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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 26th May, 2022
Pronounced on: 4th July, 2022

\+ CM(M) 62/2022 & CM APPL. 3222/2022

B D KHANNA PUBLICITY ..... Petitioner
Through: Mr. Kamlesh Anand, Adv.

versus

JALVEEN ROSHA ..... Respondent
Through: Ms. Deepika Marwaha, Sr. Adv. with Mr. Alok Pandey and Ms. Raunika Johar, Advs.

\+ CM(M) 644/2021 & CM APPL. 33300/2021

JALVEEN ROSHA ..... Petitioner
Through: Ms. Deepika Marwaha, Sr. Adv. with Mr. Alok Pandey and Ms. Raunika Johar, Advs.

versus

B. D. KHANNA PUBLICITY ..... Respondent
Through: Mr. Kamlesh Anand, Adv.

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

% **JUDGMENT**
04.07.2022

1. Jalveen Rosha ("Jalveen", hereinafter), claiming to be the owner and landlord of C-10, Defence Colony, New Delhi-110048 ("the suit property"), filed a petition under clause (a) of the proviso to

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Section 14(1)[1] of the Delhi Rent Control Act, 1957 ("the DRC Act"), seeking to evict M/s B.D. Khanna Publicity (the tenant in the first floor of the suit property and referred to, hereinafter, as "Khanna", for the sake of convenience) from the premises in its occupation. The said Eviction Petition is presently pending before the learned Additional Rent Controller ("the learned ARC"). It does not seriously concern us.

Facts

2. The present petition emanates from three petitions, DR 53/2020, DR 61/2020 and DR 67/2020, filed by Khanna before the learned ARC under Section 27(1)[2] of the DRC Act. The learned ARC allowed all three petitions. Aggrieved, Jalveen appealed to the learned Rent Control Tribunal (the learned RCT), by way of RCT ARCT 02/2021 (directed against the order passed in DR 53/2020), RCT ARCT 03/2021 (directed against the order passed in DR 61/2020) and RCT ARCT 01/2021 (directed against the order passed in DR 57/2020). The impugned judgment dated 6th August, 2021, of the

[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:

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);

[2] **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 of refuses or neglects to deliver a receipt referred to therein or where there is a bona fide doubt as to the 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 case 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.

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learned RCT, dismisses RCT ARCT 02/2021 and RCT ARCT 03/2021, and allows RCT ARCT 01/2021.

3. Aggrieved, Jalveen and Khanna have both petitioned this Court. CM (Main) 644/2021, instituted by Jalveen, assails the impugned judgment insofar as it dismisses RCT ARCT 02/2021 and RCT ARCT 03/2021. CM (Main) 62/2021, instituted by Khanna, assails the impugned judgment insofar as it allows RCT ARCT 01/2021.

4. Khanna sought, by DR 53/2020 and DR 61/2020, permission of the learned ARC to deposit the rent, in respect of the suit property, for the months of October 2020 and November, 2020, with the learned ARC. DR 67/2020 sought similar permission in respect of the rent payable for the period December 2020 to May 2021. Permission, as sought, was granted by the learned ARC, for all the aforesaid three periods. By the impugned judgment dated 6th August, 2021, however, the learned RCT has reversed the decision of the learned ARC insofar as it related to deposit of rent payable for the period December 2020 to May 2021 and maintained the decision insofar as it related to deposit of the rent payable for the months of October 2020 and November 2020.

5. Before this Court, Jalveen, therefore, urges that Khanna was not entitled to be permitted to deposit the rent with the learned ARC for *any of* the aforesaid three periods, whereas Khanna would seek to contend, *per contra*, that the said permission ought to have been granted to it for *all* the three periods.

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<u>The provisions in question</u>

6. As has been correctly observed by the learned RCT, Section 27(1) of the DRC Act applies if

(i) the landlord does not accept rent tendered by the tenant within the time stipulated in Section 26, or

(ii) the landlord refuses or neglects to deliver a receipt referred to in Section 26, or

(iii) there is a *bona fide* doubt as to the person or persons to whom the rent is payable.

The existence of any *one* of these circumstances would suffice for the tenant to be entitled to deposit the rent with the Rent Controller.

7. The first of the three exigencies envisaged by Section 27(1) and delineated in para 6 (*supra*) arises where the tenant tenders rent within the time stipulated in Section 26 and the landlord does not accept the rent so tendered. Two pre-conditions are, therefore, required to be satisfied for this exigency to apply, viz (a) tendering, by the tenant, of rent, within the period stipulated in Section 26 and (b) refusal, by the landlord, to accept such rent.

8. Section 27(2)[3], however, makes it clear that the tenant would have, in the event of one or more of the aforesaid three circumstances

[3] **27. Deposit of rent by the tenant. –**

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(2) *The deposit shall be accompanied by an application* by the tenant containing the following particulars, namely:-

(a) the premises for which the rent is deposited with a description sufficient for identifying the premises;

(b) the period for which the rent is deposited;

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existing, have to deposit the rent for the concerned month upfront with the Rent Controller, and, *accompanying the deposit, move an application* for permission to do so, containing the particulars enumerated in the sub-section.

9. Sub-section (1) of Section 26[4] requires the tenant to pay rent within the contractually stipulated period or by the 15th day of the month following the month for which rent was payable. Sub-sections (2) and (3) deal with furnishing of receipt by the landlord and the procedure to be followed in default thereof. They are not of particular relevance to the present case.

10. The cascading effect of Section 27 is to be felt in Clause (a) of the proviso to Section 14(1) of the DRC Act [for convenience, "Section 14(1)(a)"]. Where a tenant defaults in paying or tendering arrears of rent within two months of the date on which a notice in that regard is issued to the tenant by the landlord, the landlord becomes entitled to seek eviction of the tenant from the tenanted premises on that ground under the said provision. Deposit of rent by a tenant with the Rent Controller, if validly made under Section 27(1) of the DRC Act, is entitled to be treated as a valid deposit for the purposes of

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;
(d) the reasons and circumstances for which the application for depositing the rent is made;
(e) such other particulars as may be prescribed.

[4] **26. Receipt to be given for rent paid. –**
(1) Every tenant shall pay rent within the time fixed by contract or in the absence of such contract, by the fifteenth day of the month next following the month for which it is payable and where any default occurs in the payment of rent, the tenant shall be liable to pay simple interest at the rate of fifteen per cent. per annum from the date on which such payment of rent is due to the date on which it is paid.

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Section 14(1)(a). Such deposit can, therefore, defeat the eviction petition if preferred by the landlord under the said provision.

11. The learned RCT has, in the impugned judgment, relied upon the decisions of the Supreme Court in ***Kuldeep Singh v. Ganpat Lal*[5], *M. Bhaskar v. Venkatarama Naidu*[6]** and ***E. Palanisamy v. Palanisamy*[7]**. Though the provisions under examination in these cases are not *in haec verba* with Section 27 of the DRC Act, they are, to the extent necessary, *in pari materia,* as they also envisaged circumstances in which the tenant could deposit rent in the Court, on the tenant being unable to deposit the rent with the landlord or on the landlord refusing to accept the rent. These decisions are, therefore, undoubtedly relevant to the controversy at hand.

12. They are all cases in which, however, consequent on the court finding that the deposit of rent by the tenant with Rent Controller was not validly effected in accordance with the relevant provisions in that regard, as contained in the applicable rent control statute, orders of eviction followed. In the present case, matters have not reached that stage, as the impugned judgment of the RCT, as well as the judgments dated 6th August, 2021 of the learned ARC, adjudicate the applications of Khanna under Section 27 of the DRC Act, for being permitted to deposit of rent in respect of the suit property for the months of October 2020 and November 2020 and for the period December 2020 to May 2021, in Court.

[5] **(1996) 1 SCC 243**
[6] **(1996) 6 SCC 228**
[7] **(2003) 1 SCC 123**

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13. Inasmuch as the judgment in ***E. Palanisamy***[5] considers the earlier decision in ***Kuldeep Singh***[3] and ***M. Bhaskar***[4], one need reproduce, for the sake of reference only, passages 5 to 8 of ***E. Palanisamy***[5], thus:

> "5. Mr Sampath, the learned counsel for the appellant argued that since the appellant tenant had deposited the arrears of rent in court, it should be taken as compliance with Section 8 of the Act. This would mean there is no default on the part of tenant in payment of rent and therefore, no eviction order could have been passed against the appellant on that ground. According to the learned counsel, the court should not take a technical view of the matter and should appreciate that it was on account of refusal of the landlords to accept the rent sent by way of money orders that the tenant was driven to move the court for permission to deposit the arrears of rent. Since there is a substantial compliance with Section 8 inasmuch as the arrears of rent stand deposited in court, a strict or technical view ought not to have been taken by the High Court. *We are unable to accept this contention advanced on behalf of the appellant by the learned counsel. The rent legislation is normally intended for the benefit of the tenants. At the same time, it is well settled that the benefits conferred on the tenants through the relevant statutes can be enjoyed only on the basis of strict compliance with the statutory provisions. Equitable consideration has no place in such matters. The statute contains express provisions. It prescribes various steps which a tenant is required to take. In Section 8 of the Act, the procedure to be followed by the tenant is given step by step. An earlier step is a precondition for the next step. The tenant has to observe the procedure as prescribed in the statute. A strict compliance with the procedure is necessary. The tenant cannot straight away jump to the last step i.e. to deposit rent in court. The last step can come only after the earlier steps have been taken by the tenant.* We are fortified in this view by the decisions of this Court in ***Kuldeep Singh v. Ganpat Lal***[8] and ***M. Bhaskar v. J. Venkatarama Naidu***[9].

