

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

Date of decision: 13th July, 2018.

+ **RSA 60/2018**

LALIT DUTT SHARMA **Appellant**

Through: Mr. Chandra Prakash, Adv.

Versus

LOKESH JASORIA **Respondent**

Through: Mr. Sanjay Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 12th February, 2018 in RCA No.61971/2016 of the Court of Additional District Judge (ADJ)-9 (Central), Tis Hazari Courts, Delhi] of dismissal of First Appeal under Section 96 of the CPC preferred by the appellant against the judgment and decree [dated 13th October, 2016 in Suit No.99591/2016 (Old No.63/2015) of the Court of Civil Judge-11 (Central), Tis Hazari Courts, Delhi], of recovery of possession of property No.1032, Kucha Sharif Beg, Bazar Sita Ram, Delhi-110006 comprising of ground and first floor with arrears of rent, in favour of the respondent/plaintiff and against the appellant/defendant.

2. The appeal came up before this Court first on 16th April, 2018, when on the contention of the counsel for the appellant/defendant that the premises are situated in a slum area within the meaning of the Slum Areas (Improvement and Clearance) Act, 1956 and no permission under Section 19 thereof for recovery of possession from appellant/defendant had been taken, notice of the appeal was ordered to be issued. Vide subsequent *ex-*

parte order dated 18th April, 2018, execution of the decree was stayed.

3. The counsel for the respondent/plaintiff appears.
4. The counsel for the appellant/defendant has been heard and copies of the relevant Trial Court record annexed to the memorandum of appeal have been perused.
5. The following substantial questions of law arise for consideration in this Second Appeal:-

- (I) Whether a tenant covered by the Delhi Rent Control Act, 1958, by non-payment of rent and/or denial of title of landlord, ceases to be a tenant.
- (II) Whether the protection from eviction available to a tenant under Section 19 of the Slum Areas (Improvement & Clearance) Act, 1956 is capable of being waived.
- (III) Whether the plea of jurisdiction of Civil Court to pass a decree of recovery of possession of premises in possession of the defendant at a rent of less than Rs.3,500/- per month, being barred by Section 50 of Delhi Rent Control Act, 1958, if not taken or proved by the defendant, relieves the Court of application thereof.

6. The counsels having been extensively heard, option was given to counsel for the appellant, to either merely have the substantial questions of law framed today and have the appeal listed in the category of 'Regulars', with stay of execution, or to argue the appeal finally today itself. He was also informed that if the appeal is to be ultimately allowed, the respondent/plaintiff, in the interregnum would also not be able to initiate proceedings for eviction of the appellant/defendant under the Rent Act. The counsel for the respondent/plaintiff stated that the appeal may be finally heard and decided today itself. The counsels have also been heard on

the aforesaid substantial questions of law.

7. The respondent/plaintiff instituted the suit, from which this appeal arises, pleading that (i) he had become the owner of the property by purchasing the same from the earlier owner thereof vide Sale Deed registered on 10th March, 2014; (ii) the great grandfather namely Pt. Jagan Nath Sharma of the appellant/defendant was a tenant in the property at a monthly rent of Rs.40/-; (iii) after the death of Pt. Jagan Nath Sharma, his son Manohar Lal Sharma inherited the tenancy rights; (iv) Manohar Lal Sharma also expired leaving four sons namely Chetan Sharma, Guru Dutt Sharma, Dinesh Dutt Sharma and the appellant/defendant; (v) Chetan Sharma and Dinesh Dutt Sharma for long were residing elsewhere and the tenancy rights were inherited only by Guru Dutt Sharma; (vi) Guru Dutt Sharma also expired and on his demise, the tenancy rights devolved on his wife and children; (vii) after the demise of Manohar Lal Sharma, only Guru Dutt Sharma used to pay rent of the premises and thus Guru Dutt Sharma only acquired the tenancy rights and on the demise of Guru Dutt Sharma his wife and children only inherited the tenancy rights; (viii) the appellant/defendant has been residing on the first floor of the property, only as a relative of the tenant and not in any individual capacity; (ix) the legal representatives (LRs) of Guru Dutt Sharma handed over vacant peaceful physical possession of the property to the respondent/plaintiff on 20th June, 2014 and thereafter the appellant/defendant became rank trespasser in the property; (x) the appellant/defendant filed a suit for permanent injunction before the Court of Civil Judge to restrain the respondent/plaintiff from disturbing his possession of the property, claiming himself to have inherited the tenancy rights; (xi) however, the appellant/defendant was a rank

