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

Reserved on 11.10.2022
Pronounced on 31.10.2022

+ RFA 1072/2019 and CM APPL. 54341/2019 (Stay)

BRIJ MOHAN RASIWASIA Appellant
Through: Mr. G.P. Thareja and Ms.
Gaganpreet Chawla, Advs.

Versus

BUTNA DEVI Respondent
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
31.10.2022

Facts

1. This first appeal, under Section 96 of the Code of Civil Procedure, 1908 (CPC), challenges the judgment dated 14th October 2019, passed by the learned Additional District Judge (“the learned ADJ”) in CS 15690/16 (*Smt. Butna Devi v. Shri Brij Mohan*). The appellant was the defendant in the said suit and the respondent was the plaintiff.

The Complaint

2. The respondent, *vide* CS 15690/16, sought recovery of possession, from the appellant, of the first floor of Property No.

XV/8929, Gali No. 1, Multani Dhanda, Paharganj, Delhi (“the tenanted premises”, hereinafter), alongwith arrears of rent @ ₹ 20,000/- per month and mesne profits.

3. The respondent claimed to be the owner of the first and second floors of the afore-noted property No. XV/8929, Gali No. 1, Multani Dhanda, Paharganj, Delhi (“the suit property”, hereinafter), having purchased the property from Kuldeep Kaur and Sanjeev Kumar *vide* Sale Deed dated 23rd March 2019. The plaintiff averred that the appellant Brij Mohan Rasiwasia was the tenant of Kuldeep Kaur and Sanjeev Kumar and that, after selling the suit property to the respondent, Kuldeep Kaur and Sanjeev Kumar had informed the appellant of the said sale and requested him to pay rent, thereafter, to the respondent. The respondent also claimed to have requested the appellant to pay rent to her, after April 2009.

4. The appellant was said to be a tenant in respect of the first floor of the suit property, where he was engaged in the business of manufacture and sale of plywood.

5. The plaintiff averred that the appellant was in default of rent on and after April 2009. It was averred that the tenancy was on month-to-month basis, @ ₹ 50,000/- per month. As such, the plaintiff averred that the appellant was liable to pay rent, to the respondent, @ ₹ 50,000/- per month for the period April 2009 till 31st December 2012 which totaled to ₹ 22,50,000/-.

6. The respondent claimed to have issued a legal notice to the appellant on 10th December 2012, calling on the appellant to vacate the suit property and disgorge the arrears of rent due to the respondent. The appellant, *vide* reply dated 26th December 2012, denied any liability in this regard.

7. It was in these circumstances that the respondent instituted the afore-mentioned CS 15690/16, seeking recovery of possession, from the appellant, of the suit property, along with arrears of rent and mesne profits.

Written statement by the appellant

8. The appellant, in his written statement, by way of response to the suit, denied the existence of any relationship of landlord and tenant between the respondent and himself. The written statement alleged that the tenanted premises were let out by Sneh Sharma to M/s Rasiwasia Marble & Granite Industries Pvt Ltd (“RMGIPL”, hereinafter), which was the tenant in respect thereof, since 1984-1985. Sneh Sharma, therefore, was the landlord, according to the written statement, and RMGIPL was the tenant. The appellant was, undisputedly, a Director in RMGIPL.

9. The appellant, in the written statement, also professed ignorance of Kuldeep Kaur and Sanjeev Kumar whom he claimed never to have met. The written statement also denied any knowledge of sale, by Sneh Sharma, of the suit property to the respondent. It was

specifically averred that no rent had been claimed, from the appellant, in respect of the suit property, by Kuldeep Kaur or Sanjeev Kumar. Insofar as the respondent was concerned, the written statement averred that the respondent never informed the appellant that she was the owner of the tenanted premises and that it was for the first time, *vide* the eviction notice dated 10th December 2012, that the respondent sought to contend that she had purchased the suit property. The appellant disputed the factum of such purchase and asserted that, insofar as he or RMGIPL were concerned, the landlord in respect of the tenanted premises was Sneh Sharma and not the respondent.

10. The appellant claimed that, since 1984-1985, rent @ ₹ 1,400/- per month had been regularly paid to Sneh Sharma and rent receipts, in the name of RMGIPL, were issued, periodically by Sneh Sharma, copies of which were filed with the written statement.

11. With effect from October 2008, however, alleged the written statement, Sneh Sharma refused to accept rent from the appellant, resulting in rent, for the period July 2008 to March 2009 and, later again, July 2008 to August 2009 being sent by the appellant to Sneh Sharma under separate cheques, on 20th March 2009 and 22nd July 2009, which were never encashed by Sneh Sharma.