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[8] (1996) 1 SCC 243
[9] (1996) 6 SCC 228

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6. The counsel for the appellant did not dispute that the tenant had not fulfilled the conditions prescribed in Section 8 of the Act before making deposit of rent in court. Hence similar circumstances and while dealing with almost similar provisions contained in the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, this Court in ***Kuldeep Singh v. Ganpat Lal***[8] (SCC p. 249, para 8):

> "8. In the present case, the appellant is seeking to avail of the benefit of the legal fiction under Section 19-A(4) of the Act. *It is settled law that a legal fiction is to be limited to the purpose for which it is created and should not be extended beyond that legitimate field.* [See **Bengal Immunity Co. Ltd. v. State of Bihar**[10]. *The appellant can avail of the benefit of Section 19-A(4) if the deposit of Rs 3600 made by him in the Court of Munsif (South), Udaipur, on 29-10-1982, by way of rent for the months of May 1982 to October 1982, can be treated as a payment under Section 19-A(3)(c) so as to enable the appellant to say that he was not in default in payment of rent. Under Section 19-A(3)(c) the tenant can deposit the rent in the court only if the conditions laid down in the said provision are satisfied. It is the admitted case of the appellant that these conditions are not satisfied in the present case. The deposit which was made by the respondent in court on 29-10-1982 cannot, therefore, be regarded as a deposit made in accordance with clause (c) of sub-section (3) of Section 19-A and the appellant cannot avail of the protection of sub-section (4) of Section 19-A and he must be held to have committed default in payment of rent for the months of May 1982 to October 1982.* This means that the decree for eviction has been rightly passed against the appellant on account of default in payment of rent for the period of six months."

7. Again in ***M. Bhaskar v. Venkatarama Naidu***[9] with reference to similar provisions contained in the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, this Court observed that *when the landlord is evading payment of rent, the tenant has to follow the procedure prescribed under*

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[10] **AIR 1955 SC 661 : (1955) 2 SCR 603**

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> *Section 8 of the Act i.e. to issue notice to the landlord to name the bank and if he does not name the bank, the tenant has to file application before the Rent Controller for permission to deposit rent. The tenant did not follow that procedure. Omission to avail of the prescribed procedure disentitles the tenant to plead that there was no wilful default on his part. The landlord was, therefore, entitled to seek eviction on the ground of wilful default in payment of rent on the part of the tenant.*
>
> 8. Admittedly the tenant did not follow the procedure prescribed under Section 8. *The only submission that was advanced on behalf of the appellant was that since the deposit of rent had been made, a lenient view ought to be taken. We are unable to agree with this. The appellant failed to satisfy the conditions contained in Section 8. Mere refusal of the landlord to receive rent cannot justify the action of the tenant in straight away invoking Section 8(5) of the Act without following the procedure contained in the earlier sub-sections i.e. sub-sections (2), (3) and (4) of Section 8. Therefore, we are of the considered view that the eviction order passed against the appellant with respect to the suit premises on the ground of default in payment of arrears of rent needs no interference.* The impugned judgment of the High Court, therefore, does not call for interference. These appeals are dismissed. We are informed that the landlords have already taken possession of the suit premises, in pursuance of the High Court judgment."
>
> (Emphasis supplied)

14. Equity, therefore, has no part to play in interpreting Section 27 of the DRC Act. The tenant can be permitted to deposit the rent in Court only if there is strict compliance with the provisions of Section 27 and the case falls within one of the three exigencies envisaged by the provision and delineated in para 6 (*supra*). If none of these circumstances exists, it is not open to the Rent Controller or to the Court to permit the rent to be deposited in Court on equitable, sympathetic or compassionate considerations.

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15. This is especially so as default in payment of rent results in vesting, in the landlord, of a valuable right to seek eviction of the tenant. Though the DRC Act is, conceptually, a legislation aimed at the welfare of the tenant, it has, in its practical application, been used, over time, by tenants to latch themselves onto properties of others, resulting in landlords having to battle for years to gain possession of their own properties. The tenant can, therefore, plead deposit of rent in Court as a valid defence to an action under Section 14(1)(a) of the DRC Act only if said deposit has been made in accordance with Section 27(1), and if the case attracts one of the three circumstances envisaged in the said provision.

16. In the present case, the learned ARC held that Khanna was entitled to deposit the rent payable to Jalveen for the months of October 2020, November 2020 and for the period December 2020 to May 2021, in Court. DR 53/2020, DR 61/2020 and DR 67/2020 were, thus, allowed by the learned ARC. The learned RCT held Khanna to be eligible to be entitled to the benefit of Section 27(1) for the months of October 2020 and November 2020, but not for the period December 2020 to May 2021. The judgment of the learned ARC in DR 53/2020 and DR 61/2020 was, thus, maintained, and the judgment of the learned ARC was reversed *qua* DR 67/2020.

<u>Applications/petitions of respondent under Section 27 of the DRC Act</u>

<u>DR 53/2020</u>

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17. DR 53/2020 sought permission for Khanna to deposit rent, payable to Jalveen for the month of October 2020, with the learned ARC. The application was filed on 10th November, 2020. The first exigency in Section 27(1) applies where the landlord fails to accept rent tendered by the tenant within the time referred to in Section 26. Invocation of this exigency by the tenant, in support of a prayer for permission to deposit, in Court, rent payable for the month of October, 2020 would, therefore, necessarily require the tenant to pay the rent on or before 15th November, 2020, being the stipulated period in Section 26(1) of the DRC Act (as it is nobody's case that there was any other contractually fixed date for payment of rent).

18. DR 53/2020 notes the fact that, by notice dated 27th August 2020, Jalveen had informed Khanna that the bank account of the Punjab National Bank at Greater Kailash-I, in which rent was, till then, being paid by Khanna, had been closed.[11] A reading of the said notice dated 27th August 2020 reveals that it was issued under Section 6A[12] read with Sections 8[13] and 14(1)(j)[14] of the DRC Act. Section

[11] This is not strictly correct, as would be noted hereinafter, as the intimation regarding closure of the bank account of Jalveen was contained in a later communication dated 25th September 2020 which was, however, a follow up to the communication dated 27th August 2020.

[12] **6-A. Revision of rent**. – Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.

[13] **8. Notice of increase of rent. –**

(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in section 106 of the Transfer of Property Act, 1982 (4 of 1882).

[14] **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:

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6A allows a landlord to increase the agreed rent by 10% every three years. Where this option is exercised by the landlord, Section 8(1) requires the landlord to issue a notice to the tenant, evincing the landlord intent to increase the rent. The increased rent becomes due and recoverable only on the expiry of 30 days from the date of such notice. Exercising the aforesaid option, notice dated 27th August 2020 from Jalveen to Khanna notified Khanna of the enhancement, by Jalveen, of the rent payable to her in respect of the suit property, from ₹ 2,750/- per month to ₹ 3,025/- per month, to take effect from 1st October, 2020, i.e. after the expiry of 30 days from the date of the notice. The notice also relied on the fact that Khanna had attorned in 1994, to M/s Oak View Farms Pvt Ltd (OVFPL) in respect of the suit property and was, since the date of such attornment, paying rent to OVFPL. OVFPL had sold the suit property to Jalveen *vide* Sale Deed dated 28th July, 2017, whereafter, as per the notice, Khanna had, *vide* letter dated 25th September, 2017, attorned to Jalveen as well. Since that date, pointed out the notice, Khanna had been paying rent, in respect of the suit property, to Jalveen, by deposit in the bank account of Jalveen at the branch of the Punjab National Bank (PNB) located at Greater Kailash-I (GK-I).

19. I may note, here, that, though the applications, under Section 27 of the DRC Act, filed by Khanna, aver that Jalveen had, *vide* notice dated 27th August 2020, informed Khanna that she had closed the bank

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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: -

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(j) that the tenant has, whether before or after the commencement of this Act, caused or permitted to be caused substantial damage to the premises;

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account at the GK-I branch of PNB, this information was, in fact, contained, not in the notice dated 27th August 2020, but in the rejoinder dated 24th September 2020, issued by Jalveen to Khanna, in response to the reply dated 17th September 2020 of Khanna to the legal notice dated 27th August 2020 of Jalveen. In the said rejoinder dated 24th September 2020, Jalveen informed Khanna that the bank account in which, theretofore, Khanna was depositing rent, had been closed and that rent would, therefore, have to be paid directly by cheque to Jalveen.

20. DR 53/2020 sought to justify the prayer for permission to deposit rent in Court for the month of October 2020, on the following grounds ("the respondent" being Jalveen and "the applicant" Khanna):

> "a. The respondent has not produced any ownership document till date vis-à-vis C-10, First Floor, New Delhi-110048, which make to believe a genuine apprehension that she is not the owner of the said premises and has been illegally trying to dispossess the tenant.
>
> b. The applicant is under no obligation to pay rent to an illegal and unauthorized occupant/person i.e. the respondent, however, due to undertaking given before the Hon'ble Court of Ld. ARC the petitioner is obliged to pay a rent of Rs.2,750/- to respondent.
>
> c. The Applicant has been paying a sum of Rs.2,750/- per month to respondent only under the undertaking dated 23.09.2017 given before the court of Ld. ARC, Saket Court."

Though DR 53/2020 prayed that Khanna be allowed to deposit rent @ ₹ 2,750/- "for the month of 10th November 2020", a reading of the application, particularly recital (b) therein, reveals that the application

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was seeking permission to deposit rent in Court for the month of October 2020.

21. Khanna acknowledged, in DR 53/2020, that it was paying rent to Jalveen as per an undertaking dated 23rd September, 2017 tendered before the learned ARC. This undertaking was tendered on the basis of a statement by Capt. Rajinder Singh Rosha, husband of Jalveen, tendered before the learned ARC on 23rd September, 2017, and recorded thus:

> "M/s B.D. Khanna Publicity v. M/s Oak View Farms Pvt. Ltd. and anr.
>
> New EV No. 5234/16
>
> 23.09. 2017
>
> Statement of Capt. Rajender Singh Rosha s/o late H.S. Rosha r/o M-131, Greater Kailash Part-I, New Delhi.
>
> ON SA
>
> I am the AR of the respondent no. 1. I am making statement upon instructions given by respondent no. 1. The respondent's no. 1 company has transferred its interest and title with respect to the property bearing no. C-10, Kailash Colony, New Delhi – 48 on 28.07.2017, in favour of Ms. Jalbeen Rosha r/o M-131, Greater Kailash Part-I, New Delhi. The petitioner's tenant may kindly pay the rent to the new owner from herein now. A letter of atonement shall be issued to the petitioner within one week.
>
> Sd.
RO & AC
>
> Sd.
(Vikrant Vaid)
ACJ/CCJ/ARC-(SE)
Saket Court, New Delhi -23.09.2017"

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22. Following the aforesaid statement, OVFPL wrote, on 25th September, 2017, to Khanna, informing Khanna that, *vide* sale deed dated 27th July, 2017, all rights and title in respect of the suit property stood transferred by OVFPL to Jalveen. Khanna was, therefore, called upon to attorn to Jalveen as its landlord, entitled to receive rent in respect of the suit property, with the terms and conditions of tenancy being the same as applied between OVFPL and Khanna.

