

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22nd October, 2020.

+ **RSA 67/2020 & CM APPLs. 27164/2020, 27165/2020**
RANA GHULAM & ORS. Appellants

Through: Mr. Aditya Gaur, Advocate. (M:
9999397097)

versus

SMT. NAUSHABA BEGUM & ORS. Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present second appeal has been filed under Section 100 of the CPC challenging the impugned judgment dated 7th August, 2020 by which the decree for possession dated 24th September, 2019, passed by the Id. ASCJ/Trial Court, has been upheld by the Id. ADJ/Appellate Court.
3. The brief facts of this case are that the Respondents/Plaintiffs in the suit bearing no.52241/2016 filed a suit for possession and damages/*mesne profits* in respect of First Floor (Right Portion) of property bearing no. 337-C/50 (Old) A-19 (New), Gali Masjid Wali, Batla House, Okhla, New Delhi (*hereinafter, 'suit property'*). Late Mohd. Khursheed was the owner of the property and after his death, the Plaintiffs/Respondents herein became the co-owners/co-sharers of the said property. The premises in question were let out to Late Gulam Mohd. – husband of Appellant No.1 and father of Appellants No.2 to 5, who are the Defendants in the suit. Mr. Gulam Mohd. was inducted as a tenant vide rent agreement dated 1st August, 1989. Initially, the rent was

Rs.800/- which was thereafter modified to Rs.1171/- per month, excluding electricity and water charges.

4. The landlord had issued notice dated 16th October 2001 and 19th December 2002 to Late Gulam Mohd. to make the payment of arrears of rent as he was irregular in his payments. Finally, the tenancy was terminated vide notices dated 16th October, 2001 and 19th December, 2002 and the original tenant remained a statutory tenant thereafter. Prior to the tenant's death on 2nd March, 2015, demand notice dated 28th March, 2013 had been issued by the landlord. A reply dated 18th April, 2013 was also received to the said notice as even the statutory rent was not being paid. Since the passing away of the original tenant, his widow/Appellant No.1 continues to live in the suit premises. The children of the original tenant being Appellant Nos. 2-4 reside separately in their respective homes in the neighbouring area.

5. In the original suit filed for possession, arrears of rent and damages against the Appellants, evidence was led by the Plaintiffs, however, the Defendants/Appellants did not lead any evidence in the matter. The following issues were framed in the suit:

“(1) Whether the plaintiffs are unauthorized occupants in the suit property?

(OPP)

(2) Whether the defendants are tenants of the plaintiffs in the suit property?

(OPD)

(3) Whether the plaintiffs are entitled to the decree of possession against the defendants in respect of the suit property? (OPP)

(4) Whether the plaintiffs are entitled to the decree of Rs. 62,156/- against the defendants towards the use and occupation charges of the suit property till 01.05.2016? (OPP)

(5) Whether the plaintiffs are entitled to pendente-lite and future damages / mesne profits at the rate of Rs. 10,000/- per month against the defendants towards the use and occupation charges of the suit property from 02.05.2016 till the vacation of the suit property? (OPP)

(6) Whether the suit is barred u/s 50 of the DRC Act, 1958? (OPD)

(7) Relief.”

6. The Trial Court, came to the conclusion that Late Gulam Mohd. was a statutory tenant of Late Mohd. Khursheed and at the time of death of Late Gulam Mohd., the defendants were not financially dependent upon Late Gulam Mohd. and accordingly the objection that the jurisdiction of the Court is barred under Section 50 of the Delhi Rent Control Act, 1958 (*hereinafter, 'DRC Act'*) would not apply. Further, the Court also held that the *mesne profits* are liable to be paid. The findings of the Trial Court are:

- Legal notices dated 16th October, 2001 (Ex.PW 1/6) and 19th December, 2002 (Ex.PW 1/7) were duly served upon Late Gulam Mohd in view of the findings recorded in paragraph 18 of the judgment dated 26th October, 2010 by the Id. ACJ in EP No. E-272/09.
- It follows that upon the service of the said legal notices, Late Gulam Mohd. had become a statutory tenant of Late Mohd. Khursheed *qua* the tenanted premises.
- At the time of death of Late Gulam Mohd. on 2nd March, 2015, the Defendants were not financially dependent upon Late Gulam Mohd. Therefore, the jurisdiction of the Court to entertain the suit is not barred by Section 50 of the DRC Act, 1958.
- The Defendants were statutory tenants of the Plaintiffs till 1st March, 2016. Accordingly, Plaintiffs are entitled to obtain possession of the

tenanted premises from the Defendants with effect from 2nd March, 2016.