12. In these circumstances, the written statement averred that RMGIPL was constrained to file DR 185/09 (*Rasiwasia Marble & Granite Industries (P) Ltd v. Sneh Sharma*) under Section 27(1) of

the Delhi Rent Control Act, 1958¹ (“the DRC Act”) for permission to deposit the rent, in respect of the tenanted premises, in Court. In the said proceedings, a Counsel appeared on behalf of Sneh Sharma on 23rd October 2009, and submitted that Sneh Sharma had sold the suit property. On his request, an adjournment was granted to the said Counsel to provide details in respect of the said sale. However, thereafter, there was no appearance on behalf of Sneh Sharma. Resultantly, on 4th December 2009, DR 185/09 was allowed by the learned Additional Rent Controller (“the learned ARC”) as under:

“Present: Counsel for the petitioner.
None for the respondent.

The respondent has been served with the notice of the DR application on 04.09.09 and the objections have not been filed till date. Although, on 23.10.09, Sh. Rakesh Patiyal, Counsel for the respondent had appeared and stated that the respondent has sold the property and he sought a short date to give complete particular of the subsequent purchaser. On the next date i.e. 20.11.09, none appeared for the respondent. The Counsel for the petitioner submits that he has not been supplied with the complete particular as to whom the respondent has allegedly sold the suit premises.

In view of above, as the respondent has not filed the objections till date and 30 days time for filing the objections have been expired hence, the present DR application is allowed. Without prejudice to her rights and contentions, she

¹27. **Payment of rent during eviction proceedings. –**

(1) If, in any proceeding for the recovery of possession of any premises on any ground other than that referred to in clause (a) of sub- section (2) of section 22, the tenant contests the claim for eviction, the landlord may, at any stage of the proceeding, make an application to the Rent Authority for an order on the tenant to pay to the landlord the amount of rent legally recoverable from the tenant and the Rent Authority may, after giving the parties an opportunity of being heard, make an order directing the tenant to pay to the landlord or deposit with the Rent Authority within one month of the date of the order, an amount calculated at the rate of rent at which it was last paid for the period for which the arrears of the rent were legally recoverable from the tenant including the period subsequent thereto up to the end of the month previous to that in which payment or deposit is made and to continue to pay or deposit, month by month, by the fifteenth of each succeeding month, a sum equivalent to the rent at that rate.

may withdraw the rent as per law.

File be consigned to record room.”

13. This order was never challenged, and attained finality.

14. The appellant claimed, in his written statement, to have, even after passing of the aforesaid order, sent a notice to Sneh Sharma on 25th April 2011, requiring for information as to whether the suit property had, in fact, been sold and, if so, the details of the purchaser thereof. The said communication did not elicit any response.

15. On 10th May 2011, the appellant claimed, in his written statement, to have disbursed the rent, in respect of the tenanted premises, for the period September 2009 till April 2011, under six Money Orders. The postal authorities confirmed, on 6th June 2011, that Sneh Sharma had received the Money Orders on 12th May 2011.

16. Thereafter, on 10th December 2012, the appellant sent a cheque, in respect of tenanted premises, to Sneh Sharma, covering the period July 2011 till April 2012. Thus, averred the written statement, rent in respect of the tenanted premises stood paid by RMGIPL till April 2012.

17. In these circumstances, the written statement averred that the suit instituted by the respondent was completely bereft of merit. It was averred that the respondent had no cause of action against the appellant, as there was no relationship of landlord and the tenant

between them. It was claimed that the respondent had never claimed any rent from the appellant at any point of time till the issuance of the eviction notice on 10th December 2012. RMGIPL, which was the actual tenant, had paid rent in respect of the tenanted premises till April 2012 and there was no default in that regard. Payment was made in terms of the order dated 4th December 2009 of the learned ARC in DR 185/09, which had attained finality.

18. The appellant also questioned the maintainability of the suit, invoking, for the purposes, Section 50² read with Clause (c) of Section 3³ of the DRC Act, as the rent in respect of the tenanted premises was less than ₹ 3,500/- per month. It was submitted that the respondent had artificially inflated the rent payable in respect of the tenanted premises to ₹ 50,000/- per month, with no evidence, whatsoever, of any lawful increase of the rent to the said figure, merely to escape the

² 50. **Jurisdiction of civil courts barred in respect of certain matters. –**

(1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of standard rent in relation to any premises to which this Act applies or to eviction of any tenant therefrom or to any other matter which the Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under this Act shall be granted by any civil court or other authority.

(2) If, immediately before the commencement of this Act, there is any suit or proceeding pending in any civil court for the eviction of any tenant from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, such suit or proceeding shall, on such commencement, abate.

(3) If, in pursuance of any decree or order made by a court, any tenant has been evicted after the 16th day of August, 1958, from any premises to which this Act applies and the construction of which has been completed after the 1st day of June, 1951, but before the 9th day of June, 1955, then, notwithstanding anything contained in any other law, the Controller may, on an application made to him in this behalf by such evicted tenant within six months from the date of eviction, direct the landlord to put the tenant in possession of the premises or to pay him such compensation as the Controller thinks fit.

