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

% Date of decision 23.10.2018

+ CS(OS) 579/2017

SANJAY GUPTA Plaintiff

Through Mr.Rajat Aneja, Mr.Akshit Kapur,
AND Ms. Sonali Chopra Advs.

versus

SUNIL KUMAR GUPTA Defendant

Through Mr.Kshitiz Ahuja and Mr.Kush
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present suit is filed by the plaintiff seeking a decree of possession in respect of suit property measuring 22 x 15 feet situated in property bearing No.E-27/4, Gopinath Building, E Block, Connaught Place, New Delhi-110001. A decree of permanent injunction and mesne profit @ Rs,1,00,000/- per month is also sought in favour of the plaintiff and against the defendant from the date of institution of the present suit till the date of delivery of vacant peaceful possession of the suit property.

2. The case of the plaintiff is that he is the absolute owner of the suit property being property bearing No.E-27/4, Gopinath Building, E Block, Connaught Place, New Delhi admeasuring 8000 Sq.Ft.. The said property consists of an open courtyard admeasuring 6300 Sq.Ft. and 1700 Sq.Ft. of covered area. The open courtyard in the said property consists of two temporary structures i.e. one tin shed open on three (3) sides admeasuring

330 Sq.Ft. and one tin shed enclosed on four sides admeasuring 550 Sq.Ft. The said tin structure measuring 330 Sq.Ft. was given on license to the father of the defendant sometimes way back in 1960s. It is stated that the father of the plaintiff was a car enthusiast and had a passion of repairing, redesigning, refurbishing and modifying his cars. The father of the defendant had introduced himself to the father of the plaintiff as a car mechanic who was acquainted with the servicing and repairing of cars. He was given the premises as a licensee. The defendant's father used the said property for repairing and servicing cars and also operating a Lathe machine which is required for specific and certain type of repairs. On 20.1.2012 the father of the defendant Shri Ved Prakash passed away. Consequent upon his death, the defendant occupied the suit property and continued to use the same for repairing and servicing cars and also operating a Lathe machine. Ultimately on account of disturbances caused by the defendant while using the property the plaintiff terminated the license. The plaintiff issued a legal notice on 10.10.2017 revoking the license. Despite receipt of the legal notice it is pleaded that the defendant did not vacate the suit property. In fact on 13.10.2017 it is pleaded that the plaintiff was surprised to receive a letter dated 9.10.2017 from the defendant seeking to pay to the plaintiff an alleged rent of Rs.200/- towards the suit premises for the months of June 2017 to September 2017 by way of a demand draft. It was further stated in the communication that the plaintiff had refused to accept cash payment towards rent of the suit premises. Hence, the said communication. Thereafter the defendant also sent a reply to the legal notice dated, 16.10.2017 reiterating that the defendant is not a licensee but a tenant in the suit premises.

3. After the pleadings were completed the plaintiff filed an application

under Order 12 Rule 6 CPC for passing of a decree. On 29.1.2018 this court while dealing with the said application being IA 1327/2018 granted liberty to the counsel for the plaintiff to urge passing of a decree forthwith under Order 15 Rule 1 of CPC when the matter is listed for framing of issues.

4. As the matter has been listed for framing of issues today, learned counsel for plaintiff has urged that in view of the admissions in the written statement a decree for possession is liable to be passed forthwith.

5. I have heard arguments of learned counsel for the parties. Learned counsel for the plaintiff has taken me through paragraphs 1 and 2 of the plaint, namely, the paras where a clear averment is made that the premises comprises of an area measuring 330 Sq.Ft. which is an open tin shed open on three sides and in possession of the defendant as a licensee. It is pointed out that in response to these paragraphs the defendant admits that the defendant is using the portion measuring 330 Sq.Ft. with an open tin shed. Of course, the defendant claims that he is paying rent of Rs.50/- per month to the plaintiff.

