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

Reserved on: 27th September, 2021

Date of decision: 22nd November, 2021

+ **RC.S.A. 1/2020 & CM APPL. 7775/2020**

RAM KISHAN (DECEASED) THR LRS Appellants

Through: Mr. J.P. Sengh, Sr. Advocate with
Mr. R.L. Sinha, Mr. Tanuj Gulati &
Mr. Sunil Verma, Advocates

versus

KANWARINDERJIT SINGH Respondent

Through: Mrs. Kajal Chandra, Ms. Perna
Chopra, Mr. Viren Kapur & Mr.
Divye Puri, Advocates

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

Brief Facts

1. The property in question is a portion of Z-39, West Patel Nagar, New Delhi (*hereinafter "suit property"*), wherein admittedly, the Appellant-tenant (*hereinafter "tenant"*) is running a dry-cleaning shop by the name of 'Uttam Dry Cleaners'. The suit property is a leasehold property by the L&DO in favour of the Respondent-landlord (*hereinafter "landlord"*). The said lease deed was executed on 10th June, 1959, by the President of India, for a period of 99 years commencing from 30th September, 1955. The relevant clauses in the lease deed read as under:

"1. The Lessee doth to the intent that the burden of the covenants may run with the said land and may bind any permitted assignee

thereof hereby covenant with the Lessor as follows:

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*(v) not to erect more than one building *single storeyed containing one residential flat or *double storeyed consisting of one or two residential flats in all, with a barsati on top, as may be approved by the Chief Commissioner, Delhi or such officer or body as the Lessor or the Chief Commissioner, Delhi may authorise in this behalf, except such outhouses and servant quarters as may be approved by the Lessor. Any servant quarter constructed by the Lessee shall not without any written permission of the Chief Commissioner, Delhi be occupied or permitted to be occupied otherwise than by the bona-fide servants of the persons occupying the main building;*

*(vi) not without the written consent of the Chief commissioner, Delhi, to carry on or permit to be carried on, on the said land and buildings erected thereon during the said lease any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a *single storeyed building consisting of one residential flat or a *double storeyed building consisting of one or two residential flats in all, with a barsati on top, as may be approved for the locality or as provided in the building already erected on the said land;*

2. A perusal of the above two clauses makes it clear that the suit property was to be used for residential purposes. The ground floor of the suit property was taken on rent by the tenant, who started a shop by the

name of Uttam Dry Cleaners. A legal notice was issued by the landlord under Section 14(1)(k) of the Delhi Rent Control Act, 1958 (*hereinafter "DRC Act"*) on 20th September, 1976, to stop misuser, on the ground that objection was raised by the L&DO and re-entry was threatened. In fact, the suit property had stood briefly re-entered because of misuse, though possession was restored to the landlord thereafter. In reply dated 12th October, 1976 to this notice, the tenant claimed that the suit premises has been used as a dry-cleaning shop since inception and the landlord has been regularly receiving rent. Reliance was also placed on a Zonal Development Plan stated to be in force from 18th January, 1972, as per which it was claimed that the premises had been declared as a commercial premises. The tenant curiously claimed that using the premises for residence would be violative of the Zonal Development Plan. In view of this stand taken by the tenant, the landlord on 2nd November, 1978, filed a petition before the Id. ARC, under Section 14(1)(k) of the DRC Act, seeking eviction of the tenant. It is this petition under Section 14(1)(k) of the DRC Act, which is the subject matter of the present second appeal.

3. In the eviction petition, the Assistant L&DO, Mr. D.R. Kapoor, who appeared as AW7 clearly stated as under:-

"607/76

AW-7 Sh. D.R.Kapoor, Asst. Land & Development Office, Nirman Bhawan, New Delhi on SA.

*I have brought the summoned record. The disputed premises were in the name of Smt. Parkash Kaur before re-entry. **During re-entry, the possession remained with the petitioners. The property has been***

restored to the owners. Ex.AW-7/1 is the photostat copy of the letter issued from L.D.O. office. (Document is allowed to be filed subject to costs of Rs.20/- Costs paid.) The property in dispute is a residential property.

XXXXXXXXXXXXXXXXXXXX by the counsel for
Shanker Lal.

*The disputed property was allotted to
Smt. Parkash Kaur on 30.09.1955."*

4. The tenant, who appeared in the eviction proceedings, admitted that he had not seen the lease deed of the suit property. He further admitted the reply sent by him. He did not produce the Zonal Development Plan, which was relied upon in his reply. Vide judgment dated 8th February, 1979, in **Suit No. 607 of 1976** titled **Kanwar Inderjit Singh v. Ram Kishan**, the Id. ARC held that the Respondent was the landlord of the shop under tenancy. The tenant admitted that he was carrying on dry-cleaning business from the premises. The said misuser was not stopped even after notice was issued by the landlord, hence, the ground of misuser was made out. The findings of Id. ARC are as under:-

"8. It was admitted even in the respective written statements by Ram Kishan, Shankar Lal and Sohan Lal that they are carrying on Dry Cleaning, Tailoring and sewing machine repair workshop in their respective premises. There is no assertion even in any court statement (in fact there is no court statement by any tenant) that such a misuse was stopped after notice. Ground u/s 14(1)(k) is therefore made out.

8. Respondents Tenants pleaded that these three suit premises were actually let for

commercial purpose and are being used as such since the beginning. AW5 and AW6 admit this. But the fact is irrelevant for the purpose of considering ground u/s 14(1)(K) of the Delhi Rent Control Act, 1958 (See Faquirchand v. Ram Rattan Bhanot 1973 RCR 221). Similarly, the argument that the premises in dispute have been shown as commercial in the Zonal Development Plan is irrelevant. We are concerned with the “Parent” lease and its term only and even notice of this parent lease is not relevant. (R Ramanujan v. Arjit Singh 1976 (27 RCR 107).

Order.

9. Grounds u/s 14(1)(K) of the Delhi Rent Control Act 1956 are held to be established in each of the three cases and notice u/s 14(11) of the Act shall go to L&DO.”

5. In terms of Section 14(11) of the DRC Act, time was to be granted to the tenant to stop the misuser. Since the tenant did not agree to stop the misuser, vide order dated 15th April, 1981 in **Suit No. 607 of 1976** titled **Kanwar Inderjit Singh v. Ram Kishan**, the order of eviction was passed by the Ld. ARC, in favour of the landlord in the following terms:

“3. I have heard the ld. counsel for the parties. The petitioner has examined Sh. D.R. Kapoor, Asstt. L&DO who had brought the summoned file. He has stated that the premises were in the name of Smt. Parkash Kaur before re-entry and during re-entry possession remained with the petitioner and property has been restored to the owners and Ex.AW7/1 is the copy of the letter issued by L&DO office. It is, therefore, proved that the property has been restored to the petitioners. The possession of the property

during the period of re-entry has remained with the petitioner. As such, there is no force in the contention of the ld. counsel for the respondents that the petition is not maintainable on account of the fact that the premises have been re-entered.