trespasser.

8. The appellant/defendant contested the suit by filing a written statement, pleading (a) that the Civil Judge had no jurisdiction to entertain the suit; (b) that the suit was not properly valued for court fees and jurisdiction; (c) that the suit was bad for non-joinder of parties; (d) that the respondent/plaintiff had not served notice under Section 106 of the Transfer of Property Act, 1882 and which was mandatory; (e) denying that the respondent/plaintiff was the owner of the property; (f) admitting the tenancy at Rs.40/- per month of Pt. Jagan Nath Sharma and after him of Manohar Lal Sharma and contending that on demise of Manohar Lal Sharma, the tenancy rights were inherited by all his four sons including the appellant/defendant and not by Guru Dutt Sharma only; (g) denying that only Guru Dutt Sharma was paying rent; (h) denying that he was a trespasser or did not have any tenancy rights; and, (i) the wife and children of Guru Dutt Sharma were in collusion with the respondent/plaintiff.

9. On the pleadings aforesaid, the following issues were framed in the suit on 27th August, 2015:

- “1. Whether plaintiff is entitled to the decree of possession and recovery of Rs.40,000/- as prayed for? OPP
2. Whether the suit is not properly valued for the purpose of court fees and jurisdiction? OPD
3. Whether the suit is bad for nonjoinder and misjoinder of necessity parties? OPD
4. Relief.”

10. The Suit Court found/observed/held that (i) the respondent/plaintiff would be entitled to the decree only if the claim was not barred by any law;

(ii) if the appellant/defendant were the tenant in the property, then his tenancy would be required to be terminated as per the provisions of the Transfer of Property Act; (iii) the respondent/plaintiff had proved the Sale Deed in his favour and was thus the owner of the property; (iv) the appellant/defendant had admitted that Manohar Lal Sharma was paying rent to Vidya Wati, the then landlord, and claimed that after her death in 1992 nobody came to claim rent or ownership of the property; (v) the appellant/defendant had not deposited any rent in the Court; (vi) however, the respondent/plaintiff having admitted that the grandfather of the appellant/defendant was a tenant, the appellant/defendant, in accordance with *Harish Tandon Vs. Additional District Magistrate, Allahabad* AIR 1995 SC 676, inherited the tenancy rights; (vii) as the appellant/defendant was one of the heirs of the original tenant Pt. Jagan Nath Sharma, therefore the appellant/defendant also inherited the tenancy rights and if the rent was paid by any one joint tenant, the benefit of the tenancy would accrue to all the tenants and in the present case to the appellant/defendant also and the appellant/defendant would not become a trespasser in the property; (viii) even after one of the joint tenants leaves the property, the tenancy would inhere or devolve on the tenant remaining in the property; (ix) since the appellant/defendant was a tenant in the property and the respondent/plaintiff had purchased the property, the respondent/plaintiff became the landlord of the appellant/defendant; (x) the counsel for the appellant/defendant had argued that the tenancy of the appellant/defendant was protected under the provisions of the Delhi Rent Control Act, 1958; (xi) though Transfer of Property Act requires determination of tenancy under Section 106 thereof but in *Nopany Investments (P) Ltd. Vs. Santokh*

