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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16th November, 2021

+ RSA 79/2021 & CM APPLs. 40674-75/2021

RAJESH GUPTA Appellant

Through: Mr. Ashish Upadhyay, Advocate

versus

MAJ. (RETD.) SURENDRA KUMAR HOODA AND

ANOTHER Respondents

Through: Mr. Satish Sahai with Ms. Sharda
Hooda, Advocates. (M: 9811029493)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 40675/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

RSA 79/2021 & CM APPL. 40674/2021 (for stay)

3. The present second appeal has been filed challenging the order dated 26th August, 2021 passed by the Ld. ADJ, Tis Hazari District Courts, Delhi (*hereinafter "Appellate Court"*) in ***RCA No.146/2019*** titled "***Sh. Rajesh Gupta v. Maj. (Retd.) Surendra Kumar Hooda & Ors.***". By the impugned order, the Appellate Court has upheld the decree dated 21st September, 2019 passed by the Ld. Civil Judge, Central District, Tis Hazari Courts, Delhi (*hereinafter "Trial Court"*) in ***CS No.97541/16*** titled "***Maj. (Retd.) Surendra Kumar Hooda v. Rajesh Gupta***" under Order XII Rule 6 CPC.

4. The brief background of this matter is that the Respondent No.1/Plaintiff instituted a suit in 2014, for recovery of possession and mesne profits/damages for use and occupation, against the Appellant/Defendant

No.1, Sh. Rajesh Gupta, as also Respondent No.2/Defendant No.2, who are the son and daughter of Smt. Kamla Gupta and Sh. Nakul Gupta, who were the original tenants of the property bearing No. 25-D, Kamla Nagar, Delhi-110007 (*hereinafter "suit property"*). The suit property was rented out to Smt. Kamla Gupta several years ago. After the death of Smt. Kamla Gupta, her husband, Sh. Nakul Gupta, occupied the suit property, and now the son i.e., the Appellant herein is in occupation of the suit property.

5. In the suit, the Appellant took an objection that the provisions of Delhi Rent Control Act, 1958 (*hereinafter "DRC Act"*) would be applicable and that the suit is not maintainable. The Respondent No.1/Plaintiff however filed an application under Order XII Rule 6 CPC, in which the impugned decree has been passed. Both the Trial Court and the Appellate Court have held that the tenancy was not succeeded to by the son and the daughter, and only the husband of the original tenant i.e., Sh. Nakul Gupta had acquired the right to continue in possession of the suit property for a limited period of one year. Thus, beyond the said period of one year, no protection would be extended to the son. Upon the death of Sh. Nakul Gupta, the right to continue in possession of the suit property stood extinguished. Moreover, the tenancy is admitted as the mother of the Appellant was paying rent to the Respondent No.1. In addition, the Appellate Court has also held that the decree is liable to be upheld on the grounds of the tenancy being admitted, the rent having been paid by the mother of the Appellant, the ownership being undisputed, as also the termination of the tenancy being undisputed. The operative portion of the Appellate Court's order dated 26th August, 2021 reads as under:

“In the light of above discussion, impugned order dated 21.09.2019 is perused again. It is reflected that Ld. Trial Court vide impugned order has rightly observed that there is no dispute with regard to landlord tenant relationship. Payment of rent on behalf of defendant and acknowledging the receipt of legal notice of eviction/termination of tenancy are the factors which cannot be overlooked.

It is needless to say that in order to pass an order under Order XII Rule 6 CPC i.e., judgment on admission, court has to consider following factors:-

- 1. There is no dispute with regard to jural relations of landlord and tenant.*
- 2. Landlord has expressed his intention of termination of tenancy which has been acknowledged by the tenant.*

*One of the main ground for preferring the present appeal is that there is no admission, unambiguous and unequivocal on the part of appellant/defendant. As per the mandate laid down in the judgment **Kumar Krishna (1937) Supra**, the position laid down under Section 116 Evidence Act has been rightly elucidated. Once a tenant always a tenant. This proposition stands true in all circumstances. Payment of rent by the grandmother of appellant and giving the reply to the notice dated 22.05.2001, by and on behalf of appellant reflects that though the original landlord/owner Smt. Gargi Devi has expired however payment of rent by Smt. Shanti Devi and Smt. Kamla Devi impliedly infers that landlord tenant relationship continues.*

*Further, as per judgment **M/s Payal Vision (SC) (2012) (Supra)** and **Sh. Ram Pasricha (1976) (Supra)** one of the co-owner is empowered and entitled to file a suit for ejectment. This proposition has been rightly considered by Ld. Trial Court in my considered opinion.*

Another objection raised by appellant is that once as per order dated 23.05.2016, Ld. Trial Court had directed that facts pertaining to Section 50 DRC Act are mixed question of fact and law, therefore, this issue remains open and cannot be

considered under Order XII Rule 6 CPC. In this regard, it is reflected from the record that the impugned order dated 23.05.2016 has not been challenged till date therefore it has not become final and binding upon the parties. While concluding objection of Section 50 DRC Act as mixed question of fact and law does not, in my considered opinion preclude trial court from considering other facts which are unambiguous and unequivocal in nature. Requirement for determining the yardstick for passing an order under Order XII Rule 6 CPC are different from deciding the objection under Section 50 DRC Act. Thus, I do not find any illegality in the findings of the Trial court in this regard.

