have been extinguished upon the expiry of period of one year from the date of death of late Sh. G.S. Chawla and his tenancy rights devolved on all legal heirs as per law of succession as held in ***Gian Devi Anand Vs. Jeevan Kumar***, (1985) 2 SCC 63.

3. The First Appellate Court while passing the impugned judgment reversed the finding of the Trial Court – that the finding with regard to the purpose of letting returned by the RC in the order dated 04.05.1968 was *res judicata*. While doing so, the learned Additional District Judge took into account the fact that in appeal against the order dated 04.05.1968 passed by the RC, the learned Rent Control Tribunal (RCT) held that the eviction petition was not maintainable on account of lack of adequate notice of the termination of tenancy prior to filing of the eviction petition, and that the learned RCT “rejected” the eviction petition. The learned Additional District Judge held that the learned RCT was conscious of the fact that invalidity of the notice went to the root of the matter and the eviction petition merited “rejection” without dwelling into the merits of the case. For want of notice, the eviction petition had no substratum. In this regard, the learned Additional District Judge relied upon ***Jeevan Kumar Khanna Vs. Ajudhia Pershad Murgai & Ors.***, 34 (1988) Delhi Law Times 355; ***Ram Kishan Vs. Bharat Bhushan***, 1979 Rajdhani Law Reporter 194; and ***Jeevraj Munshi Shah Vs. Collector Thane***, 1995 AIHC 2642 (in which reliance has been placed upon ***Gangappa Vs. Rachawwa***, AIR 1971 SC 442). The learned ADJ upheld the finding with regard to the termination of the contractual tenancy of Dr. Gopal Singh Chawla by the landlord during the lifetime of Dr. Gopal Singh Chawla, by holding the notice of termination to be legal and valid. He also relied upon ***Jeevan Diesels & Electricals Ltd. vs. Jasbir Singh Chadha (HUF)***, 183 (2011) DLT 712, wherein it has been held that filing of an eviction petition, by itself, constitutes notice of termination of tenancy. The learned ADJ held that the appellant/ plaintiff had itself pleaded with regard to the purpose of letting, that the premises had

been let out for “residential-cum-commercial purpose”. He further held that when the letting is for residential purpose, the tenancy is not heritable. However, the same is heritable when the letting is for commercial or for dual purpose. He further held that the theory of predominant user also does not come to the rescue of the appellant/ plaintiff in view of absence of specific pleadings in that regard, and no such implication could be drawn from a reading of the plaint. Consequently, the first appeal of the appellant/ plaintiff was dismissed. Insofar as the First Appellate Court has reversed the finding of the Trial Court/ learned Civil Judge, and held that the suit of the appellant plaintiff was not barred by *res judicata*, the respondent has preferred cross-objections vide C.M. No.13729/2012.

4. In order to appreciate the controversy, a few background facts and history of litigation may be taken note of.

5. On 15.09.1947, a portion of property bearing no. 37, Prithvi Raj Road, comprising of one drawing-cum-dining room, two bedrooms (one bedroom divided into two by a wooden partition), kitchen, garage, WC, bath, 3 servant quarters and a portion of front verandah were let out to Dr. Gopal Singh Chawla by the custodian of evacuee property. The said tenant occupied the property alongwith his wife, 2 sons and one daughter. On 12.02.1962, property no. 37, Prithvi Raj Road, including the suit property was leased out via perpetual lease deed to Sh. Krishan Kumar, and thereafter purchased by the plaintiff company on 07.08.1962/05.09.1962.

Litigation History

First Case:

6. On 15.07.1963, an Eviction Petition No. 640/63 was filed by the landlord, inter alia, on the ground of “misuse” and of “bona fide requirement” under Section 14 of the Act. The claim of the landlord was that the suit premises were residential and let out as such. However, the tenant was using a part of the tenanted premises for his medical laboratory and clinic purpose and for business which was against the express purpose for which they were let. The tenant filed his written statement on 11.09.1963 alleging that the tenant being a practicing physician, the tenancy was for professional-cum-residential purpose. The tenant also stated that “*there is one bed room and not two. The side verandah at one end has been converted into a room by wooden partition with the permission of the custodian, the then landlord*”. The tenant stated “***The premises in suit, not being residential only, is not to be vacated for the reason of building a residential property by the respondent. Besides being let for professional cum residential proposes it has been always used as such by the respondent to the knowledge of all landlords who haed acquiesced in, agreed to and confirmed the same***” (emphasis supplied). He also stated “*It is denied that the premises was let to this respondent only for residential purposes. It was both for professional business & residence & this respondent has always used it as such to the knowledge of the Custodian & other landlords*”. (emphasis supplied)

7. The said petition came to be decided on 04.05.1968 by Sh. P.C. Saini, Rent Controller (RC) who held that the premises were being used for residence as well as for medical practice and, therefore, the premises are deemed to be let out to the tenant not only for residence but also for his

professional use. Consequently, both the grounds i.e., of misuse and bonafide requirement were not made out in the case. The Eviction Petition was dismissed.

8. An appeal was filed against the said order, being Rent Control Appeal No.461/1968. The appeal came to be dismissed vide order dated 24.08.1971 by Sh. G.C. Jain, Rent Control Tribunal (RCT) (as His Lordship then was), inter alia, holding that the petition was not maintainable, and was liable to be “rejected” due to invalid notice of termination of tenancy. The finding of the learned RC with regard to the purpose of letting was upheld. The second appeal against the order bearing SAO No. 273/71 was dismissed in default by this Court.

Second case:

9. Thereafter, on 20.12.1975 an Eviction Petition No. 120/76 was filed by the landlord, on ground of bona fide requirement, on the basis that the premises were residential, and let out for residential purpose. The said Eviction Petition was opposed on ground of *res-judicata*, by contending that the finding in the “*first case*” with regard to purpose of letting bound the landlord. On 10.05.1977 the said eviction petition was dismissed in default and for non prosecution by Sh. Mahender Pal, ARC.

Precursor for 3rd litigation:

10. On 19.10.1978, a notice terminating the tenancy was sent by the landlord to Dr. G.S. Chawla alleging that the premises were residential and were let out for residential purpose, and that they were being misused.

Notice was replied to on 24.10.1978 stating that the suit premises were not residential only, and were let out for residential and commercial purpose.

Third case:

11. An Eviction Petition No. 151/1980 under Section 14 (1) (b), (c), (j) and (h) of the Act was filed by the landlord on 14.03.1980, on the basis that the premises were let out for residential purpose. On 04.08.1980, written statement was filed to the eviction petition stating that the letting was not for residential purpose simplicitor, but for residential-cum-commercial purpose. The plea of *res-judicata*, as far as the purpose of letting was concerned, was also raised, premised on the findings returned in the “*first case*”. On 23.01.1981, Dr. G.S. Chawla died leaving behind his wife Mrs. Ram Pyari Chawla, two sons – including the respondent in the present second appeal, and one daughter as his legal heirs.

12. On 04.07.1983, the Eviction Petition No. 151/80 was withdrawn with the permission of the learned RC.

Fourth case:

13. On 24.04.1980 (i.e. during the life time of Dr. Gopal Singh Chawla) a civil suit was filed by the landlord for seeking a declaration that the tenancy of the defendant/tenant had been validly terminated vide notice dated 19.10.1978. On 05.08.1980, written statement was filed in the said suit by the defendant/tenant Dr. G.S. Chawla. On 28.09.1983, the said suit was dismissed as withdrawn on account of the death of the original tenant Dr. G.S. Chawla on 23.01.1981, as well as for the reason that an ejectment/

eviction proceeding had already been initiated against the LRs, i.e. “*fifth case*”.

Fifth case

14. On 23.09.1983, the plaintiff filed the suit for possession bearing No. 203/83/98 in respect of the suit property on ground that the tenancy of the original tenant Dr. G.S. Chawla had been determined during his life time, and in view of the provisions contained in Section 2(1)(iii) of the Act only limited tenancy had devolved upon the spouse of the deceased Mrs. Ram Piari Chawla – the defendant. The present respondent was impleaded as the legal representative upon the demise of Mr. Ram Piari Chawla. Issues were framed in the said suit on 14.01.1985. Thereafter, on 28.08.1989 an application moved by the plaintiff for amendment of plaint was allowed, which order was challenged in the High Court by way of a revision petition, and further proceedings in the suit were stayed. In the year 1999, the plaintiff made a statement before the High Court and withdrew the amendment application and, consequently, the revision was disposed of. In July, 1999, the written statement of the defendant was amended, alleging that premises were let out for residence-cum-clinic, and since the premises were not let out for residential purpose alone, the tenancy-after the death of Dr. G.S. Chawla, was heritable. Two additional issues were framed in the suit for possession. Evidence was led by both the parties. What became of the said proceedings would be dealt with a little later. Suffice it to note at this stage, that the present second appeal has arisen out of this litigation.

