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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 15th November, 2021
+ **RSA 77/2021 & CM APPL. 39880/2021**

RAJENDER KUMAR AND & ORS. Appellants

Through: Mr. Gurmehar Sistani, Mr. Samit
Khosla & Mr. Kapil Goyal,
Advocates. (M-9999259904)

versus

NITIN KUMAR GOYAL & ANR. Respondents

Through: Mr. Ashok Mahipal, Advocate.

30 And

+ **RSA 78/2021 & CM APPL. 39885/2021**

RAJENDER KUMAR AND SONS Appellant

Through: Mr. Gurmehar Sistani, Mr. Samit
Khosla & Mr. Kapil Goyal,
Advocates.

versus

NITIN KUMAR GOYAL Respondent

Through: Mr. Ashok Mahipal, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present appeals challenge the impugned orders dated 25th October, 2021 in *RCA DJ 12/21* and in *RCA DJ 13/21*, both titled *Rajinder Kumar & Ors. v. Nitin Kumar Goyal*, and by which the appeals against the Trial Court's order dated 12th February, 2021 in *CS No. 684/2019* titled *Nitin Kumar Goyal v. Rajender Kumar & Ors.*, have been dismissed by the

Appellate Court.

3. The brief background is that the Respondent/Plaintiff/landlord (*hereinafter "Plaintiff"*) filed a suit for ejectment/possession, of the Appellants/Defendants/tenants (*hereinafter "Defendants"*) as well as for recovery of rent, *mesne* profits/damages and permanent injunction, in respect of two shops bearing Shop Nos.1 and 2 located in Village Ghonda Chauhan Bangar, in the abadi of Gali No.11, Main Road Brahampuri, Delhi-110053 (*hereinafter "suit property"*).

4. In the said suit, an application under Order XII Rule 6 CPC was filed by the Plaintiff. The Trial Court passed a detailed judgment on 12th February, 2021, by which the suit was decreed in respect of the relief of possession and Defendants were directed to hand over vacant and peaceful possession of the suit property. The operative portion of the Trial Court's order is set out below:

"In view of the judgment discussed above, no ambiguity exists with respect to non applicability of Delhi Control Act in the area of Village Ghonda Chouhan Bangar, hence the present suit is not barred by section 50 of DRC Act. The objection raised by the defendant is without any force or merits, accordingly same stands rejected.

In view of the discussion above, the application moved by the defendant under Order VII Rule 11 CPC stands dismissed and as a consequence of the same the application moved by the plaintiff under Order XII Rule 6 stands allowed on the basis of categorical admission made by the defendant. A decree of possession is passed in favour of the plaintiff and against the defendant qua the suit property i.e., Shop No.2 in property no. K-1/144/1, out of Khasra No.1etc./60, situated at Village Ghonda Chouhan

Bangar, in the abadi of Gali No.11, Main Road, Brahmpuri, Delhi-53. Defendant is directed to handover the vacant physical possession of the suit property to the plaintiff immediately.”

5. Insofar as question of *mesne* profits, etc., were concerned, issues have been framed and the matter is now pending for evidence before the Trial Court.

6. This order of the Trial Court was challenged and vide the impugned orders dated 25th October, 2021 the appeal has been dismissed.

7. Mr. Gurmehar Sistani, Id. Counsel appearing for the Defendants, has submitted that the issue of law raised by him, is that the area known as Ghonda Chauhan Bangar forms a part of urbanised areas and has been notified as an area covered under Section 1 of the Delhi Rent Control Act, 1958 (*hereinafter “DRC Act”*). Thus, the appropriate remedy for the Plaintiff was to seek relief under Section 14 of the DRC Act and not ejectment by a simple civil suit of possession and other reliefs. He submits that the suit itself was not maintainable in view of the notifications which have been issued wherein Ghonda Chauhan Bangar has been notified both under Section 507 of the Delhi Municipal Corporation Act, 1957, (*hereinafter “DMC Act”*) as also under Section 1 of the DRC Act. He has placed the said notifications before the Court.

8. Reliance is also placed upon the order passed by a Id. Single Judge of the Court in *Sayada Begum v. Qaisar Dad Khan [RSA 56/2017, decided on 5th March, 2018]*, to argue that the reliance by the Trial Court on this judgment would not be correct inasmuch as though the said order related to the same area, in the said case, proper notifications etc., were not placed on record as is evident from the reading of the judgment itself. Thus, he submits

that the Defendants ought to be permitted to lead evidence in the matter and the order under Order XII Rule 6 CPC would not be tenable.

