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

Reserved on: 8th August, 2022
Pronounced on: 17th August, 2022

+ RSA 79/2022, CAV 220/2022, CM APPL.33525/2022, CM APPL.33526/2022

SMT MANJULA AGGARWAL & ORS. Appellants
Through: Mr. Harish Malhotra, Sr. Adv.
with Ms. Rekha Aggarwal, Adv.

versus

SH VINOD KAKKAR SINCE DECEASED THROUGH LRS
& ORS. Respondents
Through: Mr. Ravi Gupta, Sr. Adv. with
Mr. Chetan Sharma and Mr. Yashpal Singh,
Advs.

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

J U D G M E N T

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17.08.2022

1. Vinod Kakkar, Vijay Kakkar and Swati Khurana, as the plaintiffs, instituted Suit No. CS 613232/16 against Manjula Aggarwal, Anil Aggarwal and Rekha Aggarwal as the defendants before the learned Senior Civil Judge (the learned SCJ). The plaintiffs are the respondents before this Court and the defendants are the appellants, and would be referred to as such, except where their individual names (sans patronymics) are used.



2. The suit pertains to a property located at 24, Patel Road, West Patel Nagar, New Delhi-110008 which shall, therefore, be referred to as “the suit property”.

The Suit

The Complaint

3. The respondents claimed to have purchased the suit property from M.R. Sethi (HUF) *vide* registered sale deed dated 16th November 2009. At the time, Brij Mohan Aggarwal, the husband of Manjula and the father of Anil and Rekha was occupying part of the suit property as tenant. There is a dispute as to whether the premises, let out to Brij Mohan Aggarwal, consisted of two bed rooms, one drawing room with one store, one kitchen and two bath rooms on the first floor of the suit property or included, in addition, half of the terrace of the suit property. This aspect of the dispute is of considerable significance, as would become apparent presently.

4. The complaint further averred that, after purchasing the suit property from M.R. Sethi (HUF), the respondents-plaintiffs wrote to Brij Mohan Aggarwal, requiring him to attorn to the respondents. The respondents also instituted eviction proceedings against Brij Mohan Aggarwal under Clause (a) of the proviso to Section 14(1)¹

¹ 14. **Protection of tenant against eviction.** –

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:



[hereinafter “Section 14(1)(a)”] of the Delhi Rent Control Act, 1958 (the DRC Act) which were, subsequently, withdrawn by them on a technical ground.

5. According to the respondents, and as averred in the plaint, *vide* notice dated 9th December, 2009, addressed to Brij Mohan Aggarwal, the respondents terminated his tenancy. The said notice read thus:

“Date. 09.12.2009

Registered A.D./U.P.C.

SHRI BRIJ MOHAN AGGARWAL
R/O 24, FIRST FLOOR,
PATEL ROAD, WEST PATEL NAGAR,
NEW DELHI.

Dear Sir,

Under and on behalf of the instructions of my client SHRI VINOD KAKAR, S/O SHRI G.R.KAKKAR, MRS. VIJAY KAKKAR, W/O SHRI VINOD KAKKAR, BOTH RESIDENT OF 49/27, EAST PATEL NAGAR, NEW DELHI AND MRS. SWATI KHURANA, W/O SHRI RAJAN KHURANA, R/O AP-22, SHALIMAR BAGH, DELHI, I serve upon you with the following notice:-

1. That my clients are the joint owners having 1/3 undivided share each in the entire property, except two shops on the Ground Floor, bearing No. 24, Patel Road, West Patel Nagar, New Delhi, which they purchased by virtue of

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:—

(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882);”



registered sale deeds executed by its owners M.R.Sethi (HUF) consisting of its Karta Shri B. R.Sethi, S/o Shri Munshi Ram Sethi and Shri Rohit Sethi, S/o Shri B .R.Sethi, both resident of C-25, South Extension, Part-II, New Delhi, registered on 18.11.2009 in favour of my clients .

2. That you are a tenant in respect of two bedrooms, one drawing room with one store and one kitchen with two bathrooms on the back side of the First Floor of premises bearing No. 24, Patel Road, West Patel Nagar, New Delhi, at a monthly rent of Rs. 450/- excluding electricity and water charges.

3. That the erstwhile owner Shri B.R.Sethi Karta of M/s .M.R.Sethi (HUF) and Shri Rohit Sethi, S/o Shri B.R.Sethi had verbally informed you about the sale of the aforesaid property and also informed you to pay the monthly rent of the portion under your tenancy to my clients. However, I also on behalf of my aforesaid clients notify you to pay the rent of the tenanted portion in your occupation to my clients from the date of its purchase.

4. That my clients do not wish to keep you as their tenant in the aforesaid tenanted premises and hereby terminate your tenancy w.e.f. 31.12.2009 after giving you 15 days clear time.

5. That, in case, you failed to deliver the vacant physical possession of the tenanted premises under your occupation on or before 01.01.2010, then you will be a trespasser/unauthorized occupant in the said premises and you shall be liable to pay the damages/ mesne profit for use and occupation of the said premises @Rs. 10,000/- per month which is the prevalent market rent in the area where the tenanted premises is situated.

Now, I hereby call upon you to pay the entire arrears of rent to my clients forthwith and I further call upon you to surrender the vacant and peaceful possession of the tenanted premises to my client on or before 01.01.2010, otherwise my client shall institute appropriate civil proceedings before the competent court for the recovery of rent as well as for the recovery of possession, mesne profit/damages in which case you shall be liable for all the cost and consequences thereof.



Copy kept.

Sd/-
Sanjeev Sharma
Advocate”

6. As is apparent from a reading of the aforesaid notice, the portion of the suit property tenanted to Brij Mohan Aggarwal was described therein as “two bed rooms, one drawing room with one store and one kitchen with two bath rooms on the back side of the first floor” of the suit property. There was, therefore, no reference to any part of the terrace of the suit property as being tenanted to Brij Mohan Aggarwal.

7. One of the principal contentions of the petitioners before me is that, as the half terrace in the suit property which was also, according to them, let out by the respondents to Brij Mohan Aggarwal did not find mention in the notice dated 9th December, 2009, the notice was defective. Mr. Harish Malhotra, learned Senior Counsel for the petitioners sought to contend that a notice terminating a tenancy, which was not issued in respect of the entire tenanted premises, was of no legal effect whatsoever and that, therefore, it could not be treated as having terminated the tenancy at all. He relied, for this purpose, on *Chiman Lal v. Mishri Lal*².

² (1985) 1 SCC 14



8. To return to the précis recital of the plaint, the respondents filed three eviction petitions against Brij Mohan Aggarwal, under clauses (c), (g) and (h)³ of Section 14(1) of the DRC Act.

9. During the pendency of the said eviction petitions, Brij Mohan Aggarwal expired on 21st September 2015, leaving behind Manjula, Anil and Rekha, the petitioners herein, as his legal heirs. The plaint asserted that, as the tenancy of Brij Mohan Aggarwal stood terminated during his life time by virtue of the notice of termination dated 9th December 2009, read with Section 111(h)⁴ of the Transfer of Property Act, 1882, Manjula, not being financially dependent on Brij Mohan Aggarwal, was entitled to continue in possession of the tenanted premises only for one year from the date of death of Brij Mohan Aggarwal, by application of Explanation II to Section 2(l)⁵ of the DRC Act.

³ 14. **Protection of tenant against eviction. –**

(1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by any court or Controller in favour of the landlord against a tenant:

Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:—

(c) that the tenant has used the premises for a purpose other than that for which they were let –

- (i) if the premises have been let on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord; or
- (ii) if the premises have been let before the said date without obtaining his consent;

(g) that the premises are required *bona fide* by the landlord for the purpose of building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated;

(h) that the tenant has, whether before or after the commencement of this Act, acquired vacant possession of, or been allotted, a residence;

⁴ 111. **Determination of lease. –** A lease of immovable property, determines –

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

⁵ 2. **Definitions.**—In this Act, unless the context otherwise requires, -



10. Additionally, the plaintiff alleged that though Manjula had deposited arrears of rent for the period 9th December 2015 to 8th April 2016 @ ₹ 450/- per month alongwith interest @ 15% per annum under Section 27(1)⁶ of the DRC Act with the learned Additional Rent Controller (“the learned ARC”), no rent had been paid for the period March to August 2016 despite repeated reminders. As a result, the plaintiff alleged that Manjula was liable to vacate the suit property and also disgorge *mesne* profits/damages @ ₹ 20,000/- per month from 22nd September 2016 till the date when the property would be vacated.

(l) “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be, payable, and includes –

(iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid person's—

- (a) spouse,
- (b) son or daughter, or, where there are both son and daughter, both of them,
- (c) parents,
- (d) daughter-in-law, being the widow of his pre-deceased son,

as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include, -

- (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976);
- (B) any person to whom a licence, as defined by Section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted.

Explanation II.—If the person, who acquires by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished.

⁶ 27. **Deposit of rent by the tenant. –**

(1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 26 or refuses or neglects to deliver a receipt referred to therein or where there is a *bona fide* doubt as to person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner:

Provided that in cases where there is a *bona fide* doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to the Controller by postal money order.



11. Predicated on the aforesaid, the respondents, *vide* CS 613232/16, sought a decree in their favour and against the petitioners (i) for recovery of possession of the suit property, (ii) for arrears of rent of ₹ 2,250/- and (iii) for damages/*mesne* profits @ ₹ 20,000/- per month after requisite inquiry under Order XX Rule 12 of the CPC, along with costs.