Precursor to the sixth case:

15. On 11.04.1990, a notice was given to the legal heirs of Dr. G.S. Chawla by the plaintiff, alleging that Dr. G.S.Chawla was in default of payment of rent at the time of his death; that the tenancy of Dr. G.S. Chawla had been terminated in his life time; that the noticees were liable to pay mesne profits/damages for use and occupation of the premises at the prevailing market rate (which was claimed to be more than Rs. 50,000/- per month) along with interest; and demanding damages @ Rs. 3000/- per month since 1981.

Sixth case:

16. On 21.03.1991, an Eviction Petition No. 258/90 was filed under Section 14(1)(k) of the Act i.e. use of premises in a manner contrary to conditions imposed on the landlord by the Government or DDA etc. The said case was filed against all four legal heirs, and purpose of letting was stated to be residential. It was alleged that the premises were being misused for running a Clinic-cum-Pathology lab, as also for running office of Vantage Construction Pvt. Ltd. On 04.02.1992 written statement was filed to the said eviction petition, and again the ground of *res-judicata* was raised viz-a-viz the purpose of letting being residential-cum-commercial.

17. In view of the judgment in the Supreme Court in ***Amba Lal Sarabhai Enterprises Ltd. Vs. Amrit Lal and Ors***, 2001 8 SCC 37, on 25.07.2002, the Civil Court directed the plaintiff to elect to pursue either of the two proceedings i.e. one pending before the Civil Court (*fifth case*), or the one before the Rent Controller(*sixth case*). On 31.08.2004, the plaintiff elected to pursue the civil proceedings i.e. Suit No. 203/83/98(*fifth case*) and,

accordingly, eviction petition no. 258/90(*sixth case*) was disposed off.

Back to fifth case

18. On 01.03.2006 the Suit No. 203/83/98 was dismissed on the ground that the finding recorded by Sh. P.C. Saini, RC in his order dated 04.05.1968, and Sh. G.C. Jain, RCT in the first case operated as *res-judicata*. The other findings returned by the learned Civil Judge have been taken note of earlier. As noticed above, the regular first appeal against the said judgment came to be dismissed vide impugned judgment dated 20.03.2012. The respondent had preferred cross objection, which were also dismissed. The findings returned by the learned ADJ have also been taken note of herein above.

19. Apart from supporting the findings returned by the first appellate court in favour of the respondent, in support of the cross objections preferred by the respondent (vide CM No. 13729/2012), learned counsel for the respondent has contended that the finding that the premises were being used for residential-cum-commercial purpose, recorded in order dated 04.05.1968 passed by the learned Rent Controller would operate as *res-judicata*. Consequently, Section 2(1)(iii) of the Act has no application to the present case and the tenancy, on the death of the original tenant Dr. G.S. Chawla, devolved upon all his legal heirs, and not just his widow-Smt. Ram Piari Chawla. It is contended that Section 2(1)(iii) of the Act does not cover residential-cum-commercial premises, but are restricted to exclusive residential premises. Consequently, the present suit was not maintainable. Reliance has been placed upon a plethora of judgments in support of the

proposition that the findings recorded in judgment dated 04.05.1968 would operate as a *res-judicata*. The respondent has also urged that there were no pleadings with regard to the dominant purpose of the lease being residential and, in the absence of such pleadings, no amount of evidence could be led, and even if led, the same could not be considered by the Court.

20. On the other hand, counsel for the appellant has urged that, firstly, the findings recorded in judgment dated 04.05.1968 passed by the learned RC stood obliterated when they merged with the appellate judgment dated 24.08.1971 of the RCT, whereby the plaint was “rejected” on a technical ground viz. lack of a legal and effective notice of termination of the contractual tenancy. By virtue of the doctrine of merger, the finding returned by the RC stood merged in the judgment of the RCT. In this regard, reliance is placed upon ***Kunhayammed Vs. State of Kerala***, AIR 2000 SC 2587. It is argued that where the petition is held to be not maintainable, and is ‘rejected’, the finding returned by the RC in the first case would not operate as *res-judicata*. In this regard, reliance is placed on ***Karnail Singh & Ors. Vs. Bhajan Singh & Ors.***, AIR 2005 P&H 207; ***Sadhna Rai v. Bimla Rai & Ors.***, 155 (2008) DLT 496 (DB).

21. Mr. Gupta has further submitted that the letting out of the premises for profession-cum-residence is also letting for residential purpose, and would not make it a letting for commercial purpose. He emphasized that a family of five persons was living in the premises which comprised of one drawing-cum-dining room and 2 bedrooms (created by dividing one room into two by a wooden partition). The premises falls in Leutyns Bungalow Zone, and the perpetual lease is also for residential purpose. Therefore, carrying out of

profession of a physician from such premises would not make such premises commercial, and take away the residential character thereof. Even according to the tenant/ his heirs, their consistent defence has been that the premises was used for residential-cum-professional purpose – or residential-cum-commercial purpose at the highest, and was let out for the residential-cum-commercial purpose. Such purpose of letting/user is predominantly considered “residential” for the purpose of the Act. In this regard, reliance has been placed on:

- (i) ***Dr. Gopal Dass Verma Vs. Dr. S.K. Bharadwaj and Another***, 1962 (2) SCR 678;
- (ii) ***Hiralal Kapur Vs. Prabhu Choudhury***, 1988 (2) SCC 172;
- (iii) ***Jasbir Kaur Vs. Girdhari Lal Mehra***, 1993 (Supp.1) SCC 454;
- (iv) ***B.K. Dawesar Vs. Sh. K.K. Sapra***, 2005 VI AD (Delhi) 321;
and
- (v) ***M/s Precision Steel and Engg Works Vs. Prem Deva Niranjana Deva Tayal***, AIR 2003 SC 650.

22. Mr. Gupta has submitted that even if the finding with regard to the purpose of letting returned by the RC in the first case is assumed to be binding and *res judicata*, and the matter be proceeded on the premise that the letting of the premises was for residential-cum-professional purpose, or residential-cum-commercial purpose, and it was being used for residential-cum-professional purpose (as admitted by the tenant and his heirs throughout) , or residential-cum-commercial purpose, the same would not

exclude the applicability of Section 2(l)(iii) of the Act to the premises in question. The submission of Mr. Gupta is that, for application Section 2(l)(iii) of the Act what is required is that at the time of death of the tenant, whose tenancy has been terminated prior to his death, the person(s) mentioned in Section 2(l)(iii) (a) to (d) (in terms of Explanation I) shall inherit a limited tenancy if the person(s) “*had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death*”. Mr. Gupta submits that even in respect of a letting which is for residential-cum-professional or residential-cum-professional or commercial purpose and in respect of a premises which is being used for residential-cum-commercial purpose, Section 2(l)(iii) would be attracted because the conditions of Section 2(l)(iii) are satisfied in all respects. Section 2(l)(iii) does not distinguish between premises so long as they are also being used for residential purpose at the time of demise of the tenant. Thus, the premises which may be in use for residential-cum-professional or residential-cum-commercial purpose are also covered by Section 2(l)(iii) of the Act.

23. Mr. Gupta submits that Section 2(l)(iii) neither mentions the purpose of letting, nor the nature of premises in relation to the cases in which it would be applicable. All that is necessary is that the person who inherits the limited estate should have been ordinarily living with the tenant in the premise at the time of demise of the tenant. Such ordinary living could be in a premises let out for either residential purpose exclusively, or for residential-cum-professional or even residential-cum-commercial purpose. He submits that in *Gian Devi (supra)* the Supreme Court used the

expression “commercial premises” and “residential premises”. The judgment drew a distinction on the basis of nature of premises, i.e. whether the same was “residential” or “commercial”. The decision in *Gian Devi (supra)* only dealt with purely “residential premises” or purely “commercial premises”, and no observation was made with regard to the applicability of S.2(1)(iii) to cases where letting was for “residential-cum-professional” or “residential-cum-commercial” purpose, and it also did not deal with the applicability of Section 2(1)(iii) to residential-cum-commercial premises *per se*.

24. While admitting the present regular second appeal, this Court on 22.07.2013 framed the following substantial question of law:

“Whether the finding returned by the trial court and affirmed by the first appellate court is perverse, so far as the purpose of letting is concerned? If so, to what effect?”

While considering the first question, the questions which are sought to be raised by the learned counsel for the respondent/tenant in cross objections with regard to the applicability of principles of res judicata as well as estoppels will also be considered.”