4. The next ground urged by the ld. counsel for the respondents is that the premises have been commercialised as per Zonal Plan. This contention has also got no force in it. Firstly, this point was discussed by Sh. R.L. Chugh in his order dated 8.2.79 wherein he has held that the argument that the premises in dispute have been shown as commercial in Zonal Development Plan is not relevant as we are concerned with the parent lease and its terms only. The misuser has already been held by Sh. R.L. Chug vide his order dated 8.2.79 and the misuser is against the terms of the parent lease which has been established in that order. Moreover, no question has been put to the witness examined by the petitioner Sh. D.R.Kapoor, whether the land underneath the premises has been commercialised in the Zonal Development Plan or not. In the reply of the L&DO, it was categorically stated that the land used for the premises is for commercial purpose and it cannot be regularised permanently and not permitted under Master Plan/Zonal Plan.

5. Respondents have examined themselves wherein they have all stated that the premises were let out as a shop by the consent of Smt. Parkash Kaur. Now, the consent of the landlord is immaterial. The misuser is against the land underneath the premises which prohibited according to the terms and

conditions of the parent lease even if the landlord/owner has let out the premises for commercial purposes, even then the misuser would be there. Moreover, this has been discussed by Sh. R.L. Chug in his order dated 8.2.79. It is held to be irrelevant for the purpose of decision of the present petitions. Now, none of the respondent has stated in his statement that he is prepared to stop the misuser of the premises or is prepared to pay the penalty. Now, as per restoration of the lease deed, vide Ex.AW7/1 and in view of the reply of the L&DO, the premises can only be regularised temporarily. As the land underneath the premises is residential, it cannot be regularised permanently and respondents have not stopped the misuser of the premises and neither they are prepared for paying the penalty. As the respondents have not stated in their statement that they are prepared to comply with the conditions imposed on the landlord by the authorities, that is, the L&DO and also to pay the compensation, therefore, they are liable to be evicted from the suit premises and the petitioners are entitled to an order of eviction against them.

ORDER

6. An order of eviction is passed in favour of the petitioner Kanwar Inderjit Singh and against the respondent Ram Kishan with respect to the suit premises shown red in site plan Ex.AW5/3 and situated at portion of premises No.Z-37, West Patel Nagar, New Delhi in petition No.607/76. An order of eviction is passed in favour of the petitioner Gurbachan Inderjit Singh and against the

respondent Shankar Lal with respect to the suit premises shown red in site Plan Ex.AW5/4 and situated at portion of premises No.Z-37, West Patel Nagar, New Delhi in petition No.608/76. An order of eviction is passed in favour of the petitioner Gurbachan Inderjit Singh and against the respondent Sohan Singh with respect to the suit premises shown red in site plan Ex.AW5/5 and situated at portion of premises No.Z-39, West Patel Nagar, New Delhi in petition No.609/76. There is no order as to costs. The original order be placed in file No.607/76 in which evidence has been recorded, that is Kanwar Inderjit Singh V/s Ram Kishan. Copies of the order be placed in file No.608/76 Gurbachan Inderjit Singh V/s Shankar Lal and file No.609/76 Gurbachan Inderjit Singh V/s Sohan Lal. Al the files be consigned to record.”

6. This order of eviction was challenged in appeal before the Ld. Rent Control Tribunal (*hereinafter “RCT”*) in **R.C.A No. 317/81** titled **Ram Kishan Vs. Kanwar Inderjit Singh**, wherein the RCT vide order dated 5th May 1982, allowed the appeal and dismissed the eviction petition under Section 14(1)(k) of the DRC Act, on the ground that the tenant had deposed that they were willing to pay misuser charges till July, 1982, within the next 4 months. It was also recorded in this order that the findings of the first Id. ARC concerning misuser under Section 14(1)(k) were not disputed before this RCT and it was conceded at the bar to that effect. A statement was also recorded. The operative portion of the said order reads as under:

“(15) For these reasons given above, I set aside the impugned order and accept the three appeals. Instead it is directed that the appellant will pay to the respondent or deposit in the trial

court the misuse chares in case of Ram Kishan Rs.7234.67, in case of Sohan Lal Rs.2055.63 and in case of Shanker Lal Rs.3079.30 within four months from today or stop misuse within the same stipulated time. In default, the appellants shall be liable to be evicted.

(16) When the respondent come to know of any misuse charges for the future, he shall inform the appellant about the misuse charges and within one month, appellant shall remit the same to the respondent or deposit the same in the trial court, or within the said one month stop misuse. In default, the appellant would be liable to be evicted. If the respondent accepts these deposits and does not deposit the same with the Land and Development Office, then the petition shall be deemed to have been dismissed. If at any stage the Land and Development office puts an tentative date that misuse shall not be permitted the respondent shall inform the appellant and they shall stop the misuse within one month. In default, they shall be liable to be evicted.

Announced and dictated in the presence of the appellant and the respondent.”

7. A second appeal was preferred by the landlord against the order of Id. RCT. Unfortunately, the matter remained pending before the High Court for 22 years and came to be decided on 14th December, 2004 wherein in **SAO No. 251/82** titled **Kanwal Inderjeet Singh v. Ram Kishan**, a Ld. Single Judge of this Court remanded the matter back to the Id. ARC for a fresh decision. The said order reads as under:

“This appeal is directed against the order dated 5th May, 1982, of the Rent Control Tribunal in Suit No.317/1981, whereby the

learned Tribunal has allowed the appeal and dismissed the eviction petition under Section 14(i)(k) of the Delhi Rent Control Act.

Counsel for the parties have drawn my attention to the office order No.2/83, L&DO/24(3)/75-CDN, dated 12th January, 1983, whereby the Land and Development Office has made concessions as regards the use of premises inasmuch as certain non-residential activities have been permitted in residential areas. In item no.92 thereof, washing, dyeing and dry cleaning have been permitted in the premises on the conditions that the tenant/landlord resides in the same premises and area does not exceed 300 square feet. Since there is no finding of any of the courts below whether this circular applied to the premises in question or not, it is a clear case that the matter should be remanded to the Additional Rent Controller to re-decide the issue in the light of the above circular as also in the light of any subsequent notifications that may have been issued. The orders of the Additional Rent Controller and the Rent Control Tribunal are set aside. The matter is remanded to the Additional Rent Controller.