Written Statement

12. The petitioners, in their written statement filed in response to the suit instituted by the respondents, raised various objections. Of these, however, Mr. Harish Malhotra, learned Senior Counsel for the petitioners has pressed only two. The first is that there was no valid termination of tenancy, as the notice dated 9th December 2009 covered only part of the property which was tenanted to Brij Mohan Aggarwal, omitting to include the half terrace which was also part of the tenanted premises. Such a notice, issued in respect of a part of the tenanted premises, submits Mr. Malhotra, cannot be treated as a valid notice of termination of tenancy. There being no valid notice of termination of tenancy, he submits that Brij Mohan Aggarwal continued as a contractual tenant in the premises so that, on his death, Manjula succeeded to the tenancy as a contractual tenant. As the tenancy in respect of the tenanted premises was less than ₹ 3,500/- per month, the premises were covered by the DRC Act and, by virtue of Section 50(1)⁷ thereof, the suit instituted by the respondents, he submits, was

⁷ 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



incompetent. The entire premise on which the suit was predicated, i.e., that (i) there had been a termination of tenancy during the life time of Brij Mohan Aggarwal, (ii) consequent on his demise, therefore, Manjula succeeded to the tenancy as the successor of Brij Mohan Aggarwal and (iii) being financially not dependent on Brij Mohan Aggarwal, Manjula was entitled to continue in the suit premises only for a period of one year from his death, submits Mr. Malhotra, was without any legal basis whatsoever.

13. The second ground urged by Mr. Malhotra was that there was no evidence to indicate that Manjula was not financially dependent on Brij Mohan Aggarwal. That being so, Explanation II to Section 2(1) would not apply, even if the tenancy were to be treated as having been validly terminated during the life time of Brij Mohan Aggarwal.

Judgment dated 14th January, 2021 of the learned SCJ

Issues

14. The learned SCJ framed the following issues as arising for consideration in the suit:

“1) Whether the plaintiff is entitled to the decree of recovery of possession of the property no. 24, Patel Road, West Patel Nagar, as prayed for? OPP

2) Whether the plaintiff is entitled to the decree of arrears of rent from 09.04.2016 till 08.09.2016 @ Rs. 450/- per month? OPP

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.



- 3) Whether the plaintiff is entitled to the decree of mesne profits @ Rs.20,000/- per month from 09.09.2016 till handing over of vacant possession of the suit property by the defendant to the plaintiff? OPP
- 4) Whether the suit of the plaintiff is barred by Section 50 of the DRC Act? OPD
- 5) Whether the suit of the plaintiff is liable to be stayed in view of pendency of eviction petition under the DRC Act already filed by the present plaintiff against Sh. Brij Mohan Aggarwal, husband of the defendant no.1? OPD
- 6) Relief, if any.”

Evidence

15. The respondents led the evidence of Kanika, Probation Officer, Punjab & Sind Bank, West Patel Nagar, as PW-1 and Vinod Kakkar, Respondent 1 as PW-2. PW-1 Kanika produced *inter alia*, in the proceedings, a certified copy of a joint bank account bearing no. 00541000020065 of the Punjab & Sind Bank which was exhibited as Ex. PW-1/1. The petitioners led the evidence of Petitioner 2 Anil Aggarwal as DW-1 and Divya Prakash Gautam, who had prepared the site plan in respect of the property as DW-2. The witnesses were examined and cross examined and evidence was closed.

Findings

16. The learned SCJ noted that, after the death of Brij Mohan Aggarwal on 21st September, 2015, Manjula had deposited arrears of rent for the period 9th December, 2012 to 8th April, 2016 @ ₹ 450/- per month along with interest @ 15% p.a. under Section 27 of the DRC



Act. It was observed that both sides had relied on the photocopy of the rent agreement dated 12th March, 1965 between M.R. Sethi (HUF) and Brij Mohan Aggarwal. There was no dispute about the fact that the respondents had indeed purchased the suit property from M.R. Sethi (HUF) *vide* registered sale deed dated 16th November, 2009 (Ex.PW-2/1).

17. It may be noted here, that the tenanted area is described, in the rent agreement dated 12th March, 1965 as comprising of “two bed rooms, one big hall drawing cum dining, one store, one kitchen, with two bath rooms attached with both the bed rooms”, with the words “and half terrace” inserted in hand above and after the words “two bed rooms”. To understand this, one may provide a screen shot of the said recital, in the rent agreement, thus:

whereas the said landlord is the owner of the house No. 40/24 Patel Road, West Patel Nagar, New Delhi and whereas he has agreed to let out only one portion i.e. back side flat on the 1st floor of the main building to the said tenant who has agreed to pay Rs. 450/- per month as rent. Other Municipal charges like electricity & water charges etc. are to be paid by the said tenant.

The portion comprises of two bed rooms, one big hall drawing cum dining, one store, one kitchen, with two bath rooms attached with both the bed rooms. Geyser is fitted in one of the bedrooms. One cupboard is fitted in both the bed rooms as well as in the drawing room. three ceiling fans are also fitted in all the three rooms. besides electric fittings, sanitary fittings like 4 wash basins (two in two bathrooms, one in verandah and one in kitchen) and with furniture, fittings & fixtures on the terms & conditions as cited below.

18. Inasmuch as the relationship of landlord and tenant between Brij Mohan Aggarwal and M.R. Sethi (HUF) stood thus admitted and acknowledged by both parties, the learned SCJ held that the law did not require Brij Mohan Aggarwal to separately attorn to the



respondents. The fact that Manjula deposited rent in respect of the tenanted premises even after the death of Brij Mohan Aggarwal, held the learned SCJ, amounted to acknowledgement of the relationship of landlord and tenant between the respondents and Manjula.

19. Apropos the submission of the petitioners that the notice of termination of tenancy was invalid, as it pertained only to part of the tenanted premises omitting to “half terrace” which had also been let out to Brij Mohan Aggarwal, the learned SCJ held thus:

“29. Perusal of Ex. PW-2/D-1 shows that the words 'and half terrace' is not typed in the rent agreement dated 12.03.1965 and has been inserted by writing in running hand which does not bear the signatures of both the parties. The plaintiffs have categorically stated that they have purchased the property vide sale Deeds dated 16.11.2009 Ex.PW-2/1 and the copy of the rent agreement Ex.PW-2/D-1 was supplied later on. The defendants have failed to prove that Ex.PW-2/D-1 bears the signatures of both the parties on the words written in hands. Moreover, perusal of the record shows that one copy of judgment dated 04.05.1998 in E. No. 39/83 old no. 196/75 with date of institution 17.11.1975 titled as B.M. Aggarwal v. Munshi Ram Sethi under Section 45 of DRC Act from the Court of Smt. Asha Menon, the then Ld. ARC, Delhi, is on record. Judicial notice can be taken of the said judgment. In para-2 of the said judgment, the tenanted premises has been described which is as under:-

“in the petition, the petitioner has stated that he was the tenant of the respondent with respect of the left hand first storey of the premises 24, main West Patel Road comprising of two bed rooms of terrace above, one drawing cum dinning room, one kitchen, one store, two bathrooms on a monthly rent of Rs.450/- under Rent Agreement dated 12.03.1965”.

30. Hence, in the description of the tenanted premises, in the above judgment as well of which judicial notice can be



taken, there is no mention of half terrace of second floor of the suit/tenanted premises.

31. Thus, the said contention of the defendants has remained not proved and not found to be tenable in view of the above judgment 04.05.1998 between the deceased husband of defendant no.1 and the predecessor in interest of the plaintiffs.”

20. Dealing with the submission of the petitioners that Manjula was financially dependent on Brij Mohan Aggarwal, the learned SCJ held thus:

“23. In order to prove that the defendant no.1 was financially independent on the date of death of her husband, the plaintiffs have got the record summoned i.e. the bank account statement of the account in the name of defendant no.1 and 2 from Punjab and Sind Bank, West Patel Nagar, as Ex. PW-1/1 and account opening form as Ex. PW-1/2 through PW-1 Ms. Kanika, Probation Officer from the said bank. During her cross-examination, PW-1 deposed that defendant no.1 alongwith her daughter i.e. defendant no.3 are having a joint saving account with their branch. The statement of account shows that the said bank account is being operated by the defendant no.1 and 3 jointly. Once, the plaintiffs have proved the certified copy of the account statement alongwith the account opening form, the onus of proof shifting upon the defendants. However, neither defendant no.1 nor defendant no.3 has appeared in the witness box to show that the said account does not belong to defendant no.1 or that the transactions as mentioned in the said account do not pertain to her.

24. The contention of the defendants that PW-1 did not have any authority to depose on behalf of the bank does not hold ground as Ex. PW-1/1 is computer generated copy with seal of the bank, the authenticity which document cannot be doubted. Further, the defendant no. 1 has not stepped up in the witness box to deny that the copy of the account opening form Ex.PW- 1/2 is not correct. Perusal of the above mentioned documents show that the said account was opened by the defendant no.1 and 3 jointly, which was operated as



"either or survivor", which means jointly. The said account opening form mentions the date as 26.07.2007, which is much prior to the death of Sh. B.M. Aggarwal on 21.09.2015.