25. Considering the submission of Mr. Gupta – that even if it were to be accepted that the purpose of letting of the premises in question was residential-cum-professional or residential-cum-commercial, Section 2(1)(iii) would be applicable to the premises in question being used for residential-cum-professional/ residential-cum-commercial purpose, and thus only a limited tenancy was inherited by Mrs. Ram Piari Chawla, to my mind, all other issues of *res judicata*, lack of pleading with regard to dominant purpose of the lease, etc. would become irrelevant, unnecessary and pale into insignificance if the said proposition were to be accepted. All other

issues/ questions raised by either of the parties would not survive, and would not even require consideration for the purpose of disposal of the present second appeal. In ***State Bank of India Vs. S.N.Goyal*** (2008) 8 SCC 92, the Supreme Court observed;

“13. Second appeals would lie in cases which involve substantial questions of law. The word “substantial” prefixed to “question of law” does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. “Substantial questions of law” means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of Section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law.” (emphasis supplied)

26. The other issues raised by the parties, would become incidental or collateral, and would not have a bearing on the final outcome of the present second appeal, if the aforesaid submission of the appellant (recorded in paragraphs 22, 23 and 25 above) were to be accepted.

27. Accordingly, the foremost substantial questions of law that the present second appeal raises is as follows:

Whether Section 2(l)(iii) of the Delhi Rent Control Act, 1958 would be applicable in a case where the tenanted premises is “residential-cum-professional”, or “residential-cum-commercial, and at the time of demise of the tenant (whose tenancy has been terminated), the tenant, and the person claiming a right in the premises had been ordinarily living in

the premises with the tenant as a member of his family up to the date of his death?"

28. Prior to amendment of the Act by the Delhi Rent Control (Amendment) Act, 1976, the definition of 'tenant' as it stood in the Act was in the following terms :-

"`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 a subtenant and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any order or decree for eviction have been made".

29. Section 2 (1) post amendment of 1976 reads as follows :-

"`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-

(i) a sub-tenant;

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

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's-

(a) spouse,

(b) son or daughter, or, where there are both son and daughter, both of them,

(c) parents,

(d) daughter-in-law, being the widow of his predeceased son, as had been ordinarily living in the premises with such person as a member or members of his family upto the date of his death, but does not include, -

(A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to section 3 of the Delhi Rent Control (Amendment) Act, 1976.

(B) any person to whom a licence, as defined by section 52 of the Indian Easements Act, 1882 has been granted.

Explanation I.-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;

(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 upto the date of his death;

(c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person upto the date of his death; and

(d) fourthly, his daughter-in-law, being the widow of his predeceased son, if there is no surviving spouse, son, daughter or parents of the deceased person, or if such surviving spouse son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death.

Explanation II.-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.

Explanation III.-For the removal of doubts, it is hereby declared that,-

(a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy becomes extinguished, such extinguishment shall not affect the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be ;

(b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs ;"

30. The aforesaid amendment changed the definition of 'tenant' with retrospective effect. In ***Gian Devi (supra)***, the Supreme Court considered the question as to heritability of the tenancy governed by the Act, in respect of commercial premises. The facts of ***Gian Devi (supra)*** may be noticed to appreciate the ratio of the said decision. The husband of the appellant Gian Devi was a tenant in respect of a shop. Thus, the nature of the premises was purely commercial. His contractual tenancy was determined by the landlord

in his lifetime. The landlord filed an eviction petition, inter alia, under Section 14(1)(e) of the Act. The Rent Controller returned the finding that the premises had been let for commercial purpose, and the ground of bonafide requirement was not available to the landlord under the Act in respect of commercial premises. These findings were accepted, and not assailed. Thus, the Supreme Court dealt with the case on the premise that the purpose of letting was only commercial, and the nature of the premises was purely commercial. In para 5 of the report (the opening paragraph in the majority opinion of Mr. Justice A.N. Sen), the Court set out the question which arose for consideration in the said appeal in the following words:

“The question for consideration in this appeal by special leave is whether under the Delhi Rent Control Act, 1958 (for the sake of brevity hereinafter referred to as “the Act”), the statutory tenancy, to use the popular phraseology, in respect of commercial premises is heritable or not. To state it more precisely, the question is whether the heirs of a deceased tenant whose contractual tenancy in respect of commercial premises has been determined, are entitled to the same protection against eviction afforded by the Act to the tenant.”

[Emphasis supplied]

31. Thus, it is evident that the focus of the Supreme Court was the examination of the applicability of Section 2(1)(iii) of the Act in respect of “commercial premises” which had been let out for “commercial” purpose. The aforesaid position is also evident from para 11 of the report which reads as follows:

“11. The correctness of this view that on the death of a tenant whose tenancy in respect of any commercial premises has been terminated during his lifetime, whether before the

commencement of any eviction proceeding against him or during the pendency of any eviction proceeding against him, the heirs of the deceased tenant do not enjoy the protection afforded by the Act to the tenant and they do not have any right to continue to remain in possession because they do not inherit the tenancy rights of the deceased tenant, is challenged in this appeal.”

[Emphasis supplied]

32. The submission of the appellant/ tenant before the Supreme Court, which is recorded in para 12 was that:

*“notwithstanding the determination of the contractual tenancy of the tenant **in respect of any commercial premises**, the position in law remains unchanged insofar as the tenancy **in respect of commercial premises** is concerned, by virtue of the provisions of the Act.”*

[Emphasis supplied]

33. On the other hand, the submission of landlord/ respondent before the Supreme Court was:

“that the protection against eviction after termination of tenancy afforded to a tenant by the Act creates a personal right in favour of the tenant who continues to remain in possession after termination of his tenancy without any estate or interest in the premises; and, therefore, on the death of such a tenant, his heirs who have neither any estate nor interest in the tenanted premises and who do not have any protection under the Act against eviction, are liable to be evicted as a matter of course under the ordinary law of the land.”

34. The further submission of the landlord/ respondent was that:

“the Legislature considered it fit to intervene to give some relief to the heirs of the deceased tenant in respect of the residential

*premises and amended the Act of 1958 by Delhi Rent Control (Amendment) Act, 1976 (Act 18 of 1976) by changing the definition of “tenant” with retrospective effect. The argument is that by virtue of the amendment introduced in 1976 with retrospective effect, the heirs of the deceased tenant specified in Section 2(1)(iii) enjoy the protection against eviction during their lifetime in the manner mentioned therein, provided the conditions mentioned therein are satisfied, only with regard to residential premises. **It is contended that with regard to the residential premises such limited protection essentially personal to the heirs specified and to be enjoyed by them for their lives in the manner laid down in the said sub-Section 2(1)(iii) has been provided by the amendment; but in respect of commercial premises no such protection has been given.**”*

[Emphasis supplied]

35. Thus, it would be seen that the stand of the landlord/ respondent was also that the tenanted premises was a commercial premises. Since the Supreme Court was not dealing with a case where either the tenanted premises was residential-cum-professional or residential-cum-commercial, or where the purpose of letting was residential-cum-professional or residential-cum-commercial, in the entire body of the judgment there is no discussion on the aspect of applicability of Section 2(1)(iii) in respect of either “residential-cum-professional” or “residential-cum-commercial” premises, nor in respect of premises let out for “residential-cum-professional” or “residential-cum-commercial” purpose.

36. The Supreme Court held that all tenancies are heritable. Insofar as tenancies of residential premises are concerned, the Supreme Court held that the legislature had sought to limit the right of inheritance by introducing

Section 2(1)(iii). However, in respect of tenancies of commercial premises, no such limitation had been put. Thus, the Supreme Court held that the tenancy of a tenant, in respect of any commercial premises, was heritable and I quote:

