

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

+ **RFA No. 561/2014**

% **31st January, 2019**

SAMEER MADAN & ANR. Appellants

Through: Mr. Adit Singh, Advocate with Mr. Gaurav Mitra, Advocate (Mobile No. 9953212337) with appellant no. 1 in person.

versus

J S DHILLON & ANR. Respondents

Through: Mr. Kishore M. Gajaria and Mr. Aayush Paranjpe, Advocates (Mobile No. 9811159082).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

RFA No. 561/2014 and C.M. Appl. No. 4453/2017 (for directions), C.M. Appl. No 4197/2018 (for directions), C.M. Appl. No 54017/2018 (for extension of time to vacate the premises)

1. This is an unfortunate case where this Court is forced to pass a judgment on merits for allowing the appeal, and this is only because of the unnecessary and unreasonable obduracy shown by the

respondent no. 1/plaintiff. The obduracy is because though the appellants/defendant nos. 1 and 2 were not bound to vacate the tenanted portions/premises, inasmuch as the different tenancies were within the protection of the Delhi Rent Control Act, 1958 as the rent was below Rs. 3,500/- per month, yet the appellants/defendant nos. 1 and 2 agreed to vacate the different tenanted portions, and in fact have already vacated most of the portions of the tenancies except the portion on the ground floor (which was to be vacated by today i.e. 31.01.2019), and that the respondent no. 1/plaintiff for the compromise to sustain the impugned judgment of the trial court decreeing the suit for possession and *mesne* profits, only had to give consent whereby the respondent no. 1/plaintiff was to not press his F.I.R. filed against the appellants/defendant nos. 1 and 2 with respect to the alleged forging of the Rent Deeds, but the respondent no. 1/plaintiff states that he would not seek withdrawal and quashing of the F.I.R., but instead would invite a judgment from this Court on merits as regards the disputes between the parties.

2. The facts of the case are that the respondent no. 1/plaintiff had filed the subject suit for possession and *mesne* profits

pleading that the appellants/defendant nos. 1 and 2 were joint tenants under the respondent no. 1/plaintiff with respect to the basement, a portion of the ground floor, and a portion of the second floor of the property bearing No. 13, State Bank Colony, G.T. Karnal Road, Delhi. The entire property was situated on a plot of land measuring 205.83 sq. yards. The defendant no. 3 in the suit namely, Sh. Narender Dua, was pleaded to be an illegal sub-tenant with respect to a tenanted portion, but now no relief was pressed against respondent no. 2/defendant no. 3 as he had vacated the portion occupied by him during the pendency of the suit. The respondent no. 1/plaintiff pleaded that the appellant no. 1/defendant no. 1/husband/Sh. Sameer Madan had initially taken two rooms, one toilet along with one kitchen on the ground floor for commercial purposes at a monthly rent of Rs. 10,000/- per month with effect from 15.08.2002 for a period of 24 months. This tenancy was an oral tenancy. It was further pleaded by the respondent no. 1/plaintiff that in July, 2004, the appellants/defendant nos. 1 and 2/husband and wife approached the respondent no. 1/plaintiff for the renewal of the tenancy and also to take on rent the entire basement along with one room with attached bathroom, one

kitchen and one *kaccha* room on the second floor of the property. Accordingly, it is stated that a joint tenancy was created in favour of appellants/defendant nos. 1 and 2 with respect to the entire basement, two rooms and one toilet along with one kitchen on the ground floor, alongwith a portion on the second floor with effect from 01.08.2004. The case of the respondent no. 1/plaintiff was that the monthly rent of this total portion which was let out was Rs. 25,000/- per month and the lease was for a period of three years with effect from 01.08.2004. Admittedly, however, there was no written lease deed for this period of tenancy of three years commencing from 01.08.2004. The respondent no. 1/plaintiff further pleaded that in the month of July 2007, the appellants/defendant nos. 1 and 2 requested for the renewal of the lease for the period of one year and the total leased portion on different floors was again renewed for a period of one year form 15.07.2007. The agreed rent was said to have been increased from Rs. 25,000/- per month to Rs. 40,000/- per month. However, it was stated that the rent was paid by the appellants/defendant nos. 1 and 2 to the respondent no. 1/plaintiff only till March, 2008. The respondent no.1/ plaintiff further pleaded that on 28.04.2008, the basement and a