25. During cross-examination dated 03.11.2018, DW-1 deposed that the said account belongs to his sister Rekha Aggarwal (defendant no.3). Defendant no.1 has no concern with the same. He stated that as per general banking practice, the bank usually advise not to have an account in single name to avoid any legal consequences in the event of any mishap. However, DW-1 did not produce any document regarding any such general banking practice to support his contentions. Moreover, no cogent reason has been furnished why the best evidence which would have been by way of examination of defendant no.1 or defendant no.3 has not been produced in this matter regarding the said account. Moreover, DW-1 deposed that the income tax return as well as Wealth tax return of his mother for the financial year 2011-12 till 2017-18 are in possession of his mother as she is dealing with her financial affairs, which further show that defendant no.1 is independently dealing with her financial affairs from 2011 to 2018 i.e. since prior to the death of her husband. DW-1 has further deposed that he cannot tell whether his father left any movable assets or movable property because his mother and his father looking after their movable assets and properties.

26. From the cross-examination of DW-1, it is clear that defendant no.1 is having a joint saving account in Punjab National Bank, which was opened prior to the death of late Sh. B.M. Aggarwal. Defendant no.1 is also having movable and immovable properties and she alone is dealing with her financial affairs. Therefore, the defendant no.1 was not at all financially dependent upon her late husband at the time of his death. Defendant no.1 chose not to appear as witness in the witness box, nor she has given any authority to defendant no.2 (Sh. Anil Aggarwal) to depose on her behalf. Therefore, the statement of DW-1 as far as the same is related to the bank account in the name of defendant no.1 and 3 cannot be relied upon."

21. As a result, the learned SCJ held that the respondents had succeeded in establishing that (i) the premises tenanted to Brij Mohan



Aggarwal by M.R. Sethi (HUF) did not include the “half terrace”, (ii) the notice of termination of tenancy dated 9th December, 2009, therefore, covered the entire tenanted premises and was valid and in order, (iii) as the tenancy stood terminated during his life time, Brij Mohan Aggarwal, at the time of his death, was occupying the suit property as a statutory tenant and (iv) there being no credible evidence to indicate that Manjula was financially dependent on Brij Mohan Aggarwal, she was entitled to continue in occupation of the tenanted premises only for a period of one year from the death of Brij Mohan Aggarwal.

22. The learned SCJ, therefore, decreed the suit in the following terms:

“50. In view of the above discussions, the suit of the plaintiffs is decreed with following reliefs in their favour:-

(i) A decree of recovery of possession is passed in respect of the first floor of the property bearing no. 24, Patel Road, West Patel Nagar, New Delhi- 110008 comprising of two bed rooms, one drawing room with one store, one kitchen, two bathrooms, as shown in red colour in the site plan against all the defendants.

(ii) A decree of arrears of rent as prayed by the plaintiff in the sum of Rs.2,250/ against the defendant no.1 alongwith interest @ 6% p.a. from the date of order till the realization of the decretal amount.

(iii) A decree of damages/mesne profits against the defendant no.1 as prayed is passed for a total sum of Rs. 29589.77/- along with interest @ 6 % per annum as per Section 34 CPC from date of order till the realization of the decretal amount. Further, the mesne profit will be calculated for each month thereafter with increase of 10% every year till the date of handing



over the possession by the defendants alongwith interest @ 6% per annum.”

23. I may note here, that Mr. Harish Malhotra, learned Senior Counsel for the petitioners did not join issue with the decision either of the learned ARC or of the learned RCT on the aspect of rent or *mesne* profits and, therefore, no allusion is being made to the said aspects in this judgment.

Impugned judgment dated 16th April, 2022 of the learned ADJ

24. Aggrieved by the aforesaid judgment dated 14th January, 2021 of the learned SCJ, Manjula, Anil and Rekha appealed to the learned ADJ *vide* Appeal No. RCA/DJ/11/2021 and RCA/DJ/12/2021. Of these, RCA/DJ/11/2021 was against the rejection of the counter claims preferred by the petitioners before the learned SCJ, which forms subject matter of RSA 81/2022. It is not, therefore, relevant for the purposes of the present judgment which is limited to RSA 79/2022.

25. Re: Validity of termination notice dated 9th December 2009

25.1 The learned ADJ noted the contention of the appellants that the notice dated 9th December 2009 could not be regarded as a valid notice of termination of tenancy as it was restricted to part of the tenanted premises, and excluded the half portion of the terrace on the second floor. As such, it was sought to be submitted that the notice was not a valid notice within the meaning of Section 106⁸ of the

⁸ 106. Duration of certain leases in absence of written contract or local usage. –



Transfer of Property Act. The learned ADJ observed that the Rent Agreement dated 12th March 1965, whereunder the tenanted premises were initially let by M.R. Sethi (HUF) to Brij Mohan Aggarwal was for a period of one year less one day and was not, therefore, operational on the date when the notice dated 9th December 2009 was issued. On that day, therefore, the tenancy of Brij Mohan Aggarwal, in respect of the suit property, was governed by Chapter V of the Transfer of Property Act, which included Sections 106 and 111(h). Section 106 envisaged termination of leases of immovable property, not let out for agricultural or manufacturing purposes, as being terminable by 15 days' notice either by the lesser or lessee. The learned ADJ noted that 15 days' clear time had been granted by the notice dated 9th December 2009 (Ex. PW-2/3) for the appellants to vacate the suit property. Though the notice was defective insofar as it demanded arrears of rent, the learned ADJ has held that the notice could not be regarded as defective for termination of tenancy. I may note that Mr. Harish Malhotra did not seek to argue that the notice dated 9th December 2009 was invalid as a notice of termination owing to the defect, in the notice, insofar as it demanded arrears of rent.

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.



25.2 The contention of Mr. Malhotra, noted more than once hereinbefore, is that the notice dated 9th December 2009 did not cover the entirety of the tenanted premises, as it did not include the half terrace which also constituted part thereof and was not, for that reason, a valid notice terminating the tenancy of Brij Mohan Aggarwal. On this aspect, the impugned judgment dated 16th April 2022 of the learned ADJ observes and holds as under:

“62. As per record, there is a dispute between the parties regarding the portion of the suit property that was let out by the original landlord Sh. M. R. Sethi, (HUF) to the original tenant Sh. B. M. Aggarwal. While the case of the plaintiffs is that the tenanted premises consisted of two bedrooms with attached bathrooms, one drawing room with one store and one kitchen on the first floor of the suit property, as per the case of the defendants, half portion of terrace above on the second floor of the suit premises was also of the part of the initial tenancy. Admittedly, there was a rent agreement dated 12.03.1965 executed between original landlord and the original tenant. Neither the original landlord nor the original tenant are present before the court to clarify as to what was the original portion let out to Late Sh. Brij Mohan Aggarwal. The plaintiffs herein were not in picture at the time of execution of the original rent agreement as they had purchased the suit property only in the year 2009. The defendant no. 2, on the other hand, has admitted in his cross examination that he was born in the year 1959 and was thus, merely six years of age at the time of execution of original rent agreement dated 12.03.1965. The original rent agreement has never seen the light of the day as it has not been placed on record by either of the parties. Defendant no. 1, being the wife of Late Sh. B.M. Aggarwal was a competent person to prove the portion of the suit property taken on rent by Late Sh. B. M. Aggarwal, in case, she was married to Late Sh. B.M. Aggarwal at that time. However, she has never stepped into the witness box and deposed anything about the same.

63. Defendants have relied upon a copy of the rent agreement dated 12.03.1965 which is Ex.PW2/DI. The defendants have also put this document to PW2 during his



cross examination and have relied on certain portion of cross examination of PW2 wherein he had accepted the suggestion that the copy of the rent agreement received by him by the previous owner was Ex.PW1/D1 and contained the handwritten portion at points X and X1. However, when we go through the complete cross examination of PW2, it is absolutely clear that although he had admitted the rent agreement Ex.PW2/ D1 but he has stated that the cutting and over writing at point X and X1 were not present on the copy of the agreement initially. At this stage, it is important to note that the cutting/over writing at point X is the handwritten addition of the words and “half terrace above” bearing one initial which is the bone of contention between the parties.

64. Perusal of document i.e. Rent Agreement Ex.PW2/D1 also shows that although the same has been signed by both. the landlords and the tenants but the hand written portions at point X and X1 are having a single initial. There is no clarity on record as to whose initials are there at these points. Since, it is the defendants who are alleging that this hand written portion including "half terrace above" in the tenanted premises was mutually added in the rent agreement, dated 12.03.1965, the onus was on them to prove the said fact.

65. It is also an admitted fact that the present litigation is not between the parties to the rent agreement dated 12.03.1965 i.e.Ex.PW2/D1 but their successors in interest. While the plaintiffs have allegedly stepped into the shoes of the landlord Sh. M. R. Sethi after having purchased the suit property vide documents dated 16.11.2009, the defendants are the wife and children of the original tenant of Late Sh. Brij Mohan Aggarwal who has already expired in the year 2015. As per the cross examination of DW1 defendant no. 2, he was born in the year 1959 and was thus merely six years old at the time of execution of rent agreement Ex.PW2/D1. Thus, neither the plaintiffs nor defendant nos. 2 and 3 had any personal knowledge regarding the original tenanted premises taken on rent vide rent agreement Ex.PW2/D1. Accordingly, neither the plaintiff nor defendants no. 2 and 3 could depose as to whether the handwritten portion at point X and X1 in rent agreement Ex.PW2/D1 was added with mutual consent of original landlord and tenant. At the max, the defendant no. 1 who was the wife of Late Sh. Brij Mohan Aggarwal could have deposed about the tenanted premises which was initially



taken on rent by Late Sh. Brij Mohan Aggarwal, that too if she was married to Sh. Brij Mohan Aggarwal prior to 12.03.1965 i. e. the date of rent agreement (Ex.PW2/D1). However, there is no clarity in this regard that defendant no. 1 never stepped into the witness box or deposed about the same.