(4) Nothing in sub-section (1) shall be construed as preventing a civil court from entertaining any suit or proceeding for the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises.

³ 3. **Act not to apply to certain premises. –** Nothing in this Act shall apply:—

(c) to any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees;

rigour of the DRC Act.

19. In these circumstances, the appellant prayed, *vide* the written statement, that the suit be dismissed.

Issues

20. Consequent to completion of pleadings, the following issues were framed by the learned ADJ on 9th April 2014:

- “1. Whether the plaintiff is entitled to the possession of suit property/tenanted premises, as per prayer (a)? OPP
2. Whether the plaintiff is entitled to decree of arrears of rent, along with interest, of the tenanted premises, as per prayer (b) & (d), if so, at what rate for what period? OPP
3. Whether the plaintiff is entitled to decree of future rent/damages/mesne profits along with interest, in respect of the suit premises, as per prayer (c) & (d), if so, at what rate for what period? OPP
4. Whether the defendant is not the tenant of the plaintiff? OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD
6. Whether the suit is barred u/s 50 of DRC Act? OPD
7. Relief.”

Evidence

21. One witness, each, was led by the parties. The respondent led

the evidence only of her son Laxman Singh as PW-1 and exhibited five documents Ex. PW-1/1 to Ex. PW-1/5. The appellant, too, led his own evidence as DW-1 and relied upon documents Ex. DW-1/1 to Ex. DW-1/53.

PW-1 Laxman Singh

22. PW-1 Laxman Singh tendered his evidence by way of affidavit dated 4th July 2014, which was, more or less, a verbatim reproduction of the plaint. He exhibited, during the recording of his examination-in-chief, (i) the original Special Power of Attorney dated 21st February 2014, original registered Sale Deed dated 18th July 2008 and original registered Sale Deed along with site plan dated 23rd March 2009, as Ex. PW-1/1 to Ex. PW-1/3, to illustrate how the respondent came into ownership of the suit property and the tenanted premises, (ii) the legal notice dated 10th December 2012 along with proof of receipt thereof as Ex. PW-1/4 and (iii) the reply, dated 26th December 2012, of the appellant to the said legal notice as Ex. PW-1/5.

23. PW-1 was cross-examined on 5th April 2017. He denied the suggestion that the appellant was not the tenant of Kuldeep Kaur and Sanjeev Kumar or that RMGIPL was the tenant of Sneh Sharma. He further asserted that Kuldeep Kaur and Sanjeev Kumar had orally intimated the appellant that the suit property had been sold to the respondent, though he acknowledged that he was not in a position to inform the specific date of such intimation. He further asserted that the respondent had sent a letter of attornment to the appellant, prior to

the legal notice dated 10th December 2012, and undertook to produce the said letter, if so required. The suggestion, by the appellant, to the effect that no such letter of attornment had been issued by the respondent to the appellant was denied. He admitted that he had no knowledge of the existence of any document reflecting the rate of rent, payable in respect of the tenanted premises, as ₹ 50,000/- per month. He also disclaimed any knowledge of issuance of any letter of attornment or demand of rent by Kuldeep Kaur and Sanjeev Kumar to the appellant. He denied the suggestion that the rent, payable in respect of tenanted premises, was ₹ 1,400/- per month or that Sneha Sharma had paid rent at that rate.

DW-1 – the appellant Brij Mohan Rasiwasia

24. The appellant, as DW-1, also tendered his evidence by way of affidavit dated 26th October 2018 (Ex. DW-1/A). As in the case of PW-1, the affidavit of evidence of the appellant, as DW-1, broadly reiterated the written statement tendered by him by way of response to the suit. However, the affidavit in evidence enclosed (i) periodical rent receipts issued by Sneha Sharma as Ex. DW-1/1 to Ex. DW-1/10, (ii) notice dated 20th March 2009, whereunder a cheque for the period July 2008 to May 2009 were sent by the appellant to Sneha Sharma, along with postal receipt and AD card thereof as Ex. DW-1/11 to Ex. DW-1/13, (iii) certified copies of DR 185/09 and the order dated 4th December 2009 passed by the learned ARC thereon as Ex. DW-1/14 and Ex. DW-1/15, along with rent deposit receipts filed with the permission of the Court as Ex. DW-1/16, (iv) notices dated 8th March

2010 and 25th April 2011, along with their postal receipts and AD card, as Ex. DW-1/17 to Ex. DW-1/23, and (v) two money orders dated 1st April 2010 and six further money orders dated 10th May 2011, alongwith confirmation by the postal orders and delivery thereof as Ex. DW-1/24 to Ex. DW-1/37, apart from various other communications addressed to Sneh Sharma along with their postal receipts and their AD cards.