With this SAO 251/1982 stands disposed of. The parties are directed to appear before the Additional Rent Controller on 10th January, 2005.

A copy of this order be given dasti to counsel for the appellant.”

8. Post the said remand, the ld. ARC in **E-23/08/76** titled **Kanwar Inderjeet v. Ram Kishan** considered the matter afresh, and vide order dated 12th September, 2011, the eviction petition was dismissed.

9. In these proceedings before the Id. ARC, the L&DO again filed a report dated 25th October, 2008, which observed that the tenant was residing in the suit premises. This was challenged by the landlord by way of an application which was rejected by the Id. ARC vide order dated 10th May, 2010. The landlord had also sought appointment of a Local Commissioner which request was also rejected.

10. The eviction petition was finally dismissed, basis the reasoning that the L&DO had not raised any misuse charges/compensation since last 25 years after 1983, hence, the misuse had become condonable. The reasoning of the Id. ARC is as under:

“12. After the remand order, the case was again taken up & certain notifications were filed by the parties & no notification was issue after the year 2007 as per the intimation derived through RTI from L & DO. [Letter dated 30/08/2011 has been placed on file by the respondent which was issued by the L & DO). In the original petition the petitioner examined Sh. D. R. Kapoor Assistant in L & DO who has deposed regarding the re-entry & proved letter exh.AW7/1, the copy of letter issued by L & DO vide which the property has been restored to the petitioner. The main controversy between the parties remains that the respondent is not residing in the premises in question therefore the premises cannot be used for any other purpose besides the purpose for which it was let out. The premises in question as per the contention of the petitioner was let out for residential purposes & the respondent is not residing there but has changed the user & running a dry cleaning shop & notice was given to stop the misuse.

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14. The Ld. Appellant Rent Control Tribunal ordered to deposit the Compensation / misuse charges which was complied by the respondent & he deposited the compensation/misuse charges upto 14/07/82. The Court challan is placed on record. The L & DO was not inclined to condone the breach on the permanent basis. In the Hon'ble High Court of Delhi, the officials of L & DO were directed to explain the correct position/status of the premises in question. The inspection was carried in the premises on 19/10/2000 by the officials of Land & Development Office. Sh. Atma Ram filed an affidavit which inter-alia states as under:- "Uttam Dry Cleaner: The misuse charges w. e. f. 15/01/80 to 02/01/83 before issue of the order of condonable items are recoverable. The Dry Clean Shop has become a condonable item under item no.99 issued by the Govt. of India and as such the question of misuse charges does not arise at all.

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16. It is also pertinent to mention here that L & DO has not raised any demand of misuse charges/compensation since last 25 years and the affidavit filed by Sh. Atma Ram Dy. L & DO corroborates this fact. Sh. Ram Kishan was also residing in the premises in question and his Ration Card number was 210288.

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23. Ld. Counsel for the petitioner argued that the Lessor, in case of breach of the condition has a right of re-entry upon the premises in question but once the notifications were issued

by the authorities the above referred clause automatically comes to an end if the change of user is permissible under the subsequent notifications.

24. In view of the discussion and in the light of notifications, I am of the considered opinion that the respondent cannot be ordered to be evicted. Hence the petition is dismissed with no order as to cost. File be consigned to record room after due compliance.”

11. This order of the Id. ARC was again challenged before the Id. RCT in ***RCT No. 29/2016*** titled ***Kanwar Inderjeet Singh v. Sh. Ram Kishan***. The Id. RCT reversed the findings of the Id. ARC and allowed the appeal and directed eviction. The same reads as under:

“21. A bare perusal of Section 14(1) (k) of the DRC Act would show that the tenant, notwithstanding previous notice, cannot be allowed to use or deal with the property in the manner contrary to any condition imposed on the landlord by the Government or DDA or MCD giving him lease of the land on which the premises was constructed. In the present case, admittedly the lease had been executed between the mother of the petitioner and the L&DO and the terms and condition thereof, are binding upon the respondent/tenant. It is admitted case that the premises had been let out for commercial purposes contrary to clause 1(vi) as reflected in the master lease Ex.AW-1/1 which reads as under:-

"Not without the written consent of the Chief Commissioner, Delhi to carry on or permit to be carried on, on the said said land and buildings erected on thereon during the said lease deed any

trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of a single storeyed building consisting of one residential flat in all, with a barsati, on top, as may be approved for the locality or as provided in the building already erected on the said land:

II....If any breach by Lessee or by any person claiming through or under him of any of the covenants or conditions herein before contained and on his part to be observed or performed then and in any such case it shall be lawful for the Lessor or any persons duly authorized by him not with standing the waiver of any previous cause or right or re-entry upon any part of the premises hereby demised or of the building thereon in the name of the whole to re-enter any thereupon this demise and every thing herein constrained shall cease and determined and the Lessee shall not be entitled to any compensation whatsoever nor to the return of any premium paid by him".

22. At the outset, it is also borne out from the record that notice dated 20.09.1976 Ex.AW-3/A was served upon the respondent/tenant to stop the misuser of the premises for commercial purposes, which was replied by him vide letter dated 12.10.1976 Ex.AW-4/2 and the same not only denied the case of the landlady but also has gone uncomplied with throughout the length and breadth of the present litigation. It is significant to note here that the order dated 08.02.1979 passed by Sh. R.L. Chugh, the then Ld. ARC under Section 14 (1) (k) DRC Act was

not challenged before the Rent Control Tribunal nor the findings recorded by the Rent Control Tribunal about the correctness and legality of order dated 08.02.1979 was assailed or disputed before the Hon'ble Judge of the High Court of Delhi, which led to order dated 14.12.2004. It would bear repetition that the matter was remanded back to the Id. ARC for a limited enquiry with regard to the scope and applicability of Office Order No. 2/83, L&DO/24(3)75-CDN, dated 12th January, 1983.

23. When the said aspect is examined, it is clearly borne out from the trial Court record that the respondent/tenant in his written statement categorically averred that the tenancy premises had been let out for commercial purposes and he has never resided in the same. The premises is one room structure, which is not supported by any facility of common Latrine or Bathroom and it is established fact on the record that premises has been used ever since the inception of tenancy for running a dry cleaning shop under the name and style of "Uttam Dry Cleaners". It may further be stated that the orders of the Id. ARC dated 14.05.2008 and 02.06.2008 are beyond any challenge in so far as it pertains to examining the scope, ambit and applicability of Circular dated 12.01.1983 without leading evidence, has not been either questioned by the parties.