66. It is also interesting to note that the defendants have moved an application in RCA No. 12/21 for placing on record certified copy of the rent agreement dated 12.03.1965. Vide order dated 19.02.2022, it was observed by the court that the said certified copy was only a photocopy and was not accompanied with the first page of petition from which it has been obtained. Accordingly, the appellants/defendants were given permission for filing the certified copy of said document on record subject to payment of cost to the opposite counsel. However, the said certified copy was never placed on record. Still, I deem it appropriate to look into the document which is on record and relied upon by the appellants/defendants. At the time of submissions of application under section 151 CPC whereby the said copy was placed on record, it was alleged that this was the copy of the rent agreement filed by the father of appellants no. 2 and 3 in a rent petition bearing no. E-83/1967/75 which was referred to in judgment dated 04.05.1998 and was marked as Ex.AW-13/1. Perusal of this photocopy shows that this is an entirely different document than the rent agreement relied upon by the defendants in the original suit i.e. Ex.PW2/D1. While the rent agreement Ex.PW2/D1 is typed on stamp paper of one rupee fifty naye paise, the document Ex.AW-13/1 is on a plain white paper. Even the handwritten addition at point X are in different handwritings and bearing different initials in both the documents. The second page of Ex.AW-13/1 is not bearing the signatures of the tenant and witnesses while the signatures of tenant and one witness are present on the second page of rent agreement Ex.PW2/D1. There are also certain handwritten additions after the signatures on the second page of Ex.AW-13/1 which are missing from rent agreement Ex.PW2/D1. These contradictions in two different copies of rent agreement dated 12.03.1965 being relied upon by the defendants are sufficient to doubt the genuineness of these copies especially the hand written contents thereon. Since the addition of hand written portion at pt. X in Rent Agreement Ex. PW2/D-1 including "the half portion above" in the tenanted premises was pleaded by the defendants. The



onus was on them to prove that handwritten additions were genuine additions made in the rent agreement with mutual consent of both the parties. However, they have failed to discharge this onus.

67. Considering the overall documents on record, I have no hesitation in holding that the defendants have miserably failed to prove that "half portion of terrace above" was a part of the tenanted portion let out to Late Sh. Brij Mohan Aggarwal by the erstwhile owner. Accordingly, the notice dated 09.12.2009 Ex.PW2/3 terminating the tenancy of Late Sh. Brij Mohan Aggarwal cannot be faulted with on the ground of 'not specifying the complete tenanted premises.

68. In this regard, Ld. Trial court has also relied upon the certified copies of judgment dated 04.05.1998 in petition number in E-39/83 (Old No.196/75) (date of institution - 17.11.1975) titled as B. M. Aggarwal Vs. Munshi Ram Sethi under Section 45 of DRC Act passed by the court of Smt. Asha Menon, the then Ld. ARC, Delhi. Although, none of the parties have exhibited this judgment but there is no dispute regarding its authenticity and accordingly, judicial notice of the same has been taken. In fact, the copy of the said judgment was put to DWI/defendant no. 2 during his cross-examination and he had admitted the same which is marked as **Mark A**. This was a petition filed by the erstwhile tenant/predecessor in interest of the present defendants namely Late Sh. Brij Mohan Aggarwal against the erstwhile owner/predecessor in interest of the plaintiffs namely Sh. Munshi Ram Sethi. In paragraph no. 2 of the said judgment the then Ld. ARC has described the tenanted premises as mentioned in the petition to be "comprising of two bedrooms of terrace above, one drawing-cum-dinning room, one kitchen, one store, two bathrooms on the first floor of the suit property". There is no mention of "the half portion of the terrace above" on the second floor to be a part of tenanted premises. Relying upon the said judgment, it is observed by Ld. Trial Court that the contention of the defendant that the half portion on the second floor of the suit property was a part of the tenanted premises is misfounded and without any evidence. I find no infirmity in the reliance of Ld. Trial court upon this judgment or the findings arrived at by Ld. Trial Court relying upon this judgment.



69. From the evidence on record, I have no hesitation in holding that the defendants have failed to prove that half portion of terrace on the second floor of the suit property was a part of the tenanted premises. Accordingly, the failure of the plaintiffs to mention the said portion in the termination notice Ex.PW2/3 is not, in any way, fatal to the case of the plaintiff. The citations relied upon by the defendants/appellants to support their arguments that there is no valid termination of tenancy in case the notice of termination is defective and does not mention the entire tenanted premises, are of no support to them in view of their failure to prove that "the half portion of the terrace on the second floor of the suit property" was also a part of initial tenancy.

70. Even otherwise, the intention of the defendants to terminate the complete tenancy of the plaintiffs is very clear from the notice Ex.PW2/3 and there is no reason to arrive at a conclusion that there was no clarity from the notice as to the intention of the plaintiffs to terminate the complete tenancy of the defendants.”

25.3 On the issue of the want of financial dependence of Manjula on Brij Mohan Aggarwal, the learned ADJ has held thus, in paras 78 to 81 of the impugned judgment:

“78. It is argued on behalf of the defendants that the bank account statement of defendant No. 1 has not been properly proved on record as it was not certified under Banker's Book Evidence Act and the witness proving the same i.e. PW1 had no authority to depose before the court.

79. Contentions of the defendants in this regard have been duly dealt with by Ld. Trial Court in paragraph nos. 23 to 26 of the impugned judgment. After going through the reasoning given by the Ld. Trial court while rejecting the contention of the defendants in this regard, I find no illegality or infirmity in the same. DW1/defendant no. 2 who is the son of defendant no. 1 has not disputed in his examination as DW1 that the bank account bearing no. 00541000020065 was not the joint bank account of defendant no. 1 and defendant no. 3. When specifically questioned in this regard during his cross-



examination, DW1 showed his ignorance and stated that he cannot state anything in this regard. The relevant portion of his cross examination in this respect is reproduced hereinunder for the sake of clarity:

“Cross examination dated 03.11.2018

Q. It is correct that your mother have joint account with her daughter Smt. Rekha Aggarwal in Punjab and Sindh Bank, Patel Nagar Branch, New Delhi?

A. The said account belongs to my sister Smt. Rekha Aggarwal, defendant no. 3. Defendant no. 1 has no concern with the same. As per general banking practice, banks usually advice not to have an account in single name to avoid legal complications in the event of any mishap.

Q. I put it to you that the said joint bank account was operated jointly and severally by defendant no. 1 and 3 and there were transactions of deposit and withdrawal by both defendant no. 1 and 3?

A. I can not say.

Q. I put it to you that same joint bank account in Punjab and Sindh Bank in the name of defendant no. 1 and 3 was in operation even prior to the death of your father?

A. I can not say.

Q. The plaintiff had given a notice to you under Order 12 Rule 8 CPC to produce the income tax return as well as Wealth Tax Return of your mother for FY 2011-12 till 2017-18, have you brought same today in the court?

A. I have not brought the same Income Tax and Wealth Tax are in possession of my mother as she is dealing with the financial affairs.

Q. I put to you that your mother is assessed to income tax?



A. *I can not say.*

Cross dated 05.12.2018

Q. *Had your father left any movable assets or movable property?*

A. *I can not tell about this because my mother and my father were looking after their movable assets and properties.*

Q. *Please tell after the death of your father to whom those movable assets and properties belong?*

A. *I do not know.*

Q. *Had your father make any provision for the maintenance of your mother at the time of his death and in what manner?*

A. *My father had not left any provision for my mother at the time of his death.*

Q. *It means I take it that your mother D-1 was not financial dependent upon your father?*

A. *It is wrong to suggest."*

80. Relying upon these evasive replies given by DW1 regarding alleged financial dependence of defendant no. 1 on her husband Late Sh. Brij Mohan Aggarwal at the time of his demise, Ld. Trial Court rightly observed that after the deposition of PW1 and cross-examination of DW1, the onus was on the defendant no. 1 to stepped into the witness box to support her contention that she was financially dependent upon her Late husband. In the alternative, if defendant no. 1 not in a position to appear before the court on account of her medical condition, defendant no. 3 who was having a joint account with defendant no. 1 could have examined herself to prove that the bank account bearing no. 00541000020065, though in the joint name with defendant no. 1 was actually operated by her only and there was no income of defendant no. 1 reflected in the said bank account. However, none of the



defendants no. 1 or 3 stepped into the witness box to produce the best evidence in this regard before the court. Testimony of defendant no. 2/DW1 regarding the financial dependence of defendant no. 1 on her late husband cannot be relied upon considering his cross-examination and evasive reply reproduced above.

81. I find no infirmity or illegality in the findings of Ld. Trial Court on this aspect. Merely because PW1 could not produce any authority for deposing before the court, it is not sufficient to ignore his evidence especially when the best evidence within the control of the defendants has not been produced on record. Perusal of bank account statements Ex. PW1/1 clearly show that they bear the stamp of concerned bank. Although, it is correct that the statements Ex. PW1/1 are not duly certified under Banker's Book Evidence Act, however, they can be looked into as the defendants have failed to raise any clear dispute against the same.”

26. Following on the aforesaid, the learned ADJ has declined to interfere with the judgment dated 14th January 2021 of the learned SCJ and has, therefore, dismissed RCA 12/2021.