*“31. We now proceed to deal with the further argument advanced on behalf of the landlords that the amendment to the definition of ‘tenant’ with retrospective effect introduced by the Delhi Rent Control Amendment Act (Act 18 of 1976) to give personal protection and personal right of continuing in possession to the heirs of the deceased statutory tenant in respect of residential premises only and not with regard to the heirs of the ‘so called statutory tenant’ in respect of commercial premises, indicates that the heirs of so called statutory tenants, therefore, do not enjoy any protection under the Act. This argument proceeds on the basis that in the absence of any specific right created in favour of the ‘so called statutory tenant’ in respect of his tenancy, the heirs of the statutory tenant who do not acquire any interest or estate in the tenanted premises, become liable to be evicted as a matter of course. The very premise on the basis of which the argument is advanced is, in our opinion, unsound. **The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary.** We have earlier noticed the decision of this Court in Damadilal’s case (supra). This view has been taken by this Court in Damadilal’s case and in our opinion this decision represents the correct position in law. The observations of this Court in the decision of the Seven Judge Bench in the case of V. Dhanapal Chettiar v. Yesodai Ammal (supra) which we have earlier quoted appear to conclude the question. The amendment*

of the definition of tenant by the Act 18 of 1976 introducing particularly 2(1)(iii) does not in any way mitigate against this view. The said sub-section (iii) with all the three Explanations thereto is not in any way inconsistent with or contrary to subsection (ii) of Section 2(1) which unequivocally states that tenant includes any person continuing in possession after the termination of his tenancy. In the absence of the provision contained in subsection 2(1)(iii), the heritable interest of the heirs of the statutory tenant would devolve on all the heirs of the 'so called statutory tenant' on his death and the heirs of such tenant would in law step into his position. **This sub-section (iii) of S. 2(1) seeks to restrict this right in so far as the residential premises are concerned. The heritability of the statutory tenancy which otherwise flows from the Act is restricted in case of residential premises only to the heirs mentioned in S 2(1)(iii) and the heirs therein are entitled to remain in possession and to enjoy the protection under the Act in the manner and to the extent indicated in sub-section 2(1)(iii).** The Legislature, which under the Rent Act affords protection against eviction to tenants whose tenancies have been terminated and who continue to remain in possession and who are generally termed as statutory tenants, is perfectly competent to lay down the manner and extent of the protection and the rights and obligations of such tenants and their heirs. S. 2(1)(iii) of the Act does not create any additional or special right in favour of the heirs of the 'so called statutory tenant' on his death, but seeks to restrict the right of the heirs of such tenant in respect of residential premises. As the status and rights of a contractual tenant even after determination of his tenancy when the tenant is at times described as the statutory tenant, are fully protected by the Act and the heirs of such tenants become entitled by virtue of the provisions of the Act to inherit the status and position of the statutory tenant on his death, the Legislature which has created this right has thought it fit in the case of residential premises to limit the rights of the heirs in the manner and to the extent provided in S. 2(1)(iii). **It appears that the Legislature has not thought it fit to put any such restrictions with regard to tenants in respect of**

commercial premises in this Act.”

37. A perusal of para 32 of the report shows that the Supreme Court was focused on the nature of the tenancy premises i.e. “commercial premises” on the one hand, and “residential premises” on the other hand. In para 32, the Supreme Court, inter alia, observed:

“32. It may be noted that for certain purposes the legislature in the Delhi Act in question and also in various other Rent Acts has treated commercial premises differently from residential premises.”

38. In para 34 of the report, the Supreme Court elaborates on the reasons why the law draws a distinction in respect of a tenancy of a ‘residential premises’ on the one hand, and ‘commercial premises’ on the other hand in relation to the right of the landlord to evict the tenant. The Supreme Court deliberates on the reasons why greater protection is afforded under the Act to a tenant in respect of a ‘commercial premises’, as opposed to a tenant in a ‘residential premises’. In para 34, the Supreme Court, inter alia, observed:

“We are of the opinion that in case of commercial premises governed by the Delhi Act, the Legislature has not thought it fit in the light of the situation at Delhi to place any kind of restriction on the ordinary law of inheritance with regard to succession. It may also be borne in mind that in case of commercial premises the heirs of the deceased tenant not only succeed to the tenancy rights in the premises but they succeed to the business as a whole. It might have been open to the Legislature to limit or restrict the right of inheritance with regard to the tenancy as the Legislature had done in the case of the tenancies with regard to the residential houses but it would not have been open to the Legislature to alter under the Rent Act, the Law of Succession regarding the business which is a valuable heritable right and which must necessarily devolve on

*all the heirs in accordance with law. The absence of any provision restricting the heritability of the tenancy in respect of the commercial premises only establishes that **commercial tenancies notwithstanding the determination of the contractual tenancies will devolve on the heirs in accordance with law and the heirs who step into the position of the deceased tenant will continue to enjoy the protection afforded by the Act and they can only be evicted in accordance with the provisions of the Act.** ”*

Para 37 of the report is also relevant, and reads as follows:

*37. In the Delhi Act, the Legislature has thought it fit to make provisions regulating the right to inherit the tenancy rights in respect of residential premises. The relevant provisions are contained in S. 2(1)(iii) of the Act. With regard to the commercial premises, the Legislature in the Act under consideration has thought it fit not to make any such provision. It may be noticed that in some Rent Acts provisions regulating heritability of **commercial premises** have also been made whereas in some Rent Acts no such provision either in respect of **residential tenancies** or **commercial tenancies** has been made. As in the present Act, there is no provision regulating the rights of the heirs to inherit the tenancy rights of the tenant in respect of the tenanted premises which is **commercial premises**, the tenancy right which is heritable devolves on the heirs under the ordinary law of succession. The tenancy right of Wasti Ram, therefore, devolves on all the heirs of Wasti Ram on his death.*

[Emphasis supplied]

39. As already noticed above, the decision in **Gian Devi** (supra) does not deal with a fact situation where the property had been let out for residential-cum-professional purpose or, residential-cum-commercial purpose. The focus of the decision in **Gian Devi** (supra), is with regard to applicability of Section 2(1)(iii) of the Act to tenancies of “commercial premises” *per se*.

Clearly, the Supreme Court had typically and purely commercial premises in mind while rendering this decision inasmuch, as, such commercial premises continue to be used by the other family members on the death of the tenant to carry out the commercial activity/family business. The same logic may not apply with same vigor to professionals using a part of residential premises for carrying out their profession. This aspect is dealt with a little later in paragraph 60 of this judgment.

40. The Supreme Court, in ***Gian Devi*** (supra) confined itself to consideration of the applicability of Section 2(l)(iii) of the Act to commercial premises, and no opinion was expressed vis-à-vis residential-cum-professional premises or residential-cum-commercial premises. Since the premises in question – even according to the tenant/ respondent was being used for “residential-cum-professional purpose” (which is sought to be equated to “residential-cum-commercial” purpose. And for the purpose of this discussion this equation may be accepted), the reasoning given in ***Gian Devi*** (supra) would not enure to the benefit of the respondent.

41. It is well settled by a catena of decisions of the Supreme Court that the ratio of a decision is what it actually decides, and not what may logically follow from it. On the aspect of interpretation of a judgment, the Supreme Court in ***Islamic Academy of Education Vs. State of Karnataka***, (2003) 6 SCC 697, inter alia, observed as follows:

“Interpretation of a judgment

139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is

based is distinct from the relief finally granted or the manner adopted for its disposal. (See *Executive Engineer, Dhenkanal Minor Irrigation Division v. N.C. Budharaj* [(2001) 2 SCC 721].)

140. In *Padma Sundara Rao v. State of T.N.* [(2002) 3 SCC 533] it is stated: (SCC p. 540, paragraph 9)

*“There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 : (1972) 1 All ER 749 (HL)] (Sub nom *British Railways Board v. Herrington*). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”*

(See also *Haryana Financial Corpn. v. Jagdamba Oil Mills* [(2002) 3 SCC 496] .)

141. In *General Electric Co. v. Renusagar Power Co.* [(1987) 4 SCC 137] it was held: (SCC p. 157, paragraph 20)

“As often enough pointed out by us, words and expressions used in a judgment are not to be construed in the same manner as statutes or as words and expressions defined in statutes.

.....
.....”

142. In *Rajeswar Prasad Misra v. State of W.B.* [AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] it was held:

“No doubt, the law declared by this Court binds courts in India but it should always be remembered that this Court does not enact.”

(See also *Amar Nath Om Prakash v. State of Punjab* [(1985) 1 SCC 345 : 1985 SCC (Tax) 92] and *Hameed Joharan v. Abdul Salam* [(2001) 7 SCC 573] .)

143. It will not, therefore, be correct to contend, as has been contended by Mr Nariman, that answers to the questions would be the ratio to a judgment. The answers to the questions are merely conclusions. They have to be interpreted, in a case of doubt or dispute with the reasons assigned in support thereof in the body of the judgment, wherefor, it would be essential to read the other paragraphs of the judgment also. It is also permissible for this purpose (albeit only in certain cases and if there exist strong and cogent reasons) to look to the pleadings of the parties.

144. In *Keshav Chandra Joshi v. Union of India* [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545] this Court when faced with difficulties where specific guidelines had been laid down for determination of seniority in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348] held that **the conclusions have to be read along with the discussions and the reasons given in the body of the judgment.**

145. It is further trite that a decision is an authority for what it decides and not what can be logically deduced therefrom. (See *Union of India v. Chajju Ram* [(2003) 5 SCC 568] .)