24. In the said scenario, when we come to the report/affidavit of Pradeep Singh Kumar, Deputy Land and Development Officer dated 25.10.2008; it is categorically provided that as per master lease the tenancy premises could

only be used for residential purposes and running of Dry Cleaning shop is condonable item No. 99 of officer order No. 7/83 dated 22.03.1983 only where the person concerned running the shop is also residing in the said premises. However, the contents of the affidavit in so far as it states that the Field Staff found that the respondent was residing in the tenanted premises is palpably wrong in view of own admission of the respondent in the pleadings, and also his acknowledgment throughout the long history of litigation that he has been running a Dry Cleaning Shop from the same. Be that as it may, the fact that the respondent/tenant has been running a shop and not residing in the premises was clinched and set at rest by CW-1 Sh. Harish Chander, Public Health Inspector from Karol Bagh Zone, Anand Parbat, MCD, Delhi that as per their reply dated 18.11.2011, no one was residing in the premises and same was being used for running a Dry Cleaning Shop, which is Ex.CW-1/I.

25. Indeed, the one room shop which is measuring 11.6' x 9.4^{1/2}' is less than 300 square feet and the respondent proved that the misuse charges were paid upto 14.07.1987 in terms of directions of the the Rent Control Tribunal dated 05.05.1982. However, it is categorical in the testimony of the witness from L&DO that misuse of the premises cannot be condoned on permanent basis. Mere fact that the L&DO has not chosen to levy any charges for misuse thereafter is hardly of any consequence since such misuser is not permissible permanently. In the whole scenario, it is immaterial if there has been any changes in the Zonal or Master Plan permitting user of premises on the ground floor for commercial purposes or mixed use as it is

the very nature of the property which has been leased that needs to be protected in order to safeguard the interest of the Lessee / owner so that he does not face termination of his lease. To sum up, the illegality which was committed at the inception of the tenancy is not curable and the landlord is not estopped from seeking eviction under Section 14 (1) (k) of the Act particularly when the tenant is adamant and not willing to stop the misuser.

RELIEF

26. In view of the aforesaid discussion, the present appeal is allowed and an eviction order is passed in favour of the appellant/landlord and against the respondent/tenant in respect of premises shown red in the site plan Ex.AW-5/1 forming part of premises No. Z-39. West Patel Nagar, New Delhi. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. Trial Court record along-with copy of this Judgment be sent back. File of appeal be consigned to Record Room.”

12. Thus, the RCT directed eviction of the tenant as the tenant was not willing to stop the misuser. The said order of the RCT is impugned in this appeal.

Submissions

13. Mr. J.P. Sengh, Id. Sr. Counsel appearing on behalf of the tenant, submits that the Id. RCT has completely erred in law. He submits that under Section 14 of the DRC Act, if the Court holds that there is any misuse by the tenant, an opportunity has to be given to the tenant to remove the said deficiency and it is only thereafter that eviction can be resorted to. He relies upon the judgment of the Hon'ble Supreme Court in ***Dr. K.Madan v. Smt.***

Krishnawati and others, (1996) 6 SCC 707 wherein the Supreme Court has made observations in respect of the scheme of Section 14 as below:

“The first opportunity to the tenant is given when the notice is served on him by the landlord and the second opportunity is given when a conditional order under Section 14(11) of the Act is passed directing the tenant to pay the amount by way of compensation for regularisation of user up to the 'date of stopping the misuser and further directing stoppage of unauthorised user. The continued unauthorised user would give the paramount lessor the right to re-enter after the cancellation of the lease deed. As already noticed, the DDA is insisting on stoppage of misuser.”

14. Mr. Sengh submits that the L&DO's report which was issued in 2008 clearly showed that there was no misuse and in any event, even if there was misuse, the tenant had been depositing the misuser charges. Further, under the latest Capital's Master Plan for Delhi 2021, notified on 7th February, 2007 vide S.O. No. 141 (*hereinafter "Master Plan"*), the suit premises has been declared as a colony for mixed land use, and dry-cleaning and laundry facilities have been held to be permissible in residential areas, thus the initial discrepancy if any has also been made out by the tenant. He further submits that going by the judgment in ***Dr. K.Madan (supra)***, there is no misuser of the suit property, as, since 1983 the L&DO has not sought any misuser charges. Since the L&DO is the lessor of the premises, which would be the Government for the purposes of determining misuse in terms of Section 14(1)(k), there is no misuse and the petition is liable to be dismissed.

15. He further submits that the impugned order has erred in following the earlier observations of the first Ld. ARC in the order dated 8th February, 1979, as the same had culminated in the final order dated 5th May 1982, which has been set aside by the learned Single Judge of this Court vide the order dated 14th December, 2004. Therefore, he submits that there is a clear question of law and the same ought to be decided in favour of the tenant.

16. On the other hand, Ms. Kajal Chandra, Id. counsel appearing for the landlord, has firstly pointed out that in reply dated 12th October, 1976, the tenant categorically states that the zonal plan itself has made it commercial and he is using it for his business and commercial purposes. Ms. Chandra, also refers to the final order of the RCT passed on 5th May, 1982 wherein on the basis of all these facts, the RCT had set aside the eviction order, accepted the appeals and had given an opportunity to the tenant to pay the misuser charges. Even in this order, it is repeatedly recognized that the use of the suit property is for commercial purposes. Therefore today, the tenant cannot argue that he is living in the said premises because it is the admitted position that he was using it for commercial purposes.

17. Ms. Chandra further relies upon the findings of the Id. ARC in the order dated 8th February, 1979. She submits on the strength of the order dated 8th February, 1979, the ARC has clearly come to the conclusion that the premises can only be used for residential and not for any other purposes. The said order of the ARC dated 8th February, 1979, having not been disturbed, holds ground. She also highlights the fact that L&DO had sought to re-enter the suit property as recorded by the Id. RCT in the order dated 15th April, 1981. Therefore, the Id. RCT has concluded that eviction order is

valid and legal and the tenant did not state in his statement that he is prepared to stop the misuser. Hence the eviction order was upheld.

18. Ms. Chandra, Id. Counsel, also urges the Court that the office order No.2/83, L&DO/24(3)/75-CDN, dated 12th January, 1983 (*hereinafter* “1983 Notification”) cannot come to the benefit of the tenant as it not retrospective. Reliance is placed on ***Bikramjit Singh v. UoI, 1980 Rajdhani Law Reporter 366***, referred in the order dated 15th April, 1981 of the RCT as well, to state that the tenant cannot rely upon the Zonal Development Plan to change the user and the lease deed is the relevant document.