27. Aggrieved thereby, the appellants have moved this Court by way of second appeal under Section 100 of the CPC.

Rival contentions

28. I have heard Mr. Harish Malhotra, learned Senior Counsel for the appellants and Mr. Ravi Gupta, learned Senior Counsel for the respondents at length.

Contentions of Mr. Harish Malhotra



29. As already noted hereinbefore, Mr. Harish Malhotra essentially urged two pleas, to challenge the impugned order dated 16th April 2022, passed by the learned ADJ.

30. The first ground of challenge, urged by Mr Malhotra, was that the notice dated 9th December 2009 was not a valid notice of termination of tenancy of Brij Mohan Aggarwal qua the suit property, as it did not cover the entirety of the tenanted premises. Relying on the judgment in *Chiman Lal*², Mr. Malhotra submits that a notice which was not covering the entire tenanted premises could not be treated as a valid notice in the eyes of law. He has invited my attention to the reply, dated 26th December 2009, of Brij Mohan Aggarwal to the notice dated 9th December 2009, in which it was specifically pointed out that Brij Mohan Aggarwal was a lawful tenant not only of two bedrooms, with bathroom, one drawing room, one store and one kitchen on the rear portion of the first floor, but was also a lawful tenant in respect of a half terrace on the second floor and the driveway on the ground floor. Despite this defect in the notice of termination of tenancy having been pointed out by Brij Mohan Aggarwal to the respondents, Mr. Malhotra submits that the respondents chose, consciously, not to include the entire tenanted premises in the suit.

31. Mr Malhotra also placed reliance on the Rent Agreement dated 12th March 1965 and on the handwritten interpolation “and half terrace above”, to be found therein. Mr. Malhotra submits that it had been admitted, in evidence, by the witness of the respondents, that the Rent



Agreement dated 12th March 1965, has originally drawn up, contained the aforesaid interpolation “and half terrace above”. To demonstrate this position, Mr. Harish Malhotra drew my attention to the cross-examination of Respondent 1 Vinod Kakkar as PW-2, conducted by Anil as well as by learned Counsel for Manjula and Rekha on 20th July 2016. In the said record of cross-examination, PW-2 Vinod Kakkar acknowledged having received a photocopy of the Rent Agreement dated 12th March 1965 from Baldev Raj Sethi, the previous owner of the suit property, at the time of purchase of the suit property by him, though he had not received the original of the Rent Agreement. As such, the photocopy of the Rent Agreement was exhibited as PW-1/D-1, and was identified as the copy of the Rent Agreement received by PW-2 Vinod Kakkar from the previous owner Baldev Raj Sethi. In this context, the cross-examination records thus:

“The witness has identified the Ex PW-2/D-1 as the correct copy of the Rent Agreement received by him from the previous owner/landlord. *However, the cuttings, the over writing as Point X and XI were not present initially.* I do not remember whether this is the same copy which I have filed in the Court of Ms. Harleen Singh (two eviction petitions) and Sh Naveen Kashyap (one eviction petition) Ld. ARC respectively. I have to check whether I have a copy of Rent Agreement which does not have the cuttings/over writing as shown at Point X and X1 on Ex PW-2/D-1. It is true that the copy of Ex PW-2/D-1 was filed by me in the three eviction petition referred hereinabove. It is true that the copy of Ex PW-2/D-1 is identical to the copies filed by me in the eviction petitions in the Court of Ms. Harleen Singh and Sh Naveen Kashyap the then Ld. ARC's. When I briefed my counsel for sending the notice Ex PW-2/3 I did not show him the copy of Rent Agreement Ex PW-2/D-1. At the time of sending the notice Ex PW-2/3, I did not have the copy of the Rent Agreement Ex PW-2/D-1.”

(Emphasis supplied)



32. Mr. Malhotra also relies on the subsequent query put, in respect of the aforesaid Rent Agreement to PW-2 Vinod Kakkar and his response thereto, thus:

“Q You have stated that you received the copy of the Rent Agreement from Sh Baldev Raj Sethi previous owner after the issue of notice dated 9.12.2009 Ex PW-1/3. It is put to you that the copy of the Rent Agreement received by you from previous owner Sh Baldev Raj Sethi contained the hand written initials at Point X and X1 at the time when you received the same?

A It is true.”

33. Mr. Malhotra submits, therefore, that it had been categorically admitted in evidence by Respondent 1 himself, deposing as PW-2 in cross-examination, that a copy of Rent Agreement received by him contained the handwritten interpolations “and half terrace above”. Adverting to the orders passed by the learned SCJ and the learned ADJ, on this aspect, Mr. Malhotra submits that the learned SCJ returned no finding whatsoever on the issue, whereas the findings of the learned ADJ, though detailed, were markedly perverse and, therefore, gave rise to a substantial question of law within the meaning of Section 100 of the CPC.

34. He submits that a finding of fact, returned on appreciation of evidence, is liable to be characterized as perverse if it arrives at a conclusion which is opposed to the sole inevitable inference to which the evidence unmistakably points. The admission by Respondent 1 Vinod Kakkar, deposing as PW-2 in cross-examination, that the copy of the Rent Agreement received by him contained the interpolation



“and half terrace”, submits Mr. Malhotra could lead to one and only one inference, which was that the tenancy of Brij Mohan Aggarwal included the half terrace. The sequitur, which inevitably had to follow, was that the notice dated 9th December 2009 was an invalid notice as it did not cover the entirety of the tenanted premises, applying the law laid down in *Chiman Lal* ².

35. In this context, Mr. Harish Malhotra has also relied on the following recital, contained in para 3 of the replication filed by the respondents in respect of the written statement of the petitioners in the suit.

“It is correct that Shri B.M. Aggarwal husband of defendant no.1 and father of defendant no.2 and 3 was the tenant in the suit premises vide alleged Rent Agreement dated 12.03.1965 executed between one Shri Munshi Ram Sethi and Shri Brij Mohan Aggarwal. The Tenanted premises has been correctly described in the site plan filed along with the suit. It is, however, denied that Shri Brij Mohan Aggarwal was the tenant in respect of alleged half terrace in the said property. In any case the doctrine partial eviction cannot be used as means to defeat the suit because if the case of the defendant is that, in addition to the suit premises there was also in Brij Mohan Aggarwal's tenancy half terrace, the decree for possession to be passed in the suit will be treated as a decree not only for the suit premises but also for the half terrace.”

Mr. Malhotra submits that the aforesaid defence taken by the respondents in their replication to the written statement filed by the petitioners in response to the respondents' suit indicates that the respondents were impliedly recognizing the fact that the tenancy of Brij Mohan Aggarwal also included the half terrace on the second floor.



36. Mr. Malhotra has also placed reliance on an interlocutory order dated 18th January 2019, passed by the learned SCJ during the course of the proceedings in CS 613232/16, which also notes the fact that words “and half terrace above” were to be found in the copy of the Rent Agreement dated 12th March 1965 contained on the file.

37. The finding of the learned ADJ, to the effect that the tenanted premises did not include the half terrace was, therefore, according to Mr. Harish Malhotra, perverse on its face, and constitutes a palpable error on the face of the record of the orders passed by the learned SCJ and the learned ADJ and, therefore, made out a case for interference by this Court.

38. The second ground of challenge, by Mr. Malhotra, to the impugned order, was on the aspect of alleged financial independence of Manjula vis-a-vis her husband Brij Mohan Aggarwal. With respect to the findings returned by the learned SCJ and the learned ADJ on this aspect, Mr. Malhotra has invited my attention to the bank statement of Rekha, on which both Courts below placed reliance to hold that Manjula was not financially dependent on Brij Mohan Aggarwal. Part of the screenshot of the said statement, as figuring on the record of the learned ADJ, may be provided thus:



NEUTRAL CITATION NO: 2022/DHC/003080

Statement of Assets and Liabilities			
Assets	Liabilities	Assets	Liabilities
1. Cash	1. Cash	1. Cash	1. Cash
2. Accounts Receivable	2. Accounts Payable	2. Accounts Receivable	2. Accounts Payable
3. Inventory	3. Inventory	3. Inventory	3. Inventory
4. Prepaid Expenses	4. Prepaid Expenses	4. Prepaid Expenses	4. Prepaid Expenses
5. Other Assets	5. Other Assets	5. Other Assets	5. Other Assets
6. Total Assets	6. Total Liabilities	6. Total Assets	6. Total Liabilities
7. Cash	7. Cash	7. Cash	7. Cash
8. Accounts Receivable	8. Accounts Payable	8. Accounts Receivable	8. Accounts Payable
9. Inventory	9. Inventory	9. Inventory	9. Inventory
10. Prepaid Expenses	10. Prepaid Expenses	10. Prepaid Expenses	10. Prepaid Expenses
11. Other Assets	11. Other Assets	11. Other Assets	11. Other Assets
12. Total Assets	12. Total Liabilities	12. Total Assets	12. Total Liabilities



Statement of Assets and Liabilities			
Assets	Liabilities	Assets	Liabilities
1. Cash	1. Cash	1. Cash	1. Cash
2. Accounts Receivable	2. Accounts Payable	2. Accounts Receivable	2. Accounts Payable
3. Inventory	3. Inventory	3. Inventory	3. Inventory
4. Prepaid Expenses	4. Prepaid Expenses	4. Prepaid Expenses	4. Prepaid Expenses
5. Other Assets	5. Other Assets	5. Other Assets	5. Other Assets
6. Total Assets	6. Total Liabilities	6. Total Assets	6. Total Liabilities
7. Cash	7. Cash	7. Cash	7. Cash
8. Accounts Receivable	8. Accounts Payable	8. Accounts Receivable	8. Accounts Payable
9. Inventory	9. Inventory	9. Inventory	9. Inventory
10. Prepaid Expenses	10. Prepaid Expenses	10. Prepaid Expenses	10. Prepaid Expenses
11. Other Assets	11. Other Assets	11. Other Assets	11. Other Assets
12. Total Assets	12. Total Liabilities	12. Total Assets	12. Total Liabilities



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40. Apropos the observations of the learned SCJ and the learned ADJ that Manjula did not appear in the witness box to clarify the position, Mr. Malhotra submits that Manjula is a lady of advanced years of declining health and that the initial onus, which lay on the respondents to show that Manjula was financially dependent on Brij Mohan Aggarwal, could not be said to have been discharged merely because Manjula did not enter the witness box. He submits that it is not the case of the respondents that Manjula was in receipt of any earnings out of any independent business or job. The mere existence of a bank balance, submits Mr. Malhotra, cannot be treated as definitive proof of financial independence, in the absence of any identified source of regular independent income.