portion of the ground floor was sealed by the Municipal Corporation of Delhi (*hereinafter* 'MCD') and the appellants/defendant nos. 1 and 2 illegally and without the consent of the respondent no. 1/plaintiff in July, 2008 fraudulently deposited the conversion charges of Rs. 2,00,000/- with the MCD and got the sealed portion de-sealed. It was pleaded that the appellants/defendant nos. 1 and 2 had no right to get the property de-sealed. It was also pleaded that the conversion charges were paid by the appellants/defendant nos. 1 and 2 by wrongly representing before the MCD and pretending that the appellants/defendant nos. 1 and 2 were the owners of the property when they were not, as the appellants/defendant nos. 1 and 2 were only tenants in the property. The respondent no. 1/plaintiff terminated the tenancy in the month of July, 2008 and also pleaded that the tenancy came to an end by efflux of time on 14.07.2008. Therefore, the subject suit was filed for possession and *mesne* profits.

3. The appellants/defendant nos. 1 and 2 contested the suit and denied that there was a single tenancy with rent being Rs. 40,000/- per month with effect from 14.07.2007. It was also denied that the tenancies which were granted for different floors were combined to

become one entire tenancy with rent earlier of Rs. 25,000/- per month for three years with effect from 01.08.2004 and thereafter from July, 2007 at Rs. 40,000/- per month. It was also pleaded that there were separate tenancies of the separate portions of the property with the appellant no. 1/defendant no. 1 and the appellant no. 2/defendant no. 2 separately. While not denying the ownership of the respondent no. 1/plaintiff/landlord of the properties, it was pleaded that the appellants/defendant nos. 1 and 2 were separate tenants of their separate respective portions in the property and since the rent of each of the portions and tenancies with each of the appellants/defendant nos. 1 and 2 (except one portion at the second floor) were let out at a rent below Rs. 3,500/- per month, consequently, the civil court had no jurisdiction. As regards the tenancies, it was stated that the appellant no. 1/defendant no. 1 was first inducted as a tenant in respect of the ground floor comprising of two rooms, one kitchen, one store and a common toilet beneath the stairs in terms of the Rent Deed dated 02.02.2001 at monthly rent of Rs. 2,000/- per month. The tenancy was for a period of eleven months and a copy of the Rent Deed was placed on record. Four other tenancies of different portions of the

property were created thus creating a total of five different tenancies in favour of the appellants/defendant nos. 1 and 2 at different points of time. The above mentioned has been pleaded in the following portion of the written statement:

xxx

xxx

xxx

“In fact, 5 different tenancies were created by the plaintiff in favour of the defendant No.1 and the defendant No.2 in respect of the different portion at different period of time. It is further submitted that the said 5 tenancies were created on the basis of written agreements/rent deeds executed by the plaintiff and the defendant No.1 or the defendant No.2. The details of the said tenancies created by the plaintiff in favour of the defendant No.1 and the defendant No.2 are as under:-

- i) The first tenancy was created in favour of the defendant No.1 in the year 2001, in respect of the ground floor comprising of two rooms along with one kitchen, one store and common toilet (beneath the stairs) and the rent was agreed at Rs.2000/- per month. However, the rent was increased to Rs.2,500/-.
- ii) The Second tenancy was created in the year 2005, in favour of the defendant No.1 in respect of the Second Floor comprising of one room, one Kitchen (katcha construction) with attached bath-room and one store room vide lease deed dated 04.05.2005 and the rent was agreed at Rs.5,000/- per month (Rupees Three Thousand as rent and Rupees Two Thousand on account of electricity and water charges.)
- iii) The third tenancy was also created in favour of the defendant No.1 in respect of open space lying in front of the suit property, in the year 2005, vide lease deed dated 04.05.2005 and the rent was agreed at Rs. 2,000/-per month + Rs. 500/- per month (as water charges) for washing the cars.
- iv) That two tenancies were created in favour of the defendant No.2 regarding front half portion of the basement in the year 2002 and the second tenancy was created in favour of the defendant No.2 for the rear half portion of the basement in the year 2005 vide rent deed dated 04.05.2005.

It is not out of place to mention here that the defendant No.1 and 2 had been paying Rs.15,000/- per month for the said tenancies. Out of which Rs.5,000/- was being paid by the defendant No.2 and Rs.10,000/- were being paid by the defendant No.1.”

