

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

% *Judgment Reserved on: January 25, 2017*
Judgment Delivered on: February 06, 2017

+ **RSA 95/2016**

PREM PRAKASH SABHERWAL Appellant
Through: Mr.Brijendra Kulshrestha, Advocate

versus

R C AGARWAL & ANR Respondents
Through: Mr.Sanjeev Sindhvani, Sr. Advocate
with Mr.Siddharth Aggarwal, Adv.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

RSA 95/2016

1. This Regular Second Appeal under Section 100 of CPC is filed by the appellant/landlord impugning the concurrent judgment of the Courts below i.e. of the trial Court dated 1st October, 2014 and of the First Appellate Court dated 6th November, 2015 by which prayers by the appellant/plaintiff for declaration, mandatory injunction and permanent injunction have been declined.

2. I have heard Mr.Brijendra Kulshrestha, Advocate for the appellant and Mr.Sanjeev Sindhvani, Senior Advocate for the respondents.

3. Mr.Brijendra Kulshrestha, learned counsel for the appellant has contended that the premises was let out for residential purpose to the Managing Director Sh.R.C.Agarwal (D-1) and the rent was paid by the AGSONS Agencies (I) Pvt.Ltd. (D-2). As the rent can be paid on behalf of

the tenant by any other person/company but it does not have the effect that the person/company making the payment becomes the tenant. Another contention raised on behalf of the appellant is that if the Company was a tenant, then a board resolution authorizing the Company to take the premises on rent for commercial use must have been passed. The Company being a juristic entity, cannot act by entering into an oral contract. Induction of Ms.Usha Gupta in the suit premises amounts to subletting by tenant. It has also been urged before this Court that the Company was not having its registered office at the given address as it was used for residential purpose only. But subsequently, commercial activities started to which the landlord objected but no heed was paid by the tenant thereby compelling him to initiate legal action.

4. Apart from making oral submissions, written submissions have been filed on behalf of the respondents/tenant. Mr.Sanjeev Sindhvani, learned senior counsel appearing on behalf of the respondents has drawn the attention of this Court to the order dated 13th March, 2013 vide which the amendment seeking declaration on the basis of document titled as 'Hiring of House' Ex.PW1/3 dated 1st November, 1979 was declined. Mr.Sanjeev Sindhvani, learned Senior Counsel has also drawn the attention of the Court to the averments made in eviction petitions wherein the tenancy has been pleaded to be oral and PW-1 Prem Prakash Sabherwal, during his cross examination in eviction petition, stated that the commercial activities are being carried on for about 25 years which if calculated from the date of deposition, goes to inception of the tenancy. It has also been argued that the Company could have entered into an oral contract with a private person as had been done in this case for which no board resolution was required. No structural changes have been made by the respondents and for renovation, no

permission is required from the landlord. The property has not been sublet to anyone. Mr. Sanjeev Sindhvani, learned Senior Advocate contended that there is concurrent findings on the facts on all the issues by the Courts below and no substantial question of law is involved in this case. In view of the limited scope within which the Court can consider the Regular Second Appeal, the same may be dismissed as the second appeal does not lie on question of fact or on law but only on existence of substantial question of law. It has also been contended that this Court cannot grant any relief to the appellant which is beyond pleading, any evidence which is led beyond pleadings, cannot be looked into to grant relief to the landlord hence exhibit PW-1/3 has to be excluded from the consideration zone as the landlord was never permitted to plead in respect of the said documents even when the application seeking amendment of plaint was partly allowed by the learned Trial Court and amendment seeking declaration on the basis of document titled as 'Hiring of House' Ex.PW1/3 dated 1st November, 1979 was declined for the reason that it was not part of the pleading and the trial has begun.

5. In support of his submissions, learned Senior Counsel for the respondents has relied on following judgments:-

- (i) Union of India Vs. Ibrahim Uddin, III(2012) CLT 142(SC);
- (ii) M/s Sociedade de foment Industrial Ltd. Vs. Ravindranath Subraya Kamat; AIR 1999 BOMBAY 158;
- (iii) Asha Dass Vs. Dunlop India Ltd., DRJ 1988 (15) 256;
- (iv) Bachhaj Nahar Vs. Nilimi Mandal & Anr., (2008) 17 SCC 491;
- (v) Syeda Rahimunnisa Vs. Malan Bi, 2016 (9) JT 534

6. The following substantial question of law was formulated on 25th January, 2017:-

'Whether the findings of the Courts below suffers from illegality

or perversity?'