6. Learned counsel has also relied upon judgment of this court in ***Harish Chander Narula & Anr. vs. Purushotam Lal Gupta, 2011 SCC Online Del 1185*** and ***Ajit Singh vs. Ram Saroopi Devi, (1994) 55 DLT 759*** to contend that the property in question is not a premises as defined in section 2 (i) of the Delhi Rent Control Act, 1958. Hence, even if defendant was a tenant he has no protection under the Delhi Rent Control Act. He has further pleaded that there is not a shred of evidence to show that the defendant is a tenant inasmuch as no rent receipt or document of any sort is available. Only after the license was terminated the defendant has in a surreptitious manner sent a bankers' cheque for Rs.200/- claiming payment of rent for the premises in

question. He submits that even otherwise the suit cannot go to trial based on this manipulated and false defence raised by the defendant.

7. Learned counsel for the defendants have refuted the contentions of the plaintiff. He pleads that the defendant is a tenant at the agreed rent of Rs.50/- per month and hence a protected tenant under Delhi Rent Control Act. It has been pleaded relying upon the judgments of this Court in *Ajit Singh vs. Ram Saroopi Devi 1996 SCC OnLine Del 214* and *Nandu Mal vs. Municipal Committee, Simla, AIR 1925 Lahore 252* and in the case of *Surinder Kumar vs. Hari Singh (Deceased) Thr LRs and Ors.* in RSA 288/2015 dated 4.8.2015 that if a tin shed is given on rent the same would be covered within the definition of premises under section 2(i) of the Delhi Rent Control Act. He submits that accordingly the present defendant is protected under the Delhi Rent Control Act and this suit is not maintainable under section 50 of the DRC Act. At best there is a dispute between the parties as to whether the defendant is a tenant or licensee. This issue would have to go to trial. Hence, he submits that no decree can be passed against the defendant, at this stage, in any case.

8. Section 2(i) of the Delhi Rent Control Act, 1958 reads as follows:-

“(i) “premises” means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose and includes,-

- (i) The garden, grounds and outhouses, if any, appertaining to such building or part of the building;
- (ii) Any furniture supplied by the landlord for use in such building or part of the building;
but does not include a room in a hotel or lodging house;

9. Hence, a premises has been defined to include any building or part of

a building which is let out for use as a residence or for commercial use or for any other purpose. The term 'building' has not been defined in the DRC Act. Black's Law Dictionary 8th Edition defines building as follows:-

“building. A structure with walls and a roof, esp. a permanent structure. * For purposes of some criminal statutes, such as burglary and arson, the term building may include such things as motor vehicles and watercraft.”

10. Hence, a structure with walls specially which is a permanent structure would normally qualify to be a building. In the present case as noted above, the building comprises only an open tin shed and nothing more. It has no walls. It has no permanent structure.

11. I may see some of the judgments on this aspect.

12. In *Harish Chander Narula & Anr. vs. Purushotam Lal Gupta (supra)* this court was dealing with a case of a property of 900 sq.ft. forming part of an open plot which had a temporary structure/tin shed/khoka. In those facts this court in paragraphs 4 and 5 concluded that assuming what was let out to the defendant was an open plot of land with some structure which is at best a temporary khoka/tin shed then the same is not a permanent building as envisaged under section 2(i) of the Delhi Rent Control Act. This Court held as follows:-

“2. The only issue argued before the Trial Court, and which was also argued before this Court, was whether what was let out to the respondent/defendant was only a plot or at the very best a plot with a temporary structure/shed/Khoka so as to be or not to be a “premises” within the meaning of the expression under Section 2(i) of the Delhi Rent Control Act, 1958. The respondent/defendant had contended that the structure which exists amounts to a building and was therefore premises within the meaning of the expression

under Section 2(i) and therefore the respondent/defendant was a tenant under the Delhi Rent Control Act, 1958 (hereinafter referred to as DRC Act). The property in question has an area of 900 sq. feet forming part of an open plot of land of 412 sq. yds. at the Main Road of II-F, Block Corner, opposite Dua Travels, Rampur Market, Lajpat Nagar II, New Delhi.

.....