25. DW-1 was cross-examined on 5th February 2019. He asserted that Sneh Sharma was the landlady of the tenanted premises, but also stated that he was the tenant in respect thereof since 1984. He asserted that the rate of rent payable in respect of the tenanted premises was ₹ 1,400/- per month as per Rent Agreement executed between RMGIPL and Sneh Sharma. He denied the suggestion that Sneh Sharma had ever informed that she had sold the tenanted premises to Kuldeep Kaur and Sanjeev Kumar. He reiterated that, till 2010, he had paid rent to Sneh Sharma by post as well as by way of deposit in the Court. He went on to clarify, voluntarily, that the tenant, in respect of the suit property, was RMGIPL. He denied the allegation that the rent receipts Ex. DW-1/1 to Ex. DW-1/10 were forged or fabricated.

The Impugned judgment

26. Consequent to closure of evidence and hearing of arguments, the learned ADJ proceeded, *vide* the impugned judgment dated 14th October 2019, to decree the suit in favour of the respondent and against the appellant.

27. Addressing, first, Issues (i), (iv) and (vi), the learned ADJ commences his findings, in para 17 of the impugned judgment, by stating that the appellant was “admittedly a tenant, occupying the suit property since 1984-1985”, and that the tenancy of the appellant commenced under the land-lordship of Sneh Sharma.

28. The impugned judgment goes on to acknowledge, in paras 18 and 19, that the respondent did not adduce any evidence to the effect that, by 11th August 2009, when DR 185/09 was filed by the appellant before the learned ARC, the appellant had been notified either by the respondent or by Kuldeep Kaur, Sanjeev Kumar or Sneh Sharma that the suit property had changed hands, or that the appellant was required to pay rent to a new owner/landlord. As such, the impugned judgment, in para 18, holds that the appellant was justified in instituting DR 185/09 under Section 27 of the DRC Act against Sneh Sharma. The impugned judgment goes on to note that, pursuant to failure, on the part of the Sneh Sharma, to defend the said application, the learned ARC, *vide* order dated 4th December 2009 (Ex. DW-1/15), permitted the appellant to deposit rent @ ₹1,400/- per month with the Court.

29. Inasmuch as there was no material to indicate that, prior to the eviction notice dated 10th December 2012, the respondent had ever intimated the appellant of the fact that she was the owner of the tenanted premises, the impugned judgment reckons the date of intimation by the respondent to the appellant of the said fact as 10th

December 2012.

30. Having so noted, the learned ADJ proceeds to hold thus, in paras 21 to 27 of the impugned judgment:

“21. Defendant replied to the notice dated 10/12/2012 through his reply notice dated 26/12/2012, Ex. PW1/5, vide which he refused to acknowledge the plaintiff as his landlord and owner of the suit premises. At this very stage, the intention of the defendant can be concluded to have become dishonest. Defendant could have contested the rate of rent claimed by the plaintiff through notice Ex. PW1/4 but he had no occasion to deny the land-lordship of the plaintiff. Defendant wrongly kept harping upon the order dated 04/12/2009, Ex. DW1/15, passed by Ld. ARC, Delhi, that permitted him to deposit rent / arrears of rent @ Rs. 1,400/- p.m.; the said order was passed in proceedings of summary nature, not on merits. It had limited scope of permitting the applicant (defendant herein) to deposit rent in the court, that could be withdrawn by the landlord without prejudice to his claim in respect of tenanted premises. Order dated 04/12/2009, Ex. DW1/15, clarified that it was passed against Mrs. Sneha Sharma without prejudice to her rights and contentions.

22. Upon receipt of notice dated 10/12/2012, Ex. PW1/4, the defendant neither offered to pay rent to the plaintiff nor enjoined her to disclose the title documents in respect of suit premises. It reflected that intention of the defendant was only to take dishonest advantage of the order dated 04/12/2009 of Ld. ARC (Central), Delhi. Since order dated 04/12/2009 of Ld. ARC was not passed on merits, and was without prejudice to the rights and contentions of the purported landlady Mrs. Sneha Sharma, it is not in itself a proof that rate of rent of the suit premises was Rs. 1,400/- p.m.

23. There is no evidence that Mrs. Sneha Sharma withdrew the rent deposited by defendant in the court in pursuance of order dated 04/12/2009, Ex. DW1/15. In order to prove the rate of rent, the defendant relied upon rent receipts Ex. DW1/1 to Ex. DW1/10. Plaintiff cross examined DW1 in reference to

the rent receipts Ex. DWI/1 to Ex. DWI/10. Plaintiff disputed the genuineness of the rent receipts on several grounds. The first ground was that defendant did not cross examine PW1 Laxman Singh in reference to the rent receipts Ex. DWI/1 to Ex. DWI/10 and deprived him of the opportunity to explain. Secondly, only one rent receipt - Ex. DWI/1, bears the date of issue, whereas, all other receipts are undated. Moreover, none of the receipts bear serial number, reflecting that they are not part of a bounded receipt book. The receipts bear purported signature of issuer Mrs. Sneh Sharma but she was not summoned as a witness by the defendant to prove the receipts. The receipts refer to periodical payment of rent made by cheques to Mrs. Sneh Sharma for the period January, 2004 to June, 2008, but bank statement was not furnished to prove that Mrs. Sneh Sharma actually got the cheques encashed. The receipts Ex. DWI/1 to Ex. DWI/10 remained suspicious and unproved.