23. Khanna, in response, addressed the following communication to Jalveen on 14th October, 2017:

> "14-10-2017"
>
> Ms. Jalveen Rosha
> W/o Capt. Rajinder Singh Rosha
> R/o M-131, Greater Kailash-1
> New Delhi-110048
>
> Madam,
>
> Sub: Rented Property bearing No. C-10, Kailash Colony (first Floor), New Delhi.
>
> We are in receipt of a letter dated 25.09.2017 received under the signature of Mrs.Harjas Kaur Anand, Director of M/s Oak View Farms Pvt. Ltd., C-10, Kailash Colony, New Delhi-110048 (received by us on 04.10.2017(stating that the above mentioned property has now been sold out to your good self therefore the rent for the same i.e. let out portion of C-10, First Floor, Kailash Colony, New Delhi along with servant quarter car parking and other common facilities etc. be now directly paid to your good self i.e. Mrs. Jalveen Rosha, W/o Caption Rajinder Singh Rosha, R/o M-131, Greater Kailash-1, New Delhi-110048 as new landlord on a monthly rent of ₹ 2750/- on same terms and conditions with the previous landlord.
>
> In order to transfer the rent through digital mode for direct payment to your account, we shall request you to please forward to us the following information:

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Name of A/c Holder:
Type of Account: Current/Saving/OD/other
Name of Bank:
Branch Address:
Branch IFSC Code:

It shall be preferred if you attach a photo-copy of a cancelled cheque containing the requisite information to avoid any chance of error.

Kindly acknowledge and do the needful ASAP.

Thanking you

Your sincerely

For B.D. Khanna publicity

Sd/-
Kuldip Khanna"

24. DR 53/2020 sought to invoke Section 27(1) of the DRC Act on the sole ground that Khanna had a genuine apprehension that Jalveen was not the owner of the suit property, as she had not produced any ownership document till that date. It was contended that, despite the ownership of Jalveen over the suit property being thus in jeopardy, Khanna was paying rent to Jalveen only on the basis of the undertaking tendered before the learned ARC on 23rd September, 2017.

25. There was, in fact, no such undertaking, as the learned RCT rightly observes. Following the statement of Capt Rajinder Singh Rosha, before the learned ARC on 23rd September 2017 to the effect that OVFPL had transferred its rights, title and interest in the suit

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property to Jalveen on 28th July 2017, OVFPL wrote to Khanna on 25th September 2017 to pay rent, thereafter, to Jalveen, to which Khanna acquiesced *vide* reply dated 14th October 2017. The decision to commence paying rent to Jalveen from October 2017 was, therefore, voluntarily taken by Khanna.

DR 61/2020

26. DR 61/2020 sought permission for Khanna to deposit rent @ ₹ 2,750/-, for the month of November 2020, in Court. The contents of the application/petition were identical to those of DR 53/2020, but with an additional allegation to the effect that Khanna had paid rent @ ₹ 2,750/-, for October and November 2020, to Jalveen by way of RTGS bank transfer but that Jalveen had mischievously returned the amount to the account of Khanna by a reverse entry.

DR 67/2020

27. By this application, Khanna sought permission to deposit the rent payable to Jalveen in respect of the suit property for the period December 2020 to May 2021 with the learned ARC. Besides reiterating the submission, already advanced in DR 53/2020 and DR 61/2020, that Khanna had *bona fide* doubts regarding the ownership of Jalveen over the suit property, DR 67/2020 additionally sought to justify the request for permission to deposit the rent for the period December 2020 to May 2021 with the learned ARC on the ground that

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the deposit made by Khanna for the months of October 2020 and November 2020 had been returned by Jalveen.

Comparative evaluation of the applications

28. A comparative evaluation of DR 53/2020, DR 61/2020 and DR 67/2020 discloses, therefore, that the grounds urged by Khanna, in each of these applications, to justify the prayer for permission to deposit rent in Court were distinct and different, albeit to a slight extent. The only ground urged in DR 53/2020, pertaining to the month of October 2020, was that Khanna had *bonafide* doubts regarding ownership of Jalveen over the suit property. DR 61/2020, dealing with the month of November 2020, urged, in addition, that the rent for occupation of the suit property had in fact been transferred by Khanna into the bank account of Jalveen for the months of October and November, 2020 by way of RTGS transfer, but had been returned. DR 67/2020, while again reiterating the ground of *bonafide* doubt regarding ownership of Jalveen over the suit property, additionally sought to justify the request for permission to deposit the rent in Court on the ground that Jalveen had, by returning the rent deposited by Khanna by way of RTGS transfer for the months of October and November, 2020, effectively refused to accept rent from Khanna, leaving Khanna with no option but to deposit the rent in Court.

29. DR 53/2020, DR 61/2020 and DR 67/2020 were allowed by the learned ARC *vide* three separate orders passed on 6th April 2021. The reasoning of the learned ARC is contained in the following paragraphs, which are identical in the three orders:

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> "These are summary proceedings before this court U/s. 27 of DRC Act in cases where the landlord does not accept any rent tendered by the tenant or there is a bonafide doubt as to the person or persons to whom the rent is payable, the tenant is allowed to approach the court to deposit such rent in court. Now, in the present case, the applicant claims that he is disputing the title of the non applicant qua the property in question and the applicant claims that non applicant is an illegal and unauthorized occupant of the property and is depositing the amount of Rs.2750/- with this court on the basis of an undertaking dated 23.09.2017 given by the applicant earlier. This is strongly countered by the non applicant who claims that whether it is a valid tender of rent or not has to be decided by this court. In my opinion, considering the rival arguments of the parties, the said intricate questions of fact and law cannot be decided in a summary proceedings.
>
> Accordingly, without prejudice to the rights and contentions of the parties, the present petition is disposed off with liberty to the respondent to withdraw the amount deposit with court, if so advised."

30. Appeals RCT ARCT 01/2021, RCT ARCT 02/2021 and RCT ARCT 03/2021 were preferred by Jalveen before the learned RCT, challenging the aforesaid orders dated 3rd April, 2021 passed by the learned ARC in DR 67/2020, DR 53/2020 and DR 61/2020 respectively.

Rival Contentions before the learned RCT

31. Jalveen contended, before the learned RCT, that none of the three exigencies, in which alone permission to deposit rent with the learned Rent Controller could be granted under Section 27 of the DRC Act, applied in the present case. Inasmuch as rent had continuously been deposited by Khanna in the bank account of Jalveen since 2017

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(and, prior thereto, paid to OVFPL), it was contended, by Jalveen, that Khanna could not plead any *bonafide* doubt regarding the person to whom rent was payable. Khanna's contention that it had paid, to Jalveen, the rent payable for the months of October and November 2020, was also contested. Apropos the purported deposits for the months of October and November 2020, Jalveen contended that no such valid deposit had taken place for two reasons. The first was that the purported deposit had been made by way of RTGS to the bank account of Jalveen which, as Jalveen had already informed Khanna *vide* rejoinder legal notice dated 24th September, 2020, stood closed. Khanna having been called upon, by Jalveen, by the said rejoinder legal notice dated 24th September, 2020, as well as by the original legal notice dated 27th August, 2020, to pay the rent directly to Jalveen, it was contended that bank to bank RTGS transfer of rent by Khanna could not be treated as valid payment. Jalveen contended that the said RTGS transfer, by Khanna, was not *bonafide,* as Khanna was well aware of the fact that the bank account was closed and that, therefore, the payment would bounce back. Apparently, therefore, Khanna was only attempting to create a smokescreen, to contend that it had paid rent for the months of October and November, 2020, without actually making such payment. No payment having been made by Khanna to Jalveen for the months of October and November 2020, Jalveen contended that there could not, quite obviously, arise any question of her refusing to accept rent from Khanna for the said months.

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32. Additionally, Jalveen contended that, in order to plead payment of rent to the landlord, and refusal by the landlord to accept the rent so paid, as a ground to seek permission to deposit the rent with the learned Rent Controller under Section 27 of the DRC Act, the tenant would have to establish that it had paid the proper quantum of rent. Khanna had been specifically informed, *vide* legal notice dated 27th August 2020, that Jalveen had enhanced the rent, under Section 6A of the DRC Act, to ₹ 3,025/- per month, w.e.f. 1st October 2020. Jalveen alleged that Khanna had, by not placing the said legal notice dated 27th August 2020, on record, concealed and suppressed the fact of enhancement of rent. Apart from contending that such concealment and suppression itself constituted a ground to reject Khanna's application for permission to tender rent in Court, in view of Section 28(2)[15] of the DRC Act, Jalveen further asserted that, as rent stood enhanced w.e.f. 1st October, 2020 to ₹ 3,025/- per month, the purported payment, by Khanna, @ ₹ 2,750/- per month, for the months of October and November, 2020, could not regarded as valid payment for the purposes of Section 27(1) read with Section 26(1) of the DRC Act.

33. Insofar as the period December 2020 to May 2021 was concerned, Jalveen contended that Khanna had not even attempted to make any payment of rent to her for the said period.

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[15] **28. Time limit of making deposit and consequences of incorrect particulars in application for deposit –**

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(2) No such deposit shall be considered to have been validly made, if the tenant wilfully makes any false statement in his application for depositing the rent, unless the landlord has withdrawn the amount deposited before the date of filing an application for the recovery of possession of the premises from the tenant.

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34. As, therefore, none of the three exigencies, in which alone permission to deposit rent in Court could be granted under Section 27(1) of the DRC Act applied, Jalveen contended that the learned ARC had erred in allowing Khanna's applications under Section 27 of the DRC Act.

35. Responding to Jalveen's submissions, Khanna disputed the contention that the bank account, in which rent was theretofore being deposited by Khanna, stood closed, as stated by Jalveen in the rejoinder legal notice dated 24th September, 2020. Khanna submitted that, rather, the RTGS transfer effected by it of the rent payable for the months of October and November 2020, had gone through, but was later mischievously returned by Jalveen by way of a reverse entry. This return, contended Khanna, amounted to refusal by Jalveen to accept the rent tendered by Khanna.