5. Learned counsel for the appellant/plaintiff has filed before this Court a compilation of judgement to argue the legal position that a temporary structure would not be included within the definition of premises within the meaning of expression under Section 2(i) of the DRC Act, 1958. I need not cite all the judgement and a reference to a few of them would suffice.

The Division Bench judgement of this Court in the case of *Surinder Kumar Jhamb v. Om Prakash Shokeen*, 82 (1899) DLT 569 : 1999 (51) DRJ 704 (DB) has held that if what is let out is only land or land with a temporary structure, the property would not be a building and hence not premises within the meaning of the expression under Section 2(i) of the DRC Act. In para 10 of this judgement, at page 577 of the reporter, it is specifically held that a built up area being a temporary structure cannot be called premises nor also the vacant plot adjacent to this temporary structure. It was held that such land with temporary structure or land itself, would not be premises as per Section 2(i) of the DRC Act. Another relevant judgement in this regard is the judgement of the Supreme Court in the case of *Kamla Devi v. Laxmi Devi*, (2000) 5 SCC 646. This judgement under the Delhi Rent Control Act clearly specifies that mere plot of land would not be premises so as to get protection of the DRC Act and which is also so held by the Supreme Court in the case of *Prabhat Manufacturing Industrial Co-operative Society v. Banwari*

Lal, (1989) 2 SCC 69. I may note that this judgement also dealt with a case under the Delhi Rent Control Act. In fact in this judgement, the Supreme Court relied upon the survey report of the Assistant Custodian Industrial of the Municipal Corporation of Delhi, a report similar to a Survey Report of MCD as found in the present case.

There are then judgments of learned Single Judges of this Court. One such judgment is the decision in the case of *Ajit Singh v. Ram Saroop Devi*, (1994) 55 DLT 759 : 1996 (37) DRJ 330 and in which it has been held that a tin shed would not fall within the expression “premises” under Section 2(i) of the DRC Act, 1958. I need not further multiply judgments. It is therefore held that since at best there was only a temporary structure at the very best, the respondent/defendant cannot be said to be a tenant of a building/premises so as to get protection of the DRC Act.”

13. Reference may also be had to the judgment of this Court in the case of ***Surinder Kumar Jhamb vs. Om Parkash Shokeen & Ors.***, 82 (1999) DLT 569 (DB) where this court held as follows:-

“10.....Even otherwise as per appellant's own showing out of an area of 2 bigha 10 biswas less than 10,000 sq.ft. was the covered area where temporary structure had been raised i.e. one tin shed, one room and a hall. The built up area being a temporary structure cannot be called premises nor the vacant plot can be adjunct of this temporary structure. It can hardly be called premises. The dominant portion of the property let out as emerged from the evidence was vacant piece of land at best with temporary structure standing on iron pillars. That could be adjunct to the vacant plot. This temporary structure was raised by the appellant as admitted by him vide Exhibit PW-2/1. It was his requirement of running his business which he was to remove on the expiry of the lease period. As the construction was raised by the appellant after the property was let hence by no means it could be said that property let out to the appellant was premises as defined under Section 2(1) of DRC Act. Thus suit was

properly instituted and was not hit by the provisions of Delhi Rent Control Act.”

14. This court in *Prabhat Manufacturing Industrial Co-operative Society v. Banwari Lal*, (1980) ILR 2 Delhi 1330, held that where the original allotment comprises of plot-cum-shed which also contains the shed, the same cannot become premises under the DRC Act. In an appeal before the Supreme Court in *Prabhat Manufacturing Industrial Co-operative Society v. Banwari Lal*, AIR 1989 SC 1101, the Supreme Court noted the said finding of the High Court, but it did not deal with the said issue.

15. What follows from the above is that where an open land is given on rent which may also include some temporary khoka or structure the same would not amount to a premises within the meaning of Section 2(i) of the Delhi Rent Control Act. The DRC Act would not be applicable to such premises. Open land is not a subject matter of the Delhi Rent Control Act.