41. On both these scores, therefore, Mr. Malhotra submits that the findings of courts below are perverse and, therefore, give rise to substantial questions of law for consideration and determination by this Court.

42. No other contention was advanced by Mr. Harish Malhotra.

43. Responding to the submissions of Mr. Malhotra, Mr. Ravi Gupta submits that the findings of the courts below are pure findings of fact on appreciation of evidence and cannot, therefore, be regarded as giving rise to any substantial question of law within the meaning of Section 100 of the CPC.



44. Apropos the contention of Mr. Malhotra that the notice of termination of tenancy dated 9th December 2009 was an incomplete notice as it did not cover the entire tenanted premises, Mr. Ravi Gupta relies on the judgment dated 4th May 1998 of the learned Additional Rent Controller (as she then was) in a petition under Section 45 of the DRC Act⁹, instituted by Brij Mohan Aggarwal against M.R. Sethi. Para 2 of the said judgment contains the following recital:

“This petition was filed on 17 .11. 75 and was subsequently amended on 16.3.79. In the petition the petitioner has stated that he was the tenant of the respondent in respect of left hand flat storey of the premises 24, Main West Patel Road comprising of 2 bed rooms of terrace above 1 drawing cum dining room, 1 kitchen, 1 store, 2 bed rooms on a monthly rent of Rs 450/- under an agreement dated 12.3.65.”

45. Mr. Gupta submits that, therefore, even in the judgment of the learned ARC in the petition filed by Brij Mohan Aggarwal under

⁹ 45. **Cutting off or withholding essential supply or service. –**

(1) No landlord either himself or through any person purporting to act on his behalf shall without just and sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.

(2) If a landlord contravenes the provisions of sub section (1), the tenant may make an application to the Controller complaining of such contravention.

(3) If the Controller is satisfied that essential supply or service was cut off or withheld by the landlord with a view to compel the tenant to vacate the premises or to pay an enhanced rent, the Controller may pass an order directing the landlord to restore the amenities immediately, pending inquiry referred to in sub-section (4).

Explanation.—An interim order may be passed under this sub-section without giving notice to the landlord.

(4) If the Controller on inquiry finds that the essential supply or service enjoyed by the tenant in respect of the premises was cut off or withheld by the landlord without just and sufficient cause, he shall make an order directing the landlord to restore such supply or service.

(5) The Controller may in his discretion direct that compensation not exceeding fifty rupees—

(a) be paid to the landlord by the tenant, if the application under sub-section (2) was made frivolously or vexatiously;

(b) be paid to the tenant by the landlord, if the landlord had cut off or withheld the supply or service without just and sufficient cause.

Explanation I.—In this section, “essential supply or service” includes supply of water, electricity, lights in passages and on staircases, conservancy and sanitary services.

Explanation II.—For the purposes of this section, withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut off by the local authority or any other competent authority.



Section 45 of the DRC Act, it was specifically stated by Brij Mohan Aggarwal that the tenanted premises consisted only of the terrace above one drawing room, one kitchen, one store and two bedrooms. There was, therefore, no reference of any half terrace in the said recital. This being the recital in the petition by Brij Mohan Aggarwal as the original tenant, Mr. Ravi Gupta submits that it had to be accorded pre-eminence. This judgment had been relied upon by both, learned SCJ as well as by the learned ADJ and, in Mr. Ravi Gupta's submissions, no exception can be taken thereto.

46. Mr. Ravi Gupta further placed reliance on para 66 of the judgment dated 16th April 2022 of the learned ADJ to highlight what, according to him, was contumacious conduct on the part of the appellants in producing fabricated copies of the Rent Agreement 12th March 1965 before the Court. The appellants who resort to such conduct, submits Mr. Gupta, cannot be extended any leniency.

47. With respect to the financial status of Manjula, Mr. Gupta submits that the best witness who could testify in that regard was Manjula herself and, despite her being available, she did not enter the witness box. Nor, for that matter, did Rekha, who is also available, choose to depose in the proceedings either before the learned ARC or before the learned RCT. Manjula and Rekha being the two persons whose joint account was relied upon by the courts below to hold that Manjula was not financially dependent on Brij Mohan Aggarwal, Mr. Gupta submits that want of any evidence from Manjula or Rekha as witnesses in the present case, were fatal to the stand that the appellants



sought to urge. In this context, Mr. Ravi Gupta has drawn my attention to the following questions and answers in the cross-examination of DW-1 Anil Aggarwal:

“Q. The plaintiff had given a notice to you under Order 12 Rule 8 CPC to produce the income tax return as well as Wealth Tax Return of your mother for FY 2011-12 till 2017-18, have you brought same today in the Court?

A. I have not brought the same Income Tax and Wealth Tax are in possession of my mother as she is dealing with her financial affairs.

Q. I put to you that your mother is assessed to income tax?

A. I can not say.”

48. In view of the above, Mr. Gupta submits that either Manjula, or Rekha, or both, ought to have clarified the position with respect to the joint bank account, on which the Courts below had placed reliance.

49. Mr. Gupta has also raised a preliminary objection with respect to the plea, of Mr. Malhotra, regarding the invalidity of the notice of termination of tenancy dated 9th December 2009 for want of inclusion, in the said notice, of the entire tenanted premises. He submits that no separate issue in this regard had been framed, either as to the portion of the suit property which was tenanted to Brij Mohan Aggarwal or regarding the validity or invalidity of the notice of termination of tenancy dated 9th December 2009 on that score. No such issue having been framed, Mr. Gupta would seek to contend that the impugned judgment of the learned ADJ or the judgment of the learned SCJ



which has been affirmed thereby cannot be called into question on this score.

50. Mr. Ravi Gupta has also placed reliance on the following judgments:

- (i) the judgement of a learned Single Judge of this Court in *Parvati Devi v. Mahindra Singh*¹⁰, which holds that the mere omission to mention the open terrace as part of the rented residential premises would not affect an application for eviction on the ground of *bona fide* requirement under Section 14-1(e) of the DRC Act,
- (ii) the judgment of a Coordinate Bench of this Court in *Sangeeta Aggarwal v. Sohni Devi*¹¹, which holds that the doctrine of partial eviction could not be used as a means to defeat the suit and
- (iii) the judgment of a Division Bench of this Court in *Silicon Graphics Systems India Pvt. Ltd. v. Nidas Estates Pvt. Ltd.*¹², to the effect that Courts would not go into issues which are not framed by the Court unless the Court was satisfied that a new fact had arisen which was required to be taken note of and that a new issue, relevant to the said fact, was required to be framed.

Analysis and findings

¹⁰ 1996 (1) AD (Delhi) 819

¹¹ 2016 SCC OnLine Del 4405

¹² 2013 SCC OnLine Del 2419



51. An appeal under Section 100 of the CPC lies only on substantial questions of law. The classical exposition of what a “substantial question of law” is, may be found in the following words from the judgment of the Supreme Court in *Sir Chunilal V. Mehta & Sons Ltd v. Century Spinning & Manufacturing Co. Ltd*¹³:

“6. ... The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be *whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.*”

(Emphasis supplied)

An exhaustive discussion on the scope of Section 100 of the CPC, and the concept of a “substantial question of law” envisaged therein, is to be found in *Nazir Mohamed v J. Kamala and others*¹⁴:

“22. A second appeal, or for that matter, any appeal is not a matter of right. The right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the court cannot expand the scope of the appeal. It was not open to the respondent-plaintiff to reargue facts or to call upon the High Court to reanalyse or reappreciate evidence in a second appeal.

23. Section 100 CPC, as amended, restricts the right of second appeal, to only those cases, where a substantial question of law is involved. The existence of a “substantial

¹³ AIR 1962 SC 1314

¹⁴ (2020) 19 SCC 57



question of law” is the *sine qua non* for the exercise of jurisdiction under Section 100 CPC.

26. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in ***Chunilal V. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.***¹³, where this Court held: (AIR p. 1318, para 6)

“6. ... The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.”