146. The judgment of this Court in *T.M.A. Pai Foundation* [(2002) 8 SCC 481] will, therefore, have to be construed or to be interpreted on the aforementioned principles. The Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose the Court may also consider the constitutional or relevant statutory provisions vis-à-vis its earlier decisions on which reliance has been placed.” (emphasis supplied)

42. The aforesaid decision has been followed by the Supreme Court on the above aspect in *Laxmi Devi Vs. State of Bihar* (2015) 10 SCC 241. In the above light, the decision in *Gian Devi (supra)* cannot be said to cover the fact situation as in the present case, and would not be applicable with full

vigor in the present context. It cannot be said, on a reading of *Gian Devi* (supra) that the ratio of the said decision with regard to applicability of Section 2(1)(iii) of the Act would extend to residential-cum-professional or residential-cum-commercial premises as well.

43. Section 2(1)(iii) would, therefore, need independent examination in the light of the plain grammatical meaning of words used by the Parliament to determine whether it would apply to “residential-cum-professional” or “residential-cum-commercial” premises. A pertinent feature of Section 2(1)(iii) is that the said provision does not use the expression “*let for residential purpose*” or “*let for commercial purpose*” in respect of the tenanted premises, as has been used by the legislature in the explanation attached to Section 14(1)(e). In fact, the purpose of letting is not the focus of Section 2(1)(iii). The relevant extracts of both the provisions are being juxtaposed for ease of reference:

Section 14(1)(e)	Section 2(1)(iii)
that <u>the premises let for residential purposes</u> are required bona fide by the for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation;	(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's- (a) spouse, (b) son or daughter, or, where there

Explanation: For the purposes of this Clause, "<u>premises let for residential purposes</u>" include any premises which having been let for use as a residence are, without the consent of the landlord, used incidentally for commercial or other purposes. [Emphasis supplied]	are both son and daughter, both of them, (c) parents, (d) daughter-in-law, being the widow of his predeceased son, as had been ordinarily living in the premises with such person as a member or members of his family upto the date of his death, but does not include..... [Emphasis supplied]
---	--

44. The Explanation attached to Section 14(1)(e) deducibly treats premises let out for residential-cum-commercial purpose (with consent of the landlord) as a different category, or as not falling within the expression “*premises let out for residential purposes*”. In respect of such tenancy where the premises is let out for residential-cum-commercial purpose, an issue may arise with regard to the dominant purpose of the lease, inter alia, in the context of an eviction petition preferred under Section 14(1)(e) of the Act (After the decision of the Supreme Court in *Satyawati Sharma (Dead) by LRs Vs. Union of India* (2008) 5 SCC 287, this issue may not even be relevant for purpose of a petition under Section 14(1)(e) of the Act). However, as noticed above, Section 2(1)(iii) does not even whisper about the purpose of letting. Therefore, to place reliance on decisions rendered in

petitions under Section 14(1)(e), wherein the purpose of letting was residential-cum-commercial-to interpret the meaning of Section 2(1)(iii), would be misplaced. The decisions in *Dr. Gopal Dass Verma Vs. Dr. S.K. Bharadwaj and Another*, 1962 (2) SCR 678; *Hiralal Kapur Vs. Prabhu Choudhury*, 1988 (2) SCC 172; *Jasbir Kaur Vs. Girdhari Lal Mehra*, 1993 (Supp.1) SCC 454; *B.K. Dawesar Vs. Sh. K.K. Sapra*, 2005 VI AD (Delhi) 321; and *M/s Precision Steel and Engg Works Vs. Prem Deva Niranjana Deva Tayal*, AIR 2003 SC 650, are all decisions rendered in petitions for eviction under Section 14(1)(e) of the Act, or the analogous provisions of law. Therefore, these decisions cannot *per se* apply or guide the interpretation of Section 2(1)(iii). Both provisions, viz. Section 14(1)(e) and Section 2(1)(iii) are differently worded, and it is well-settled that where legislature uses different expressions in different parts of the same statute, they should not be presumed to have the same meaning. On the contrary, it must be presumed that different expressions have been used, consciously, to convey different meaning.

45. The only aspect of the decisions taken note of in the preceding paragraph (relied upon by Mr. Gupta), is the principle laid down therein – that use of a part of a residential premises by a professional for his professional activity, while the other part is used for residential purpose, does not render the use of the premises as non-residential. Merely because the purpose of letting is for residential purpose, which also allows the tenant to use a part of the premises for professional purpose, the purpose of letting does not cease to be ‘residential’.

46. I am of the view that the test of dominant purpose referred to and

applied in the above decisions is of no assistance for the purpose of examination of the issue of applicability of Section 2(1)(iii), as the said issue is presently being examined on the premise that the tenanted premises was residential-cum-professional, or residential-cum-commercial, and that it was let out for dual/ composite purpose.

47. Two decisions, wherein Section 2(1)(iii) has been considered by two Ld. Single Judges of this court viz. *Mohan Lal Goela Vs. Siri Kishan*, AIR 1978 Del 92, and *Kamla Devi* (supra) – relied upon by the respondent, may now be taken note of.

48. In *Mohan Lal Goela* (supra) Awadh Bihari Rohtagi, J. elaborately considered and analysed Section 2(1)(iii) of the Act. The factual background in which Section 2(1)(iii) of the Act was examined was that the tenancy was in respect of a shop in Chandni Chowk, Delhi. Thus, not only the premises was exclusively commercial, but also the tenancy was for commercial purpose. The original tenant died leaving behind his widow and four children. Consequent to the death of the tenant, the landlord brought a suit for possession and mesne profits on the premise that the tenancy of the tenant had been terminated by a notice to quit; the tenant had become a statutory tenant, and; the tenancy rights had not devolved upon the heirs of the tenant. The suit was filed on 02.11.1968. The defendants contested the suit – their principal defence being that they – as the heirs of the original tenant, had inherited the tenancy and were entitled to continue as tenants. The Court took into account the legislative history of the Act. In 1976, it was amended. The Statement of Objects & Reasons for passing the Delhi Rent Control (Amendment) Act, 1976 were taken note of. The Statement of

Objects & Reasons read:

“There had been a persistent demand for amendments to the Act of 1958 with a view to conferring a right of tenancy on certain heirs/successors of a deceased statutory tenant so that they may be protected from eviction by the landlords.”

49. The Court held that the object of the amendment was to widen the definition of the expression tenant. It conferred a right on certain persons mentioned in Explanation I to continue in possession, after the termination of the tenancy of the tenant. The effect of the amended definition of the expression ‘tenant’ was stated in the following words:

“49. It comes to this. A tenant includes a person continuing in possession after the termination of his tenancy. Though his tenancy is terminated in one of the modes mentioned in Section 111 of the Transfer of Property Act the Act of 1958 confers protection to him. During the life time he cannot be evicted on the ground that his tenancy has been terminated. The Rent Act protects him. He can be evicted, if he is in breach of the statutory conditions enumerated in S. 14.”

50. The learned Single Judge proceeded to examine the scope and effect of the amended definition of the expression “tenant” (as amended retrospectively in 1976) on the foundation that tenancy rights, generally speaking, are not heritable.

51. At this stage itself, I may point out that the aforesaid is the fundamental difference in the opinion of this Court in **Mohan Lal Goela** (supra) and in view of the Supreme Court in **Gian Devi** (supra). Whereas, this Court in **Mohan Lal Goela** (supra) proceeded to hold that *“On his death the right of the tenant to continue in possession after the termination of the*

tenancy comes to an end. The right was personal and did not devolve on his heirs. This is what is understood by the term statutory tenancy. This meant that on the death of the tenant his heirs had to vacate.”, the Supreme Court in ***Gian Devi*** (supra) held that the right of tenancy is generally heritable, and that the same devolves upon the heirs of the deceased tenant. This Court while deciding ***Mohan Lal Goela*** (supra) was guided by the Statement of Objects & Reasons of the Delhi Rent Control (Amendment) Act, 1976, as extracted above, and took the view that because the right of tenancy is not heritable, and on the death of the tenant, his heirs have to vacate. This Court held, *“This worked hardship. There was a cry, loud and clear, for changing the law. The Act of 1958 was amended “with a view to conferring a right of tenancy on certain heirs/successors of a deceased statutory tenant so that they may be protected from eviction by landlords”. This is the avowed object of the amendment”*. Thus, whereas this Court in ***Mohan Lal Goela*** (supra) held that the right of tenancy, of every nature, is not heritable, the Supreme Court held just the opposite – that every tenancy right is heritable. Whereas, this Court held that the right conferred by the Act on the heirs of the deceased statutory tenant could not be called “right to tenancy”, and that it is no more than right to continue in possession after termination of tenancy, the Supreme Court in ***Gian Devi*** (supra) held that despite determination of the contractual tenancy, there is no change of status qua the tenancy rights of a tenant, and the same right is heritable by the heirs of the tenant upon his demise. In paragraph 60, this Court in ***Mohan Lal Goela*** (supra) observed as follows:

“60. The Act provides for limited heritability. It is in a limited sense that the right to tenancy is conferred on certain

successors of a deceased statutory tenant. It is not quite correct to call it “a right to tenancy” as the Statement of Objects and Reasons describes it. It is no more than “the right to continue in possession after the termination of the tenancy”, to use the words of the statute. The “successor” is not a tenant in the sense that he has an estate. He has a merely personal right of occupation.”