4. A reading of the aforesaid pleadings/written statement of the appellants/defendant nos. 1 and 2 showed that only one tenancy of the second-floor portion was at a rent of Rs. 5,000/- per month, i.e. above Rs. 3,500/- per month, and therefore, only this second-floor tenancy was not protected under the Delhi Rent Control Act. All other tenancies i.e. the other four tenancies, two being of the half portions each of the basement in favour of the appellant no. 2/defendant no. 2/wife was at rent of Rs. 2,500/- each per month, the tenancy for the constructed ground floor portion was at a rent of Rs. 2,500/- per month, and the tenancy for the open space on the ground floor was at a rent of Rs. 2,500/- per month. The appellants/defendant nos. 1 and 2, therefore, prayed for the suit to be dismissed.

5. In the suit, the following issues were framed by the trial court:

“(i) Whether plaintiff is entitled for relief of possession as prayed for? OPP.

(ii) Whether the plaintiff is entitled to recover Rs. 3,32,000/- as arrears of rent till 30.11.2008 from defendant no. 1 & 2 alongwith interest as claimed. If so, at what rate? OPP.

(iii) Whether the plaintiff is entitled for Rs. 80,000/- per month w.e.f. 01.12.2008 as mesne profits from defendants no. 1 & 2 alongwith interest as claimed. If so, at what rate and for what period? OPP.

(iv) Whether half of the basement has been sublet to the alleged sub tenant i.e. defendant no. 3 by the defendants no. 1 & 2. If so, its effects? OPP.

(v) whether the plaintiff is entitled for the recovery of amount towards damages from the defendant no. 3 as claimed in the prayer clause of the suit alongwith interest. If so, at what rate? OPP.

(vi) Whether the present suit is maintainable in the present form? OPP.

(vii) Whether the suit is barred under section 50 of Delhi Rent Control Act? OPD.

(viii) Whether there is any cause of action in favour of the plaintiff against the defendant no. 3? OPD.

(ix) Relief, if any.”

6. The crucial issue to be determined is Issue no. 7 which is as to whether the suit which was filed by the respondent no. 1/plaintiff was barred under Section 50 of the Delhi Rent Control Act. The suit would be barred under the Delhi Rent Control Act in case there were separate tenancies at rents below Rs. 3,500/- per month.

7. The trial court has held this issue in favor of the respondent no. 1/plaintiff by holding that there was one joint tenancy

of all floors/portions together and that the rent was Rs. 40,000/- per month. As the discussion hereinafter will show, this finding of the trial court is completely illegal and perverse. The finding of the trial court is completely illegal and perverse because, admittedly, no rent deed was proved by the respondent no. 1/plaintiff of all the areas of different floors as one tenancy with rent being either Rs. 25,000/- per month till July, 2007 or becoming Rs. 40,000/- per month with effect from August, 2007. Neither was any rent deed filed and proved, nor a single rent receipt was filed and proved to show that there was one single tenancy with a rent of Rs. 25,000/- per month/Rs. 40,000/- per month. Further, not only there is no rent deed or rent receipt, there is no payment by means of cheques by the appellants/defendant nos. 1 and 2 crediting an amount of Rs. 25,000/- per month/Rs. 40,000/- per month. The issue with respect to non-existence of any receipt of rent Rs. 25,000/- per month or Rs. 40,000/- per month becomes very accentuated because of the fact that admittedly for a long period not a single rent receipt exists with rent of Rs. 25,000/- per month/Rs. 40,000/-per month. The case of the respondent no. 1/plaintiff is that the rent became Rs. 25,000/- per month with effect from 01.08.2004,

which further increased to Rs. 40,000/- per month from August, 2007, and that the rent was paid upto March, 2008, and therefore the rent at Rs. 25,000/- per month/Rs. 40,000/- per month was allegedly paid by the appellants/defendant nos. 1 and 2 from 01.08.2004 till March, 2008 being approximately for a long period of three years and eight months.