Singh AIR 2008 SC 673 and *W.N. Gujral Vs. Kavita Chhibber* 2014 (76) RCR 901 it has been held that the tenancy stands determined on service of summons and no objection under Section 106 can be taken; (xii) thus, if the tenancy of the appellant/defendant was not protected under the Rent Act, the respondent/plaintiff would be entitled to recovery of possession; (xiii) the appellant/defendant, in the written statement had not taken a plea of the suit being barred by the provisions of the Rent Act and no issue also was framed thereon; (xiv) there could thus be no evidence on this aspect in terms of *Annathula Sudhakaran Vs. P. Buchireddy* AIR 2008 SC 2033; (xv) the question, whether the Rent Act was applicable to the property, was a mixed question of law and fact and it has to be proved that the property is situated in an area which is notified under Section 1 of the Rent Act; reliance in this regard was placed on *Pearey Lal Workshop P. Ltd. Vs. Raghunandan Saran Ashok Saran* 2009 (107) DRJ 459; (xvi) there was no evidence on record that the property was covered by the provisions of the Rent Act; (xvii) even if the property was to be covered by the provisions of the Rent Act, to be entitled to protection thereof, the appellant/defendant was under obligation to pay/deposit rent under Section 26&27 of the Rent Act and the appellant/defendant, inspite of service of summons of the suit and coming to know of purchase of property by the respondent/plaintiff and the respondent/plaintiff having become landlord, never paid or tendered rent to the respondent/plaintiff; (xviii) Sections 26&27 of the Rent Act, in *Sarla Goel Vs. Kishan Chand* (2009) 3 SCC (Civil) 243, were held to be mandatory; (xix) Supreme Court, in *Atmaram Vs. Shakuntala Rani* 2005 (4) RCR (Civil) 12 has held that if the tenant wishes to take advantage of beneficial provisions of the Rent Act, he must strictly comply with the

requirement of the Rent Act; (xx) the appellant/defendant having not paid or deposited the rent under Sections 26 or 27 of the Rent Act and having denied the title of the respondent/plaintiff to the property, could not seek protection as a tenant; and, (xxi) for availing protection of the Rent Act, relationship of landlord and tenant was essential.

11. On appeal by the appellant/defendant, the First Appellate Court, by order/judgment running into six pages, and on which, till the end of page 5 the contentions are recorded, has merely held that the judgment of the Civil Court does not suffer from any illegality or infirmity. I am constrained to record that the First Appellate Court has dealt with the first appeal, of which there is a substantive right, in a unsatisfactory manner and it appears, without even perusing the pleading and the evidence.

12. The first of the aforesaid substantial question of law to be decided is the status of the appellant / defendant i.e. whether he is a tenant, in as much as if he were not found to be a tenant, the other two substantial questions of law will not be relevant.

13. The respondent / plaintiff, in plaint itself, admits the grandfather and after him the father of the appellant / defendant to be a tenant. The plea of the respondent / plaintiff however was that after the father of appellant / defendant, only the brother of appellant / defendant inherited tenancy and not the appellant / defendant. The reason given therefor is that the rent was paid by the said brother only and not by the appellant / defendant. It is however admitted that the appellant / defendant was residing in the premises with his grandfather / father till date of institution of suit.

14. The Suit court however did not accept the reasoning aforesaid of the respondent/plaintiff for contending that the appellant/defendant, after the

death of his father, he did not become a tenant and held that payment of rent by the brother of the appellant/defendant was on behalf of and for the benefit of appellant/defendant also and the appellant/defendant was a tenant.

15. The respondent/plaintiff did not challenge the aforesaid reasoning of Suit Court, before First Appellate Court. In this Second Appeal also, it is not the contention, that the appellant/defendant, after the demise of his father, did not inherit the tenancy alongwith his brother. Under the law also, including under Section 2(l) of the Rent Act defining 'tenant', all sons inherit the tenancy.

16. The Suit Court however held and the counsel for the respondent/plaintiff has also argued, that by denial of title of the landlord, the tenancy rights inherited by the appellant/defendant on the demise of his father extinguished. Reliance in this regard is placed on Section 111(g) of the Transfer of Property Act.