52. It goes without saying that the opinion of this Court in **Mohan Lal Goela** (supra), insofar as it is at variance with the view of the Supreme Court in **Gian Devi** (supra), cannot be considered as good law and is deemed to have been impliedly over-ruled. I say “impliedly overruled” because **Mohan Lal Goela** (supra) was apparently not brought to the notice of the Supreme Court, and it has, thus, not been commented upon by the Supreme Court in **Gian Devi** (supra).

53. However, the divergence of opinion between **Mohan Lal Goela** (supra) and **Gian Devi** (supra) ends at this point. Both Courts proceeded to examine the scope of Section 2(1)(iii) (on the foundation of their respective conclusions with regard to the heritability/ non-heritability of tenancy of a tenant whose contractual tenancy has been terminated prior to his death, and the context of a “statutory tenancy” under the Act). The interpretation of Section 2(1)(iii) adopted by both Courts, namely, by this Court in **Mohan Lal Goela** (supra) and by the Supreme Court in **Gian Devi** (supra) is on the same lines subject, of course, to divergence taken note of in the above discussion.

54. In **Mohan Lal Goela** (supra), this Court, inter alia, observed as follows. The analysis, of Section 2(1)(iii) which is not affected by **Gian Devi** (supra) is being highlighted.

“51. The amendment extends the protection to heirs and successors. But it is a restricted protection. It is not unlimited. There are several limitations on the right conferred by the amendment. (This interpretation stands impliedly overruled)

52. Firstly the heir must not be financially independent. If e.g. he was not financially dependent on the deceased tenant he has a right to continue in possession only for a limited period of one year.

53. Secondly only these four classes of heirs (a) the surviving spouse, (b) son or daughter, (c) parents, and (d) widowed daughter-in-law of a pre-deceased son, have been conferred the right to continue in possession.

54. Thirdly in the order of succession spouse succeeds to the exclusion of son or daughter. Son and daughter will exclude the parents. The parents will exclude the daughter-in-law. The first category excludes the second and so on.

55. Fourthly if there are two successors of the same category and one of them was financially independent and the other was financially dependent on the deceased then the one financially independent will enjoy the right to continue in possession for one year but the financially dependent one will enjoy the right to continue in possession for his life time provided he belongs to the "same category" to which the financially independent successor belonged. Take for instance a son and a daughter. The son, if financially independent, will enjoy the right for one year. But the daughter if financially dependent will have the right to continue in possession for her life.

56. Fifthly, the successor the surviving spouse, son, daughter, parents, daughter-in-law should "ordinarily live in the premises with the deceased person as a member of his family up to the day of his death" in order to be entitled to right to continue in possession.

57. Sixthly, if no successor of a category has enjoyed the

right and there is no other successor of the same category the right to continue in possession comes to an end and does not pass on to the successor in the lower category.

58. Seventhly, the right of a successor is personal to him and does not extend beyond the life time of the successor. It does not devolve on his heirs.

59. Eighthly, the Amending Act is retrospective in operation. The draftsman of the Act has chosen to achieve its retrospective effect by the use of the word "deem". It is a well known drafting tool that he has used. He has made it plain by express language in one of the key definitions in the Act."

60. The Act provides for limited heritability. It is in a limited sense that the right to tenancy is conferred on certain successors of a deceased statutory tenant. It is not quite correct to call it "a right to tenancy" as the statement of objects and reasons describes it. It is no more than the right to continue in possession after the termination of the tenancy, to use the words of the statute. The "successor" is not a tenant in the sense that he has an estate. He has a merely personal right of occupation. (This interpretation stands impliedly over ruled)

61. Now an important question of law arises. Does this definition of tenant apply only to residential premises or to both residential or non-residential ? It appears to me that this definition applies only to residential premises or perhaps to residential-cum-commercial. The reason is two-fold. Firstly it lays down that the specified successor in order to qualify to be entitled to the right to continue in possession must be such, "As had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death....."

62. The words "in the premises" are quite expressive. They are clearly suggestive of the intent of the legislature viz. to confer a right to continue to live in the premises. Similarly the words "ordinarily living" are a clear pointer. Of commercial premises it cannot be predicated that one had

been "ordinarily living in the premises" with the deceased tenant as "a member of his family". The two expressions- - (1) "living, in the premises" and (2) as a "member of the (tenant's) family" give us a clear indication of the legislative intendment.

63. The same expression "ordinarily live in the premises as a member of the family of the deceased person up to the date of his death" has been used in clauses (c) and (d) of Explanation 1. This re-inforces the conclusion I have come to.

64. My second reason for this conclusion is that what the Amending Act seeks to confer is a mere right to continue in possession after the termination of the tenancy. (This interpretation stands impliedly overruled). But to continue in possession of what? **It is "the right to continue in possession" of those very premises where the specified successor was living with the deceased tenant as a member of his family up to the date of his death.** The argument that "the right to continue in possession" extends to another and different premises is absurd. Take a case. The son was ordinarily living with the father (the tenant of the premises) as a member of his family up to the date of his death. The son has a right to continue in possession if he satisfies the conditions of the Explanations. But he cannot claim that the tenancy of the commercial premises of his father also devolves on him. (This interpretation stands impliedly overruled)

65. Suppose the son was not financially dependent on the deceased father. In that case his right to continue in possession is for a limited period of one year. This clearly refers to the residential premises. It cannot conceivably refer to the non-residential premises. The proposition that the son will have a right to continue in possession for one year in the commercial premises is *reductio ad absurdum*. This demonstrates that such a position is impossible to maintain when carried to a logical conclusion."(This interpretation stands impliedly overruled)

55. This Court further observed that:

66. *In order to protect the members of the family residing with a tenant, the provision of Section 2 of the Act were amended. (This interpretation stands impliedly overruled). The amended provision lays down the manner of devolution of statutory tenancy. On the death of the statutory tenant it devolves on the enumerated members of the tenant's family as had been "ordinarily living in the premises with such person as a member or members of his family up to the date of his death". This requirement clearly has reference to the premises which were occupied by the tenant and in which the member of the tenant's family was residing with the tenant "up to the date of his death". Section 2 cannot possibly apply to the case of premises which were used by the tenant as business premises and of which it cannot be predicated that the member of the tenant's family was residing with the tenant up to the date of his death. Why should the legislature prescribe the requirement that the member should be residing with the tenant at the time of his death if the Legislature wanted to protect the member of a tenant's family in respect of a business premises ? There is no nexus between the requirement of the residence of the tenant's family with the tenant at the time of his death and the creation of a statutory tenancy in respect of business premises in favor of such member. (This interpretation stands impliedly overruled)*

56. No doubt, the decision in **Mohan Lal Goela**(supra) was rendered on the foundation that tenancy rights, generally, are not heritable and thus, no statutory protection is available to a tenant occupying commercial premises. However, the interpretation given to Section 2(1)(iii) in **Mohan Lal Goela** (supra) i.e. that Section 2(1)(iii) covers only residential, and not commercial premises, still holds ground inasmuch, as, the subsequent decision in **Gian Devi** (supra) also held that Section 2(1)(iii) only covered residential premises, and excluded commercial premises. However, **Gian Devi** (supra)

did not deal with the issue of residential-cum-commercial premises and therefore, the observation qua Section 2(l)(iii) made by the Ld. Single Judge in *Mohan Lal Goela* (supra) that the provision could, perhaps, cover residential-cum-commercial premises as well, still holds good.

57. In *Kamla Devi* (supra), Chief Justice D.K. Kapur held that where the tenancy was in respect of a shop-cum-residence, if one could not evict the tenant from the shop, the tenant could also not be evicted from the residence as well. The court noticed that when the premises are partly residential and partly commercial, the protection available to the commercial premises (as per *Gian Devi* (supra)) is available to the entire premises. This decision apparently supports the respondent. But on a closer scrutiny, the same appears to be of no avail to the respondent.