36. Khanna further contended that the ownership of Jalveen over the suit property was seriously in jeopardy. The validity of the Sale Deed, whereunder Jalveen claimed to have obtained the title over the suit property, was questioned. Additionally, Khanna also questioned the validity and enforceability of the letter dated 14th October 2017 whereby Khanna had attorned to Jalveen in respect of the suit property. It was contended by Khanna, that the said communication dated 14th October 2017 was a consequence of the misleading statement made by Capt Rajinder Singh Rosha before the learned ARC on 23rd September 2017 [reproduced in para 17 (*supra*)] to the effect that title in respect of the suit property stood transferred in

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favour of Jalveen. The attornment of Khanna to Jalveen in respect of the suit property being thus a consequence of an allegedly false and fraudulent statement made by Capt. Rajinder Singh Rosha before the learned ARC on 23rd September, 2017, Khanna sought to contend that no valid attornment had, in fact, taken place.

37. As such, both on the ground of existence of a *bonafide* doubt regarding the title and ownership of Jalveen over the suit property, as well as of refusal by Jalveen to accept the rent tendered by Khanna, Khanna contended that the learned ARC could not be held to have erred in allowing Khanna to deposit rent in court for the months of October 2020 and November 2020 and for the period December 2020 to May 2021.

38. Khanna placed reliance, in support of the case set up by it, on the judgment of the Supreme Court in ***Bismillah Be v. Majeed Shah***[16] which, apropos Section 116 of the Indian Evidence Act[17], held that, while a tenant could not challenge the title of the landlord, during the currency of tenancy, it was open to a tenant to challenge the derivative title of a person who claimed to be the assignee or vendee of the landlord.

<u>Reasoning and decision of the learned RCT</u>

[16] **(2017) 2 SCC 274**

[17] **116. Estoppel of tenant; and of licensee of person in possession**. – No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

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39. The learned RCT has, in the impugned judgement, examined the issue in controversy under three individual heads; firstly, with respect to the plea of Khanna that it was entertaining a *bonafide* doubt regarding ownership of Jalveen qua the suit property; secondly, regarding the contention of Jalveen that Khanna had attorned to Jalveen and, thirdly, regarding the plea of Khanna that Jalveen had refused to accept rent tendered by Khanna in accordance with Section 26 of the DRC Act.

40. The learned RCT has rejected the contention of Khanna on the first two issues.

41. Qua the first issue, the learned RCT holds that no case of existence of any *bonafide* doubt, on Khanna's part, regarding Jalveen's authority to collect rent in respect of the suit property, could be said to exist. Qua the second, the learned RCT holds that the aspect of attornment of Khanna to Jalveen lost significance, as Khanna had specifically been directed, by OVFPL, to pay rent to Jalveen and had, in fact, been paying rent to Jalveen since 2017.

42. On the third issue, the learned RCT has, however, held that rent had, in fact, been tendered by Khanna for the months of October and November 2020, even if the rent was not paid in accordance with the directions contained in the legal notice dated 24th August, 2020 and the rejoinder legal notice dated 25th September, 2020 issued by Jalveen to Khanna. The return, by Jalveen, of the rent transferred by Khanna by RTGS to Jalveen's account, amounted, in the opinion of

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the learned RCT, to refusal, on the part of Jalveen, to accept the rent. The learned RCT noted that, however, no such mitigating circumstance existed in respect of the period December 2020 to May 2021. Though Khanna claimed to have deposited rent, for the said period, with the Rent Controller, the learned RCT held that this was not permissible.

43. It on this basis that the learned RCT upheld the order of the learned ARC qua the months of October and November 2020 and reversed the order qua the period December 2020 to May 2021.

44. One may now advert, briefly, to the reasoning of the learned RCT qua these individual aspects.

Re. plea of *bonafide* doubt

45. In holding that Khanna could not plead *bonafide* doubt regarding the authority of Jalveen to accept rent in respect of the suit property, the learned RCT noted that, contrary to the submission advanced by Khanna, no undertaking had been given by Khanna, at any point of time, before the learned ARC or before any other judicial forum, to pay rent to Jalveen. Rather, as noted by the learned RCT, this aspect had been accorded judicial consideration in two earlier proceedings i.e. CS 275/1995 (***B.D. Khanna Publicity v. Fateh Raj Laxmi & Ors***) and Petition 5234/16, filed by Khanna against OVFPL for restoration of water supply. The learned RCT noted that CS 275/1995, in which Jalveen was one of the defendants, was disposed of, recording the statement of the defendants (including Jalveen) that

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Khanna would not be dispossessed except in accordance with law. In Petition 5234/16, the learned RCT noted that, on 23rd September, 2017, OVFPL had specifically stated, before the learned ARC, that the documents of title, in respect of the suit property, stood executed in favour of Jalveen and that, therefore, rent, thenceforth, was required to be paid to Jalveen. Jalveen also undertook, on the same date, not to disrupt the water supply of Khanna.

46. Inasmuch as no undertaking had been given by Khanna, before any judicial forum at any point of time, to start paying rent to Jalveen, the payment of rent by Khanna to Jalveen since 2017 was being done by Khanna *suo motu*. Having thus paid rent to Jalveen since 2017, consequent to the statement of OVFPL recorded before the learned ARC on 23rd September, 2017, the learned RCT held that it was not open to Khanna to plead, before her, that Khanna was under a *bonafide* doubt regarding the entitlement of Jalveen to receive rent in respect of the suit property.

47. On the aspect of attornment, though the learned RCT examined the concept of attornment vis-à-vis Section 109[18] of the Transfer of Property Act, 1882, and the judgment of this Court in ***Mohd. Ilyas v.***

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[18] **109. Rights of lessor's transferee**. – If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

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Mohd. Adil[19], in some detail, she held that the aspect of attornment paled into insignificance as, consequent to the statement of OVFPL before the learned ARC on 23rd September 2017, Khanna had in fact been paying rent to Jalveen since October 2017.

48. In this context, the learned RCT also relied on Section 116 of the Evidence Act, which estops a tenant in occupation of demised premises to deny the title of the landlord who let him into possession. Referring to the decision in ***Bismillah Be***[10], on which Khanna sought to rely, the learned RCT observed that though the said decision recognized the right of a tenant to question the derivate title of an assignee/vendee who claimed to obtain title from the original owner of the property, this entitlement was subject to the condition that the tenant had not attorned to the original assignee/vendee. Where such attornment had taken place, the tenant was estopped from questioning the right of the landlord to collect the rent. In this context, the learned RCT also cited and relied upon ***Sri Ram Pasricha v. Jagannath***[20] and ***Vinay Eknath Lad v. Chiu Mao Chen***[21]. Further citing ***Apollo Zipper India Ltd. v. W. Newman & Co. Ltd.***[22], the learned RCT held that once the assignee/vendee proved her/his title to the property, the tenant of the original owner became the tenant of such assignee/vendee on the same terms and conditions as governed the tenancy with the original owner. The assignee/vendee, in other words, become a "new landlord".

[19] **AIR 1994 Delhi 212**
[20] **(1976) 4 SCC 184**
[21] **(2019) 20 SCC**
[22] **(2018) 6 SCC 744**

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49. In view thereof, the learned RCT held Khanna's plea of *bonafide* doubt regarding the person to whom rent was payable in respect of the suit property to be devoid of substance.

Re: refusal to accept rent

50. For the months of October and November, 2020, the learned RCT held that Khanna had, indeed, paid the rent by RTGS transfer to the account of Jalveen, even if it was not in accordance with the directions contained in the legal notices dated 27th August, 2020 and 25th September, 2020 issued by Jalveen to Khanna. The return of the rent so transferred by a reverse entry amounted, in the opinion of the learned RCT, to a refusal, by Jalveen, to accept the rent tendered by Khanna and, consequently, satisfied the requirement of Section 27 of the DRC Act. The decision of the learned ARC to allow Khanna to deposit the rent for the months of October and November 2020, with the learned ARC could not, therefore, in the opinion of the learned RCT in the impugned order, be faulted.

51. The position, however, according to the learned RCT is different, insofar as the period December 2020 to May 2021 was concerned.

52. The Section 27 petition for the said period (DR 67/2020), it was noted, had been filed by Khanna, on 18th December 2020. There was no averment, in the said petition, that rent had been tendered to Jalveen and refused by her. Rather, Khanna chose to deposit rent in advance with the learned Rent Controller. The learned RCT holds that

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Section 27 did not envisage, authorize or permit any such *suo motu* deposit of rent with the learned Rent Controller, by the tenant. Deposit of rent with the Rent Controller, instead of payment of rent to the landlord, could only be with the permission of the court/Rent Controller. As the plea of *bonafide* doubt, raised by Khanna, already stood rejected by the learned RCT, and no rent had been tendered by Khanna to Jalveen for the months of December 2020 to May 2021, the learned RCT holds that Khanna was not entitled to the benefit of Section 27(1) of DRC Act, insofar as the said period was concerned. To that extent, therefore, in the opinion of the learned RCT, the learned ARC had fallen in error.

53. Resultantly, the learned RCT has rejected Khanna's plea to deposit rent in court for the period December 2020 to May 2021 and, accordingly, allowed RCT ARCT 01/2021. The plea of Khanna for being permitted for such deposit for the months of October 2020 and November 2020 was, however, allowed and, consequently, the orders passed by the learned ARC for the said months were affirmed by the learned RCT, by dismissing RCT ARCT 02/2021 and RCT ARCT 03/2021.

Rival contentions

Submissions on behalf of Jalveen

54. Jalveen has, in her pleadings in CM(M) 644/2021 and CM(M) 62/2022, written submissions, as well as during oral arguments

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advanced by Ms. Deepika Marwaha, learned Senior Counsel, contended that the three conditions for availability, to Khanna, of the benefit of Section 27 of the DRC Act, did not apply for any of the periods for which the benefit was claimed. Ms. Marwaha contends that payment of rent was a necessary prerequisite before Section 27 could be invoked by the tenant. The tenant would first have to establish that an attempt was made to pay rent to the landlord. It was only then that the tenant could seek permission to deposit the rent with the Rent Controller. Specifically, referring to the three periods forming subject matter of DR 53/2020, DR 61/2020 and DR 67/2020, Ms. Marwaha submits that no rent had been tendered to Jalveen, or paid or deposited in any fashion, by Khanna, before filing DR 53/2020. Similarly, no rent was tendered to Jalveen by Khanna before filing DR 67/2020; instead, Khanna claimed to have deposited the rent payable for the period December 2020 to May 2020 with the Rent Controller which, as the learned RCT correctly held, was not permissible. Insofar as DR 61/2020 pertaining to the month of November 2020 was concerned, Khanna's contention was that an amount of ₹ 2,750/- had been transferred by RTGS to the bank account held by Jalveen in the GK-I branch of the PNB. This payment, Ms. Marwaha sought to contend, could not constitute a valid payment for the purposes of Section 27(1) as Khanna was well aware of the fact that the bank account of Jalveen at GK-I branch of the PNB was closed. Jalveen had specifically intimated Khanna in that regard *vide* its rejoinder legal notice dated 24th September, 2020, the receipt of which was not denied. Any attempt to transfer money into the closed account by RTGS would, as Khanna was well aware, inevitably

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result in a reverse entry of the money returning to the account of the transferor. Ms. Marwaha submits that, therefore, the entire exercise of RTGS transfer, by Khanna, of ₹ 2,750/- into the closed account of Jalveen was devoid of *bonafides*, and was engineered in full awareness of the fact that the money would return to the account of Khanna. Ms. Marwaha submits that in these circumstances, the learned RCT was in error in holding that rent had been paid by Khanna for the months of October and November 2020.