7. To understand the real controversy between the parties it is necessary to refer to the averments made by the parties in their pleadings and the evidence led to prove their respective pleas.

8. Civil Suit No.286/14 (Old No.69/08) was filed by the appellant/plaintiff impleading Sh.R.C.Agarwal as defendant No.1 and AGSONS Agencies (I) Pvt.Ltd. as defendant No.2 pleading as under:-

(i) He is owner/landlord of property No. K-1, Green Park Extension, New Delhi-110016 for which the plot was purchased vide registered sale deed on 21st August, 1961, construction was raised in the year 1963 and since then he is residing on the ground floor of the said property.

(ii) On 1st November, 1979, Sh.R.C.Agarwal (defendant No.1) was inducted as tenant in respect of the first floor and second floor of the said property on monthly rent of ₹1525/- per month. The second floor consisted of only servant room and open toilet.

(iii) Sh. R.C.Agarwal, defendant No.1 was Managing Director of AGSONS Agencies (I) Pvt.Ltd. (defendant No.2) and the premises was let out for residence of the Managing Director for which rent was paid by the Company.

(iv) The residential premises was later on converted by the defendants to commercial use without written or oral consent of the landlord.

(v) Eviction petitions No.33/2008 (old No.1537/2006) and 619/2007 (Old No.150/2005) have already been filed against the defendants/tenants.

(vi) The defendants are carrying on renovation work without the consent of the landlord with unlawful intention and for sub-letting the premises and also to create third party interest in the suit property.

(vii) The plaintiff/landlord has not been allowed to physically inspect the

tenanted premises and he being a senior citizen, is not able to make forced entry for the purpose of inspection.

9. The prayer clause of the plaint in Civil Suit No.286/14 (Old No.69/08) read as under:-

(i) *That the plaintiff may kindly be declared as landlord of defendant No.1 w.r.t. tenanted premises, Property No.K-1, (1st Floor) and servant room with open toilet on the 2nd floor situated in Green Park Extension, N.Delhi, which is more clearly shown in correct site plan filed on record and defendants are not entitled to renovate or sub-let the said tenanted premises in question without written consent of the plaintiff.*

(ii) *Pass a decree of permanent injunction in favour of the plaintiff and against the defendants to restrain the same, with their agents, assignees, representatives or any person representing them from carrying out any renovation work in said premises as well as creating any type of 3rd party interest in the said property No.K-1, 1st Floor and servant room and open toilet situated on the 2nd floor without written consent of plaintiff.*

(iii) *Pass the directions in the form of mandatory injunction for restraining the defendants for any ingress or egress of any goods inside the premises belonging to any 3rd party.*

(iv) *Pass such other or further order which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case to protect the interest of the plaintiff, who is senior citizen and his having continuous threat of said illegal activities of the defendants.*

10. A joint written statement was filed by defendants No.1 and 2 wherein material averments have been made in para 2, 4 and 6 which read as under:-

“2. Para 2 of the plaint is wrong and is denied. It is denied that defendant No.1 was inducted as tenant on 1.11.79 in the first floor of the said property along with servant room and open

toilet on the 2nd floor at the rent of ₹1525/- per month. It is denied that the defendant No.1 was the Managing Director of the defendant No.2 and hence the rent was being paid by the said company for residence of its Managing Director. It is denied that due to passage of time the user of the said residential premises was converted by defendants to commercial without taking consent in writing or oral from the plaintiff herein till date. The site plan filed by the plaintiff is incorrect. It is submitted that the defendant no.1 was never inducted as a tenant in the premises in dispute. The defendant No.2 was inducted as a tenant in the first floor and the entire second floor of the property in dispute by Sh.G.S.Sabharwal. Later on, the defendant no.2 attorned to the plaintiff and started paying rent to him. The premises as let out to defendant no.2 has been shown in red in the site plan annexed as Annexure A to this written statement. The said premises were let out to the defendant no.2 for residential-cum-commercial purpose and has always been used for residential-cum-commercial purpose by the defendant no.2. The condition of the premises as existing at present is correctly shown in Annexure A.