58. Firstly, in the said case a shop on the ground floor, and residential flat over the shop were independently/ separately let out on different rentals, but later on the tenancy was consolidated when the standard rent of the property was fixed by the court at a composite rate of Rs. 50.2 Naya Paisa per month. Therefore, the tenant was in occupation of a purely commercial premises, i.e. a shop on the ground floor, and a residential premises, i.e. a flat over it. The tenancies were consolidated into one. Half of it was purely commercial, and half of it was purely residential. In these facts the court held that the tenancy being one (upon being merged), protection was available in respect of the commercial portion even after demise of the original tenant (by virtue of *Gian Devi* (supra)). However, the tenancy could not be split, and eviction could not be ordered qua the residential portion alone. Thus, the tenancy of the entire tenanted premises devolved upon all the heirs of the deceased

tenant.

59. However, in the present case, the premises are, without doubt, residential premises which were being used for residential and professional purposes. It has never been the case of the tenant/his heirs that any defined part of the property was, by its very nature, exclusively commercial. In fact, a portion of the premises – at the choice and convenience of the tenant, was used for carrying out the profession of a physician. As to which portion the tenant chose to use for his profession was not defined either contractually, or by the nature of the premises. In fact, it is not in dispute that the premises forms part of a residential bungalow in Lutyens Bungalow Zone. The same consisted of one drawing-cum-dining room and 2 bedrooms (created by dividing one room into two by a wooden partition). The nature of the premises, and no part of it, could be described as a ‘shop’ or ‘commercial’. At the highest, it’s a case of a residential premises being put, partly (though undefined) to professional/commercial use.

60. The aspects which are present in the case of a tenanted premises which is used for residential-cum-professional purpose were neither present, nor considered by the Court while dealing with *Kamla Devi* (supra). Professionals like Doctors, Lawyers, Architects, Chartered Accountants, Company Secretary etc all require special educational qualification and acquired knowledge and skill, and they can operate a home office from within their residential premises, irrespective of wherever they choose to reside. This may not be true for shopkeepers/manufacturing units/ other businesses or trades, which may only be operated from purely commercial premises. In case of a professional using a part of his residence for his

profession, on his demise, his practice as a Doctor, Lawyer etc. cannot be continued by every other member of his family *ipso facto*, and even otherwise, on determination of his tenancy he may shift to any other residential premises and continue with his professional activity as far as is permissible by law, or permitted by the new landlord.

61. Secondly, even otherwise, the decision in ***Kamla Devi*** (supra) does not take note of the earlier decision in ***Mohan Lal Goela*** (supra) on the same aspect. Unfortunately, it seems that the decision in ***Mohan Lal Goela***(supra) was not brought to the notice of the Ld. Chief Justice deciding ***Kamla Devi*** (supra), and he did not have the benefit of his lordships views in ***Mohan Lal Goela*** (supra). The decision in ***Kamla Devi*** (supra) has to be understood, as applicable and relevant to fact situations similar to the one dealt with by the Court in that case. ***Kamla Devi*** (supra) cannot be pressed into service to examine whether Section 2(1)(iii) of the Act would be applicable in cases of tenanted premises which are residential-cum-professional, or even residential-cum-commercial, where the nature of the premises is such that it does not have distinct and separate commercial area by its very nature. ***Kamla Devi*** (supra), therefore, is of no avail to the respondent.

62. On the plain grammatical reading of provisions of Section 2(1)(iii) it has to be held that the real test laid down by the statute is that of “*ordinarily living in the premises with the tenant as a member of his family up to the date of his death*”, and not whether the premises were let out for residential purpose exclusively, or for residential-cum-professional or residential-cum-commercial purpose. In either case, i.e.

- (i) where the premises, is purely residential, or,
- (ii) where the premises, is residential-cum-professional, or residential-cum-commercial (unless the commercial portion is clearly defined so by its very nature);

if the other requirements of Section 2(1)(iii) are satisfied, there is no reason not to invoke the same, merely because the purpose of letting, or the user, may be residential-cum-professional, or residential-cum-commercial. As aforesaid, in respect of residential-cum-commercial premises, if the nature of the premises is residential, and no part of it is –by its very nature commercial; the mere permitted use thereof for dual purpose i.e. residential-cum-commercial would not save the tenancy from attracting the applicability of Section 2(1)(iii) of the Act. Purely commercial premises would mean premises which are situated in a commercial area, such as, in a shopping complex, a mall or a market area. Generally, such premises would not have attributes of a residential premises – such as, separate bedrooms, living/drawing room, kitchen and bathroom, though, a purely commercial premises, situated in a commercial area may also have facilities, such as toilets & kitchen/pantry. Purely commercial premises would not be given, or taken, for residential use as well, as it is well known that such premises would be more expensive to let out and would be unsuitable for residential use on account of the noise and other kinds of pollution and the attendant nuisance. It would, generally, not be permissible to use commercial premises for residential purpose, and would impinge on privacy of the tenant. Whether the premises, or a part of the tenancy premises are pure commercial by their very nature, would have to be examined in the facts of

each case in the light of the above noted attributes, which may not be exhaustive.

63. Rent Control legislation was introduced at a time when the legislature felt the need to ameliorate the suffering of tenants. At that time, there was high demand for tenanted premises, and very few premises were available, leading to exploitation by landlords. Thus, the rent control and protection statutes were earlier being interpreted to protect and promote the interests of tenants. However, in more recent years the approach of the courts has changed with regard to the interpretation of the provisions contained in rent control legislations, and the Courts have started adopting a more reasonable and balanced approach while interpreting the provisions of such legislation, for the reasons which have been noted by the Supreme Court in the recent decision in *Satyawati Sharma* (supra). The Supreme Court observed;

11. Before proceeding further we consider it necessary to observe that there has been a definite shift in the Court's approach while interpreting the rent control legislations. An analysis of the judgments of 1950s' to early 1990s' would indicate that in majority of cases the courts heavily leaned in favour of an interpretation which would benefit the tenant Mohinder Kumar and Others vs. State of Haryana and Another [1985 (4) SCC 221], Prabhakaran Nair and Others vs. State of Tamil Nadu and Others (supra), D.C. Bhatia and Others vs. Union of India and Another [1995 (1) SCC 104] and C.N. Rudramurthy vs. K. Barkathulla Khan [1998 (8) SCC 275]. In these and others case, the Court consistently held that the paramount object of every Rent Control Legislation is to provide safeguards for tenants against exploitation by landlords who seek to take undue advantage of the pressing need for accommodation of a large number of people looking for a house on rent for residence or business in the

background of acute scarcity thereof. However, a different trend is clearly discernible in the latter judgments. In Malpe Vishwanath Acharya and Others vs. State of Maharashtra & Another (supra), this Court considered the question whether determination and fixation of rent under the Bombay Rents, Hotel and Lodging Houses, Rates Control Act, 1947, by freezing or pegging down of rent as on 1.9.1940 or as on the date of first letting was arbitrary, unreasonable and violative of Article 14 of the Constitution. The three-Judge Bench answered the question in affirmative but declined to strike down the concerned provisions on the ground that the same were to lapse on 31.3.1998. Some of the observations made in that judgment are worth noticing. These are:

"Insofar as social legislation, like the Rent Control Act is concerned, the law must strike a balance between rival interests and it should try to be just to all. The law ought not to be unjust to one and give a disproportionate benefit or protection to another section of the society. When there is shortage of accommodation it is desirable, nay, necessary that some protection should be given to the tenants in order to ensure that they are not exploited. At the same time such a law has to be revised periodically so as to ensure that a disproportionately larger benefit than the one which was intended is not given to the tenants. It is not as if the government does not take remedial measures to try and off set the effects of inflation. In order to provide fair wage to the salaried employees the government provides for payment of dearness and other allowances from time to time. Surprisingly this principle is lost sight of while providing for increase in the standard rent the increases made even in 1987 are not adequate, fair or just and the provisions continue to be arbitrary in today's context." "When enacting socially progressive legislation the need is greater to approach the problem from a holistic perspective and not to have narrow or short sighted parochial approach. Giving a greater than due emphasis to a vocal section of society results not merely in the miscarriage of justice but in the abdication of responsibility of the legislative authority. Social Legislation is treated with

deference by the Courts not merely because the Legislature represents the people but also because in representing them the entire spectrum of views is expected to be taken into account. The Legislature is not shackled by the same constraints as the courts of law. But its power is coupled with a responsibility. It is also the responsibility of the courts to look at legislation from the altar of Article 14 of the Constitution. This Article is intended, as is obvious from its words, to check this tendency; giving undue preference to some over others."

