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

+ **RC.REV. 44/2023 & CM APPLs. 7215-16/2023**

SUBHASH CHANDRA RASWANT

..... Petitioners

Through: Mr. Sudhir Nandrajog, Senior  
Advocate, with Ms Payal Jain,  
Advocate

versus

ALOKESH BARUA

..... Respondent

Through: Mr. Sanjeev Sindhwani, Senior  
Advocate with Mr. Sachin Bandooni,  
Advocate.

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Reserved on: 30<sup>th</sup> May, 2023

Date of Decision: 06<sup>th</sup> July, 2023

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

### **J U D G M E N T**

#### **MANMEET PRITAM SINGH ARORA, J:**

1. This eviction petition has been filed by the Petitioner, tenant, assailing the eviction order dated 17.08.2022 passed by the Rent Controller, East District, Karkardooma Courts, Delhi ('Trial Court'), whereby the Petitioner's application seeking leave to defend was dismissed and the eviction order was passed with respect to Shop No. 2 in Property No. K-3, Laxmi Nagar, Main Market, Opposite State Bank Patiala, New Delhi – 110092 ('tenanted premises').

2. The eviction petition has been filed by the Respondent herein, landlord, under Section 14(1)(e) of the Delhi Rent Control Act, 1958 ('DRC Act') for the *bona fide* need of his elder son, Sh. Vishwajit Barua,



who wants to start his business of fast-food restaurant. It is stated in the eviction petition that the Respondent herein is the owner of property No. K-3, Laxmi Nagar, Main Market, Opposite State Bank Patiala, New Delhi – 110092 ('subject building'), wherein the tenanted premises are located. It is stated that the Respondent herein does not have any suitable alternate accommodation except the tenanted premises, for the *bona fide* need of the elder son.

3. The Petitioner herein filed his leave to defend application under Section 25B(5) of the DRC Act, claiming to be the legal owner of the tenanted premises by way of an unregistered Agreement to Sell ('ATS') dated 06.07.1982. It is stated that the Respondent's father, Sh. J. B. Barua, in the year 1982, executed the said ATS with the Petitioner for a total consideration of ₹ 1,10,000/-. It is stated that in view of the said ATS, there is no landlord-tenant relationship between the parties.

***Arguments of the Petitioner, tenant***

4. Mr. Sudhir Nandrajog, the learned senior counsel for the Petitioner states that the Petitioner herein is protected from eviction in view of Section 53A of the Transfer of Property Act, 1882 ('TPA').

4.1. In this regard, he relies upon the unregistered ATS dated 06.07.1982 placed on record as Annexure P-3 and more specifically, the recital therein to the effect that the total sale consideration for the tenanted premises was reserved at ₹ 1,10,000/- and a sum of ₹ 81,000/- already stands paid to Respondent's mother (the recorded owner) as detailed at paragraph Nos. 1 and 2 of the said ATS. He further relies upon the receipt dated 25.07.1988, to aver that a further sum of ₹ 10,000/- was paid to the Respondent's father i.e., Sh. J. B. Barua towards the outstanding sale consideration.



4.2. He also relies on the fact that the Petitioner herein had applied for an electricity connection in the year 1988, on the basis of the ATS and obtained an electricity connection. In this regard, he relies upon a document dated 28.10.1988 filed with the electrical supply company; and states that the aforesaid shows that the Petitioner herein held himself out to be an owner to third parties after execution of the ATS. He also relies upon the fact that the Petitioner herein has paid conversion charges to the Municipal Corporation of Delhi ('MCD').

4.3. He states that the Respondent herein had earlier as well filed an eviction petition under Section 14(1)(a), (c), (e) and (j) of the DRC Act, which was withdrawn by the Respondent *vide* order dated 19.09.2016. He states that subsequently the Respondent herein had filed this eviction petition on 04.10.2016. He states that in view of the adversarial action of the Respondents in disputing the proprietary rights of the Petitioner herein, the said Petitioner has filed a civil suit bearing no. 9982/2016 ('civil suit') for specific performance of the ATS, on 03.11.2016, which is pending before the Civil Court. He states that issues have been framed in the said civil suit.

4.4. He has placed reliance on the judgment passed by this Court in ***Ran Singh v. Lilu Ram (Deceased) Thr. Lrs., 2018 SCC OnLine Del 6783***, wherein the Court in similar facts had granted leave to defend and the matter was remanded back to the Rent Controller for trial.