Para 4 of the plaint is wrong and is denied. It is denied that the defendants recently shifted their office as well as the family to H-47 stated above from the said rented premises and now the said rented premises on the first floor with servant room and open toilet is almost vacant. The defendant no.1 never remained in possession of the said portion at any time. The allegations that it has come to the knowledge by gathering information that the defendant are going to sublet the property are false and vague. The defendant no.2 never had any intention to sublet the property. It is submitted that only repairs to the existing construction are being carried on by the defendant no.2. The defendant no.2 has the legal right to repair and carry out renovations to the tenanted portion.

6. Para 6 of the plaint is wrong and denied. The defendant no.2 has the legal right to repair and renovate the tenanted premises. The defendant No.2 does not have and never had any intention to create any third party interest. The tenanted portion was let out to the defendant no.2 for residential-cum-commercial

purposes and is being used for both the said purposes.”

11. On the pleadings of the parties, learned Trial Court settled the following issues on 4th July, 2009:-

(i) *Whether the defendant No.1 was inducted as a tenant in the suit property by the plaintiff and there is no relationship of landlord and tenant between the plaintiff and defendant No.2?OPP*

(ii) *Whether the plaintiff has not approached this Court with clean hands? OPD*

(iii) *Whether the defendants are entitled to renovate the suit property without the written consent of the plaintiff? OPD*

(iv) *Whether the plaintiff is entitled for any relief, if so, what relief?*

12. The plaintiff himself appeared in the witness box and examined as PW-1. On behalf of the defendants while Sh.Dinesh Sharma was examined as DW-1 and defendant No.1 Sh.R.C.Agarwal examined himself as DW-2.

13. Vide judgment dated 1st October, 2014, the learned Trial Court returned the findings issue wise as:-

Issue No.1

Relying on the rent receipt exhibit PW-1/D1 and rejecting the document titled as ‘Hiring of House’ Ex.PW1/3 filed by the plaintiff, learned Trial Court held that the AGSONS Agencies (I) Pvt. Ltd. - defendant No.2 was the tenant in the suit property.

Issue No.2

Referring to the admission of the plaintiff that site plan Ex.PW1/D2 filed by the tenant is correct and that factum of oral tenancy was concealed by the appellant/plaintiff though it was made basis of eviction proceedings, this issue was decided against the plaintiff.

Issue No.3

On this issue, the learned Trial Court was of the view that renovation was only for restitution of the suit property to its original position to keep the same intact for which tenant need not wait for the consent of the landlord. Conversion of servant quarter into office was not considered to be as an addition or alternation made in the structural status of the suit property.

Issue No.4

The learned Trial Court has just recorded that as a consequence of findings on issue No.1 to 3, the suit is dismissed.

14. The First Appellate Court while concurring with the findings of learned Trial Court held that the appellant is not entitled to any relief as the misuse apparently had been acquiesced which is evident as appellant had been confronted with his cross-examination in EP No.219/09 recorded on 18.11.2009 Ex.PW1/D3 wherein he has admitted that the premises was being used for residential and commercial purposes over a period of 25 years. The learned Appellate Court has further held that it is settled law that having acquiesced to the said misuse, the appellant cannot seek relief of equity after a period of 25 years unless he is able to satisfy the Court as to why he failed to approach the Court for such a long time.

15. I have considered the rival contentions and carefully gone through the record.

16. During the course of hearing, in view of the nature of the prayers made by the landlord, it was put to the respondents that even assuming for the sake of arguments that oral tenancy was for residential cum commercial purpose, the property being situated in a residential area where commercial use is prohibited, if no structural change is made or is intended to be made in the tenanted premises and there is no intention to sublet the same, the appeal

can be disposed of confirming the finding on issue no.1 that the Company is a tenant. But tenanted premises being in the residential area will be used only for residential purpose, renovation can be carried on with no structural changes so as to make it suitable for its commercial use.