17. However, the respondent/plaintiff did not sue for recovery of possession from the appellant/defendant on the plea of appellant/defendant having denied the title of respondent/plaintiff. The respondent/plaintiff sued, as aforesaid, on the plea that because after the death of father of appellant/defendant only the brother of the appellant/defendant paid rent, the appellant/defendant did not become a tenant. The Suit Court returned a finding of 'denial of title', on the basis of written statement of appellant/defendant and not on basis of pleaded case or proof thereof. Moreover, Section 111(g) provides for determination of lease by forfeiture "in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself". The appellant/defendant, in his

written statement, neither set up title in himself or in a third person. The denial by the appellant/defendant, in the written statement, of ownership claimed by the respondent/plaintiff, was in the context of the respondent/plaintiff claiming to have become owner by purchase and it being not the plea even of respondent/plaintiff that he or earlier owner at any time having informed the appellant/defendant of such sale/purchase. The respondent/plaintiff, for first time by way of subject suit, intimated the appellant/defendant of purchase of property. The same would not constitute forfeiture under Section 111(g) supra.

18. However, to determine whether such forfeiture, even if any, can be ground for eviction if the Rent Act is applicable, it will have to be determined, whether the Rent Act applies.

19. Rent Act applies to all tenancies, rent whereof is Rs.3,500/- per month or less. The rent of the subject premises admittedly was Rs.40/- per month.

20. Per Section 1(2) of the Rent Act, the said Act extends to areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule to the Act. The First Schedule to the Act specifies the areas which immediately before 7th April, 1958, were included *inter alia* in the Municipality of New Delhi, Municipal Committee, Delhi, Notified Area Committee, Civil Station, Delhi, Municipal Committee, Delhi-Shahdara, Notified Area Committee, Red Fort; Municipal Committee, West Delhi; South Delhi Municipal Committee; and, Notified Area Committee, Mehrauli. The proviso to Section 1(2) empowers the Central Government to, by

Notification in the Official Gazette, extend the Act to any other urban area included within the limits of Municipal Corporation of Delhi.

21. The Delhi Municipal Corporation Act, 1957 which came into force on 2nd January, 1958 (partly) and 7th April, 1958 (completely) is a prior enactment to the Rent Act which came into force on 9th February, 1959. Per Section 1(2) of the MCD Act, it extends to 'Delhi'. 'Delhi' is defined in Section 2(11) as entire area of Union Territory of Delhi except New Delhi and Delhi Cantonment. The locality of Bazar Sita Ram, situated in the old city area close to the Red Fort, was very much within the purview of the Municipal Committee, Delhi. Thus, the Rent Act, at the time of enactment thereof, extended to the subject property.

22. Section 14(1) of the Rent Act is as under:-

“14. Protection of tenant against eviction. –
(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:- ”

and Section 50 thereof is as under:-

“50. Jurisdiction of civil courts barred in respect of certain matters. – *(1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any other matter which*

the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.

(2) If, immediately before the commencement of this Act, there is any suit or proceeding pending in any civil court for the eviction of any tenant from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, such suit or proceeding shall, on such commencement, abate.

(3) If, in pursuance of any decree or order made by a court, any tenant has been evicted after the 16th day of August, 1958, from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, then, notwithstanding anything contained in any other law, the Controller may, on an application made to him in this behalf by such evicted tenant within six months from the date of eviction, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.

(4) Nothing in sub-section (1) shall be construed as preventing a civil court from entertaining any suit or proceeding from the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises.”

The aforesaid provisions create an absolute bar on the jurisdiction of the Civil Court to entertain a suit/proceeding for eviction of a tenant from a premises to which the Rent Act applies and to pass an order for recovery of

possession of any such premises from tenant.

23. The Suit Court has reasoned, that the appellant/defendant having not taken the plea of the suit being barred by the Rent Act, was not entitled to contend so, when admittedly such argument was raised during the hearing.