24. Plaintiff proved that Mrs. Sneh Sharma sold the suit property vide Sale Deed dated 18/07/2008, Ex. PWI/2 to Smt. Kuldeep Kaur and Sh. Sanjeev Kumar, who, in turn, sold it to the plaintiff vide Sale Deed dated 23/03/2009, Ex. PWI/3. The defendant cannot use the notices and money orders sent to Mrs. Sneh Sharma after 18/07/2008 (Ex. DWI/17 to Ex. DWI/52) to any advantage against the plaintiff, simply because Mrs. Sneh Sharma lost all right, title and interest in the suit property upon executing the Sale Deed dated 18/07/2008, Ex. PWI/2; she had no right to accept rent from the defendant after 18/07/2008. In essence, the defendant failed to prove that the rate of rent of suit premises was Rs. 1,400/- per month.

25. The defendant is in occupation of first floor of the suit property, measuring 75 sqr. yards, that he uses for commercial purpose. The suit property is situated in Central Delhi area of Multani Dhanda, Pahar Ganj, Delhi. Although, plaintiff led no evidence of rent fetched by neighboring properties of similar dimension, it is not hard to reach the estimation that in the year 2012, the suit premises, being used for commercial purposes, could easily fetch rent of Rs.20,000 - 30,000/- per month. Using the estimate from the lower side, rather than the higher side, the rate of rent is reckoned as Rs.20,000/- per month as on 10/12/2012, which was the date on which plaintiff issued notice Ex. PWI/4 for termination of tenancy of

defendant and arrears of rent.

26. Since the plaintiff informed defendant of her ownership over the suit property vide notice dated 10/12/2012 for the first time, she shall not be entitled to arrears of rent accrued before 10/12/2012.

27. In view of foregoing observation and analysis, the suit is not tenant of the plaintiff. The plaintiff is entitled to possession of the suit premises. Issues No. (i), (iv) and (vi) are decided in favour of plaintiff and against the defendant.”

31. Having thus held with respect to Issues (i), (iv) and (vi), the learned ADJ proceeds to decide issue (v) against the appellant on the ground that the objection of non-joinder of necessary parties, as raised, was perfunctory and was not elaborated by any effective data, and holds, with respect to Issues (ii) and (iii), that the respondent was entitled to arrears of rent, in respect of the tenanted premises @ ₹ 20,000/- per month, w.e.f. 10th December 2012 along with interest @ 9% per annum.

32. Aggrieved by the aforesaid judgment, the appellant has approached this Court under Section 96 of the CPC by way of present first appeal.

33. Mr G.P. Thareja, appearing for the appellant, addressed arguments on 10th October 2022 and 11th October 2022. There was no appearance for the respondent on either occasion. Mr. Thareja has also submitted written notes of the arguments, which have been perused.

Analysis

Points for determination:

34. The points that arise for determination in the present appeal may be enumerated thus:

- (i) Whether CS 15690/16 was maintainable?
- (ii) Whether there existed any relationship of landlord and tenanted between the respondent and the appellant?
- (iii) Whether the respondent was entitled to the relief granted by the learned ADJ?

35. Needless to say, these issues would have to be examined in the backdrop of the impugned judgment of the learned ADJ and the findings returned therein.

Decision on the points for determination and reasons therefor:

36. The impugned judgment dated 14th October 2019, on a plain reading, reveals itself to be a textbook case of assumption, presumption and conjecture. Before addressing the points for determination noted hereinabove, seriatim, certain apparent errors in the impugned judgment deserve to be highlighted thus:

36.1 Para 17 of the impugned judgment, with which the discussion by the learned ADJ commences, starts by noting that the appellant was “admittedly a tenant” in respect of the tenanted premises. A holistic reading of the written statement filed by the appellant along with his

affidavit in evidence and record of cross-examination indicate that there was no such admission of tenancy. Though, at points in the written statement, the appellant does refer to himself as tenant, the appellant has clearly adopted the stand that the tenant, in respect of the tenanted premises, was not the appellant, but was RMGIPL. The documentary evidence filed by the appellant, including the record of DR 185/09, the rent receipts issued by the Sneh Sharma, as well as all communications to Sneh Sharma were by RMGIPL and not by the appellant. The initial presumption, by the learned ADJ, that the appellant was “admittedly a tenant” in respect of the suit property is, therefore, itself fundamentally misconceived.