17. The respondents expressed unwillingness to make any such statement, may be due to the two concurrent judgments declining the relief to the landlord and certain admissions made by the landlord in eviction petition about the property being used for commercial purpose for about 25 years. It appears that respondents are interested to continue the stalemate for the reason that it suits them and their requirements. It is surprising that two floors on a plot of 500 sq.yds. in a posh colony like Green Park are being enjoyed by the respondents on payment of meager rent of ₹1525/- since 1979 without any increase for more than 37 years. This is evident on the basis of admission by DW-2 (defendant No.) that till date rent continues to be ₹1525/- per month.

18. The right of the tenant to get the property renovated cannot be disputed. There cannot be two opinions about the right of the tenant to get the property renovated to keep it habitable for which no permission is required from the landlord.

19. The contention of the respondent that this Court cannot interfere with the concurrent finding by the Courts below in exercise of jurisdiction under Section 100 of Code of Civil Procedure also does not seem to be fully correct. In the decision reported as Union of India vs. Ibrahim Uddin & Anr. (2012) 8 SCC 148 the Apex Court has observed as under:-

‘54. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration

of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. (Vide: Jagdish Singh v. Nathu Singh MANU/SC/0313/1992 : AIR 1992 SC 1604; Smt. Prativa Devi (Smt.) v. T.V. Krishnan, MANU/SC/0811/1987 : (1996) 5 SCC 353; Satya Gupta (Smt.) @ Madhu Gupta v. Brijesh Kumar, MANU/SC/0513/1998 : (1998) 6 SCC 423; Ragavendra Kumar v. Firm Prem Machinery & Company MANU/SC/0010/2000 : AIR 2000 SC 534; Molar Mal (dead) through Lrs. v. Kay Iron Works Pvt. Ltd. MANU/SC/0179/2000 : AIR 2000 SC 1261; Bharatha Matha and Anr. v. R. Vijaya Renganathan and Ors. MANU/SC/0400/2010 : AIR 2010 SC 2685; and Dinesh Kumar v. Yusuf Ali, MANU/SC/0407/2010 : (2010) 12 SCC 740).

55. In Jai Singh v. Shakuntala MANU/SC/0187/2002 : AIR 2002 SC 1428, this Court held that it is permissible to interfere even on question of fact but it may be only in "very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible it is a rarity rather than a regularity and thus in fine it can thus be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection.

Similar view has been taken in the case of Kashmir Singh v. Harnam Singh and Anr. MANU/SC/7267/2008 : AIR 2008 SC 1749.

56. Declaration of relief is always discretionary. If the discretion is not exercised by the lower court "in the spirit of the statute or fairly or honestly or according to the rules of reason and justice", the order passed by the lower court can be reversed by the superior court. (See: Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg and Anr. MANU/SC/0443/1976 : AIR 1977 SC 747).

57. There may be exceptional circumstances where the High Court is compelled to interfere, notwithstanding the limitation imposed by the wording of Section 100 Code of Civil Procedure. It may be necessary to do so for the reason that after all the purpose of the establishment of courts of justice is

to render justice between the parties, though the High Court is bound to act with circumspection while exercising such jurisdiction. In second appeal the court frames the substantial question of law at the time of admission of the appeal and the Court is required to answer all the said questions unless the appeal is finally decided on one or two of those questions or the court comes to the conclusion that the question(s) framed could not be the substantial question(s) of law. There is no prohibition in law to frame the additional substantial question of law if the need so arises at the time of the final hearing of the appeal.'

20. The findings of the Courts below on issues No.1 and 3 call for no interference. I concur with the findings as from the receipt Ex.PW1/D1 it is clear that the tenant has been mentioned as M/s Agsons Agencies (I) Pvt. Ltd. and the tenant has a right to get the property renovated to make it suitable for habitation.