9. Mr. Ashok Mahipal, Id. Counsel appearing for the Plaintiff, on the other hand, has placed reliance on the order passed by the Trial Court wherein the Trial Court has clearly discussed the various notifications relied upon by the Defendants and has held that there is no notification *qua* village Ghonda Chauhan Bangar and thus rightly relied upon the judgment in **Sayada Begum (supra)**. The relevant extract of the Trial Court's order is as below:

*“It is settled position of law that simple issuing of notification u/s 507(a) of the Delhi Municipal Corporation Act to declare any particular rural area as urbanized, it is not sufficient and another notification u/s 1 (2) of Delhi Rent Control Act is also necessary qua any particular area for enforcing the provisions of the DRC Act and to create bar of jurisdiction of Civil Court. It is not disputed that Village Ghonda Chouhan Bangar is a different revenue division and have separate identity and jurisdiction from Village Ghonda or for that matter different from Village Ghonda Chouhan Khadar, Ghonda Gujran Bangar and Ghonda Neemka. The notifications referred by the defendant pertains to Village Ghonda and not to Village Ghonda Chouhan Bangar. Further the notifications referred by the Ld. Counsel for the defendant only reflects the area of village Ghonda to have been urbanized and there is no notification issued by the competent authority with respect to applicability of Delhi Rent Control Act to the area of Village Ghonda Chouhan Bangar. The judgment relied upon by the Id. Counsel for the Plaintiff in **Sayada Begum Vs. Qaisar Dad Khan (supra)** categorically deals with the issue in hand and especially with respect to applicability of DRC on the are forming part of Village*

Ghonda Chouhan Bangar, North East Delhi. It has been held therein that no notification for applicability of DRC Act qua the area village Ghonda Chouhan Bangar has been issued, therefore the jurisdiction of Civil Court is not barred. The said order of Hon'ble High Court when challenged before the Hon'ble Supreme Court was upheld. Copy of the said order filed on record today by the ld. Counsel for the plaintiff can be referred."

10. He also relies upon the judgment of the Supreme Court in ***Mitter Sen v. Shakuntala Devi* 85, (2000) 9 SCC 720**, which clearly lays down that a mere notification under Section 507 of the DMC Act is not enough and there has to be a specific notification under Section 1 (2) of the DRC Act.

11. The Court has perused the notifications which have been placed on record. A perusal of the said notifications shows that the Defendants are relying upon the first notification No. F. 9(20)/66-Law-Corp dated 13th June, 1963, notification No. F.2(49)/65-LSG dated 28th May, 1966, and a subsequent notification No. S.O. 1236 dated 27th March, 1979, issued by the Central Government. The said notifications do not show clearly that village Ghonda Chouhan Bangar has been specifically notified both under Section 507 of the DMC Act and under Section 1 of the DRC Act. The village Ghonda appears to have various portions and unless and until there are specific notifications *qua* each of the portions, under each of the enactments, it cannot be said that the area is covered by the DRC Act. The judgment in ***Mitter Sen Jain (supra)*** is clear to this effect that notifications would be required under both legislations. The relevant portion of the said judgment is set out below:

"1. The appellant herein is a tenant of the premises situated at Sagarpur in Delhi, whereas the respondent

is the landlord. The landlord let out the premises to the appellant on a monthly rent of Rs. 400/- per month. Subsequently, the landlord terminated the tenancy by giving notice under Section 106 of the Transfer of Property Act. The landlord thereafter brought a suit for ejectment of the tenant as well as for recovery of arrears of rent and mesne profit. Before the Trial Court the tenant filed a written statement wherein one of the pleas taken was that the premises which was let out to him was covered by Delhi Rent Control Act, 1958 and as such the suit is not maintainable. The Trial Court held that the premises was not covered by the Delhi Rent Control Act, 1958. Consequently, the suit was decreed. First Appeal was preferred to the learned District Judge, which was dismissed. Thereafter the appellant filed a Second Appeal before the High Court and the same was also dismissed. It is in this way the appellant is before us in appeal.

2. The only argument raised on behalf of the appellant is that since the premises of which the appellant is a tenant is covered by Delhi Rent Control Act and therefore, the suit filed by the landlord in Civil Court was not maintainable and decree passed therein is void ab initio. In order to appreciate the argument, it is worthwhile to extract the relevant provisions of Delhi Municipal Corporation Act as well as Delhi Rent Control Act, which are as follows:

“Section 507 of Delhi Municipal Corporation Act:

(a) the Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas;

Sub-section (2) of Section 1 of the Delhi Rent Control Act:

It extends to the areas included within the limits of the New Delhi Municipal Committee and the Delhi Cantonment Board and to such urban areas within the limits of the Municipal Corporation of Delhi as are specified in the First Schedule:

Provided that the Central Government may, by notification in the Official Gazette, extend this Act or any provision thereof, to any other urban area included within the limits of the Municipal Corporation of Delhi or exclude any area from the operation of this Act or any provision thereof.