19. In any case, she submits that even condonation under Item 99 of the 1983 Notification requires the tenant to be residing in the premises. She relies upon the order dated 22nd December, 2014, wherein the RTI response has been obtained by the landlord from the Health Officer, Karol Bagh Zone, MCD, that no one is residing in the premises. The RTI being now part of the lower court’s record and having not been challenged, no argument to the contrary can be accepted. She thereafter relies upon the following judgments to support her contention that the 1983 Notification or subsequent Zonal Development Plans or Master Plans are not relevant to the present case:

- ***Ajai Pal Singh v. State of U.P. [Civil Appeal No. 5738-5739 of 2021, decided on 23rd September, 2021]***: a decision concerning the Land Acquisition Act, 1894, where it was held that the benefit of a greater compensation amount for land acquisition determined in 1991, cannot accrue to land acquisitions undertaken in 1976;
- ***Rajender Bansal and Ors v. Bhuru (Dead) Through LR & Ors. (2017) 4 SCC 202***: where during the pendency of a suit for

possession and termination of tenancy, the area was declared as an urban area covered by the DRC Act. However, it was held that the law was crystallized as on the date of institution of the suit and the Civil Court's jurisdiction would continue, as opposed to the jurisdiction of the Rent Control Tribunal under the DRC Act;

- ***Munshi Ram & Anr. v. UOI & Ors. (2000) 7 SCC 22***: to support the position that two dates which would be relevant for eviction on misuser, are: first, when the first notice was served and second, when the order under Section 14(11) was passed.

20. She further submits that the ration card etc. which was issued for the suit premises in favour of the tenant cannot be considered to be proof of residence inasmuch as for there to be a dwelling house, there needs to be proper kitchen and toilet facilities, which admittedly do not exist in the present suit premises.

21. Mr. J.P. Sengh, Id. Senior Counsel, in rejoinder relies upon the judgment in ***Manohar Lal v. Narain Das & DDA, 1982 RLR 41*** to argue that the procedure under Section 14(1)(k) entails two steps: the first order is passed under Section 14(1)(k) and thereafter notice being issued to the authority concerned i.e. L&DO in this case. If misuser is there, then there are two options to the tenant. One to stop the misuse or second, to pay the misuser charges. In the present case, the misuser charges have been paid by the tenant. Thereafter, the L&DO has not issued any notice for payment of misuser charges after 1982, post which the misuser has been condoned by the 1983 Notification. He also relies upon the said judgment to state that the order of eviction under Section 14(1)(k) only becomes final when eviction is determined and when only payment of compensation is directed without

finality on eviction or permission of future misuser, the eviction application is not determined finally. Thus, the misuser cannot be ground for eviction in the present case and the order dated 8th February, 1979 had merged with the order dated 15th April, 1981, which was set aside.

Analysis & Findings

22. The question in this second appeal is whether the impugned order dated 14th January, 2020, directing eviction of the tenant, warrants any interference or is liable to be upheld.

23. The present appeal is the sixth round of litigation which the landlord has been compelled to undergo to seek eviction and obtain possession of his property. The admitted fact in this matter is that the suit premises is being used for a dry-cleaning shop since almost 50 years. The submissions made on behalf of the tenant are primarily twofold:

- That since inception the premises is being used as a shop and the same was with the consent of the landlord; and
- The subsequent circulars, notifications, Zonal Development Plan as also reports of the L&DO would show that the running of the shop has been clearly condoned by the L&DO and no misuser charges have been claimed thus. Thus, as on date there is no misuser.

24. The question that arises is whether the misuser firstly existed and secondly, whether the misuse was condoned and, if so, the effect thereof on the eviction petition.

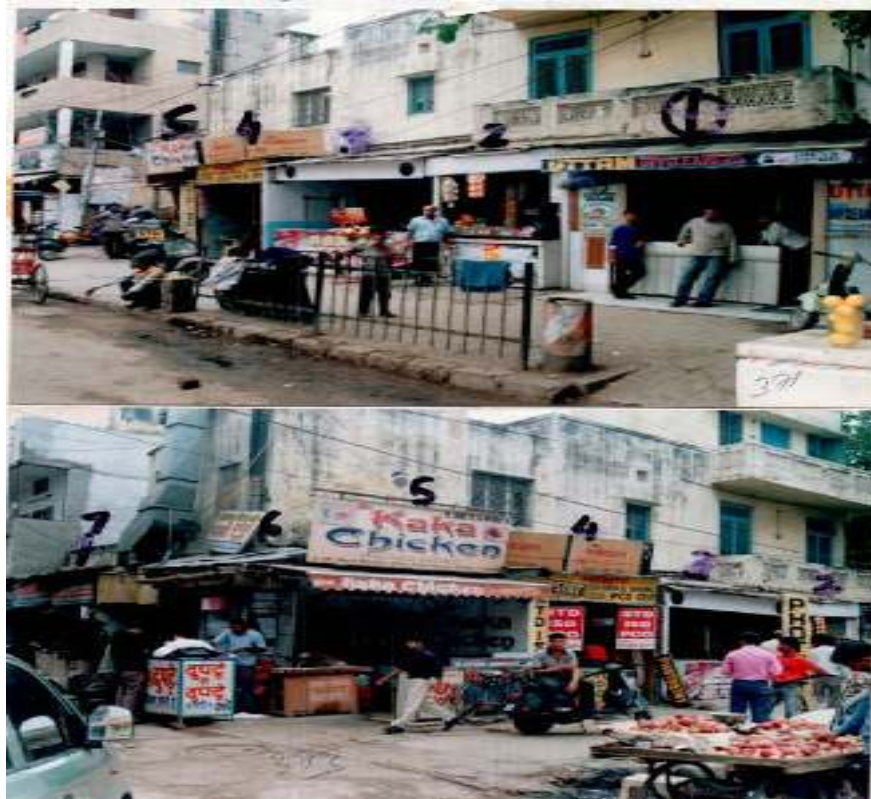
25. As to whether misuser exists or not, it is notable that the original order dated 8th February, 1979, passed by the Ld. ARC, clearly came to the conclusion that there was misuse. This fact is not even being disputed by the tenant. The photographs placed on record clearly show that the dry-

cleaning shop is being run from the suit premises. The report of Deputy L&DO dated 25th October, 2008 is curious to say the least. The fulcrum of the tenant's argument is based on this report and the alleged changes in the Zonal Development Plan, which permitted commercial user in this premises "if the person is residing in the premises". Even taking the tenant's case at its highest that there has been a change in the Zonal Development Plan where misuser can be condoned, this Court is of the opinion that the mere fact that the misuser can be condoned or regularized can only be a reason for the L&DO not to re-enter the suit premises. As per the lease deed, any misuser can lead to re-entry. In fact, the L&DO sought to re-enter the suit premises in this case, for which misuser charges were paid. Any subsequent change in the Zonal Development Plan cannot have the effect of nullifying the original lease deed itself, unless there is express communication by the L&DO regularising the usage. Mere tacit waiver or non-charging of misuser charges, would not be sufficient in such cases.