36.2 The learned ADJ goes on, in para 21 of the impugned judgment, to castigate the intention of the appellant as having become dishonest from the point where the appellant replied, on 26th December 2012 (Ex. PW-1/5) to the legal notice dated 10th December 2012 issued by the respondent. The learned ADJ goes on to hold that, though the appellant could have contested the rate of rent claimed by the respondent, “he had no occasion to deny the landlord-ship” of the respondent.

36.2.1 It is difficult to understand the basis of this finding. It is admitted, in paras 18 and 19 of the impugned judgment, which precede para 21, that, till 10th December 2012, the respondent never intimated the appellant that ownership of the tenanted premises stood transferred to her. The first such communication being the legal notice dated 10th December 2012, the appellant was well within his

right in disputing the ownership of the respondent over the suit property, especially in view of the order dated 4th December 2009 passed by the ARC in DR 185/09, instituted by the appellant under Section 27 of the DRC Act. The adverse observations, returned by the impugned judgment in para 21, against the appellant, castigating him as dishonest are, therefore, completely unjustified.

36.3 Para 21 of the impugned judgment further criticizes the appellant for “wronglyharping upon the order dated 04/12/2009, Ex. DW1/15, passed by Ld. ARC, Delhi”, on the ground that the order was summary in nature and not on merits. Para 22 of the impugned judgment further observes, in this context, that, as the order dated 4th December 2009, of the learned ARC in DR 185/09 was not passed on merits, it was not, in itself, proof that the rate of rent in respect of the tenanted premises was ₹ 1,400/- per month.

36.3.1 These observations, too, in my considered opinion, are perverse. The learned ADJ has completely overlooked the fact that the order dated 4th December 2009 was never challenged and had attained finality. Irrespective of whether the order was passed on merits or not, at the very least, the order resulted in discharge, by the appellant, of the initial onus, placed by the learned ADJ on him, to prove that the rate of rent in respect of the tenanted premises was ₹ 1,400/- per month – assuming the fixing of the initial onus regarding the rate of rent in respect of the tenanted premises on the appellant was at all justified. The onus, at least thereafter, shifted to the respondent to establish that the rent in respect of the tenanted premises was ₹

50,000/- per month. Not a scrap of paper was placed on record, by the respondent, to this effect. The manner in which the learned ADJ has brushed aside the order dated 4th December 2009, of the learned ARC in DR 185/09 is also, therefore, completely misguided in law.

36.4 Proceeding further, the learned ADJ has again, in a manner unknown to law, rejected the rent receipts placed on record by the appellant and exhibited as Ex. DW-1/1 to Ex. DW-1/10 as worthy of no credence. In doing so, the learned ADJ has, rather strangely, failed to notice the fact that, while the appellant had placed the said rent receipts on record, the respondent produced no documentary or other material to indicate that the rent payable in respect of the tenanted premises was ₹ 50,000/- per month, as averred in the plaint. It is, to say the least, astonishing that the learned ARC has, on the one hand, found no fault with the respondent in failing to adduce any material to substantiate the rate of rent pleaded in the plaint and has, on the other, rejected the rent receipts filed by the appellant as manifesting the rate of rent, in respect of the tenanted premises, as ₹ 1,400/- per month. This, in my opinion, is a completely perverse manner of appreciation of evidence, within the meaning of the concept of “perversity” has enunciated by the Supreme Court in *Shiv Kumar Sharma v. State of Rajasthan*⁴, *State Bank of India v. K. S. Vishwanath*⁵, *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra*⁶, *Damodar Lal v. Sohan Devi*⁷ and *S. R. Tewari v. U.O.I.*⁸.

⁴ 2022 SCC OnLine SC 997

⁵ 2022 SCC OnLine SC 667

⁶ (2010) 13 SCC 657

⁷ (2016) 3 SCC 78

⁸ (2013) 6 SCC 602

36.4.1 The learned ADJ, in rejecting the credibility of the rent receipts (Ex. DW-1/1 to Ex. DW-1/10), exhibited by the appellant as DW-1, proceeds on five premises, none of which, in my opinion, can sustain legal scrutiny.

36.4.2 The learned ADJ first observes, adversely to the appellant, that the appellant did not cross-examine PW-1 Laxman Singh in reference to the rent receipts, thereby depriving him of an opportunity to explain them. It is difficult to understand this finding, as the rent receipts have been placed on record to evince payment of rent by RMGIPL to Sneh Sharma.

36.4.3 The second observation by the learned ADJ, to reject the rent receipts, is that the date of issue was to be found only in one rent receipt (Ex. DW-1/1), whereas the other rent receipts were undated. The learned ADJ also notes that the rent receipts did not bear any serial number, indicating that they were not part of any bound receipt book. These findings, too, cannot sustain judicial scrutiny. The rent receipts clearly indicated the individual periods for which they were issued. There is no requirement, in law, for rent receipts to be issued from a bound rent receipt book. As such, these grounds, as cited in the impugned judgment for rejecting the rent receipts, are manifestly tenuous.