55. In this context, Ms. Marwaha relies on para 8 of the consolidated reply filed by Khanna in the three appeals before the learned RCT, in which it is specifically averred that rents were paid subsequent to filing of the applications under Section 27 of the DRC Act on 17th October, 2020, 18th November, 2020 and 10th December, 2020 respectively.

56. Ms. Marwaha also underscores the fact that the rent paid was inadequate and insufficient. Relying on Section 6A of the DRC Act and the judgments of the Supreme Court in ***Rakesh Wadhawan v. Jagdamba Industrial Corpn.***[23] and of this Court in ***Deepak Nijhawan v. R.N. Abrol***[24] and ***Prof. Ram Prakash v. D.N. Srivastava***[25], Ms. Marwaha submits that the right of the landlord to enhance rent by 10% under Section 6A was absolute and unqualified and that the rent would *ipso facto* stand enhanced on the expiry of 30 days from the issuance of the notice under Section 6A. The rent payable by Khanna to Jalveen, therefore, stood enhanced to ₹ 3,025/- per month on the

[23] **(2002) 5 SCC 440**
[24] **226 (2016) DLT 188**
[25] **126 (2006) DLT 6**

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expiry of 30 days of 27th August, 2020, when the legal notice envisaging such enhancement was issued by Jalveen to Khanna. Payment of any amount less than ₹ 3,025/- would not, therefore, in Ms. Marwaha's submission, constitute valid payment of rent for the purposes of Section 27(1) of the DRC Act. As such, Ms. Marwaha submits that no valid payment of rent having accompanied, or been made prior to filing DR 53/2020, DR 61/2020 or DR 67/2020, all the applications/petitions were liable to be dismissed even on that score.

57. Ms. Marwaha also invokes Section 28(2) of the DRC Act and submits that the applications/petitions of Khanna under Section 27 were liable to be dismissed under the said provision, as they suffer from concealment and suppression of material facts. She points out that Khanna concealed, in its Section 27 applications, the legal notice dated 27th August, 2020, whereby the rate of rent was enhanced by Jalveen. Additionally, Khanna, also concealed the fact that the purported RTGS transfer of ₹ 2,750/- had been effected by Khanna only after DR 53/2020 was filed, and that there was, in fact, no payment of any amount by Khanna prior to the said petition.

58. Ms. Marwaha further submits that the plea, of Khanna, that it was entertaining a *bona fide* doubt regarding the entitlement of Jalveen to receive rent in respect of the suit property, was completely devoid of substance. While relying on the findings of the learned RCT, in this regard, Ms. Marwaha submits that, having voluntarily attorned to Jalveen *vide* letter dated 14th October, 2017, and having voluntarily paid rent to Jalveen since then, Khanna could not seek to

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raise a belated challenge to Jalveen's authority to collect rent and, on that ground, seek to contend that it was entertaining a *bona fide* doubt in that regard. In this regard, on the aspect of attornment, Ms. Marwaha places reliance on Section 109 of the Transfer of Property Act, by application of which Jalveen stepped into the shoes of OVFPL and became the landlord of Khanna, in respect of the suit property. Additionally, she submits that, by application of Section 116 of the Evidence Act, Khanna was estopped from challenging the title of Jalveen, or Jalveen's authority to collect rent in respect of the suit property from Khanna. Apropos the judgment of the Supreme Court in ***Bismillah Be***[15] on which Khanna relied, Ms. Marwaha echoes the findings of the learned RCT to the effect that the right of the lessee to challenge the derivative title of the vendee/assignee in respect of the suit property would be available only if the lessee had not attorned to such assignee/vendee. As, in the present case, Khanna had attorned to Jalveen *vide* letter dated 14th October, 2017, the reliance by Khanna on ***Bismillah Be***[15] was, she submits, rightly held by the learned RCT to be misplaced.

59. Ms. Marwaha submits that for the aforesaid reasons, while the learned RCT has correctly rejected Khanna's request for permission to deposit rent in Court for the period December 2020 to May 2021, the learned RCT was in error in upholding the decision of the learned ARC to allow such deposit for the months of October and November 2020.

Submissions on behalf of Khanna

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60. Arguing *per contra*, Mr. Kamlesh Anand, learned Counsel for Khanna submits that the contention of *bona fide* doubt existing in the mind of Khanna, regarding the title of Jalveen with respect to the suit property, had been raised by Khanna in all its Section 27 applications. Mr. Anand submits that the Sale Deed dated 28th July, 2017, whereunder title in respect of the suit property purportedly passed from OVFPL to Jalveen, was a forged document. He has drawn my attention to a recital in the said Sale Deed which referred to an earlier Sale Deed dated 5th August, 1994, registered on 8th August, 1994, and contends that no such earlier Sale Deed was in existence. The title of OVFPL in respect of the suit property being itself in jeopardy, Mr. Anand submits that OVFPL could not have transferred a valid title to Jalveen. These contentions, he submits, were specifically advanced by Khanna in its reply to the objections of Jalveen in response to Section 27 applications filed by Khanna.

61. Mr. Kamlesh Anand has, in this regard, also placed reliance on the judgment of the learned Single Judge of this Court in ***Fateh Raj Laxmi Devi (supra).*** The existence of a *bona fide* doubt regarding the title and ownership of Jalveen constitutes an independent ground on which Khanna could seek permission to deposit rent in Court and, therefore, since such a valid ground existed, the decision of the learned ARC to allow deposit of rent in Court by Khanna, was, in Mr. Anand's submission, justified for all the periods in issue in the present case.

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62. Mr. Kamlesh Anand seeks to contest the interpretation being placed by Ms. Marwaha on Section 27(1) of the DRC Act. He submits that, in order to establish its entitlement to the benefit of the said provision, a tenant is not required to show that, for each month for which such benefit was being claimed, rent had been tendered by the tenant to the landlord and refused by the landlord. He submits that once the landlord had refused to accept the rent for a particular month, such refusal would, for the purposes of Section 27(1), apply to all periods *in futuro*, and the tenant would be entitled to seek permission to deposit rent in Court for all subsequent periods. Once, therefore, the RTGS payment made by Khanna to Jalveen on 29th October 2020, had returned to Khanna's account by way of a reverse entry, it amounted to refusal, on the part of Jalveen, to accept the rent tendered by Khanna *in perpetuo*. No further refusal was required, in Mr. Kamlesh Anand's submission, for his client to be entitled to the benefit of Section 27(1) for future periods. As such, the absence of any such refusal in respect of the rent tendered by Khanna to Jalveen for the month of November 2020 or for the period December 2020 to May 2021, he submits, could not operate as an inhibiting factor, to disentitle Khanna to the benefit of Section 27(1).

63. Mr. Kamlesh Anand faults the learned RCT for having returned a finding of ownership of Jalveen over the suit property. He submits that such a finding could not have been returned by the learned RCT without a trial. Mr. Anand further submits that his client had placed, on record, documents which indicated that OVFPL never possessed valid title in respect of the suit property. He submits that the only

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ground on which Khanna was seeking the benefit of Section 27(1) was the existence of a *bona fide* doubt regarding the authority of Jalveen to collect rent in respect of the suit property. The facts of the case, Mr. Anand submits, clearly indicated the existence of such a *bona fide* doubt. He reiterates the contention, advanced before the learned ARC and the learned RCT that Jalveen was unable to produce any document on the basis of which she could claim a valid title in respect of the suit property.

64. Adverting to the deposit of consolidated rent by Khanna for the months December 2020 to May 2021, Mr. Kamlesh Anand submits that the law did not proscribe such a consolidated deposit. While a tenant is entitled to pay rent in a consolidated fashion covering a number of months, Mr. Anand submits that the landlord was entitled to withdraw the rent only for the month for which it was due. He relies, for this purpose, on Section 27(2)(b) read with Section 5(2)(b) of the DRC Act[26].

65. Mr. Anand also places reliance on the order dated 18th December, 2020, passed by the learned ARC, which directed Khanna to deposit rent with the learned ARC within 10 days, as a condition for issuance of notice on Khanna's Section 27 petition. Apropos the submission of Ms. Marwaha that Khanna had attorned to Jalveen, Mr.

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[26] **5. Unlawful changes not to be claimed or received**. –

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(2) No person shall, in consideration of the grant, renewal or continuance of a tenancy or sub-tenancy of any premises, -

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(b) except with the previous permission of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

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Kamlesh Anand submits that such attornment, even if were presumed *arguendo* to have taken place, did not divest Khanna of its right to challenge the validity of Jalveen's title, or of the title of Jalveen's predecessor-in-interest, i.e. OVFPL. The circumstances of the case, submits Mr. Kamlesh Anand, were sufficient to raise a *bona fide* doubt regarding the title of Jalveen in respect of the suit property and, therefore, justify the decision of the learned ARC to allow Khanna to deposit rent in Court.

66. Mr. Kamlesh Anand, therefore, concludes by submitting that the orders of the learned ARC are required to be accepted in their entirety. While endorsing the decision of the learned RCT to reject Jalveen's appeals against the said orders, for the months of October 2020 and November 2020, Mr. Kamlesh Anand submits that the learned RCT was not justified in reversing the decision of the learned ARC for the period December 2020 to May 2021.

<u>Submissions of Jalveen in rejoinder</u>

67. Advancing submissions by way of rejoinder, Ms. Marwaha asserts that the entire argument of ownership of Jalveen in respect of the suit property is irrelevant, as it does not constitute a valid consideration for the purposes of Section 27(1). All that has to be seen, she submits, is whether a valid relationship of landlord and tenant between Jalveen and Khanna existed, or not. She has invited

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my attention to the definitions of "landlord" and "tenant", as contained in Clauses (e)[27] and (l)[28] of Section 2 of the DRC Act.