16. I may also look at the judgments relied upon by learned counsel for defendant. Learned counsel for the defendant has heavily relied upon judgment of this court in *S.Ajit Singh vs. Ram Saroopi Devi*, 1996 SCC Online Del 214. That was a case in which the Court noted that the issue for determination is as to whether the appellant was inducted as a tenant on a vacant piece of land or in a tin shed which would constitute premises within the meaning of section 2(i) of the DRC Act. The Court held as follows:-

“15. Reading of this Section show that garden, grounds or out house independently cannot be a premises. It is only the building which when given on rent would constitute premises. Appurtenant to the building would not amount to premises. It is so held by the Supreme Court.”

The Court further held as follows:-

16. In almost identical facts Supreme Court in the case of Koti Saroj Anamma v. Jonnalagada Malleswara Rao, 1995(2)(4) Scale page 445, observed that shed being only as accessory to the main lease it would not come within the purview of Rent Control Act. It was only an adjunct. Such a shed meant to cover the Saw Mill machinery can hardly be called a house or even a hut. Hence dominant purpose of the lease was to let out vacant site with Saw Mill Machinery.

.....”

“18. For the reasons stated above, I am of the considered view that the tenancy consisted of “*open land*” which does not fall within the purview of Section 2(i) of the D.R.C. Act and cannot be called building. Even if for the arguments sake it is presumed that tin shed existed and was appertaining to the open land, it would not fall in the definition of “premises”. Hence, the Civil Court was the competent Court to try the suit for possession and not the Court of Rent Controller. This was the only point on which the Supreme Court remanded the case. The question is answered in favour of the respondent. The appeal is accordingly dismissed with costs.”

17. Hence, in those facts the court came to the conclusion that the tenancy consisted of an open land which does not fall within the purview of section 2(i) of the DRC Act and cannot be called a building. Even if it is presumed that a tin shed existed and it was appertaining to the open land it would not fall within the definition of premises. The Court further concluded that any hut or shed which is only adjacent, cannot be called premises. This judgment would not be of any help to the defendants.

18. Similarly, *Surinder Kumar vs. Hari Singh (deceased) Thr.LRs & Ors..(supra)* was a case in which the plaintiffs under an oral agreement let out the said plot to the original defendant with permission to raise

construction on the said plot for his residence. The original defendant raised construction and started residing there with his family. It was in those facts that the court noted the definition of section 2(i) of the DRC Act and noted as follows:-

“11. A plain reading of the expression ‘premises’ as defined in Section 2(i) of the Act shows that for the premises to fall within the realm of the Act, it is essential that there should be in existence a ‘building’. It is only when there is a ‘building’, that garden, grounds and outhouses, if any, appertaining to such building or part of the building could be considered to be ‘premises’ within the meaning of Section 2(i) of the Act. If there is no ‘building’ in existence at the time of letting out, the tenancy cannot be said to fall within the realm of the Act.”

19. In that case the trial court concluded that the tenancy was not governed by the DRC Act as what was let out was an open land with no building thereon. Accordingly, this court had upheld the findings of the trial court and the appeal filed by the tenant was dismissed. This judgment also does not help the defendant in any manner whatsoever.

20. In the light of the above-noted legal position what follows is that where an open piece of land is let out with a temporary khoka/tin shed the same would not qualify under the definition of building. As noted above in the present case what was allegedly let out to the defendant was an open land. It had a tin shed and nothing more. The said shed does not even have any walls around it on three sides. The same cannot be called a premises within the meaning of section 2(1) of the DRC Act. Accordingly, the present suit is maintainable and is not barred under the DRC Act.

21. Similarly, the claim of the defendant that he is a tenant of the premises would require no investigation by leading evidence as even if he

was a tenant of the premises he is not protected under the Delhi Rent Control Act and would be governed by the Transfer of Property Act. Being a month to month tenant he is liable to be evicted forthwith.