36.4.4 The third ground on which the learned ADJ has rejected the rent receipts produced by the appellant as evidence of periodical payment

of rent by RMGIPL to Sneh Sharma @ ₹ 1,400/- per month is that Sneh Sharma was not summoned as a witness by the appellant to prove the receipts. Once the appellant had, as DW-1, proved the issuance of the rent receipts, there was no requirement, in law, for the appellant to produce Sneh Sharma as a witness for the said purpose. Significantly, the respondent was unable, during cross-examination of the appellant, as DW-1, to discredit the issuance of the aforesaid rent receipts, which stood re-asserted by the appellant as DW-1 in cross-examination.

36.4.5 The fourth, and last ground on which the learned ADJ has rejected the rent receipts is that the appellant did not produce the bank statement to prove that Sneh Sharma actually encashed the cheques tendered to her. There is no requirement, in law, for the bank statement to be produced. Equally, non-production of the bank statement cannot be treated as fatal to the case of the appellant. Once rent receipts had been issued by Sneh Sharma, evincing receipt of rent, with the period and amount reflected in such rent receipts, there was no necessity, whatsoever, for the appellant to produce his bank statement as evidence of payment of rent.

36.4.6 Even otherwise, the evidence which a litigant chooses to cite in his support is entirely his prerogative. It is only where best evidence is kept out of the proceedings, and secondary or supplementary evidence is sought to be led without any reasonable basis for exclusion of best evidence within the meaning of Sections 91 to 100 of the Evidence Act may result in drawing of an adverse inference. Else, a

Court cannot hold against a party on the ground that the party did not lead any other evidence, which could have been led by her or by him. The omission, if at all, on the part of the appellant, to place his bank statement on record cannot, therefore, constitute a basis to disregard the rent receipts furnished by the appellant and exhibited as Ex. DW-1/1 to Ex. DW-1/10.

36.4.7 There is, therefore, no substance, whatsoever, in any of the grounds on which the learned ADJ has chosen to disregard the rent receipts (Ex. DW-1/1 to Ex. DW-1/10) tendered by the appellant in evidence.

36.5 Para 24 of the impugned judgment goes on to observe that the appellant could not seek to place reliance on the notices or money orders issued to Sneha Sharma to his advantage; as consequent to sale of the suit property on 18th July 2008, Sneha Sharma lost all right, title and interest therein. This finding, again, is perverse. The learned ADJ fails to notice that the notices and money orders issued by the appellant to Sneha Sharma constituted credible material evincing payment of rent by RMGIPL to Sneha Sharma till April 2012, the appellant having never been informed by anyone, prior thereto, that the suit property had been sold by Sneha Sharma to any other person or requested, either by Sneha Sharma or by any other person, to pay rent to someone other than Sneha Sharma. In that view of the matter, the reliance, by the appellant, on the legal notices, cheques and pay orders, sent by RMGIPL to Sneha Sharma, as proof of payment of rent in respect of the tenanted premises, as also as proof of the quantum of

rent payable in respect thereof, cannot be undermined.

36.6 Perhaps, the most glaring example of perversity, in the impugned judgment, is to be found in para 25 thereof, in which, with no prelude, preface or supportive documentary material whatsoever, the learned ADJ has presumed the rent that tenanted premises would fetch to be ₹ 20,000/- to ₹ 30,000/- per month. This is pure conjecture and nothing else. Interestingly, in so holding, the learned ADJ would effectively be rejecting the case, set up by the respondent in her plaint, that the rent payable in respect of the tenanted premises was ₹ 50,000/- per month. This would cast a cloud on the entire credibility of the suit instituted by the respondent. Once the rate of rent cited by the respondent in the plaint was not accepted by the learned ADJ, the very maintainability of the suit would become questionable, in view of Section 50² of the DRC Act. There is no basis, whatsoever, to support the finding, in para 25 of the impugned judgment that the rate of rent payable in respect of the tenanted premises was ₹ 20,000/- per month.

36.7 The impugned judgment, therefore, being founded entirely on assumption, presumption and conjecture, unsupported by any cogent material, is liable to be set aside even on that score.

37. The discussion hereinbefore substantially answers the questions that have been noted as arising for consideration in the present case. A brief allusion may, however, be made thereto.

Re. Question (i)

38. Insofar as the maintainability of the suit is concerned, the case of the appellant was that, as the rent in respect of the tenanted premises was only ₹ 1,400/- per month, the suit was not maintainable in view of Section 50² read with Clause (c) of Section 3³ of the DRC Act. The respondent had placed no material on record to support the contention that the rent in respect of the tenanted premises was ₹ 50,000/- per month. Rather, PW-1 Laxman Singh, in cross-examination, admitted that he was unaware of any rent agreement or other document which could indicate ₹ 50,000/- per month as being the rent payable in respect of the tenanted premises.