68. Ms. Marwaha reiterates, in rejoinder, her submission that, not having paid rent to Jalveen in the prescribed manner before or along with its applications under Section 27(1) of the DRC Act, Khanna was *ipso facto* disentitled to the benefit of the said provision. She has invited my attention to the proviso to Section 27(1), which envisages a situation in which *bona fide* doubt existed as to the person or the persons to whom rent was payable. The proviso, she submits, contemplates, in such a circumstance, remittance of the rent by the tenant to the Rent Controller by postal money order. He submits that Khanna did not adhere to the discipline of this proviso either and could not, therefore, seek the benefit of Section 27.

69. Ms. Marwaha has also emphasized the words "in the prescribed manner", figuring in Section 27(1) of the DRC Act. The "prescribed

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[27] (e) "landlord" means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant.

[28] (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 –

(i) a sub-tenant;
(ii) any person continuing in possession after the termination of his tenancy; and
(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.

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manner", she submits, is to be found in Rule 10[29] of the Delhi Rent Control Rules, 1959 ("the DRC Rules"), which requires deposit of rent under Section 27 to be made in cash and to be accompanied by an application by the tenant in Form C annexed to the DRC Rules. She has, thereafter, taken me to Form C annexed to the DRC Rules, which is as under:

"FORM 'C'
(See rule 10)
Application for deposit of rent

Before Controller ………………….……………

Name Petitioner

Versus

Name Landlord

(1) The premises for which the rent is deposited with a description sufficient for identifying the premises.

(2) The period for which the rent is deposited and the rate per month.

(3) The name and address of the landlord or the person or persons claiming to be entitled to such rent.

(4) The reasons and circumstances for which the application for depositing the rent is made.

(5) The amount of the rent deposited.

(6) Whether electricity, water charges, property tax, etc. are included in the rent and if so, particulars thereof.

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[29] **10. Deposit of rent –**
(1) A deposit of rent under section 27 shall be made in cash and shall be accompanied by an application by the tenant in Form C.
(2) On such deposit being made, the Controller shall send a copy or copies of the application accompanying the deposit, by registered post with acknowledgment due, at the cost of the applicant, to the landlord or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.

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(7) How the rent was tendered to the landlord—whether in persons or by postal money-order or by cheque, etc., and whether it was refused by him in writing or otherwise.

(8) Whether there is a *bona fide* doubts as to the person or persons to whom the rent is payable and if so, why.

(9) Date on which the rent was last paid to the landlord and the receipt, if any, obtained from him therefor.

(10) Any other relevant information.

The statements made above are true to the best of my knowledge and belief and I, the applicant/recognized agent signed the application on day of 19 .

………………
Signature of the applicant/
recognized agent."

70. Ms. Marwaha submits that, in Form C as filed in the Section 27 applications of Khanna, rows (5) to (8) were missing. The Form being, therefore, not in accordance with Rule 10(1) of the DRC Rules, Ms. Marwaha submits that Khanna could not be treated as having paid the rent "in the prescribed manner", as required by Section 27(1) of the DRC Act.

71. Ms. Marwaha has also taken me through the grounds urged in the Section 27 applications/petitions filed by Khanna, i.e. DR 53/2020, DR 61/2020 and DR 67/2020, and has sought to contend that Khanna could not expand its case, for grant of the benefit of Section 27, beyond the case set out in the said applications.

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72. Responding to Mr. Kamlesh Anand's reliance on Section 5(2)(b) of the DRC Act, Ms. Marwaha submits that the benefit of Section 5(2)(b) would be available only if the landlord approached the Court seeking permission under the said provision. Contravention of Section 5, Ms. Marwaha points out, attracts penalties under Section 48(1). The reliance by Mr. Kamlesh Anand on Section 5(2)(b) of the DRC Act is also, therefore, according to Ms. Marwaha, misplaced.

73. Ms. Marwaha submits that, while the procedure envisaged by Section 27(1) of the DRC Act is summary in nature, deposit of rent by the tenant seeking the benefit of the said provision has to be a valid deposit. Deposit of any amount less than the rent which is required to be paid cannot, in her submission, constitute such a valid deposit. Ms. Marwaha points out that, in its reply dated 17th September 2020 to the Section 8 notice dated 27th August 2020, Khanna did not challenge enhancement of the rate of rent, as envisaged by the Section 8 notice, and only sought to question the title of Jalveen *qua* the suit property.

<u>Surrejoinder submissios on behalf of Khanna</u>

74. Advancing, with the permission of the Court, submissions in surrejoinder, Mr. Kamlesh Anand places reliance on the judgments of the High Court of Punjab and Haryana in ***Balwant Singh v. Harbhajan Singh***[30], the High Court of Himachal Pradesh in ***Satya Devi v. M/s. Ram Gopal Angania***[31]**,** and the High Court of Karnataka

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[30] **1984 (2) RLR 34 (P & H)**
[31] **1987 (1) RLR 41 (HP)**

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in ***Pratapsingh v. Jaibunnisa Begum***[32]**.** He further reiterated some of the submissions advanced by him in his reply to the submissions of Ms. Marwaha.

Analysis

<u>Scope of the relevant statutory provisions and the plea of *bona fide* doubt, addressed</u>

75. It is important, at the outset, to understand the exact scope of Section 27(1) to (3) of the DRC Act vis-à-vis Section 26 thereof.

76. Section 27(1) refers to three circumstances, satisfaction of which is essential for the provision to apply.

75.1 The first is refusal, by the landlord, of any rent tendered by the tenant within the time referred to in Section 26. Section 26(1) requires a tenant to pay rent within the time fixed by contract or, in the absence of any such contractually fixed time, by the 15th day of the month following the month for which rent is payable. For the first circumstance envisaged by Section 27(1) to apply, therefore, the tenant is required to tender rent either within the time contractually stipulated in that regard or by the 15th day of the month following the month for which the rent is tendered. It is only if rent is tendered in such fashion, and the landlord does not accept the rent so tendered by the tenant, that the first circumstance envisaged by Section 27(1) can be said to exist.

[32] **1988 (1) RLR 54 (Kant)**

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75.2 The second circumstance envisaged by Section 27(1) is refusal, or neglect, by the landlord, of the responsibility, also cast by sub-section (2) of Section 26, to deliver a receipt, to the tenant, of the rent paid. This circumstance does not arise for application in the present case and may, therefore, be eschewed from further consideration.

75.3 The third circumstance envisaged by Section 27(1) is where there is a *bona fide* doubt, in the mind of the tenant, as to the person or persons to whom the rent is payable.

75.3.1 The two important ingredients which are required to concurrently exist for this circumstance to apply are required to be identified and noted. First, the doubt must be with respect to the person or persons *to whom the rent is payable*. The provision does not, either expressly or even obliquely, advert to *the title over the suit property of the person to whom the rent is payable*. Considerable time was expended, during arguments, on the aspect of whether Jalveen had a valid title over the suit property, or was its owner. Mr. Kamlesh Anand sought to contend that the Sale Deed, on the basis of which Jalveen claimed to have acquired ownership of the suit property, was a fraudulent document, as OVFPL, which had executed the Sale Deed, was itself not a valid title holder of the suit property. To my mind, this consideration is completely foreign to Section 27(1). So long as the person to whom the rent is payable by the tenant is not in doubt, the question of whether that person had or did not have a valid title over the suit property, is completely irrelevant.

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75.3.2 In this context, it is necessary to appreciate the purpose for which Section 27 was enacted. Non-payment of rent by a tenant to a landlord constitutes one of the grounds on which the landlord could seek eviction of the tenant. It is obvious, on its face, that Section 27 is intended to cater to a circumstance in which the tenant is willing to pay rent but the landlord is unwilling to accept it. The provision obviously intends to protect tenants from such recalcitrant landlords who do not accept the rent tendered by the tenant and, thereafter, seek to urge non-payment of rent as a ground to evict the tenant from the premises. Section 27 is, therefore, only intended to provide an avenue by which the tenant, situated in such unhappy circumstances, can deposit the rent, so as to avoid an allegation of default in that regard, as a plea to defend an eviction action. By its very nature, Section 27(1) does not envisage any exhaustive inquiry into the title of the person to whom the rent is payable.

75.3.3 One could, at this juncture, delve into the nooks and crannies of "payability" as a jurisprudential concept, but, in the facts of the present case, that would not be necessary. It is not in dispute that, since October 2017, following the letter dated 14th October, 2017 addressed by Khanna to Jalveen, Khanna was paying rent to Jalveen on a month to month basis. This letter, significantly, was a follow-through to the communication dated 25th September 2017, addressed by OVFPL to Khanna, following the statement made by Capt. Rajinder Singh Rosha before the learned ARC on 23rd September, 2017. On 23rd September, 2017, Capt. Rajinder Singh Rosha,

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representing OVFPL, asserted, on solemn affirmation, before the learned ARC, that, *vide* Sale Deed dated 28th July, 2017, the suit property had been sold by OVFPL to Jalveen. Following this, on 25th September, 2018, OVFPL wrote to Khanna, requiring Khanna to attorn to Jalveen and to commence paying rent to Jalveen. Khanna agreed to do so, *vide* its response dated 14th October, 2017. Following the said communication, Khanna commenced payment of rent to Jalveen. While this itself would amount to “attornment” of Khanna to Jalveen within the meaning of Section 109 of the Transfer of Property Act, it is not necessary to enter into the aspect of attornment, for determining the controversy in issue. *Suffice it to state that, in the backdrop of these facts and in the backdrop of the fact that, following the letter dated 14th October, 2017, Khanna was paying rent to Jalveen, it could not lie in the mouth of Khanna to urge that it entertained any bona fide doubt regarding the person to whom the rent was payable.*

75.3.4 To reiterate, the aspect of whether Jalveen or, for that matter, OVFPL, had a valid title over the suit property is an irrelevant consideration for the purposes of Section 27(1). In the facts of the present case, it was clear that rent was payable – and, in fact, was being paid – by Khanna to Jalveen since October 2017. The plea of *bona fide* doubt, as urged by Khanna as a ground to seek the benefit of Section 27(1) has, therefore, in my considered opinion, no legs whatsoever to stand on. I completely endorse the finding of the learned RCT in that regard.