24. The applicability of the Rent Act, as would be evident from the aforesaid, was not a mixed question of law and fact, as held by the Suit Court and which was required to be pleaded and proved. The applicability of the Rent Act to the property can be determined as aforesaid, merely from deciphering the provisions of the Rent Act and the MCD Act. The Rent Act, as per Section 1(2) thereof was applicable to the property on the date of enactment of the Rent Act and it was not as if the Rent Act at the time of inception did not extend to the property or was extended thereto by a Notification under the proviso to Section 1(2) thereof. Moreover, even if it was so extended, all it required was a Notification to be placed on record and of which judicial notice could also have been taken. When ignorance of law is not a defence or a plea available to a litigant, it can certainly not be a reason available to the Court. The Court cannot be blind to the provisions of law. A Court, in adjudication of a *lis* before it, is required to apply the law applicable thereto irrespective of whether the litigants before the Court or the counsels representing them have invoked any applicable law or not. Thus the Suit Court could not have shirked its duty to determine whether the Rent Act was applicable to the property or not, for the reason of the appellant/defendant having not pleaded and proved the same. As aforesaid, no evidence in proof was required.

25. The proviso to Section 14(1) aforesaid entitles the Rent Controller constituted under the Rent Act to pass an order for recovery of possession

against a tenant, on the grounds specified therein. A question has arisen from time to time, whether the consent of the tenant that such a ground has accrued to the landlord, would entitle the Rent Controller to pass an order of eviction on such ground. It has been held that such consent cannot form the basis for an order of eviction. In ***Nagindas Ramdas Vs. Dalpatram Ichharam*** (1974) 1 SCC 242, it was held that the broad policy of rent legislations in different States of the country is to protect tenants against their landlords in respect of the rents, evictions and repairs; with the said beneficent end in view, the Rent Acts interfere with the contractual tenancies and make provisions; there is no escape from the conclusion that the Rent Court under the Rent Act is not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is *de hors* the Act or *ultra vires* the Act; the existence of one of the statutory grounds mentioned in the Rent Act is a *sine qua non* to the exercise of jurisdiction by the Rent Court under the Rent Act and even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which, according to the Legislative mandate, it could not do. It was further held that the mere fact that Order XXIII Rule 3 of the CPC is applicable to the proceedings before the Rent Court, does not remove that fetter on the Rent Court or empower it to make a decree for eviction *de hors* the statute; the Rent Court, before ordering that the compromise to be recorded, is required to satisfy itself about the lawfulness of the agreement – such lawfulness or otherwise of the agreement is to be judged, also on the ground whether the terms of the compromise are consistent with the provisions of the Rent Act. In the same vein, in ***Murlidhar Aggarwal Vs. State of Uttar Pradesh*** (1974) 2 SCC 472, it was held that Rent Acts are

based on public policy and are primarily intended for protection of tenants only and the tenant cannot waive the benefit of the provision. I was in order dated 10th August, 2017 in RC Rev. No.167/2015 titled ***Joginder Singh Vs. Harminder Singh Chowdhary*** also concerned with the question, whether the landlord could have waived the right to evict the tenant. It was held that the Rent Control Statutes are matter of public policy and the rights therein cannot be waived. Reference in this regard can also be made to ***Deendayal Daga, Director M/s. Assam Timber Products Pvt. Ltd. Vs. Sneh Sharma*** 2018 SCC OnLine Delhi 6577.

26. I thus answer the substantial question of law No.III above by holding that the Civil Court, before passing an order for recovery of possession of any premises from a tenant at a rent less than Rs.3,500/- per month, is required to satisfy itself that the Rent Act is not applicable thereto, even if no plea in that regard has been taken in the pleadings.

27. That brings me back to the substantial question of law No.I which has been partly dealt with hereinabove, in the light of the finding of the Rent Act being applicable to the property.