3. Subsequently, by a notification dated 24.10.1994 issued under Section 507 of the Delhi Municipal Corporation Act, the rural area falling under Sagarpur where the property in dispute is situate was included within the urban area of Delhi Municipal Corporation. It is on the strength of this notification, learned Counsel urged that once the area has been included as urban area within the Delhi Municipal Corporation ipso facto, the Delhi Rent Control Act shall be applicable the argument is totally misconceived. Even if any new area is included within the urban area of Municipal Corporation of Delhi, a further notification is required to be issued under proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act. Unless the area is so specified in the Schedule by a notification, the provisions of the Delhi Rent Control Act cannot be made applicable to that area. It is admitted that no notification has yet been issued under the proviso to Sub-section (2) of Section 1 of the Delhi Rent Control Act specifying Sagarpur area within the Schedule of the Act. In absence of such a notification, the provisions of Delhi Rent Control Act cannot be enforced to the area, namely, Sagarpur.”

12. Even in the decision in **Sayada Begum** (*supra*), the Court has clearly come to the conclusion that the notification concerning urbanisation of the

area under Section 507 of the DMC Act, and the notification under Section 1(2) of the DRC Act have not been produced, and the said decision clearly relates to this very area which is in question. Thus, the question of law raised by the Defendants does not arise in the present appeals.

13. However, insofar as the eviction of the Defendants is concerned, there is no doubt that the Defendants have been in possession of these two shops since more than 40 years and the current rent that is being paid is stated to be Rs. 324/- for one shop and 363/- for the other shop. These being commercial shops which are being run by the Defendants i.e. *kirana* stores, time is sought for vacating and handing over possession subject to the condition that market rent would be paid by the Defendants.

14. In these appeals -

- (i) the suit was filed in December, 2019 and the decree has been passed under Order XII Rule 6 CPC without any evidence being led in February, 2021;
 - (ii) the said decree was upheld by the Appellate Court in October, 2021;
 - (iii) in the meantime, execution proceedings were also filed by the Plaintiff;
 - (iv) Considering the fact that the suit is less than two years old;
 - (v) Also considering the pandemic period; and
 - (vi) the long occupation by the Defendants of the suit premises,
- this Court is of the opinion that some reasonable time ought to be granted to the Defendants for vacating the premises and for handing over vacant and peaceful possession.

15. Mr. Kapil Goyal, Id. Counsel on instructions from Mr. Rajender, i.e., Appellant No.1 accordingly undertakes to hand over vacant and peaceful

possession of both shops to the Plaintiff, on or before 31st January, 2023, on the following terms:

- (i) For the period starting from today, i.e., with effect from 15th November, 2021 till 31st January, 2023, monthly use and occupation charges of Rs.5,000/- per shop i.e., Rs.10,000/- for both the shops collectively shall be paid by the Defendants to the Plaintiff on or before the 10th of every month.
- (ii) For the month of November, 2021, 50% of the monthly rental amount shall be paid by the Defendants to the Plaintiff.
- (iii) The Defendants shall also ensure that no damage is caused to the suit property and the current condition of the suit property shall be maintained while handing over vacant and peaceful possession.
- (iv) No third party interest shall be created in respect of title and/or possession.

16. All three Defendants shall file affidavits of undertaking before this Court, within a period of two weeks, confirming that they shall comply with the above terms and conditions.

17. Subject to the said undertakings being filed by the Defendants before this Court, the execution of the impugned decree shall not be proceeded with. However, if vacant and peaceful possession is not handed over or any of the terms set out above are breached by the Defendants, the Plaintiff is free to reactivate the execution proceedings which are already stated to be pending before the Executing Court.

18. At this stage, both counsels submit that this order may be passed with the consent of parties. Accordingly, the above order is passed with consent of parties.

19. The suit in respect of *mesne* profits shall, however, continue *qua* the period till 15th November, 2021.
20. With these observations, both the appeals, along with all pending applications, are disposed of.
21. List before the Registrar for receipt of the affidavits of undertakings, on 15th December, 2021.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 15, 2021

dj/ms