21. But while deciding issues No.2 and 4 and the findings that the appellant/plaintiff had not approached the Court with clean hands and he is not entitled to any relief, the following aspects were required to be considered by the Courts below which stand proved on the basis of the admitted documents of the respondent/tenant himself i.e. the rent receipt Ex.PW1/D1, site plan Ex.PW1/D2 and certain admissions made by DW-2 (defendant No.1 Sh.R.C.Agarwal) during his cross examination about the user of suit property:-

- (i) Whether suit property was let out to the Company for purpose of residence of Managing Director, Sh.R.C.Agarwal, defendant No.1 or for commercial use?
- (ii) Whether since inception, the suit property has been used for commercial purpose or it was used for residence by the Managing Director?

(iii) Whether the oral objection by the landlord to the commercial use of the tenanted premises has the effect of acquiescence and the tenant can be permitted to continue the misuse for commercial purpose?

22. The observation of the Courts below that the appellant/plaintiff had approached the Court with unclean hands is not supported from the record. Here it needs to be noted that the landlord is a senior citizen and he specifically pleaded that he was not permitted to inspect the property to know about structural changes. In that circumstance it was not proper for the Courts below to observe that he has not approached the Court with clean hands. So far as creation of third party interest by the tenant is concerned, this apprehension has arisen in the mind of the landlord when Ms.Usha Gupta shifted there. Induction of another person and huge renovation led to a reasonable apprehension in his mind that not only the property is being used as commercial but even third party interest is being created by making Ms.Usha Gupta to shift there. The respondents/tenants could have made a statement clarifying the position that Ms.Usha Gupta was Director of the same Company and purpose of use was only residential so as to remove apprehension in the mind of the landlord. Unfortunately, the respondents/tenant seem to be more interested in continuing the litigation though it could have been resolved before the learned Trial Court on the first date of hearing by making statement that there is no structural changes, no third party interest is being created. As noted earlier, the respondents seem to be enjoying this litigation as by paying nominal sum of ₹1525/- per month for two floors in Green Park Extension constructed on a plot of 500 sq.yds., they are enjoying the premises for commercial purpose without increase of even a penny since 1979 till date. This situation cannot be allowed to continue any further. From the evidence brought on record which includes

admission of the respondents both the Courts below erred in returning a finding that purpose for letting out was residence-cum-commercial or that the Company being tenant, it can induct anyone in the premises taken by Sh.R.C.Agarwal in his capacity as Managing Director of the company for residence and had admitted that all his six children were residing, educated and got married from this very property ruling out the purpose of letting to be commercial.

23. The appellant has placed on record the copy of the registered sale deed Ex.PW1/1 dated 21st August, 1961 which has been executed by Urban Improvement Housing and Construction Company Pvt. Ltd. in respect of plot No.1, Block K measuring 500 sq.yards in the residential colony known as Green Park Extension. This establishes that the suit property is situated in a residential colony. It is the admitted case of the parties, as can be made out from the respective pleadings not only in the eviction petition but also in the Civil Suit No.286/2014 that when it was let out on 1st November, 1979, no rent agreement was executed. In the absence of execution of any rent agreement and the document titled as 'Hiring of house' Ex.PW1/3 has not been admitted in evidence by both the Courts below being not initially pleaded, while allowing amendment the prayer to plead about this document has been specifically rejected and that order has attained finality, denial of execution of any such document by the tenant, this Court has to take into consideration the oral and documentary evidence produced by the parties to ascertain the purpose of letting.

24. From the site plan Exhibit PW-1/D2 and the statement of DW-2 Sh.R.C.Agarwal it is not disputed that the suit property consists of three bedrooms, two bathrooms, one drawing cum dining room with kitchen, lobby and balcony and DW2 himself has six children who had been living

with him since inception of the tenancy therefore it seems highly improbable that the premises could have been used for commercial purpose.

25. The rent receipt Ex.PW1/D1 dated 10th August, 2008 has been placed on record by the tenant and confronted to the landlord during his cross-examination. The rent receipt exhibit PW-1/D1 is reproduced as under:-

“Property of Shri P.P.Sabherwal
Receipt No. **Dated:** 10-08-2008
Received with thanks from **M/s Agsons Agencies (I) Pvt. Ltd.**
..... **Tenant**
The sum of ₹ -One Thousand five Hundred Twenty Five only-
(cheque No. 743583 Dated 9-08-08 of SBI South Extn.-I)
L.Balance ₹
Rent for August 2008 ₹ 1525/-
House No.K-1, F.F. & Barsati Block K-1, Green Park
Extension
House Tax **Electric & Meter Rent**
Water Tax **Total**
Balance
₹ 1525/- Signature of Property Owner”