27. In ***Hero Vinoth v. Seshammal***,¹⁵, this Court referred to and relied upon ***Chunilal V. Mehta and Sons Ltd.***¹³ and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law. The relevant paragraphs of the judgment of this Court in ***Hero Vinoth***¹⁵ are set out hereinbelow : (SCC p. 554, para 21)

“21. The phrase “substantial question of law”, as occurring in the amended Section 100 CPC is not defined in the Code. *The word substantial, as qualifying “question of law”, means – of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with – technical, of no substance or consequence, or academic merely.* However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words

¹⁵ (2006) 5 SCC 545



“of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. *The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance.* In **Guran Ditta v. Ram Ditta**¹⁶, the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that *it did not mean a substantial question of general importance but a substantial question of law which was involved in the case.* In **Chunilal case**¹³ the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in **Rimmalapudi Subba Rao v. Noony Veeraju**¹⁷:

‘5. ... when a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law.’”

28. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

29. To be a question of law “involved in the case”, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact,

¹⁶ (1927-28) 55 IA 235 : AIR 1928 PC 172

¹⁷ AIR 1951 Mad 969



arrived at by courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

30. *Where no such question of law, nor even a mixed question of law and fact was urged before the trial court or the first appellate court, as in this case, a second appeal cannot be entertained, as held by this Court in **Panchugopal Barua v. Umesh Chandra Goswami**¹⁸.*

31. *Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from **Santosh Hazari v. Purushottam Tiwari**¹⁹.*

32. *In a second appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in **V. Ramachandra Ayyar v. Ramalingam Chettiar**²⁰. An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.*

33. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

33.1. An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

¹⁸ (1997) 4 SCC 713

¹⁹ (2001) 3 SCC 179

²⁰ AIR 1963 SC 302



33.2. *The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.*

33.3. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

33.4. *The general rule is, that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where : (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.*

34. With the greatest of respect to the High Court, neither of the two questions framed by the High Court is a question of law, far less a substantial question of law. There was no controversy before the High Court with regard to interpretation or legal effect of any document nor any wrong application of a principle of law, in construing a document, or otherwise, which might have given rise to a question of law. There was no debatable issue before the High Court which was not covered by settled principles of law and/or precedents.

35. It is nobody's case that the decision rendered by the first appellate court on any material question, violated any settled question of law or was vitiated by perversity. It is



nobody's case that the evidence *taken as a whole* does not reasonably support the finding of the first appellate court, or that the first appellate court interpreted the evidence on record in an absurd and/or capricious manner. It is also nobody's case that the first appellate court arrived at its decision ignoring or acting contrary to any settled legal principle.

36. The first appellate court examined the evidence on record at length, and arrived at a reasoned conclusion, that the appellant-defendant was owner of a part of the suit premises and the respondent-plaintiff was owner of the other part of the suit premises. This finding is based on cogent and binding documents of title, including the registered deeds of conveyance by which the respective predecessors-in-interest of the appellant-defendant and respondent-plaintiff had acquired title over the suit premises. There was no erroneous inference from any proved fact. Nor had the burden of proof erroneously been shifted.”

(Emphasis supplied)

52. Findings of fact based on appreciation of evidence cannot, therefore, result in any substantial question of law, even if they are palpably erroneous. Having so observed, relying on *V. Ramachandra Ayyar*¹⁹, the decision in *Nazir Mohamed*¹⁴ proceeds to somewhat relax the rigour of this dictum, by holding that findings of fact based on appreciation of evidence may result in a substantial question of law if the evidence, *taken as a whole*, is not *reasonably capable* of supporting the finding.

53. As to when findings of fact, arrived at by the learned Trial Court and the learned First Appellate Court, can justify interference in



second appeal, the following passages from *Municipal Committee, Hoshiarpur v. Punjab State Electricity Board*²¹ are instructive:

“27. There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied *that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (Vide Jagdish Singh v. Natthu Singh*²²; *Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan*²³ and *Dinesh Kumar v. Yusuf Ali*²⁴.)

28. *If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide Bharatha Matha v. R. Vijaya Renganathan*²⁵.)

54. In *Illoth Valappil Ambunhi v. Kunhambu Karavanan*²⁶, the Supreme Court held that it was well settled “that perversity in arriving at a factual finding gives rise to a substantial question of law,

²¹ (2010) 13 SCC 216

²² (1992) 1 SCC 647 : AIR 1992 SC 1604

²³ (1999) 6 SCC 343 : AIR 1999 SC 3067

²⁴ (2010) 12 SCC 740 : AIR 2010 SC 2679

²⁵ (2010) 11 SCC 483 : AIR 2010 SC 2685

²⁶ (2020) 18 SCC 317



attracting intervention of the High Court under Section 100 of the Code of Civil Procedure”.

55. On the jurisprudential concept of “perversity”, the Supreme Court held, in *Kilasho Devi Burman v. C.I.T.*²⁷ that “a conclusion is perverse only if it is such that no person, duly instructed, could upon the record before him, have reasonably come to it”. *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*²⁸ holds that “any finding which is not supported by evidence or inferences is drawn in a stretched and unacceptable manner can be said to be perverse”. Specifically dealing with “perversity” as a permissible ground to interfere with findings of fact in a second appeal under Section 100 of the CPC, the Supreme Court held thus, in *Damodar Lal v. Sohan Devi*²⁹:

“**8.** “Perversity” has been the subject-matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of the Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.

9. In *Krishnan v. Backiam*³⁰, it has been held at para 11 that: (SCC pp. 192-93)

“11. It may be mentioned that the first appellate court under Section 96 CPC is the last court of facts. The High Court in second appeal under Section 100 CPC cannot interfere with the findings of fact recorded by the first appellate court under Section 96 CPC. No doubt the findings of fact of the first appellate court can be challenged in second appeal on the ground that

²⁷ (1996) 7 SCC 613

²⁸ (2012) 7 SCC 288

²⁹ (2016) 3 SCC 78

³⁰ (2007) 12 SCC 190



the said findings are based on no evidence or are perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect.”

10. In **Gurvachan Kaur v. Salikram**³¹, at para 10, this principle has been reiterated: (SCC p. 532)

“10. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and the defendant and default committed by the latter in payment of rent.”

13. In **Kulwant Kaur v. Gurdial Singh Mann**³², this Court has dealt with the limited leeway available to the High Court in second appeal. To quote para 34: (SCC pp. 278-79)

“34. Admittedly, Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but *the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however,*

³¹ (2010) 15 SCC 530

³² (2001) 4 SCC 262



only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the issue of perversity vis-à-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication — what is required is a categorical finding on the part of the High Court as to perversity. In this context reference be had to Section 103 of the Code which reads as below:

‘103. Power of High Court to determine issues of fact. – In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal –

- (a) which has not been determined by the lower appellate court or by both the court of first instance and the lower appellate court, or
- (b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100.’

The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 since the issue of perversity will also come within the ambit of substantial question of law as noticed above. The legality of finding of fact cannot but be termed to be a question of law. We reiterate however, that there must be a definite finding to that effect in the judgment of the High Court so as to make it evident that Section 100 of the Code stands complied with.”

14. In *S.R. Tewari v. Union of India*³³, after referring to the decisions of this Court, starting with *Rajinder Kumar Kindra v. Delhi Admn.*³⁴, it was held at para 30:

“30. The findings of fact recorded by a court can be held to be perverse *if the findings have been arrived at*

³³ (2013) 6 SCC 602

³⁴ (1984) 4 SCC 635



*by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide **Rajinder Kumar Kindra v. Delhi Admn**³³, **Kuldeep Singh v. Commr. of Police**³⁵, **Gamini Bala Koteswara Rao v. State of A.P.**³⁶ and **Babu v. State of Kerala**³⁷.)”*

This Court has also dealt with other aspects of perversity.

15. We do not propose to discuss other judgments, though there is a plethora of settled case law on this issue. Suffice to say that the approach made by the High Court has been wholly wrong, if not, perverse. It should not have interfered with concurrent findings of the trial court and the first appellate court on a pure question of fact. Their inference on facts is certainly reasonable. The strained effort made by the High Court in second appeal to arrive at a different finding is wholly unwarranted apart from being impermissible under law. Therefore, we have no hesitation to allow the appeal and set aside the impugned judgment of the High Court and restore that of the trial court as confirmed by the appellate court.”

“सत्यमेव जयते”

56. Applying the above principles to the facts at hand, it is clear that the findings of the learned ADJ are pure findings of fact, which do not give rise to any substantial question of law.

³⁵ (1999) 2 SCC 10

³⁶ (2009) 10 SCC 636

³⁷ (2010) 9 SCC 189



57. Mr. Malhotra's first submission is that the notice dated 9th December 2009 was an invalid notice and could not be regarded as terminating the tenancy of Brij Mohan Aggarwal. This, he submits, is because the notice did not cover the entire tenanted premises but left out the half terrace at the second floor. He relies on *Chiman Lal*¹³ to contend that a notice which is issued in respect of part of the tenanted premises cannot be treated as a notice terminating the tenancy at all.

58. Mr. Malhotra's reliance, to substantiate this submission, is entirely on the cross examination of Respondent 1 as PW-2, during trial. In fact, his reliance is fundamentally on one question addressed to PW-2 and his answer thereto, which stand reproduced, in para 32 *supra*. Mr. Malhotra seeks to point out that, when queried as to whether the copy of the rent agreement received by Respondent 1 from Baldev Raj Sethi contained the hand-written initials at points X and X-1, PW-2 answered in the affirmative. This indicates, according to Mr. Malhotra, unequivocally and unambiguously, that the words "and half terrace above" were contained in the original rent agreement dated 12th March, 1965. Any finding to the contrary, in the face of this evidence, submits Mr. Malhotra, is *ex facie* perverse and, therefore, gives rise to a substantial question of law within the meaning of Section 100 of CPC.