22. Even otherwise, in my opinion, the defence taken by the defendant i.e. being a tenant for a rent of Rs.50/- per month is completely make belief and moonshine. The defendant is in occupation of the suit premises since 1960s, namely, more than 50 years. The defendant is not in possession of a shred of document to show that his predecessor was inducted as a tenant. A tenant of 50 years is bound to leave a trail. There would be documents in the form of electricity bills, Municipal Corporation License, Taxes paid which may show the capacity in which the defendant was occupying the premises. No such document has been pleaded or placed on record. The only documents which have been filed by the defendant comprises of some photographs of the premises in question. That apart, there are only repeated averments that rent @ Rs.50/- per month was being paid to the plaintiff for which he was not receiving any receipt.

23. Section 27 of the Delhi Rent Control Act provides that in case a landlord neglects to deliver a receipt of the rent received the tenant may deposit the said rent with the Controller. For 50 years the defendant has not chosen to take the said step for the purpose of getting a receipt for payment of rent from the plaintiff.

24. It is clear that the plaintiff has failed to produce even a shred of evidence to show that he is occupying the property in the capacity of a tenant.

25. I cannot help coming to a conclusion that the defence sought to be raised is a complete sham and only an abuse of the process of the court.

26. Reference in this context may be had to the judgment of the Division Bench of this court in the case of ***Keshav Chander Thakur & Ors. v. Krishan Chander & Ors.***, 211(2014) DLT 149. The court held as follows:

“40. The Division Bench of this court in the case reported as 2012 (127) DRJ 70 *Aniruddha Dutta & Ors. vs. Bhawani Shanker Basu & Ors.* held as follows:-

“28. A Court of record has every inherent power to prevent the abuse of its process and Order 7 Rule 11 of the Code of Civil Procedure is not the complete reservoir of the power of nip a frivolous suit when it is still in the stage of infancy. The inherent powers of a Court of record, and we highlight that Section 151 of the Code of Civil Procedure does not confer, but saves the inherent power of a Court also constitutes the reservoir of the power of a Court of record to throw out vexatious suits.”

41. Similarly the Rajasthan High Court in the case reported as 2008 (1) ILR (Raj) 619 *Temple of Thakur Shri Mathuradass Ji vs. Shri Kanhaiyalal & Ors.* in para 16 held as follows:-

16. ...If the suit is abuse of process of the court and cannot be dismissed under Order 7 Rule 11 CPC then the court is not helpless and can accordingly invoke the powers under Section 151 CPC and can dismiss the suit under Section 151 CPC. Frivolous litigations are required to be nipped in the bud at the earliest possible stage otherwise no relief to the aggrieved party because of the reason that sole object of the frivolous litigation is to drag adversary in the litigation till it is dismissed consuming several years in trial. If court reaches to the conclusion that suit is frivolous from the totality of the facts brought on record or which have come on record then by not dismissing the suit at earliest, the court virtually declares that a frivolous suit can demand trial of suit and aggrieved party has no remedy against frivolous suit. If there are creases in the law or sometimes is left out

or not specifically provided in statute then they are required to be ironed out by the courts by interpreting the law in a manner to advance the cause of justice and no party can be left with no remedy against frivolous suits. At the cost of repetition, it is observed that the continuation of frivolous suit against any person on the ground that it cannot be dismissed since there is no provision under Order 7 Rule 11 CPC is virtually denying an aggrieved party his right to crush the frivolous litigation without suffering the trial of suit.”

27. As noted above, in the facts of the case the defence sought to be raised by the defendant is complete moonshine. In my opinion, no issue arises in the present case. Permitting the defendant to lead evidence would only enable the defendant to misuse the process of the Court.

28. Accordingly, a decree of possession is passed in favour of the plaintiff and against the defendant for the suit property in terms of prayer (i) and (ii) of the plaint. Learned counsel for the plaintiff submits that in view of the decree passed in case the defendant does not impugn the decree the plaintiff will not press for relief (iii) from the defendant. The suit stands disposed of as above.

JAYANT NATH, J

OCTOBER 23, 2018

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corrected and released on 2.11.2018