39. As against this, the appellant had filed rent receipts (Ex. DW-1/1 to Ex. DW-1/10), which reflected the rent payable as ₹ 1,400/- per month. These rent receipts were all duly signed by Sneh Sharma and also reflected the periods for which the rent had been paid. No legitimate basis is forthcoming, in the impugned judgment, for rejecting the said rent receipts. The said rent receipts are also reasserted by the appellant, as DW-1, both in his affidavit by way of his examination-in-chief as well as in his cross-examination.

40. A holistic appreciation of the evidence, therefore, would require acceptance of the appellant's contention that the rent payable in respect of the tenanted premises was ₹ 1,400/- per month, and rejection of the respondent's contention, *per contra*, that the rent payable was ₹ 50,000/- per month.

41. Section 50(1)² clearly bars institution of civil suits for eviction of tenants from premises to which the DRC Act operates. Tenanted premises, fetching rent below ₹ 3,500/- per month were, by virtue of clause (c) of Section 3³, covered by the DRC Act. No civil suit would, therefore, lie for eviction of a tenant therefrom.

42. Section 50(4)² excepts the applicability of Section 50(1)² to cases in which the suit was “for the decision of any question of title to any premises to which this Act applies or any question as to the person or persons who are entitled to receive the rent of such premises”. CS 15690/16, as instituted by the respondent, was not a suit *for* a decision on the question of title to the premises, or *for* a decision on the question as to the person or persons entitled to receive the rent in respect of the premises. The respondent, clearly and unequivocally, asserted both title to the tenanted premises as well as the right to recover rent in respect thereof, from the appellant. The mere fact that these assertions were disputed by the appellant in his written statement would not suffice to attract Section 50(4)², or except the applicability of Section 50(1)² to the case.

43. That being so, CS 15690/16, as instituted by the respondent, was not maintainable.

Re. Question (ii)

44. There is, unfortunately, no application of mind, whatsoever, by the learned ADJ, to this aspect of the matter, i.e. whether there existed

any relationship of landlord and tenant between the respondent and the appellant. Proceeding from this submission, the appellant had sought to contend, in his written statement, that the suit was bad for non-joinder of necessary parties. Having framed, as Issue (ii), a specific issue on the point, the learned ADJ holds against the appellant on the issue, observing that the objection had been “perfunctorily raised” and had not been “elaborated and proved”. The finding is clearly perverse. The appellant had clearly stated that the tenant, in respect of the tenanted premises, was not the appellant but was RMGIPL. The rent receipts Ex. DW-1/1 to Ex. DW-1/10 were also issued to RMGIPL. All notices issued to the respondent were by RMGIPL. DR 185/09 under Section 27 of the DRC Act was also instituted by RMGIPL. The appellant, as DW-1, also confirmed, in cross-examination, that RMGIPL was actually the tenant in respect of the tenanted premises. No material, to the contrary, was placed on record by the respondent. In that view of the matter, the aspect of existence of relationship of landlord and tenant between the respondent and the appellant would have to be decided in favour of the appellant, by holding that tenant in respect of the tenanted premises was RMGIPL, not the appellant, and the landlord was Sneh Sharma, and not the respondent.

45. In this context, it is significant to note that PW-1, in cross-examination, sought to submit that the respondent had sent a letter of attornment to the appellant prior to sending the legal notice dated 10th December 2012. He also undertook to produce the said letter. No such letter of attornment was ever placed on record by the respondent. Nor is there any reference, either in the plaint or in the affidavit in

evidence filed by PW-1, of any such letter of attornment having been issued by the respondent to the appellant. This, even by itself, casts serious doubt on the credibility of PW-1 as the sole witness deposing in favour of the respondent.

46. It is clear, therefore, that there was no relationship of landlord and tenant between the respondent and the appellant and that, therefore, the respondent could have no cause of action against the appellant.

Re. Question (iii)

47. In view of the aforesaid observations and findings, it is clear that the learned ADJ substantially erred, both on facts as well as in law, in decreeing the suit in favour of the respondent and against the appellant. The impugned judgment suffers from manifestly perverse appreciation of evidence and is also, on its face, fatally beset by assumption, presumption and conjecture.

48. Based on the material on record and the evidence that was tendered before the learned ADJ, no case can be said to exist for grant, to the respondent, of the reliefs claimed in the suit. The suit is liable to be dismissed both on maintainability as well as on merits.

Relief

49. In view of the aforesaid, CS 15690/16 (*Smt. Butna Devi v. Shri*

Brij Mohan), instituted by the respondent against the appellant, is dismissed. The appeal stands allowed accordingly, without costs.

50. Miscellaneous applications, if any, stand disposed of.

C.HARI SHANKAR, J

OCTOBER 31, 2022

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