59. The passages from the impugned judgment of the learned ADJ, extracted in para 25.2 *supra* reveal that the learned ADJ has dealt with this aspect in great detail. He has noted the reliance, by the



petitioners, on the evidence in cross examination of Respondent 1 deposing as PW-2 Vinod Kakkar. He specifically notes thus:

“63. Defendants have relied upon a copy of the rent agreement dated 12.03.1965 which is Ex.PW2/D1. The defendants have also put this document to PW2 during his cross examination and have relied on -certain portion of cross examination of PW2 wherein he had accepted the suggestion that the copy of the rent agreement received by him by the previous owner was Ex.PW1/D1 and contained the handwritten portion at points X and XI.”

60. Thus, the precise submission advanced by Mr. Malhotra has been noted and taken into account by the learned ADJ. Once the submission has been noted and taken into account, the scope for urging that a substantial question of law arises as the appreciation of evidence, by the learned ADJ, is perverse, reduces considerably. Perversity can be attributed to findings returned consequent on appreciation of evidence only if (i) the order takes into account extraneous material or (ii) fails to take into account evidence which is relevant and which could tilt the scales against the findings that the order arrives at, or (iii) arrives at a finding which is so unreasonable that no person conversant with the facts and the law and the evidence in the case, would arrive at such finding.

61. Once, therefore, the learned ADJ is seen to have considered the submission, of the petitioners, that the afore-extracted question put to Respondent 1 as PW-2 in cross examination and his answer thereto amount to an acknowledgement that the words “and half terrace above” did indeed find place in the original rent agreement dated 12th



March 1965, the first two circumstances [(i) and (ii) *supra*] in which perversity could be attributed to the findings of fact of the learned ADJ are no longer available to the petitioners. All that can be seen, then, is whether the manner in which the learned ADJ has appreciated the evidence is unsustainable to the extent that no reasonable person would appreciate the evidence in such a manner or arrive at the conclusion at which the learned ADJ has arrived at. Short of this high plateau, no perversity can be attributed to the findings of the learned ADJ.

62. When one peruses the findings in the impugned judgment dated 16th April, 2022 of the learned ADJ, it is seen that, even while noting the reliance, by the petitioners, on the afore-extracted response of Respondent 1 as PW-2 in cross examination, the learned ADJ goes on to observe that, earlier in his cross examination, PW-2 had specifically stated that the over-writing at points X and X-1 were not present on the initial copy of the agreement. Dealing with this aspect, the learned ADJ notes that

- (i) though the rent agreement (Ex.PW-2/D-1) was signed both by the landlord and the tenants, the hand-written portions at points X and X-1 were accompanied only by a single initial,
- (ii) there was no clarity as to the person who had initialled the said interpolations,
- (iii) as the respondents were seeking to contend that the words “and half terrace above” had been entered in the rent agreement by mutual consent, the onus was on the respondents to prove the said fact,



- (iv) Brij Mohan Aggarwal, the original tenant, had expired in 2015,
- (v) the cross examination of Anil Aggarwal as PW-1, disclosed that, at the time of execution of the rent agreement Ex.PW-2/D-1 in 1959, he was merely six years of age,
- (vi) neither the respondents, nor Petitioners 2 and 3, i.e Anil and Rekha, therefore, had any personal knowledge regarding the identity of the original premises which had been tenanted by Brij Mohan Aggarwal,
- (vii) consequently, neither the respondents nor Petitioners 2 and 3 could depose as to whether the hand-written portion at points X and X-1 in the rent agreement Ex.PW-2/D-1 had been added with mutual consent of landlord and tenant,
- (viii) the only party to the proceedings who could have deposed in that regard would be Manjula, assuming she was married to Brij Mohan Aggarwal prior to 1965 when the rent agreement Ex.PW-2/D-1 was executed,
- (ix) Manjula, however, never stepped into the witness box,
- (x) though the petitioners had, in RCA 12/21, moved an application to place on record the certified copy of the rent agreement dated 12th March, 1965, and the petitioners had, in fact, placed the purported certified copy of the rent agreement, as filed in Rent Petition E-83/1967/75 (disposed of by the learned ARC *vide* judgment dated 4th May 1998 *supra*) on record, the said document, as placed on record by the petitioners, was discrepant in several respects from Ex.PW-2/D-1,



- (xi) these discrepancies were, even by themselves, sufficient to doubt the genuineness of the copies of the rent agreement dated 12th March 1965 which had been placed on record, especially with respect to the hand-written interpolations therein,
- (xii) the onus was on the petitioners, as the defendants placing reliance on the interpolation “and half portion above” in the rent agreement dated 12th March, 1965 (Ex.PW-2/D-1) to prove the genuineness of the hand-written additions and the fact that the additions have been made by mutual consent of the parties and
- (xiii) this onus was, however, not discharged by the petitioners, in the case.

63. It is on the basis of this detailed analysis of the material on record that the learned ADJ has not condescended to accept the sole question and answer, put to Respondent 1 as PW-2 in cross examination, on which Mr. Malhotra placed reliance, as conclusive evidence of the existence, in the original rent agreement dated 12th March, 1965, of the interpolated words “and half terrace above”. This finding cannot, in any manner of speaking, be regarded as perverse for having failed to take into account relevant material, or for having taken into account irrelevant material or because the finding is such as no reasonable person conversant with the facts and the law and the evidence in the case, *taken as a whole*, would arrive at.

64. Still weaker is the case pleaded by Mr. Malhotra regarding the purported financial dependence of Manjula on Brij Mohan Aggarwal.



The bank statement, on which the courts below placed reliance, was a joint bank statement of Rekha and Manjula. The contention of Mr. Malhotra that the said statement could not be treated as reflective of the financial condition of Manjula, as the increase therein reflected the professional earnings of Rekha, is unsubstantiated by any factual material. The bank statement speaks for itself. In the face of the entries in the bank account statement, the onus was clearly on the petitioners to disabuse the Court that the bank statement could not be treated as reflecting the actual financial condition of Manjula.

65. The submission of Mr. Malhotra that a mere bank statement is not reflective of financial independence, in the absence of any evidence of independent earnings and any other independent source of earning, has no foundation either in fact or in law. It is not possible to accept the said submission. Indeed, I am completely unable to understand as to how it can even be sought to be contended that the financial condition of a person cannot be discerned from the statement of the bank account of that person.

66. If the statement of the bank account is actually not reflective of the actual financial wherewithal of the account holder, the onus would be on the party who seeks to so assert, to so establish. Neither Manjula nor Rekha chose to lead evidence in the matter. It is obvious that, as the joint account holders of the bank statement on which the courts below had placed reliance, they would be the best witnesses to



depose in that regard. Neither Manjula nor Rekha having chosen to step into the witness box, no exception whatsoever can be taken to the findings of the courts below that, on the basis of the joint bank statement of Manjula and Rekha, the plea of financial dependence of Manjula on Brij Mohan Aggarwal could not sustain.

67. Section 2(1)(l)(iii), read with Explanation II thereto, indicates that, in normal course, a person who succeeds to the tenancy by virtue of succession consequent on the death of the original tenant is entitled, where the tenancy has been validly terminated prior to the death of the original tenant, to continue in the premises only for a period of one year. An exception is statutorily carved out in a case where the succeeding tenant is financially dependent on the original tenant. The onus is, therefore, on the person seeking to plead and invoke the exception, to prove that the pre-requisites of the exception are met.³⁸ The onus was, therefore, on the petitioners, who sought to invoke, against the respondents, Explanation II to Section 2(1)(l)(iii) of the DRC Act, to establish that the ingredients of the explanation stood satisfied. It was, therefore, for the petitioners to establish that Manjula was, in fact, *not* financially dependent on Brij Mohan Aggarwal, and not for the respondents to establish to the contrary. No evidence, to that effect, has been led by the petitioners. Rather, the joint bank account statement of Manjula and Rekha indicates a considerable degree of solvency. If the petitioners desired to urge to the contrary, the onus was on them to lead evidence to that effect. The best

³⁸ See *M.A. Rumugam v. Kittu*, (2009) 1 SCC 101, *Subramanian Swamy v. U.O.I.*, (2016) 7 SCC 221, which hold that the onus to prove the existence of the pre-requisites for an Exception to apply is on the person pleading the Exception



evidence in that regard would have been the evidence of Manjula and Rekha – though it might be questionable as to whether any oral evidence of Manjula and Rekha could militate against what was apparent from their joint bank account statement. Be that as it may, neither Manjula nor Rekha chose to step into the witness box.

68. As a result, the concurrent findings of fact, based on appreciation of evidence, by the learned SCJ and the learned ADJ, to the effect that Manjula could not be treated as financially dependent on Brij Mohan Aggarwal are in order, and cannot be said to be unsustainable on any ground whatsoever, much less perverse, on any ground whatsoever.

69. Neither of the twin submissions urged by Mr Malhotra as grounds on which to challenge the impugned decisions of the learned Civil Judge and the learned ADJ, therefore, impresses.

Conclusion

70. In view of the aforesaid, no substantial question of law can be said to arise in the facts of the present case.

71. The appeal is accordingly dismissed in *limine*.



72. Caveat also stands disposed of. Pending applications, if any, do not survive for consideration and accordingly stand disposed of.

C.HARI SHANKAR, J

AUGUST 17, 2022

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