28. The Rent Act, by proviso to Section 14(1), empowers the Rent Controller to pass an order of eviction of a tenant but only on being satisfied that a ground of eviction as specified therein is made out. Denial of title of landlord is not a ground of eviction specified under the Rent Act. Though Section 111(g) of the Transfer of Property Act provides that a lease shall stand determined thereunder as aforesaid but Section 14(1) begins with a *non obstante* clause “notwithstanding anything to the contrary contained in any other law or contract”. Thus, the provisions of the Rent Act prevail over the provisions of the Transfer of Property Act. Supreme

Court, in *Murlidhar Aggarwal* supra, as aforesaid, held that the Rent Acts are based on public policy and are primarily intended for protection of tenants and the tenant cannot waive the benefit of the provision. Similarly, in *Shalimar Tar Products Ltd. Vs. H.C. Sharma* (1988) 1 SCC 70, finding that the tenant had sublet a portion of the premises without consent of the landlord and that the landlord was entitled to order of eviction, it was held that the question of waiver by the landlord would not arise in view of the statutory requirements. Thus, a tenant protected by the provisions of the Rent Act, does not cease to be a tenant or loses the protection by denial of title of the landlord.

29. As far as the aspect of non-payment of rent is concerned, Clause (a) of the proviso to Section 14(1) though makes the same a ground of eviction but on the condition, “that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882”. Thus, mere non-payment of rent is not a ground of eviction and non-payment of rent within two months of service of a notice of demand is a ground of eviction.

30. As far as the reference by the Suit Court of Section 26 and Section 27 of the Rent Act is concerned, Section 26 merely provides for the time for payment of rent in the absence of a contract to the contrary and Section 27 provides for deposit by the tenant of the rent with the Rent Controller if the landlord does not accept the rent tendered by the tenant or refuses to deliver a receipt therefor or when there is a *bona fide* doubt as to the person to whom the rent is payable. Though the appellant/defendant certainly, upon

the earlier owner or anyone else not approaching for collections of rent, or for the reason of entertaining a doubt as to the person to whom rent was to be paid, had the option of depositing the rent with the Rent Controller under Section 27 of the Act but the failure of the appellant/tenant to do so does not determine the tenancy of the appellant/tenant nor does it make the appellant/tenant liable for eviction under the Rent Act. As aforesaid, eviction under the Rent Act, on the ground of non-payment of rent, can only be in accordance with Clause (a) of the proviso to Section 14(1) thereof. Reliance by the Suit Court on *Sarla Goel* and *Atmaram* supra in this context is erroneous.

31. I thus answer the substantial question of law No.I by holding that a tenant covered by the Rent Act, by mere non-payment of rent, does not cease to be a tenant.

32. That brings me to the substantial question of law No.II.

33. In fact the counsel for the appellant/defendant started with the contention that the premises are situated in a slum area and the suit for recovery of possession had been filed without obtaining the permission of the Competent Authority, under the Slum Act.

34. Section 19 of the Slum Act is as under:

“19. Proceedings for eviction of tenants not to be taken without permission of the competent authority.—(1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority,—

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any

building or land in a slum area; or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

(2) Every person desiring to obtain the permission referred to in sub-section (1) shall make an application in writing to the competent authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the competent authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under sub-section (3), the competent authority shall take into account the following factors, namely:—

(a) whether alternative accommodation within the means of the tenant would be available to him if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum areas;

(c) such other factors, if any, as may be prescribed.

(5) Where the competent authority refuses to grant the permission, it shall record a brief statement of the reasons for such refusal and furnish a copy thereof to the applicant.”

35. The appellant/defendant having been found to be a tenant in the premises, Section 19 of the Slum Act, again commencing with a *non obstante* clause, bars his eviction, if the premises were to be situated in a slum area, without obtaining the permission of the Competent Authority under the Slum Act.