All these factors have been rightly considered by the Ld. Trial Court and I do not find any illegality or infirmity in the said observation. Once the admitted position as mentioned above is being reflected from the record either not disputed or by the conduct of the parties then nothing more remains to be considered under Order XII Rule 6 CPC which can be said to be unequivocal and unambiguous.

*In the light of these observations, therefore, none of the judgments relied upon by the appellant are applicable in the present facts and circumstances. The situation emerging from the facts of the case is very much in consonance with the admitted position amongst the parties either through their conduct or their admission which has been rightly elucidated by Ld. Trial Court vide impugned order. Admission as required under Order XII Rule 6 CPC, in my considered opinion does not imply that it should be in writing only. It can be inferred from the conduct of the parties as well. Thus, none of the grounds raised by appellant vide this appeal stands justiciable and it cannot be said that Ld. Trial Court has considered and presumed the facts of his/her own. Thus, in my considered opinion appellant has failed to establish any of the grounds alleged in the present appeal, hence, appeal filed by the appellant is **dismissed.***

TCR be sent back along with the copy of the order to the concerned court.

Appeal file be consigned to record room.”

6. Mr. Upadhyay, Id. Counsel for the Appellant submits that while adjourning the application under Section 50 of the DRC Act, the Trial Court could not have passed a decree under Order XII Rule 6 CPC.

7. It is the settled position in law that once the original tenant has passed away, the children of the tenant have no legal status to enjoy possession of the suit property as there is no landlord-tenant relationship between them. Thus, the question of the applicability of the DRC Act would not arise. In ***Smt. Krishna Prakash & Anr. v. Dilip Harel Mitra Chenoy [93 (2001) Delhi Law Times 777 (DB)]***, it was held that the legal heirs, including the son and daughter of the original tenant, would not inherit the right of tenancy after the death of the original tenant. Thus, in the absence of any right to continue in possession of the suit premises, the protection against eviction enjoyed by the legal heirs would be limited to a period of one year. This position has been reiterated by this Court in ***Naushad Khan v. Sir Sobha Singh and Sons (P) Ltd. & Anr. [CM (M) 1016/2019 decided 12th December, 2019]***. The relevant extract of the said judgment reads as under:

“13. Under these circumstances, no fault can be found, either in the original orders or the appellate order. The son of the Original Tenant has no legal status to enjoy possession of the suit property as there is no landlord tenant relationship, he has not been authorised by the Original Tenant nor has the Landlord acquiesced his occupation. Thus, the challenge to the eviction order at his behest is not tenable.”

8. Thus, this Court is of the opinion that the order passed by the Trial Court and the Appellate Court are in accordance with law, and do not warrant any interference. In view of the legal position which has been settled in various judgments, including ***Naushad Khan v. Sir Sobha Singh (supra)***,

no substantial question of law arises in the present second appeal. In view thereof, the Appellant is liable to vacate the suit property. Moreover, in view of *Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd. [(2005) 1 SCC 705]*, once the decree for possession has been passed, the Appellant is liable to pay market rent to the Respondent.

9. At this stage, Mr. Upadhyay submits that the Appellant has a son who is giving his 12th class board exams, and therefore, he prays that the Appellant may be given some time to vacate the suit property.

10. In any event, considering the overall fact and circumstances of the present case, the following directions are issued:

- i) The Appellant shall handover vacant and peaceful possession of the suit property, on or before 30th April, 2022 to the Respondent.
- ii) The Appellant shall not change the *status quo* of the suit property, either in respect of title or possession.
- iii) The Appellant shall continue to pay the electricity and water charges, as also any other charges due to the authorities.
- iii) The Appellant shall, in addition, pay a sum of Rs. 4,000/- per month as use and occupation charges in respect of the suit property, for the period beginning from the date of the original decree i.e., 21st September, 2019. Going forward, the amount shall be paid by the 10th of every calendar month.
- iv) The arrears shall be cleared by 30th April, 2022, on a monthly basis and in equal instalments. The first

instalment shall be liable to be paid to the Respondent, on or before 31st December, 2021. If the said instalment, as also the occupation charges for November, 2021 and December, 2021 are not paid to the Respondent No.1, the Respondent No.1 shall be entitled to claim vacant and peaceful possession and the Appellant shall vacate the suit property by 10th January, 2022.

11. If any amounts have been deposited by the Appellant before the Trial Court or the Appellate Court, the Appellant may seek refund of the same from the Trial Court or the Appellate Court respectively.

12. The Appellant shall file an undertaking before this Court confirming the above terms, within two weeks. List before the Registrar on 10th December, 2021 for receiving the undertaking of the Appellant. If the undertaking is not filed, the above relaxation given to the Appellant in respect of the suit property, shall stand withdrawn.

13. The present second appeal, along with all pending applications, is disposed of in these terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 16, 2021

mw/AD