26. This is supported by the decision in ***Edward Keventers v. Union of India***, AIR 1983 Del 376, by a ld. Single Judge of this Court, where unauthorized constructions on grant land, contrary to the terms of the grant given by the Government, were being condoned/regularized for two decades by the L&DO on payment of damages. An argument that such condonation in itself would amount to waiver of the lessor-Government's right of forfeiture, was rejected. It was held that the condonation of breaches is a discretionary measure and the stand to defer civil consequences of default is permissible because the revocation of lease was held to be in the discretion of the Government.

27. Admittedly, the conditions in the lease deed have not been amended. The L&DO's unambiguous affidavit and status report makes it adequately clear that it has not condoned the misuser permanently. The commercial use of the premises has not been regularized by any communication given by the L&DO to the landlord. The order of the High Court by which the matter was remanded back to the Id. ARC merely directed the ARC to consider whether the 1983 Notification would apply to the premises in question or not, and for the Id. ARC to re-decide the issue in light of the said notification.

28. In any event, the Court notes the reasoning of Id. ARC, that some industries including dry-cleaning are mentioned at serial no. 6 of Notification No. S. O. 928 (E) dated 16th August, 2004, and the street where the premises in question is located, is permitted for mixed user. Even taking this circular and the subsequent mixed user as being permissible, at its highest, the suit premises in question could at best be used as a dry-cleaning shop if the tenant also had a residence in the suit premises. The shop in question is a 20 sq. metre shop on the ground floor of the building. There is hardly any space in the shop. It is merely a counter with a shelf at the back for hanging clothes. The tenant is clearly not residing in the said premises. The photographs of the shop are shown as below:



29. A perusal of the above photographs, clearly, shows that there is business being operated from the said suit premises. The report of the Deputy L&DO, to the contrary, thus, does not deserve to be believed by this Court. An RTI query by the landlord to the Deputy Health Officer, Karol Bagh Zone has also clearly stated as under:-

“NO. DHO/KBZ/2011/1473 Dated :- 28.11.11

*To,
Sh. Kanwar Inder Jit Singh
20/47 First Old Market
West Patel Nagar
New Delhi 110008*

*Subject : Reply to CRTI application received in
this office on 18-11-2011 and registered in ID
No. 527 for seeking information under RTI Act,
2005*

Reply :-

1. No one is residing in premises no. Z-39, West Patel Nagar, New Delhi.

2. This premise is being used for Dry Cleaning Shop under name and style M/S Uttam Dry Cleaners.

Under Central Right to Information Act-2005, you may file an appeal with in 30 days, with the first appellate Authority under RTI Act "Deputy Commissioner, Karol Bagh Zone, Municipal Corporation of Delhi, Room No.202, Zonal Building, D. B. Gupta Road, Anand Parbat, Karol Bagh, Delhi-110005.

*Deputy Health Officer
Karol Bagh Zone"*

30. The said RTI query was also considered in the impugned judgment and the ld. RCT had observed as under:-

"17. It appears that when the matter came up before Ms. Anu Malhthora, the then Ld. District & Sessions Judge (West) (as her ladyship was then) on 22.12.2014, the appellant/landlord invited the attention of the Court to a reply dated 28.11.2011 purportedly of the Deputy Health Officer, Karol Bagh Zone in response to an RTI query by him, which gave a specific information that no one was residing in the demised part of the premises No. Z-39, West Patel Nagar, New Delhi and that premises was being used for Dry Cleaning shop under the name and style of "M/s. Uttam Dry Cleaner".

18. The Ld. Predecessor of this Court finding that said RTI reply has been received subsequent to decision dated 28.02.2011 by the Hon'ble High Court, requisitioned the original

file from the Karol Bagh Zone,MCD and in compliance thereof CW-1 Sh. Harish Chander, Public Health Inspector, Karol Bagh Zone, Anand Parbat, MCD, Delhi appeared and he was examined before the Court on 16.02.2015 and 23.02.2015.”

31. Be that as it may, the written statement of the tenant, dated 2nd May, 1979 to the eviction petition in **Suit No. 607 of 1976** titled **Kanwar Inderjit Singh v. Ram Kishan**, unequivocally pleaded as under:-

“4. That the contents of para 4 of the petition are wrong and hence denied. It is denied that the premises are residential. The premises are commercial and have been used as such as by different shop owners for a number of years.”

32. The written statement of the L&DO in these proceedings also clearly pleaded as under:-

“WRITTEN STATEMENT ON BEHALF OF THE LAND & DEVELOPMENT OFFICER IN REPLY TO NOTICE DATED 7.4.1979 ISSUED BY THE HON'BLE COURT.

Sir,

The answering party submits as under:-

The property known as Z-37 to 40 West Patel Nagar, New Delhi was leased out to Smt. Parkash Kaur W/o. Shri Sampuran Singh and Shri Sampuran Singh S/o. Shri Sabh Singh and stands re-entered on account of breaches of misuse i.e. for contravention of clause 1(vi) of the lease deed. The heirs of the Ex-lessee has since applied for compromise. The breaches of misuse can

only be regularised temporarily on payment of charges which will be intimated to the heirs of Ex-lessee in due course or Hon'ble Court.

As the land use of the premises is for residential purpose hence it cannot be regularised permanently. Moreover, it is not permitted under Master Plan/Zonal Plan."

33. From the above two written statements it is clear that the tenant denies that the suit premises are residential and in fact claims that the suit premises is commercial in nature. The tenant also places reliance on an inspection report dated 25th October, 2008 by the L&DO to argue that the tenant is also residing in the premises. The extract of the said affidavit filed by the Deputy L&DO is set out below:-

"1. That I Pradeep Kumar Singh working as Dy. Land & Development Officer, Land and Development Office, Ministry of Urban Development, Nirman Bhawan, New Delhi.