36. It is not disputed that no such permission has been taken.

37. No such plea was also taken and axiomatically no evidence led thereon.

38. The counsel for the appellant/defendant however has before this Court filed CM No.14699/2018 for taking on record the response dated 22nd March, 2018 of the Delhi Urban Shelter Improvement Board to a query under the Right to Information Act, 2005, to the effect that the subject property is within slum notified area under Section 3 of the Slum Act, vide Notification dated 10th April, 1957.

39. The counsel for the respondent/plaintiff does not dispute that the premises are situated in a slum area. He has however referred to ***Chiraguddin Vs. Urmila Rani*** (2014) 213 DLT 699 and ***Tulsi Dass Ahuja Vs. Chattar Singh*** 2017 SCC OnLine Del 10964, both of the same Hon'ble Judge of this Court, holding as under:-

“11. It is an extremely important aspect to note that ‘slum area’ is now only a mere nomenclature because really there are no slums and there is no slum area except that an area in the old Delhi, popularly known as walled city of Delhi, has been categorized as a ‘slum area’ under the Slum Act although in fact and reality the entire walled city of Delhi/old Delhi is a totally built up area and therein exist some of the most valuable immovable properties; both commercial and residential; in Delhi. Actually Slum Act was passed in the year 1956 as per the situation then prevailing but today in the year 2014 really there are no slums but only huge costly buildings, both commercial and residential, though technically they continue to be labelled as a ‘slum area’.”

40. The counsel for the respondent/plaintiff also refers to ***Vijay Kumar Sharma Vs. Manoj Kumar Garg*** 2016 SCC OnLine Del 4030 Special Leave

Petition (SLP) No.27944/2016 preferred whereagainst was dismissed in *limine* on 30th September, 2016. However all that the said judgment holds is that permission under Section 19 of the Slum Act is not required against a mere occupier who has no tenancy rights. The said judgment would thus have no application to the present case, as the appellant/defendant has been found to be a tenant.

41. I am, with respect, unable to agree with the reasoning given in ***Chiraguddin*** and ***Tulsi Dass Ahuja*** supra. In my view, statutory bar created by Section 19 of the Slum Act is incapable of being waived and binds the Court to the same extent as Section 14(1) and Section 50 of the Rent Act. However propriety demands for the said question to be referred to a larger Bench, instead of taking a view different from that taken in ***Chiraguddin*** and ***Tulsi Dass Ahuja***. Need therefor however is not felt because, for this Second Appeal to be allowed, my findings on the other two substantial questions of law are enough and it is felt that the appeal should not be kept pending awaiting the decision of the larger Bench and in which time the respondent/plaintiff, if desirous of invoking provisions of Rent Act for eviction of the appellant/defendant, would be precluded therefrom also.

42. The appeal thus succeeds and is allowed.

43. The judgments and decree of the Suit Court and the First Appellate Court are set aside and the suit filed by the respondent/plaintiff for recovery of possession of property No.1032, Kucha Sharif Beg, Bazar Sita Ram, Delhi-110006 from the appellant/defendant, is dismissed.

44. The counsel for the respondent/plaintiff at this stage states that the appellant/defendant, in the memorandum of appeal, has sought only setting

aside of the judgment and decree of the First Appellate court and not of the Suit Court and thus the decree of the Suit Court should not be set aside.

45. The said argument is to be noted to be rejected.

46. The counsel for the respondent/plaintiff, now also draws attention to the last three lines of para 7 of the judgment of the First Appellate Court to the effect that one cannot be allowed to travel beyond the pleadings.

47. Once the Statute bars a Court from passing an order of eviction, there can be no estoppel against the Statute.

48. The counsel for the appellant/defendant, in this context refers to *Chief Engineer, Hydel Project Vs. Ravinder Nath* (2008) 2 SCC 350. However, the same is concerning the Industrial Disputes Act, 1947 and not the Rent Act.

No costs.

Decree sheet be drawn up.

Dasti.

RAJIV SAHAI ENDLAW, J.

JULY 13, 2018

Bs/pp..