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<u>Re. plea of Khanna that refusal to accept rent would apply *in futuro*</u>

77. In the event of any one of the aforesaid three circumstances envisaged by Section 27(1) applying, the provision states that "the tenant may deposit *such rent* with the Controller in the prescribed manner". The words "such rent", as used in Section 27(1), and as read in juxtaposition with the words "any rent" used in the same provision read with Section 26(1) which envisages payment of rent on a month to month basis, indicates that Section 27(1) would also apply on a month to month basis. This is clear from a reading of sub-section (1) of Sections 26 and 27 in conjunction. Section 26(1) requires the tenant to pay rent, to the landlord, for any particular month, by the 15th day of the succeeding month (where no other contractually fixed date of payment is forthcoming). Section 27(1) would apply where the landlord *does not accept the rent so tendered* by the tenant, or refuses to give a receipt for the said rent, or where a *bona fide* doubt in terms of Section 27(1) exists. In any of these circumstances, Section 27(1) permits the tenant to deposit *such rent* with the Rent Controller in the prescribed manner.

78. Clearly, therefore, the rent which the tenant is permitted to deposit with the Rent Controller, under Section 27(1), is the rent which tenant tendered within the time stipulated in Section 26(1) and which the landlord refused to accept.

79. The submission of Mr. Kamlesh Anand that the landlord having refused to accept the rent tendered for a particular month, such refusal

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would apply *in futuro* and forever, and entitle the tenant to, for all times to come, deposit the rent in Court, is, therefore, contrary to the express terms of Section 27(1) and Section 26(1) of the DRC Act. In order for the tenant to seek the benefit of Section 27(1), the tenant is required to positively establish that he had attempted to pay rent within the time stipulated in Section 26(1) and that *such* payment had not been accepted by the landlord. Then, and only then, could the tenant seek permission to deposit *such rent* with the Rent Controller. In other words, *it is only the rent which was attempted to be paid by the tenant to the landlord and which the landlord refused to accept*, that could be deposited, by the tenant, with the Rent Controller, under Section 27(1).

80. Each application under Section 27(1) would, therefore, have necessarily to aver and establish that (i) the tenant had sought to pay, to the landlord, the rent forming subject matter of that application and (ii) the landlord had refused to accept that rent. There could, therefore, be no question of any request for permission to deposit he rent in Court, under Section 27(1) if in the first instance, the tenant had not sought to pay the said rent to the landlord and the landlord had not refused to accept the said rent.

<u>Re. plea of Jalveen that applications were liable to be dismissed for non-payment of rent accompanying, or prior to, said applications</u>

81. In the present case, insofar as DR 53/2020 and DR 67/2020 are concerned, it is not in dispute that no attempt to make any payment of rent to Jalveen was made, by Khanna, before filing the said

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applications, let alone any refusal by Jalveen to accept such rent. Even on this ground, therefore, the said applications were, in my opinion, liable to be rejected. Ms Marwaha's submission, in this regard, merits acceptance.

82. The structure of Section 27(1) to (3) is, in this regard, important. Section 27(1) does not refer to making of any application by the tenant. The making of application by the tenant is envisaged, for the first time, by Section 27(2). The application, to which Section 27(2) alludes, *is to accompany the deposit made by the tenant*. The "deposit", to which Section 27(2) refers is obviously the deposit envisaged by Section 27(1). In other words, in the event of one or more of the exigencies envisaged by Section 27(1) applying, the tenant would, under that provision, be entitled to deposit such rent with the Rent Controller. Section 27(2) contemplates that such deposit, made under Section 27(1) would be accompanied by an application containing the particulars enumerated in Section 27(2). *On such deposit being made, accompanied by the application,* copies of the applications are required to be sent by the Rent Controller to the landlord or to the person entitled to receive the rent, under Section 27(3).

83. Deposit has, therefore, necessarily either to accompany the application or to have been paid prior to the applications. Making of deposit subsequent to filing of the applications is inimical to the entire structure of Section 27 of the DRC Act. An application seeking permission to deposit rent in Court, unaccompanied by such deposit is,

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therefore, not maintainable under Section 27, as sub-section (2) thereof specifically envisages the application *as an accompaniment* to the deposit. The statute does not, therefore, envision an application without a deposit. Any application made without a deposit is not maintainable under Section 27, as it is in the teeth of sub-section (2) thereof.

84. In the present case, it is not in dispute that no deposit accompanied, or preceded, DR 53/2020 which pertained to the month October 2020. DR 53/2020 was, therefore, not maintainable as a valid application under Section 27, and was liable to be rejected even on that score.

85. The same situation obtains in respect of DR 61/2020. Khanna sought to contend, in respect of the said application, that an amount of ₹ 2,750/- had been transferred by Khanna to Jalveen on 29th October, 2020 by way of RTGS transfer, but that the said transfer had bounced back, boomerang-like, by a reverse entry. Irrespective of whether such transfer and reversal could, in the circumstances, constitute payment of rent by Khanna to Jalveen and refusal by Jalveen of such payment – an aspect to I would allude presently – the fact remains that no deposit of rent, for the month of November 2020, in respect of which DR 61/2020 was preferred by Khanna, either accompanied the application or preceded the application. Even if it were to be presumed, *arguendo*, that the RTGS transfer of ₹ 2,750/- by Khanna to Jalveen constituted payment of rent within the meaning of Section 26(1) and Section 27(1) and that the return of the said amount by a

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reverse entry constituted refusal, on the part of Jalveen, to accept the rent, Khanna would, nonetheless, have had to deposit the rent with the Rent Controller either along with the application under Section 27 or prior thereto, for the application to be maintainable under sub-section (2) of the said provision. It appears that Khanna rested content with the return of the RTGS transfer effected by it to Jalveen's account on 29th October, 2020, and did not deem it necessary to deposit the said amount with the Rent Controller along with its application under Section 27. The application was, therefore, *ipso facto*, not maintainable under Section 27(2). As in the case of DR 53/2020, therefore, DR 61/2020 was also liable to be rejected even on this ground.

86. Adverting, now, to DR 67/2020, it is acknowledged even by the learned ARC in the order dated 6th April, 2021, passed by him, that the rent for the period December 2020 to May 2021, in respect of which Khanna had filed the said application, had not been paid or deposited by Khanna and that it had, instead, "straightaway" filed DR 67/2020. The following passages from the order dated 6th April, 2021, of the learned ARC in DR 67/2020 manifest this factual position:

> "Vide the present petition, *applicant seeks to deposit rent for the month of December 2020 to May 2021 in court*. It is the case of the applicant that the non applicant is claiming herself to be the owner of the property in question, but she has not produced any ownership documents qua the property bearing no. C – 10, first floor, New Delhi – 48 and therefore, there is a genuine apprehension in the mind of the applicant that the non applicant is not the owner of the property and is illegally trying to dispossess the applicant/tenant from the property in question. It is the case of the applicant that earlier an undertaking was given dated 23.09.2017 before the

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predecessor of this court to pay a sum of Rs.2750/- to the non applicant and therefore, the non applicant has filed the present application to deposit the rent for the said period before this court. It is also the case of the applicant that since the bank account in which the rent was deposited earlier, therefore, the present petition has been filed for deposit of rent.

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Perusal of the petition shows that admittedly from October 2017 till September 2020, applicant was paying the non applicant at the rate of Rs.2750/. *Now, for the period of December 2020 to May 2021, applicant has not tendered the rent for the non applicant and has straight away filed the present petition on the ground that vide notice dated 27.08.2020, applicant was told that non applicant has closed her account in which the rent was being deposited.* It is also claimed before this court that the applicant disputes the title of the non applicant and has a genuine apprehension qua the ownership of the property in question."

(Emphasis supplied)

87. As in the case of DR 53/2020 and DR 61/2020, DR 67/2020 was also, therefore, not maintainable under Section 27(2), as it did not accompany any deposit made under Section 27(1).

88. As a result, all the three applications/petitions filed by Khanna, i.e. DR 53/2020, DR 61/2020 and DR 67/2020 were not maintainable, as they did not accompany the requisite deposit under Section 27(1), as required by Section 27(2).

89. Additionally, the plea of *bona fide* doubt, raised by Khanna as a ground to invoke Section 27(1), has also been found, by me, to be bereft of substance, in which regard I concur entirely with the findings of the learned RCT.

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90. All the three applications of Khanna, therefore, were liable to be rejected even for these reasons.

Re. RTGS transfer of ₹ 2,750/-

91. I deem it appropriate, however, to also address the issue of the deposit of ₹ 2,750/-, transferred by Khanna to the account of Jalveen by way of RTGS on 29th October, 2020. Though, as all the three Section 27 applications of Khanna were liable to be dismissed even otherwise, this aspect may lose its determinative character, submissions having been advanced, in that regard, it is but proper to address them.

92. Mr. Kamlesh Anand sought to contend that the RTGS transfer of ₹ 2,750/-, made on 29th October, 2020, amounted to payment of rent within the meaning of Section 26(1) and the re-crediting of the amount into the account of Khanna by way of a reverse entry, amounted to a refusal by Jalveen to accept the rent. The learned RCT has found merit in these submissions. With greatest respect to the learned RCT, I am unable to agree.

93. In this regard, I find both the submissions advanced by Ms. Marwaha worthy of acceptance.

94. Ms. Marwaha rightly contends that, once Khanna had been informed, by Jalveen, *vide* the legal notice dated 27th August, 2020 followed by the rejoinder legal notice dated 24th September, 2020, that

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the account of Jalveen in the GK-I PNB branch stood closed, and had been called upon to pay rent directly to Jalveen, Khanna could not seek to urge that, by making an RTGS transfer to the said account of Jalveen in the GK-I PNB branch, rent stood paid by Khanna to Jalveen. Khanna has not disputed, at any point of time, the receipt of the communications dated 27th August, 2020 or 24th September, 2020.

95. The contention of Jalveen that the aforesaid bank account in GK-1, PNB branch had been closed has been seriously disputed by Mr. Kamlesh Anand. He has sought to contend, on the basis of certain documents which have been placed on record, that transactions were taking place in the account even after the date of its alleged closure. On the other hand, there is also on record a Certificate dated 17th August, 2021, issued by PNB, sealed and signed by its official signatory, certifying that the aforesaid account was frozen on 3rd October, 2020.