2. That the present statement is being filed as per direction passed by the Hon'ble Court' order dated 2/6/2008.

3. That the deponent submits as under:-

The property No. Z-37 to Z-40 West Patel Nagar was originally leased out to Smt. Parkash Kaur W/o Shri Sampuran Singh and Shri Sampuran Singh S/o Shri Sobha Singh by virtue of lease deed executed on 17/6/1957. Consequent upon the death of Co-lessees Smt. Prakash Kaur and Shri Sampuran Singh, substitution of the property was effected in the name of Sh. Kanwar Inderjeet Singh vide substitution letter dated 9/7/1980.

The user of the suit property is residential as per lease deed. However, the dry cleaner shop became a condonable item under item No. 99 of the office order No. 7/83 dated 22/3/1983 with the stipulation that the person running/the shop should also be residing in the said premises. As per survey of the premise conducted by field staff of this office the defendant is residing in the tenanted portion. It is thus clear that the condonation as per item No. 99 is valid only if the user is also residing in the said premises other wise the same will be treated as misuse , and shall be liable to pay the misuse charges till the date of its removal.”

Clearly, the L&DO's stand is that the regularization can only be temporary on payment of charges and that the premises is for residential purposes. There is however no ambiguity or doubt that the premises was and continues to be used for the purposes of running a dry-cleaning business.

34. In this regard, the Court notes that some submissions have been made by the tenant to the effect that the original order dated 8th February, 1979 under Section 14(1)(k) has merged into the order dated 15th April, 1981, under Section 14(11), and therefore after remand by the High Court, the original order cannot be relied upon for the purpose of holding misuse. Reliance is also placed by the tenant on **Manohar Lal(supra)**, as stated above. This contention is completely misplaced, inasmuch as the question of applying Section 14(11) would arise only when the Court has come to the conclusion that there is misuse under Section 14(1)(k). Even the 1983 Notification and the Zonal Development Plan which are referred to in the order of remand, do not permit complete commercial use of the premises in the absence of a mixed use i.e. residential-cum-commercial use. Thus, the

examination on remand was for the limited question in respect of the tenant's compliance with the lease deed's condition in the light of the 1983 Notification and the Zonal Development Plan; not a re-adjudication of the original misuser by the tenant. Upon remand by the High Court, the Id. ARC merely reconsidered whether the eviction petition is to be allowed or dismissed in the light of the order dated 8th February, 1979, and the 1983 Notification and Zonal Development Plan. No evidence was led again before the Id. ARC after remand except the production of those documents. In fact, in the order of the Id. ARC dated 14th May, 2008 in ***Suit No. E-68/06/76***, the ARC agreed with the landlord that since the said notifications were public documents, no further evidence was required to be led. It held that the case is to be decided only in the light of subsequent notifications and there is no direction for leading any additional evidence. Even in ***Manohar Lal (supra)***, the Court clearly held that under Section 14(11) of the DRC Act, if the tenant agreed to stop misuser, further question of determining compensation would not arise. This lends no support to the tenant in the present facts where the tenant still continues to misuse the premises. In fact, in ***Kewal Kishan Ahuja v. Jagdeep Singh, 214 (2014) DLT 716***, it was held by a Id. Single Judge of this Court that once misuser is determined in the proceedings under Section 14(1)(k) and the same is not challenged, there is finality on misuser and the proceedings under Section 14(11) are on the basis that misuser is not permissible.

35. Therefore, in the light of pleadings and the legal position, this Court is of the opinion that subsequent circulars or the 1983 Notification or Zonal Development Plan, which may permit condonation or regularization cannot support the tenant's case in the petition under Section 14(1)(k) of the DRC

Act, as the misuser continues and has not been stopped. This view has been taken in ***Union of India v. Dev Raj Gupta, AIR 1991 SC 93***, where the lease had been entered into in 1931 for the premises. By a master plan issued by the Delhi Development Authority (*hereinafter "DDA"*) in 1962, the area where the said premises was located was allowed to be used for commercial purposes. In its observations, the High Court herein had held that from 1962 onwards, there was no need to apply for conversion under the lease deed as the master plan would automatically allow commercial use. The Hon'ble Supreme Court rejected this observation and held that conversion could not be presumed statutorily. It held as under:

"11. The High Court is further not right in holding that there was an automatic or a statutory conversion of the user of the land because in the Master Plan the land in question fell in the area reserved for commercial use. The High Court failed to appreciate that the charge of user of the land permitted by the Plan was only enabling in nature. It lifted the restriction which was otherwise there for using the land for commercial purpose. The land has to be used as per the agreement between the contracting parties, and no change of the user can be made contrary to the agreement even if the Plan permits such user. The Plan helps the parties to change the user, if the parties mutually agree to do so. It does not permit the occupant to change the user unilaterally. It is not, therefore, correct to say that no permission of the landlord was needed to change the user of the land."

36. Similarly, in ***Sant Lal v. Ram Laxman Gupta, 2013(2) RCR(Rent) 625***, when the DDA refused to condone misuser despite a policy resolution

being in discussion, whereby the DDA had proposed that a change could be possible in the said area from residential to commercial purposes, a ld. Single Judge of this Court held that:

“8. The counsel for the petitioner raised a plea that since new master plan has come into force, the area was likely to be notified as commercial area. I consider that this argument has no force. There is no dispute that the property in question was put to misuse. DDA has made categorical statement in the Court before learned ARC that the misuser cannot be condoned and has also made statement that misuser was to be stopped. Under these circumstances, I consider that the petitioners had no case to approach this Court time and again. This is the third round of litigation being made by the petitioners. Firstly, the petitioners lost in the main case. Then they lost before the ARCT and the third round of litigation regarding raising of objections in the execution petition of the eviction order.

I consider that the present petitions are a gross misuse of judicial process and are liable to be dismissed. In Buddikota Subbarao v. V.K. Parosaran MANU/SC/0678/1996 : AIR 1996 SC 2687, the Supreme Court held that no litigant has unlimited right to draught the court time and public money in order to get his affairs settled in the manner, he wishes. Access to justice cannot be allowed to be misused as a license to file misconceived and frivolous petitions. The present petitions are hereby dismissed with costs and the eviction order passed by learned trial court is hereby confirmed. Since misuser has not been stopped by the petitioners and the petitioners had no

intention to stop the same and the only intention of the petitioners is to prolong the misuser through litigation, the landlord (respondent herein) is entitled for eviction of the premises forthwith. The costs are quantified at Rs. 1 lac, in each petition.”