8. Therefore, it is seen that though the onus was on the respective parties to prove the rate of rents, the real onus to prove the rate of rent to the satisfaction of this Court by credible documentary evidence in the form of rent deeds or rent receipts or crediting of the lumpsum amounts by the means of a cheque in the bank account of the respondent no. 1/plaintiff was on the respondent no. 1/plaintiff because it is the respondent no. 1 who was the plaintiff in the suit and it is the plaintiff who has to show that the rate of rent was Rs. 25,000/- per month/Rs. 40,000/- per month, thereby showing one tenancy outside the purview of Delhi Rent Control Act. In the facts of the present case, the onus is strictly, more so, on the respondent no. 1/plaintiff because admittedly separate portions were taken during separate period commencing from August, 2002 onwards i.e. separate

tenancies were created of different portions at different points of time. There is no presumption in law or in fact which can be drawn that the separate portions taken at separate time would merge together into one tenancy having a total rent of Rs. 25,000/- per month/Rs. 40,000/- per month and in law, the respondent no.1/plaintiff had to prove to the satisfaction of the court that there was one tenancy at rent of Rs. 25,000 per month/Rs. 40,000/- per month. In the issues where grave and valuable rights of the parties are involved in an immovable property, oral evidence cannot substitute the requirement of requisite documents filed for proving the rate of rent, as in the facts of the present case, as stated above, where separate portions have been taken at separate points of time on lease. The trial court has, therefore, without any appropriate reasoning, much less convincing reasoning, wrongly held that there was a single tenancy with the rent being Rs. 40,000/- per month. In order to appreciate as to how the reasoning of the trial court is beyond the parameters of law and cannot be accepted by this Court, the relevant para 6 of impugned judgment of the trial court (and it's sub-paras) dealing with Issue no. 7 (though long) is reproduced herein as under:

“6. My issue was findings are as under:

Issue No.7: Whether the suit is barred under section 50 of Delhi Rent Control Act? OPD.

This issue is taken up first. Onus of this issue is upon defendants no.1 & 2. Defendants no. 1 & 2 have alleged that there are five separate tenancies and none of the tenancies is joint. Therefore, the suit filed by the plaintiff is barred by section 50 DRC Act. The Defendant no. 1 has alleged that the first tenancy is qua the ground floor of the suit property in question which was entered into in between the plaintiff and defendant no. 1 in the year 2001. The initial date of rent was 2000/- per month which was increased upto Rs. 2500/- and it is continued till date. The second tenancy was entered into in 2005 i.e. vide leased deed dated 04.05.2005 with regard to the second floor of the suit property in question at the monthly rent of Rs. 5000/- with defendant no. 1. The defendant no. 1 has not alleged any increase in the rent of this premises. The third tenancy alleged by defendants no. 1 & 2 is vide lease deed dated 04.05.2005 which is pertaining to the open space in the suit property in question and the monthly rent is Rs. 2500/- per month with defendant no. 1. The fourth tenancy was entered into with defendant no. 2 vide lease deed dated 01.06.2002 pertaining to the front half portion of the basement of the suit property in question and the fifth tenancy was entered into with defendant no. 2 vide lease deed dated 04.05.2005 pertaining to rear half portion of the basement. Defendants no. 1 & 2 have not alleged the individual rent of both these premises which were allegedly given to defendant no. 2 and has stated that the rate of rent for both the premises was given by defendant no. 2 as Rs. 5000/- per month. In the absence of any separate rent for the tenancy no. 4 & 5, it is, therefore, considered as Defendants no. 1 & 2 have not themselves stated anything to the contrary, therefore, it is considered that rent for both the premises was allegedly given as Rs. 5000/- per month. From the submissions of Defendants no. 1 & 2 themselves, it is reflected that the objection of section 50 DRC Act raised by Defendants no. 1 & 2 is only attracted, if any, with regard to the tenancy entered into with defendant no. 1 as alleged by him in the year 2001 with regard to the ground floor and in the year 2005 with regard to the open space. Defendants no. 1 & 2 have relied upon the rent deeds which have been filed by them on record. They are perused thoroughly. It is pertinent to mention here that plaintiff herein had taken a serious objection with regard to the alleged rent deed shown by the defendants and stated that they have been forged and fabricated as such they have never been signed by the plaintiff. Therefore, the plaintiff filed a complaint case against defendants no. 1 & 2 and therefore, an FIR No. 482/11 has been registered against defendants no. 1 & 2. The copy of chargesheet is Ex. DW1/PX. This chargesheet is perused thoroughly. It is reflected from perusal of the record