96. As to whether, on the date when the RTGS transfer was sought to be effected by Khanna, the account was functioning, or not functioning may, therefore, be disputable. That dispute need not, however, detain us, as Jalveen had *vide* legal notice dated 27th August, 2020 and rejoinder legal notice dated 24th September, 2020, specifically directed Khanna not to deposit rent in the said account and, instead, to issue a cheque for rent directly in favour of Jalveen. Neither in the pleadings nor during oral arguments at the bar has any justification been provided by Khanna for not depositing rent in accordance with this request. The manner in which rent is to be

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received by the landlord is the prerogative of the landlord, so long as it is in conformity with the law, and is not unreasonable or vexatious.

97. There is nothing to indicate that the reverse entry, by which the money credited by RTGS on 29th October, 2020 came back into the account of Khanna, was engineered by Jalveen, though a bald allegation to that effect has been made by Khanna. Ms. Marwaha would seek to contend, *per contra*, that the money bounced back as the account stood closed. In any event, in the absence of any positive material to indicate that Jalveen was responsible, directly or indirectly, for the reverse entry by which the money stood re-credited into the account of Khanna, it is not possible to treat such reverse entry as amounting to "refusal" by Jalveen to accept the rent tendered by Khanna.

98. Resultantly, as there is no material to indicate that the rent was tendered by Khanna, as in the manner requested by Jalveen in her legal notices dated 27th August, 2020 and 24th September, 2020, or that Jalveen had consciously returned the amount transferred, I am unable to concur with the finding of the learned RCT that the said transfer and return would amount to payment of rent and refusal thereof.

99. The learned RCT has also observed that, even if the payment of rent was not in accordance with the direction contained in the letters dated 27th August, 2020 and 24th September, 2020, from Jalveen to Khanna, that would not be of much significance. Again, I venture, respectfully, to disagree. The aspect, to my mind, is, rather, of

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considerable import, as tendering of rent, and refusal thereof, are preconditions for Section 27(1) to apply. The importance or relevance of a precondition statutorily contemplated in a plenary parliamentary legislative instrument cannot be undermined by Court.

100. It is settled, from the time of ***Taylor v. Taylor***[33] through ***Nazir Ahmad v. King Emperor***[34] and a whole host of judgments of the Supreme Court which have followed the said decision (including as recently as in ***Opto Circuit India Ltd v. Axis Bank***[35]) that, where the law requires a thing to be done in a particular manner, it has to be done in that manner or not done at all. Prescription, by law, of a manner of doing a particular act necessarily entails, in its legal wake, proscription against doing of the act in any other manner.

101. If valid tender of payment of rent by tenant to landlord, and refusal by landlord, have been envisaged as statutory preconditions for Section 27(1) to apply, the provision can apply only if the said provisions are satisfied. Ordinarily, conditions prescribed by statute are to be treated as mandatory, though, where they are merely procedural in nature and do not affect vested rights of parties to the *lis*, compliance may be regarded as directory. Insofar as the requirement of payment of rent in accordance with law is concerned, the decisions in ***E. Palanisamy***[7] and ***Sarla Goel v. Kishan Chand***[36]**,** are clear and categorical. Significantly, ***Sarla Goel***[35] holds that the word "may", as contained in Section 27(1) has to be treated as imperative and as

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[33] **1875 (1) Ch. D. 462**
[34] **AIR 1963 PC 253**
[35] **(2021) 6 SCC 707**
[36] **(2009) 7 SCC 658**

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equivalent to "shall". For ready reference, paras 27 to 29 of ***Sarla Goel***[35] may be reproduced, thus:

> "27. Now we come to the most important provision regarding the procedure under the Act to pay or deposit or tender rent to the landlord, if be refuses to grant any receipt in respect of the payment already made to him. As quoted hereinearlier, Section 27 deals with deposit of rent by the tenant. It clearly says that:
>
> > **"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 the person or persons to whom the rent is payable, the tenant may deposit such rent with the Controller in the prescribed manner:"
>
> When the words "bona fide doubt" have been added to Section 27, the tenant may remit such rent to the Controller by postal money order.
>
> 28. From a conjoint reading of this provision referred to hereinabove and particularly Section 27 of the Act, in our view, it cannot be doubted that the procedure having been made by the legislature how the rent can be deposited if it was refused to have been received or to grant receipt for the same. *If that be the position, if such protection has been given to the tenant, the said procedure has to be strictly followed in the matter of taking steps in the event of refusal of the landlord to receive the rent or to grant receipt to the tenant. It is well settled that whether the word "may" shall be used as "shall", would depend upon the intention of the legislature. It is, not to be taken that, once ,the word "may" is used by the legislature in Section 27 of the Act, would not (sic) mean that the intention of the legislature was only to show that the provisions under Section 27 of the Act were directory but not mandatory.*
>
> 29. In other words, taking into consideration the Object of the Act and the contention of the legislature and in view of the discussions made hereinearlier, *we are of the view that the*

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> *word "may" occurring in Section 27 of the Act must be construed as a mandatory provision and not a directory provision as the word "may", in our view, was used by the legislature to mean that the procedure given in those provisions must be 'strictly followed as the special protection has been given to the tenant from eviction*. Such a canon of construction is certainly warranted because otherwise intention of the legislature would be defeated and the class of landlords, for whom also the beneficial provisions have been made for recovery of possession from the tenants on certain grounds, will stand deprived of then."
>
> (Emphasis Supplied)

102. I am, therefore, in agreement with Ms. Marwaha's submission that the purported RTGS transfer of ₹ 2,750/- effected by Khanna into the account of Jalveen on 29th October, 2020 could not be regarded as "payment of rent" within the meaning of Section 27(1) read with Section 26(1) of the DRC Act.

103. Equally, there is substance in the contention of Ms. Marwaha that any valid payment of rent would have to be of the actual amount of rent payable, and not of any lesser amount. Section 6A of the DRC Act entitles the landlord to increase, every three years, the agreed rent by 10%. This Court has held, in ***Deepak Nijhawan***[23], that, if a notice in terms of Section 8 is issued by the landlord to the tenant, envisaging increase of rent, in terms of Section 6A, the rent would, *ipso facto*, stand increased from the expiry of 30 days from the receipt of said notice. Nothing more is required to be done by the landlord in that regard.

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104. As Ms. Marwaha correctly points out, Khanna in its response dated 17th September 2020 to the legal notice dated 27th August, 2020 from Jalveen, did not contest Jalveen's proposal to enhance the rent. Though, in the said response, Khanna did question the title of Jalveen over the suit property, that, by itself, would not amount to disputing the proposal of Jalveen to enhance the rent payable in respect thereof, especially as Khanna had, since October 2020, been paying rent to Jalveen in respect of the suit property. Khanna was, therefore, well aware of the fact that the rent stood enhanced to ₹ 3,025/- per month w.e.f. 1st October, 2020. That being so, the payment of any amount less than ₹ 3,025/- per month could not be treated as a valid payment of rent for the purposes of Section 27(1) read with Section 26(1) of the DRC Act.

105. I am, therefore, also in agreement with Ms. Marwaha's submission that the RTGS transfer of ₹ 2,750/-, purportedly effected on 29th October, 2020, could not be regarded as amounting to a valid payment of rent, as it was for an amount less than ₹ 3,025/-, to which figure the rent had, by that time, been validly enhanced in accordance with Section 6A of the DRC Act.

106. For these reasons too, therefore, the reliance, by Khanna, on RTGS transfer of ₹ 2,750/- effected on 29th October, 2020, has to be regarded as misplaced.

107. DR 61/2020 was, therefore, liable to be dismissed even on that score, as no prior payment of rent by Khanna to Jalveen and refusal

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thereof by Jalveen could be said to have taken place for the month of November 2020.

The "attornment" controversy – no longer significant

108. Considerable debate also took place, at the bar, on the aspect of whether, in fact, Khanna had attorned to Jalveen within Section 109 of the Transfer of Property Act. This aspect does not retain significance, in view of the finding, already returned by me hereinabove, that no *bona fide* doubt could be said to exist regarding the fact that Khanna was liable to pay rent, in respect of the suit property, to Jalveen. I do not deem it necessary, therefore, to enter into the intricacies of the said issue or to venture any finding thereon.

Re. other contentions

108. In view of the above discussion, no occasion remains to examine the dispute that Mr Anand has sought to raise regarding the title of Jalveen over the suit property. It is made clear, however, that the impugned judgement, and the findings returned therein, would not bind the learned Trial Court in the proceedings to follow, on the aspect of the title and ownership of Jalveen over the suit property, if any such issue were to arise for consideration.

109. Nor do I intend to return any finding on the plea, of Ms Marwaha, regarding non-compliance, by Khanna, of Rule 10 of the DRC Rules, or the effect thereof, essentially as I do not find that any

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such ground was urged before the learned RCT either in the appeal filed by Jalveen or orally during arguments (as recorded in the impugned judgement dated 6th August 2021).

110. These proceedings have been preferred under Article 227 of the Constitution of India. The jurisdiction of this Court under Article 227 is supervisory in nature. The Court does not sit in appeal over the decision of the Court below, nor does the Court correct errors of the Court below except where they are errors of law warranting such supervisory correction.[37] The Court cannot, therefore, interfere or return findings, while exercising Article 227 jurisdiction, on issues which were not canvassed before the Court below.

Conclusion

111. For all the aforesaid reasons, I am of the opinion that all the three applications/petitions filed by Khanna under Section 27 of the DRC Act, i.e. DR 53/2020, DR 61/2020 and DR 67/2020 were liable to be dismissed.

112. The impugned judgment of the learned RCT dated 6th August, 2021, to the extent it reverses the order dated 6th April, 2021 of the learned ARC in respect of DR 67/2020 and, consequently, dismisses the said Section 27 application of Khanna, are, therefore, affirmed and upheld.

[37] Refer **Sadhana Lodh v. National Insurance Co. Ltd, (2003) 3 SCC 524**

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113. In accordance with the findings hereinabove, the impugned order dated 6th August, 2021, insofar as it upholds the decisions of the learned ARC in DR 53/2020 and DR 61/2020 and allows the Section 27 applications filed by Khanna is, however, set aside. Resultantly, DR 53/2020 and DR 61/2020 shall also stand dismissed.

114. As a result, CM(M) 644/2021 filed by Jalveen Rosha stands allowed and CM(M) 62/2022, filed by BD Khanna Publicity, stands dismissed.

115. There shall be no order as to costs.

116. Pending applications, if any, do not survive for consideration and are, accordingly, disposed of.

C. HARI SHANKAR, J.

JULY 4, 2022
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