26. In this rent receipt exhibit PW-1/D1 the tenant has been shown as Company and it is in respect of **House No. K-1, F.F. & Barsati Block K-1, Green Park Extension**. This rent receipt is for ₹1525/- for the month of August, 2008 and payment has been received by way of cheque from the Company - defendant No.2. Once the suit property has been described as house it clearly establishes that the purpose of letting out was residential and not commercial. Any premises let out for commercial purpose is not to be described as house.

27. Cross-examination of DW-2 Sh.R.C.Agarwal is relevant to resolve the controversy about the user of the property. While admitting that he is

Managing Director of the Company since inception till date of his examination (i.e. 19th July, 2014), his cross-examination reads as under:-

*“From beginning of the company till date I am Managing Director, AGSONS Agencies India Pvt. Ltd., have passed a resolution in favour of Dinesh Sharma to represent the present case. I can produce the board of resolution if so directed. There are four directors in defendant No.2 company namely Sh.R.C.Aggarwal, Ms.Rakhi Aggarwal, Dr.Usha Gupta and Mr.Ravi Aggarwal. There is no other sister concerned of the defendant No.2. usha Gupta became the Director in December 2008-09. It is wrong to suggest that after filing of this case, Usha Gupta was appointed as Director. I do not know any M/s Himgiri Enterprises nor I am concerned with it. It is wrong to suggest that the correspondence in the name of M/s Himgiri Enterprises is also addressed and received at the address of the suit property. It is wrong to suggest that I am also running company with name of M/s Bharat Construction Company from the same address. I am not aware of the registered office of M/s Himgiri and Bharat Construction Company. **The defendant no.2 is the tenant in the suit premises which is having its registered office from the said premises and R.C.Aggarwal, Managing Director is residing in the said premises with family. I have one son and five daughters. It is correct that all the son and daughters were educated and married from the same house. It is wrong to suggest that defendant No.2 could not be accommodated in the suit premises as any family residing there in was a large family. Vol. Defendant No.2 was the only tenant in the said suit premises.***

XXXX deferred as not time left.

RO & AC

Sd/-

*CJ-04 (South)/Saket Courts
New Delhi/19.07.2014*

DW-2 Sh.R.C.Aggarwal. Recalled for further cross examination after 19.07.2014.

XXXXX by Sh. Brijendra Kulshrestha, learned counsel for plaintiff

*I have never purchased property bearing No.H-47, Green Park Extension and K-22, Green Park, New Delhi. It is wrong to suggest that I have purchased the above said property. It is wrong to suggest I have built flats in property no. K-22, Green Park, New Delhi or that shifted office of defendant No.2 in the suit property without permission of the plaintiff or that same is exclusively use for commercial purpose. **I do not recollect when the registered office of the company has been entered into the record of Registrar of Companies at the address of suit property. It is wrong to suggest that I have not taken the permission for showing the registered office of defendant No.2 at suit premises.***

Further cross is deferred as no time left.

RO & AC

Sd/-

CJ-04 (South)/Saket Courts
New Delhi/26.07.2014

DW-2 Sh. R.C.Agarwal (recalled for further cross examination as deferred on 26.07.2014)

On SA,

XXXXX by Sh. Brijendra Kulshrestha, learned counsel for plaintiff

The suit property is for purposes of residential as well as commercial also. I am not aware whether the electricity and water connection installed in the suit premises if for residential purpose. It is wrong to suggest that I am deposing falsely that I am not aware as I am paying the charges for both electricity as well as water as use for residence. Ex.PW-1/3 is fabricated document and the same does not bears my signatures. The office of defendant No.2 is at the suit property since beginning. It is wrong to suggest that office of defendant No.2 was at D-100, East of Kailash, New Delhi. It is correct that factory of defendant no.2 was at 65, Industrial Estate, Mehrauli Road, Gurgaon. There was no written NOC by the plaintiff allowing the defendant for running the suit premises for commercial purposes. I am not aware if the company has passed any resolution to shift the office at suit premises. It is wrong to suggest that I have done construction and alteration on the 1st and 2nd floor of the suit property. I cannot recollect when Usha Gupta entered in the tenanted suit premises.