that the concerned IO has obtained the opinion of handwriting expert from Forensic Lab during investigation under the FIR NO. 482/11 and the opinion so given with regard to the disputed signatures of plaintiff herein, it has been opined that the signatures of the plaintiff have been traced and have not been done by the plaintiff herein in actual. Such opinion is the part of record of the investigation and charge-sheet filed under section 173 Cr. PC which is under consideration before the concerned court. However, such an opinion given by the handwriting expert of the Forensic Lab can be considered u/s 45 of Indian Evidence Act. It is also reflected from perusal of the record that the plaintiff also examined one of the handwriting expert namely Sh. B. N. Shrivastava who gave his report and finding that plaintiff has not signed these documents. It is reflected from perusal of the cross examination of handwriting expert I.e. PW-9 that he has not seen the documents on the basis of which certified copies were obtained. It is further reflected from perusal of the record that no permission for obtaining the opinion of the handwriting expert has ever been taken by the plaintiff. This witness PW-9 also had not taken any permission to take the photographs from the judicial record. It has been stated by PW-9 himself in his examination in chief that he got scanned enlargement and the transparencies and did not come to the court therefore to take the photographs from the judicial record itself. The examination of PW-9, therefore, can not be considered to be beyond any doubt, however, the opinion so given by him is similar to the opinion given by the handwriting expert of the Forensic Lab. Therefore, there is a corroboration with regard to the signatures of plaintiff upon the disputed documents that they have not been done by the plaintiff. The defendant, on the other hand, was having all the opportunity and time to get his own handwriting expert examined, however, he has not exercise his options accordingly. Therefore, inaction of the defendants in this regard can not be considered having raised a presumption in their favour that the rent deeds were duly signed by the plaintiff. It is pertinent to mention here that a competent court of the jurisdiction is seized of the matter in this regard for which an FIR has already been registered. Therefore, no opinion by this court has to be given as to whether the rent deeds have been forged or not or any forgery has been committed by the defendants no. 1 & 2. However, considering the opinion of the handwriting expert and considering the facts that the defendants did not exercise their option well within time, which has to be considered that they volunteered themselves to this extent, I am of the opinion that plaintiff has not signed the alleged rent deeds shown by the defendants no. 1 & 2. Therefore, the averments made by the defendants no. 1 & 2 that five different tenancies were executed between the parties does not find support from the documents filed by the defendants no. 1 & 2 themselves and these document i.e. the alleged rent deed has to be read accordingly against them. This fact is further strengthened from the specific query which was raised to the defendants no. 1 & 2 and their

counsel that whether any rent receipt was issued or whether the defendants used to pay the rent separately for alleged separate premises or the rent was paid jointly in one lump sum amount. It has been stated during arguments that, and also reflected from the record itself that the rent for the entire premises i.e. basement, ground floor and second floor was paid jointly and in one go. Plaintiff has filed certain counter foil of rent deed which have been disputed by the defendants no. 1 & 2. It is reflected from perusal of the averments made by the defendants no. 1 & 2 that the alleged rate of rent of each of the premises was separate. In this regard, the plaintiff has examined PW-2 Rajesh Sharma who is his neighbour. It is stated by PW-2 that plaintiff earlier from the year 2000 till July 2002 let out the two room alongwith kitchen and bathroom situated on the front portion of ground floor of the property in question to one Ms. Rishu at a monthly rent of Rs. 8000/ who was running a beauty parlour. Ms. Rishu vacated the said two rooms on ground floor in the month of July 2002. It is further stated by PW-2 that in the month of August 2002, Sameer Madan and Pragya Madan jointly acquired the said two rooms alongwith kitchen and bathroom as tenants of the plaintiff @ Rs. 10,000/ per month. Ms. Pragya Madan started her boutique under the name and style of M/s Chhavi Boutique in one of the said rooms and in the kitchen portion, Ms. Pragya Madan installed sewing machine for stitching the clothes. In the other room, Sameer Madan started his office for sale and purchase of Cars under the name and style of M/s Jai Ambey Cars. It is further stated by PW-2 that in the month of August 2004, defendants no. 1 & 2 further jointly took the entire basement and portion of second floor of the property in question on rent from plaintiff apart from the two rooms, kitchen and toilet situated at the ground floor of the suit property in question. The rent was enhanced to Rs. 25,000/ per month. It is further stated by PW-2 that earlier the basement was without any partition and Sameer Madan and Pragya Madan initially renovated the entire basement and raised the partition wall and divided the entire basement in three different portions. In or around November 2004, Sameer Madan and Pragya Madan shifted their office of sale and purchase of cars as well as boutique to the portion of basement. Defendants no. 1 & 2 renovated the two rooms at the ground floor and shifted their office again on the ground floor and boutique remains at basement.