12. In *Joginder Pal vs. Naval Kishore Behal* [2002 (5) SCC 397], the Court after noticing several judicial precedents on the subject observed as under:

"The rent control legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The legislative intent has to be respected by the courts while interpreting the laws. But it is being uncharitable to legislatures if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants, go to the extent of being unfair to the landlords. The legislature is fair to the tenants and to the landlords - both. The courts have to adopt a reasonable and balanced approach while interpreting rent control legislations starting with an assumption that an equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interest of the landlord the court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlords too are weak and feeble and feel humble. [Emphasis added]"

64. The decision in *Gian Devi* (supra) was also considered by the Supreme Court in the said judgment in *Satyawati Sharma* (supra) and it was observed:

In paragraph 34 of the judgment, the Court highlighted difference between the residential and commercial tenancies and concluded that the legislature could never have intended that the landlord would be entitled to recover possession of the premises or the building let for commercial purposes on the death of the tenant of the commercial tenancies, even if no ground for eviction as prescribed in the rent Act is made out. In the concluding part of the judgment, the Court took cognizance of the absence of provision for eviction of the tenant of non-residential premises even when the same are bona fide required by the landlord for his use or occupation and observed:

"Before concluding, there is one aspect on which we consider it desirable to make certain observations. The owner of any premises, whether residential or commercial, let out to any tenant, is permitted by the Rent Control Acts to seek eviction of the tenant only on the grounds specified in the Act, entitling the landlord to evict the tenant from the premises. The restrictions on the power of the landlords in the matter of recovery of possession of the premises let out by him to a tenant have been imposed for the benefit of the tenants. In spite of various restrictions put on the landlord's right to recover possession of the premises from a tenant, the right of the landlord to recover possession of the premises from the tenant for the bona fide need of the premises by the landlord is recognised by the Act, in case of residential premises. A landlord may let out the premises under various circumstances. Usually a landlord lets out the premises when he does not need it for own use. Circumstances may change and a situation may arise when the landlord may require the premises let out by him for his own use. It is just and proper that when the landlord requires the premises bona fide for his own use and occupation, the landlord should be entitled to recover the possession of the premises which continues to be his property in spite of his letting out the same to a tenant. The Legislature in its wisdom did recognise this fact and the Legislature has provided that bona fide requirement of the landlord for his own use will be a legitimate ground under the Act for the eviction of his tenant from any residential premises. This ground is, however,

confined to residential premises and is not made available in case of commercial premises. A landlord who lets out commercial premises to a tenant under certain circumstances may need bona fide the premises for his own use under changed conditions on some future date should not in fairness be deprived of his right to recover the commercial premises. Bona fide need of the landlord will stand very much on the same footing in regard to either class of premises, residential or commercial. We, therefore, suggest that Legislature may consider the advisability of making the bona fide requirement of the landlord a ground of eviction in respect of commercial premises as well."

19. What is significant to be noted is that in para 34 of the aforementioned judgment, the distinction between residential and non-residential tenancies was made in the context of the rights of the heirs of the tenant to continue to enjoy the protection envisaged under Section 14(1). The Court was of the view that the heirs of the tenants of the commercial premises cannot be deprived of the protection else the family of the tenant may be brought on road or deprived of the only source of livelihood. The Court also opined that if the heirs of the individual tenants of commercial tenancies are deprived of the protection, extremely anomalous consequences will ensue because the companies, corporations and juridical entities carrying on business or commercial activities in rented premises will continue to enjoy the protection even after the change of management, but the heirs of individual tenants will be denuded of similar protection. At the same time, the Court noted that the landlord of a premises let for residential purpose may bona fide require the same for his own use or the use of his dependent family members and observed that the legislature should remove apparent discrimination between residential and non-residential tenancies when the landlord bona fide requires the same. If the observations contained in para 34 are read in any other manner, the same would become totally incompatible with the observation contained in the penultimate paragraph of the judgment and we do not see

any reason for adopting such course., more so, because the later part of the judgment has been relied in Harbilas Rai Bansal vs. State of Punjab (supra) and Rakesh Vij vs. Dr. Raminder Pal Singh Sethi (supra)

[Emphasis supplied].

65. Even though the reasoning of *Gian Devi* (supra) that commercial premises require higher protection and, therefore, tenancies of commercial premises were not covered by Section 2(1)(iii) of the Act was before the Supreme Court in *Satyawati* (supra), the Supreme Court still interpreted Section 14(1)(e) to cover commercial tenancies as well, for eviction of tenant on grounds of bona fide requirement.

66. In the light of the above discussion, in my view, the conditions prescribed in Section 2(1)(iii) were satisfied in the present case, and on demise of Dr. G.S. Chawla (after service of a notice of termination of his tenancy), only a limited right devolved upon his widow in terms of Section 2(1)(iii). Even if it were to be assumed that Mrs. Ram Piari Chawla was financially dependent on her husband-the original tenant Dr. Gopal Singh Chawla, the protection under the Act in respect of the suit premises ended upon her demise. The respondent-Narinder Pal Singh Chawla certainly did not inherit the tenancy rights in the suit property upon the demise of his father Dr. G.S.Chawla, as the said right was inherited by late Mrs. Ram Piari Chawla to the exclusion of the other heirs of late Dr. G.S.Chawla.

67. Consequently, the aforesaid question of law framed in paragraph 27 of this judgment is answered in favour of the appellant by holding that Section 2(1)(iii) of the Act would be applicable in a case where the tenancy premises

is residential-cum-professional, or residential-cum-commercial and where the nature of the tenanted premises is residential and no part of it is, by its very nature purely commercial, and it is used for residential-cum-commercial purpose by the tenant. As already noted above, all other issues/ questions raised by either of the parties do not survive on account of the aforesaid answer given to the substantial question of law framed in para 27 above, as the said questions are only incidental and in view of the conclusion drawn by this Court, even if the said questions/ issues are decided in favour of the respondent, the same would not come in the way of the appellant/ plaintiff in succeeding in the present second appeal and obtaining the decree for possession, as prayed for in the suit in question.

68. During the course of his submissions, learned counsel for the respondent Mr. Bhuchar has sought to raise the issue of non-maintainability of the suit in question on the ground that the plaintiff withdrew the earlier eviction petition No.151/1980, i.e. the “*third case*” and the suit for declaration, i.e. the “*fourth case*” and thus, the present suit was barred, *inter alia*, under Order XXIII Rule 1 CPC. He also sought to urge the plea of estoppel against the plaintiff on the ground that the plaintiff had given up the plea with regard to the purpose of letting and the valid termination of the lease during the lifetime of Dr. G.S. Chawla, the original tenant by withdrawing the aforesaid proceedings, i.e. the “*third case*” and “*fourth case*”.

69. On the issue of estoppel, the Trial Court and the First Appellate Court have returned consistent findings in favour of the appellant/ plaintiff. Similarly, on the issue of maintainability of the suit, both courts have

decided in favour of the appellant/ plaintiff. In my view, no substantial question of law arise on the said aspects as the said issue are squarely covered by the decisions relied upon by Mr. Gupta in *Man Mohan Singh Bhalla Vs. H.L. Mehra (HUF) through its Karta and Others*, (1987) 31 DLT 134; *Vimlesh Kumari Kulshrestha Vs. Sambhajirao and Another*, (2008) 5 SCC 58; *Rohit Kumar and Another Vs. A.S. Chugh*, (2009) 107 DRJ 466; and *Parma Nand Vs. Mani Ram Aggarwal and Others*, RFA No.720/2005 decided on 28.03.2012 by this Court. I may observe that the “*fifth case*”, i.e. the present suit was instituted by the appellant/ plaintiff prior to the withdrawal of the “*fourth case*” and it is well-settled that withdrawal of an eviction petition preferred under the Act would not bar the filing of a civil suit subsequently. The eviction petition, i.e. the “*third case*” had been preferred against the original tenant Dr.G.S. Chawla and the said proceeding was withdrawn on account of his death. The “*fifth case*”, i.e. the suit in question was premised on a fresh cause of action which arose on account of the demise of the original tenant Dr. G.S. Chawla by placing reliance on Section 2(1)(iii) of the Act. I do not consider it necessary to delve any further into the aforesaid aspects as they do not raise a substantial question of law, on account of the fact that the law is well-settled on all the issues raised by Mr. Bhuchar, learned counsel for the respondent.

70. Accordingly, the present second appeals are allowed, the impugned judgment and decree dated 20.03.2012 passed by the learned Additional District Judge (Central) 12, Tis Hazari Courts, Delhi, in RCA No. 15/2006, and the judgment and decree dated 01.03.2006 passed by the learned Civil Judge, Delhi, in suit No. 203/83/98 set aside, and; the suit of the plaintiff

being Suit No.203/83/98 is decreed in terms of the prayers made therein.
The plaintiff shall be entitled to costs thereon.

VIPIN SANGHI, J.

JULY 11, 2016