*Defendant No.2 has never shifted to H-47, Green Park Extension, New Delhi. The affidavit was prepared under my instruction on behalf of the Company. **It is wrong to suggest that the company has paid the rent for the purposes of my residence.** It is wrong to suggest that the company has not paid the rent since the year 2005. It is wrong to suggest that no other person live in tenanted premises except Usha Gupta or that amounts to create any third party interest in the suit property. It is wrong to suggest that Usha Gupta was appointed as Director only after filing of this suit. Usha Gupta remained in the suit property for one year and thereafter she left the suit property but I do not recollect the date. It is wrong to suggest that I have violated the order of Hon'ble Court dated 13th May, 2010. **The Company is occupying the suit premises and also I am staying there with my family as on date including my son Ravi Aggarwal.** It is wrong to suggest that he is practicing as CA qualified. It is wrong to suggest that I am deposing falsely.*

RO & AC

Sd/-

CJ-04 (South)/Saket Courts
New Delhi/20.08.2014

I close my DE in affirmative.

RO & AC

Sd/-

CJ-04 (South)/Saket Courts
New Delhi/20.08.2014”

28. The rent receipt Ex.PW1/D1 being an admitted document produced by the respondents/tenant and from cross examination of DW-2 Sh.R.C.Agarwal (D-1), it is proved that:-

(i) The first floor of the suit property has admittedly been used by Sh.R.C.Agarwal for his family which consisted of him, his wife and six children meaning thereby eight family members were accommodated in a three bedroom accommodation on first floor. Despite the fact that he is the Managing Director of the company since inception, he has not been able to place on record any document showing where was the registered office of defendant No.2 company when this premises was taken on rent and when the

registered office was shifted to suit property. He has very categorically admitted that all his children have received education and got married from this property. He has also admitted that the electricity and water connection used in the suit premises were not commercial but **domestic**.

(ii) No doubt in the eviction petition the plea of landlord had been that tenancy was oral which is also the case of the respondent/tenant but the purpose of tenancy has to be gathered from the testimony of the landlord as well DW-2 Sh.R.C.Agarwal - Managing Director of defendant No.2. Statement of DW-1, Sh.Dinesh Sharma is wholly irrelevant for the reason that oral tenancy was in the year 1979 and he joined the employment with the defendant No.2 only in the year 1989. It being an oral tenancy, the surrounding circumstances like nature of the premises and its construction, the dominant use since inception and permissible under the condition of the lease deed have to be examined for inferring the purpose of letting out.

(iii) Surprisingly DW-2, Sh.R.C.Agarwal, the Managing Director of the Company preferred to withhold all relevant documents in power and possession of the Company which could have thrown some light on the purpose for which the first and second floor of the property No.K-1, Green Park Extension, New Delhi-110016 was taken on rent, since when use for commercial purpose began or registered office of the Company shifted to this address which has to be documented. Obviously, the Company was in existence at the time of entering into an oral agreement of tenancy having registered office at some other address (not disclosed) but the subsequent events like changing of the registered office or putting it to commercial use or under what head the rent was paid by the Company and shown in the accounts of the company were something in the personal knowledge of the Managing Director (DW-2) and in possession of tenant company.

(iv) It being a case of oral tenancy, even if it is assumed for the sake of arguments that tenancy was for residential-cum-commercial purpose, suffice it to note that commercial use for a longer period even with acquiescence or consent cannot have the effect of letting the tenant to continue with the misuse and convert his act of misfeasance into an advantageous situation for him.

(v) Even if it is assumed for the sake of arguments that for a period of more than 25 years i.e. since inception of the tenancy, the tenant had been using it in connection with his functioning as Managing Director of the company, that in itself is not sufficient to change the nature of the building or its letting purpose as held in Girdhari Lal vs. The Life Insurance Corporation of India and Anr. 1974 RCR (Rent) 467.

(vi) In the case Kidar Nath Sodhi vs. T.R.Kapoor 35 (1988) DLT 408 this Court has noted the factors which can assist in ascertaining letting purpose.