During his cross examination, PW-2 has stated that he has been residing in property no. 12, State Bank Colony, G. T. Karnal Road for last 45 years. PW-2 has stated that he do not know regarding the settlement of terms and condition of tenancy created in favour of defendants no. 1 & 2. He has further stated that he was told by defendant no. 1 that rate of rent was settled as Rs. 10,000/ per month. During his cross examination, PW-2 has corroborated that tenancy is joint and the rent was enhanced. No other material contradiction has emerged from his cross examination.

On the point of rate of rent of the premises, the plaintiff has examined PW4-Sh. Rajender Kumar Duggar who has stated that he was the tenant of plaintiff in respect of two room, one kitchen, toilet and veranda on the rear portion of ground floor of the suit property in question from the year 1990 to June 2006 and he had taken the said portion on rent initially @ Rs. 1900/ per month in the year 1990 which was enhanced time to time and the last rate of rent in respect to the above portion was Rs. 6000/ per month from 2005 onwards. It is further stated by PW4 that plaintiff had let out the two rooms, alongwith kitchen and bathroom situated on the front portion of the ground floor, from the year 2000 till July 2002 to Ms. Reshu @ Rs. 8000/ per month who was running a beauty parlour. She vacated the said premises in July 2002. It is further stated that in month of August 2002, defendant no. 1 & 2 initially had taken two rooms, one toilet alongwith kitchen on the ground floor for commercial purpose @ Rs. 10,000/ per month through Sh. Kapil. Pragya Madan started her boutique under the name and style of M/s Chhavi Boutique and Sameer Madan started his office for sale and purchase of cars. It is further stated that Sameer Madan and Pragya Madaan further jointly took the entire basement and portion of the second floor of the property in the month of August 2004 and the rent was increased to Rs. 25,000/ per month for the entire tenanted premises. It is further alleged that from August 2004 till November 2004, defendants no. 1 & 2 renovated the entire basement and raised the wooden partition wall and divided the basement into three portions and shifted their business to basement and after renovation the business of car was shifted to the ground floor.

During his cross examination, PW-4 has corroborated what he has stated in his examination in chief.

Plaintiff has also examined another witness i.e. PW-5 Kapil Lamba through whom the premises was let out to defendants no. 1 & 2 as alleged by the plaintiff. PW-5 has stated that he is running his business of selling mobiles and accessories. Defendants no. 1 has been purchasing the mobile phones and accessories for more than last 10 years from his shop. It is stated by PW-5 that defendant no. 1, in the month of June/ July 2002 requested him to look for commercial space for him near Gujranwala, Model Town, Delhi as he wanted to shift his business from Rohini to the place near Gujranwala, Delhi. It is further stated that plaintiff till July 2002 had let out two rooms on ground floor to Ms. Reshu at the monthly rent of Rs. 8000/. In the month of August 2002, son of plaintiff asked PW-5 that the ground floor was lying vacant and asked him to look for tenant. PW-5 introduced defendant no. 1 with the plaintiff who requested him to let out the said portion of ground floor of the property, therefore, on 15.08.2002, defendants no. 1 & 2 initially had taken two rooms, one toilet alongwith kitchen on ground floor for commercial purpose at a monthly rent of Rs.

10,000/- w.e.f. 15.08.2002 for a period of 24 months. Defendant no. 2 started her boutique under the name and style of M/s Chhavi Boutique and installed her sewing machine in kitchen and in another room Sameer Madan started his office for sale and purchase of cars. It is further stated that in the month of August 2004, defendants no. 1 & 2 jointly took the entire basement and portion of second floor of the property on rent and the rent was enhanced to Rs. 25,000/- per month. No document was executed in between the parties. The tenancy was renewed again in July 2007 at the monthly rent of Rs. 40,000/- per month for one year.

During his cross examination, PW-5 has corroborated what he has stated in his examination in chief.

Another witness on the point of rate of rent is examined by plaintiff who is Sushil Sharma, PW-6. It is stated by him that he is tenant in the rear portion of ground floor of the suit property in question. He came into the premises in November 2008 at a monthly rent of Rs. 6500/- and now the rent has increased to Rs. 7500/- from November 2009.

During his cross examination, PW-6 has corroborated what he has corroborated in his examination in chief.