37. With regard to the submission of the tenant that they have paid misuser charges and therefore may continue to run their business in the suit premises without eviction, the judgment in **K. Madan (supra)** has been relied upon. This judgment however, related to a case where the L&DO sought re-entry in the premises. The premises was initially given on rent for residential-cum-commercial purposes, however eventually, the tenant stopped residing in the premises and only continued its use for his clinic. The L&DO in its reply in the proceedings under Section 14(11) stated that the compensation may be paid for past misuse and future misuse must be stopped. Accordingly, the ARC in this case, directed the tenant to pay misuser charges for past misuse and ordered eviction if the misuser was not stopped. Therefore, in those facts, the Hon'ble Supreme Court upheld the order of the ARC directing the tenant to stop misuser and pay compensation, to avoid eviction. The Hon'ble Supreme Court also observed that in case the L&DO itself waives its right of re-entry/cancellation of lease, the order under Section 14(1)(k) may direct payment of compensation instead of eviction, which did not happen in that case. Contrarily, in the present case the suit premises was only capable of being used as a residential premises as per the lease deed. Moreover, the L&DO even in the proceedings under Section 14(11), has clearly stated that the question of regularization/condoning of the breach permanently would not

arise. The misuser has been held way back in 1979 and till date the tenant continues to use the suit property for a dry-cleaning shop. The tenant has not agreed to not use the same for a commercial purpose, as recorded in the order dated 15th April, 1981 also and has just paid misuser charges till 1982 without stopping misuser thereafter. He has had adequate opportunities to stop the misuser but since inception he has continued to argue that commercial use is permissible.

38. Even as per the 1983 Notification/Zonal Development Plan, at best, mixed use would be permissible. The tenant is clearly not residing in the premises. Thus, the misuser has continued even till date. In these facts, the judgment in ***K. Madan (supra)*** would not come to the aid of the tenant. In fact, applying the ratio of ***K. Madan (supra)***, would mean that the L&DO's stand in his written statement in ***Suit No. 607 of 1976***, required the tenant to stop misuse, which he admittedly did not. The relevant extract of the said judgment is as below:

“20. The observations of this Court in Punjab National Bank's case (supra) to the effect that as long as the penalty continued to be paid, deviation to user could be permitted, do not appear to be in consonance with the decision of the larger Bench in Fakir Chand's case (supra). Continued wrongful user cannot be permitted by levying penalty but if the authorities do not require the stoppage of misuser, but merely ask for payment of penalty or compensation, then in such a case, an order of eviction or for stoppage of premises need not be passed and it will be sufficient if compensation is required to be paid.

21. Coming to the facts of the present case, the Additional Rent Controller in order dated

13.9.1985, while issuing notice under Section 14(11) has observed that the landlord has placed on record a notice sent by the Land and Development Office regarding misuser. In the written statement filed on behalf of the Land and Development Office in response to the notice issued under Section 14(11), it was stated that the question of regularisation/condoning the breach permanently did not arise. The said reply contemplates an undertaking being given by the Landlord for removal of breach otherwise there is a threat of re-entry. The payment of misuse charges would only amount to temporary regularisation of the earlier misuser and the Land and Development Office clearly insisted on the stoppage of the misuser. This being so, the question of the Controller requiring payment of penalty or compensation and permitting continued misuser would not be in accordance with law.”

39. This is also supported by the decision of a ld. Single Judge of this Court in *Pushpa Rani Jaggi v. Dwarka Dass, 2008(1) RCR (Rent) 40*, holding that merely permitting temporary regularization of breaches on payment of misuse charges does not imply final compounding of the misuse, especially when the L&DO has clearly denied permanent regularization.

40. Further reliance is placed by the tenant on *M.C. Mehta v. Union of India [W.P.(C.) 4677 of 1985, decided on 29th September, 2006]* as also on the order passed by the Ld. ARC dated 12th September, 2011, to argue that small shops measuring not more than 20 sq. metres, such as dry-cleaning businesses would be allowed to continue business for the time being, even

in residential areas. The same cannot be relied upon by the tenant in defence to a petition under Section 14(1)(k) of the DRC Act, as the issue in **MC Mehta(supra)** concerned unauthorized constructions and misuser in violations of master plans, environmental laws, etc. The said judgment does not extend the protection to tenants, who are already facing allegations of misuse. Reliance on the same by the tenant is completely unfounded.

41. At this stage, this Court must reiterate that as held by the Hon'ble Supreme Court most recently in **Municipal Committee, Hoshiarpur v. Punjab State Electricity Board [Civil Appeal No. 9651 of 2003, decided on 19th October, 2010]**, the right to a second appeal under Section 100 of the Civil Procedure Code, 1908, is a substantive statutory right and the conditions in the said Section have to be strictly fulfilled to decide the appeal. Therefore, a substantial question of law and not a mere question of law is *sine qua non* and the second appeal cannot lie on the ground of erroneous findings of fact based on appreciation of relevant evidence. In **Sugani v. Rameshwar Das & Ors., AIR 2006 SC 2172**, it was held that:

17. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact. It is true that the lower appellate court should not ordinarily reject witness accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal, when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible. One drawn by the lower appellate court is binding on the High Court in second

appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.

18. If the question of law termed as a substantial question stands already decided by a larger Bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on the facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as a substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as a substantial question of law. Where the first appellate court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in Reserve Bank of India v. Ramkrishna Govind Morey

MANU/SC/0448/1976 : AIR1976SC830 held that whether the trial court should not have exercised its jurisdiction differently is not a question of law justifying interference.”

42. Similarly, in ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors., AIR 1999 SC 2213***, it was held that:

“5. It is not within the domain of the High Court to investigate the grounds on which findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court had given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence.”

43. Therefore, merely because the High Court in second appeal could reach a different conclusion would not give rise to a substantial question of law, as also held in ***Gurmail Singh v. Rajinder Singh, AIR 2003 P&H 336***.

44. In view of the above submissions and analysis, it is clear to this Court that the tenant has enjoyed the suit premises in question for at least more than 50 years. The suit premises is a property located in West Patel Nagar, which is one of the prime areas in Delhi. The tenant had adequate notice to stop the misuser but has failed to do so. The tenant is clearly not residing in the premises and has refused to stop the misuser. This is also not a case of commercial-cum-residential use. Thus, this Court is of the opinion that the eviction order is valid and justified. No substantial questions of law arise in the second appeal and the same is dismissed. The amounts lying deposited with the Registrar General of this Court shall be immediately released to the landlord through counsel.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 22, 2021
dk/MS