(vii) This Court cannot act as a mute spectator to such a situation. The respondents/tenant had referred the admission of landlord in eviction proceedings that commercial use was for more than 25 years to be interpreted to their advantage. The first appellate Court erred in dismissing the appeal holding that the long misuse had the effect of acquiescence. The First Appellate Court also committed illegality while dismissing the appeal observing that this amounts to acquiescence. The findings of both the Courts below in respect of the user of the property suffer from perversity for the obvious reason that a property situated in a residential area cannot be used for commercial purpose with or without consent of landlord. Accordingly, the findings on issues No.2 and 4 by the Courts below are gravely flawed and cannot be sustained for the above reason.

(viii) The contention of the respondents that the Court cannot grant any relief beyond pleadings has to be construed in consonance with the averments made and relief sought. The effect of dismissal of two suits has resulted in conferring such advantage to the tenant which are not permissible in a residential area specially when admittedly there is conversion of user of the premises from residential to commercial by the tenant. Even if it is assumed for the sake of arguments that the purpose of letting was residential-cum-commercial as argued by learned counsel for the respondent/tenant, undisputedly the suit property is situated in a residential area which is very specifically stated in the sale deed Ex.PW1/1. The tenant being a company and the landlord being fully aware about the sale deed executed in his favour for residential use only, the nature of the construction raised thereon i.e. bedroom, kitchen, drawing room etc. make it fit for residential used only. Irrespective of the fact that he was a party to the breach of conditions under which the land was leased out to him, landlord is not estopped from emphasising that the misuser be discontinued. Thus, inspite of the property being misused for commercial purpose which as per the landlord was objected orally, if the landlord wants to stop such misuse, he can enforce it as there can be no estoppels against the statute.

(ix) The manner in which contradictory stands have been taken by the defendants in the written statement about the purpose for which property was let out or to whom it was let out, the manner in which the renovation work was carried on i.e. by converting the servant room to office room and putting a shed for use of servant, created reasonable apprehension in the mind of the landlord about the change of user of the property.

(x) Though both the Courts below had rightly held that from the rent receipt exhibit PW-1/D2 it is clear that the tenant was the Company and the

landlord was not entitled to seek any declaration that Sh.R.C.Agarwal, the Managing Director was the tenant but at the same time failed to appreciate that despite the Company being the tenant the purpose of letting out was residential only. This fact is borne out from the cross-examination of DW-2 that he along with his wife and six children was accommodated in a three bedroom floor. With such a large family, the floor could be let out only for residential purpose. Thus, both the Courts below have failed to examine the factual aspect of the issue that even Company can take the premises on rent for residential purpose which was only permissible use in that residential colony.

(xi) It is admitted case of the parties that no rent agreement has ever been executed between them. Under Section 46 (1)(b) of the Companies Act, 1956 the Directors of the company who are agents of the company as the company acts through its Directors as its agents, an oral agreement by the Managing Director on behalf of the company could have been entered into with the landlord who falls in the category of a private person for purpose of taking his property on rent.

29. In the absence of any evidence of structural changes being made in the suit property and renovation without structural changes being permissible, the relief of permanent injunction in this regard has rightly been declined by the Courts below.

30. In view of the findings of the Courts below, both the Courts have seriously erred by holding that letting was for commercial purpose thereby permitting the respondents/tenant to perpetuate the misuse which cannot be permitted under the law. The suit property was let out to the Managing Director of the defendant No.2 i.e. AGSONS Agencies (I) Pvt.Ltd. for

residential purpose only in which no third party interest could have been created either by the Managing Director or by the Company.

31. The appellant/plaintiff is entitled to the relief to the extent that the respondents are restrained from using the suit property for any purpose other than residential or creating any third party interest in the suit property.

32. The substantial question of law is answered in favour of the appellant to the above extent and the appeal stands disposed of in above terms.

33. No costs.

34. LCR be sent back alongwith copy of this order.

CM No.12210/2016 (Stay)

Dismissed as infructuous.

FEBRUARY 06, 2017

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**PRATIBHA RANI
(JUDGE)**