PW-1, who is the plaintiff himself has also stated that defendants no. 1 & 2 are joint tenants in the suit property in question and the rate of rent at present is Rs. 40,000/ per month which is jointly paid by the defendants no. 1 & 2. The tenancy has been renewed from time to time. It is reflected from perusal of the examination of PW-1 that nowhere in the entire plaint or his examination in chief or cross examination, he has stated that the tenancy was extended. PW-1 has merely stated that it was renewed and another portion of the premises was taken on rent. The evidence led by the plaintiff, therefore, on the point of joint and single tenancy is oral. There is no documentary evidence in support thereof. The above mentioned witnesses, however, have corroborated the facts stated by the plaintiff in his plaint as well as in his evidence. The rate of rent has also been stated by the other witnesses called by the plaintiff as has been alleged by the plaintiff in his plaint as well as in his examination in chief. The defendant, on the other hand, has not been able to show that there were five different tenancies entered into in between the parties from the examination of the defendant's witness which is the sole testimony of defendant no. 1 himself, this fact has not been corroborated as per Law that five different tenancies were created and the defendants have not been able to show that the rent for the premises was paid separately. The defendants, on the other hand, has admitted that rent for the entire premises was paid by him in one go, every time to the plaintiff.

Before proceeding further, it is important to mention here one important development which had taken place in this case. The defendant had filed certain interrogatories as per order 11 Rule 4 CPC wherein four questions were raised by the plaintiff. With regard to the first query, the facts reflecting

from the record and the evidence led by the parties are stating a different story. Defendants has not been able to establish any of his alleged rent deed in writing. The plaintiff, on the other hand, has led his evidence at length and has shown that the tenancy with defendants no. 1 & 2 was joint. These interrogatories have been filed after the evidence was concluded. Therefore, they have to be read in the light of the evidence led by the parties accordingly. In the second interrogatory, the plaintiff has stated that the reply in this regard has already been given. The plaintiff has filed certain counterfoil of the rent receipts. These counterfoil of the rent receipts have been considered in the above mentioned para and the subsequent paras as well. Therefore, this aspect is also taken care of by way of evidence. The next two interrogatories are relating to the rate of rent of the premises in question with regard to which the plaintiff has also given his specific reply during his evidence. Therefore, the reply of the plaintiff is reflected from the evidence led by him which is a matter of record. It is, therefore, reflected that from these interrogatories filed by defendants no. 1 & 2 no material contradiction is emerging.

In these circumstance, therefore, it is reflected from the evidence led by the plaintiff and I am of the considered opinion that plaintiff has been able to show that though the tenancy was renewed from time to time and new premises were added in the earlier tenanted premises, however, they became the part and parcel of joint and single tenancy. Hence, the tenancy in between the parties is joint and single tenancy as on date and the rate of rent as on date is Rs. 40,000/ per month. In terms of these observations, section 50 DRC Act is not attracted, hence, this issue is decided in favour of the plaintiff and against the defendants.”

9. Therefore, it is held that the respondent no.1/plaintiff has failed to prove that there was a single tenancy of all the portions together with a rent of Rs. 25,000/- per month/Rs.40,000/- per month. The respondent no. 1/plaintiff, therefore, cannot succeed in a suit for possession with respect to all the portions, and the respondent no.1/plaintiff can only succeed with respect to the second-floor portion, as the rent for the same was admittedly Rs. 5,000/- per month and there is no registered lease deed of the second-floor portion

making the appellants/defendant nos. 1 and 2, or either of them, a monthly tenant only, and once there is only a monthly tenancy of the second-floor portion, the same could have always been terminated by serving a notice under Section 106 of the Transfer of Property Act, 1882, and the same has been done by respondent no.1/plaintiff, and in any case, it is now settled law that filing of a suit amounts to termination of tenancy vide *M/s. Jeevan Diesels & Electricals Ltd. v. M/s. Jasbir Singh Chadha (HUF) & Anr., 2011 (183) DLT 712*.