- Plaintiffs are not entitled to recover from the Defendants, arrears of rent of Rs.42,156/- for the period 2nd March, 2013 to 1st March, 2016, along with interest at the rate of 15% per annum as the same was deposited by the tenant in a petition filed under Section 27 of the DRC Act.
 - The trial court held that the Plaintiff's case that the tenanted premises would have fetched rent at the rate of Rs. 10,000/- is not corroborated by any oral or documentary evidence.
 - Thus the Plaintiffs are entitled to recover damages/*mesne* profits from the Defendants with effect from 2nd March, 2016 at the rate of Rs.1347/- per month for the period 2nd March, 2016 to 1st March, 2017; damages/*mesne* profits at the rate of Rs.1777/- per month for the period 2nd March, 2018 to 1st March, 2019 and damages/*mesne* profits at the rate of Rs.2044/- per month for the period 2nd March, 2019 till the handing over of the tenanted premises by the Defendants to the Plaintiffs, along with simple interest at the rate of 12% per annum.
7. Finally, the Id. ACSJ decreed the suit, vide judgment dated 24th September, 2019, in the following terms:

*“26. As a net result of the aforesaid findings qua the issues framed in this suit, on 23.11.2017, this suit is partly decreed in favour of the plaintiffs and against the defendants. It is held that the plaintiffs are entitled to recover from the defendants, (a) possession of tenanted premises viz. first floor (right portion) of property no.337 -C/50 (old) A-19 (new), Gali Masjid Wali, Batla. House, Okhla, New Delhi-110025, as shown in red colour in the site plan, Ex.PW1 /1; (b) damages/*mesne* profits at the rate of*

Rs.1347/- per month for the period, 02.03.2016 to 01.03.2017; damages/mesne profits at the rate of Rs.1549/- per month for the period, 02.03.2017 to 01.03.2018; damages/mesne profits at the rate of Rs.1777/- per month for the period, 02.03.2018 to 01.03.2019 and damages/ mesne profits at the rate of Rs.2044/- per month from 02.03.2019 till the handing over of the tenanted premises by the defendants to the plaintiffs, along with simple interest at the rate of 12% per annum and (c) proportionate costs of this suit. Also, it is held that the plaintiffs are not entitled to recover from the defendants arrears of rent of Rs.42, 156/-, for the period, 01.03.2013 to 01.03.2016 along with interest at the rate of 15% per annum, by way of this suit.”

8. An appeal was filed against the said judgment by the Defendants/Appellants herein, which was dismissed by the Id. ADJ vide judgment dated 7th August, 2020. In the appeal, the Id. ADJ had also noticed the evidence led by the Plaintiffs as also the fact that the Defendants did not lead any evidence. The Ld. ADJ also recorded that the Defendants had not filed any application before the Trial seeking opportunity for leading evidence or challenging the order closing their right to lead evidence. Thus, the question of violation of principles of natural justice was held against the Defendants. The Court observed as under:

- A Court of law can only grant reasonable opportunity to a litigant. No litigant has right to seek unlimited opportunities from the Court. The appellants were afforded reasonable opportunity to lead evidence which they did not avail. The impugned judgement of the trial court is not in violation of the principles of natural justice.
- It is proved that Late Gulam Mohd. was served with notices dated 16th October, 2001 and 19th December, 2002 and as such, the contractual

tenancy of Gulam Mohd. was validly determined during his lifetime. He was a statutory tenant at the time of his death on 2nd March, 2015.

- The onus to prove financial dependence upon the deceased statutory tenant was on the Appellants. Since the spouse i.e., the widow of the Tenant gains precedence, the financial dependence of the three daughters and the son need not be gone into. No evidence was led on the issue of financially dependency of the Appellants on the original tenant. The financial status of the deceased was also not proved.
- The Appellant no.1 ceased to be entitled to protection of the DRC Act after expiry of one year from the date of death of Gulam Mohd.
- As the Appellants are in unauthorized possession of the tenanted premises since 2nd March, 2016, the suit is not barred under Section 50 of the DRC Act, 1958. Accordingly, there is no legal infirmity or material illegality or perversity in the impugned judgment. Appeal was dismissed.

9. The present second appeal has thus been filed against two concurrent judgments of the Trial Court and the Appellate Court. In the appeal, this Court has heard Mr. Aditya Gaur, ld. counsel. The only question that has been raised is that the tenant is protected under the Delhi Rent Control Act, 1958. This issue has been dealt with by both the Trial Court and the Appellate Court, in accordance with law. This question is no longer Res integra. It is settled in several judgements including *Krishna Prakash & Ors. v. Dilip Harel Mitra Chenoy*, [RFA No. 181/1996, Decided on 10th August, 2001 (DHC)] and *Prem Nath Aggarwal v. Munshi Ram*, [RSA No. 96/2006, Decided on 21st July 2010 (DHC)] that the jurisdiction of the civil court to entertain any suit or proceeding is not barred under Section 50 of the DRC Act if the deceased

was a statutory tenant and right of the legal heir/s, in this case, the widow, has expired. Thus, no question of law arises for consideration in the present second appeal.

10. This Court was inclined to issue notice in the second appeal, limited to the issue of grant of some time to the Appellants to vacate the property. However, after seeking instructions from Appellant No.1 i.e. the widow of the original deceased tenant, Id. counsel submits that the Appellants would not like to avail of any further time to vacate the premises and that the second appeal deserves admission. In view of this stand taken by the Defendants, this Court has no option but to dismiss the appeal, inasmuch as no substantial question of law arises for considering the present appeal.

11. The son/daughters of Appellant No.1 are living in separate premises in the nearby area itself and accordingly even on equitable consideration, this Court does not deem it appropriate to issue notice in the second appeal.

12. Accordingly, the appeal is dismissed. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 22, 2020

Rahul/ A