10. Since it is held that there was no single tenancy and that there were different tenancies at different floors, hence, the respondent no.1/plaintiff will also not be entitled to *mense* profits at Rs. 40,000/- per month as decreed by the trial court. The respondent no. 1/ plaintiff, therefore, will only be entitled to rent for the different tenancies of different portions as is the case of the appellants/defendant nos. 1 and 2 noting that the respondent no. 1/plaintiff has failed to prove the rate of rent at Rs. 40,000/- per month, and therefore, this Court has no option but to agree to the aspect of the rate of rent being that as stated by the appellants/defendant nos. 1 and 2 at Rs. 2,500/- each for half basement

portion of which tenancy is in favour of the appellant no. 2/defendant no. 2/wife, and the rate of rent for the constructed ground floor portion taken firstly in the year 2001 would be Rs. 2,500/- per month and the rate of rent which is fixed for the open portion of the ground floor, taken on lease in the year 2005 would be Rs. 2,000/- per month plus Rs. 500/- as water charges totaling to Rs. 2,500/-. To this extent, a decree for payment of rent from 01.04.2008 till date is passed in favour of respondent no.1/plaintiff for the four portions, two portions being two half portions of the basement, and the two portions on the ground floor. The respondent no.1/plaintiff would however be liable to adjustment with respect to any amount deposited/paid by the appellants/defendant nos. 1 and 2 in this period from 01.04.2008 till date to the respondent no.1/plaintiff and also an adjustment for the amount deposited by the appellants/defendant nos. 1 and 2 in this Court pursuant to the impugned judgment and decree. Since the amount deposited by the appellants/defendant nos. 1 and 2 in this Court is pursuant to the impugned judgment and decree holding the rent to be Rs. 40,000/- per month, if any excess amount is found to be deposited by the appellants/defendant nos. 1 and 2 and beyond the

entitlement of the respondent no.1/plaintiff for the rent to be paid, such amount deposited in this Court, along with accrued interest thereon, be refunded back to the appellants/defendant nos. 1 and 2. Whatever principal amount towards rent would have been deposited by the appellants/defendant nos. 1 and 2 in this Court and accrued interest thereon, will be for the benefit of the respondent no. 1/plaintiff. I would also clarify that admittedly during the pendency of the suit before the trial court, amounts were paid by the appellants/defendant nos. 1 and 2 to the respondent no. 1/plaintiff and with respect to such amount, adjustments will be granted to the appellants/defendant nos. 1 and 2 by the respondent no. 1/plaintiff.

11. Further, I would like to add that though the tenanted portion of the second-floor is outside the protection of the Delhi Rent Control Act, it is held that the respondent no. 1/plaintiff is entitled to possession thereof in terms of the impugned judgment and decree, however, for this second floor tenancy, no *mesne* profits have been proved by the respondent no. 1/plaintiff by showing rate of rent of a similar premises by leading necessary evidence in the trial court, and therefore it is held that *mesne* profits payable for the second floor

portion will be at the agreed rent of Rs. 5,000/- per month, and this rate of rent will also be payable from 01.04.2008, subject to the adjustments as already stated above.

12. So as to determine the amounts which already stand paid by the appellants/defendant nos. 1 and 2 to the respondent no. 1/plaintiff or deposited in this Court, and consequently for amounts to be paid to the respondent no. 1/plaintiff along with the accrued interest thereon, and also if any amount has to be refunded to appellants/defendant nos. 1 and 2 along with the accrued interest, the matter now be listed before the Joint Registrar on 30th March, 2019 for such detailed calculation exercise and adjustment purposes.

13. Finally, it is directed that since the impugned judgment of the trial court is set aside, and the respondent no. 1/plaintiff has received possession of the total basement portion having two half tenancies of two equal half portions of the basement, this total basement portion will be restituted by respondent no. 1/plaintiff to the appellant no. 2/defendant no. 2 by handing over the actual physical possession of the entire basement within a period of one week from today, and this order is passed in exercise of powers of restitution

provided under Section 144 CPC as the impugned judgment of the trial court is set aside. In case the respondent no. 1/plaintiff fails to return the basement portion tenancy to the appellant no. 2/defendant no. 2, the respondent no. 1/plaintiff will be liable for such action as is available to the appellant no. 2/defendant no.2 in accordance with law. It is also clarified that so far as the ground floor portions which are with the appellant no.1/defendant no.1, the said portions will continue to remain in possession and tenancies of the appellant no.1/defendant no. 1.

14. In view of the aforesaid discussion, this appeal is accordingly allowed and disposed of partially, with respect to the basement and the ground floor portions as stated above, but dismissed to the extent of sustaining the impugned judgment and decree to the extent of second floor portion is concerned. All pending applications are also disposed of. Parties are left to bear their own costs.

JANUARY 31, 2019

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VALMIKI J. MEHTA, J