4.5. He states that grave prejudice will be caused to the Petitioner if he is evicted from the tenanted premises during the pendency of the civil suit and therefore, his possession in the tenanted premises needs to be protected. In this regard, he has relied upon the judgment passed by a Division Bench of



this Court in *Jai Singh Rana v. Mohinder Mohan Goel, 1994 SCC OnLine Del 622*, wherein the Division Bench at paragraph no. 6 (2) has held as under:

*“6. We feel that the following approach would be reasonable:*

*.....*

*(2) It indeed there is prima facie proof of the genuineness of the agreement of sale, the Court could consider the question of stay of the Rent Control case on merits. Even assuming that the Court came to the conclusion that a prima facie case was made out in favour of the tenant, the balance of convenience might not lie in granting stay of the Rent Control case. In such cases, the Court may even allow the rent control case to be decided and judgment and decree pronounced but grant stay to the execution thereof, allowing the parties to complete the appeal against Rent Controller's decision or even the further appeal/revision as the case may be so that the whole exercise need not be commenced after the disposal of the civil suit for specific performance.”*

4.6. To a query from this Court, the learned senior counsel for the Petitioner fairly admits that the Petitioner continued to pay the rent for the tenanted premises even after the execution of the ATS, to the Respondent's mother and the Respondent herein. He states that however, the payment of the rent is of no consequence in view of clause 3 of the ATS, which reads as under:

*“The second party only has to pay balance amount of Rs. 29,000 to the second party in future and second party will continue to pay rent for remaining portion till the payment of balance amount.”*

He states that the rent was being tendered towards the undivided portion of the tenanted premises proportionate to the unpaid sale consideration.

4.7. No other arguments were addressed by the learned senior counsel for the Petitioner.



***Arguments of the Respondent, landlord***

5. In reply, Mr. Sanjeev Sindhvani, the learned senior counsel for the Respondent states that the Petitioner, tenant, has sought to set up a fresh plea of possession in part performance of Section 53A of TPA. He states that no such plea was raised before the Trial Court and it was never alleged that the tenancy has been surrendered and the possession of the premises was being held in pursuance of the ATS.

5.1. He relies upon the judgment of this Court in ***Hari Gopal Manu v. B. S. Ojha, 2016 SCC OnLine Del 985***, and more specifically the judgment in ***M/s Jagdambey Builders Pvt. Ltd. v. J.S. Vohra, 2016 SCC OnLine Del 765***, quoted therein at paragraph 7. He also relied upon judgment of the Supreme court in ***Shyam Narayan v. Krishna Prasad, (2018) 7 SCC 646***. He relied upon the said judgments to contend that the Petitioner herein to avail the benefit of Section 53 A of TPA must necessarily plead in his application seeking leave to defend that he has taken possession of the property in part performance of the contract. He stated that in the present case, no such plea was raised by the Petitioner in his pleadings and therefore, he is not entitled to claim the benefit under Section 53 A of TPA.

5.2. He relies upon judgment passed by the Supreme Court in ***S. Sanyal v. Gian Chand, AIR 1968 SC 438***, to contend that it is trite law that the tenancy cannot be split up. He states that therefore, the averments made by the Petitioner, tenant, with respect to payment of rent towards undivided portion of the tenanted premises, proportionate to the unpaid sale consideration is absurd, untenable and contrary to law. He states that the



Respondents do not admit that the payment of rent by the Petitioner was towards a portion of the tenanted premises as alleged.

5.3. He states that in fact in the leave to defend application and the rejoinder to the reply to leave to defend application, it is admitted by the Petitioner that the tenant continued to pay the admitted rent till 2014, whereas the alleged ATS was executed in the year 1982.

5.4. He has relied upon the averments at paragraph '11' of the eviction petition and the corresponding paragraphs of the leave to defend application and rejoinder to contend that the averment of the landlord that the monthly rent of tenanted premises is ₹ 500 was unchallenged and therefore, admitted.

5.5. He states that in reply to leave to defend application, the landlord at paragraph 4 had asserted that last rent was paid until 30.06.2014 and in the rejoinder to the said reply; no dispute was raised by the tenant. He states that the rent receipts filed before the Rent Controller are also not disputed and therefore, admitted.

5.6. He states that the judgment of **Ran Singh v. Lilu Ram** (Supra) is distinguishable as the alleged agreement to sell therein was purportedly executed between the parties therein post service of the eviction petition.

5.7. No other arguments were raised by the learned senior counsel for the Respondent.

### ***Analysis and finding***

6. This Court has perused the paper book and considered the submission of the learned senior counsel for the parties.

7. The Trial Court held that the Respondent herein has sufficiently



established the three (3) essential ingredients of Section 14(1)(e) of the DRC Act.

7.1. The Trial Court held that the rent receipts evidencing payment of rent earlier to late Smt. Bidhu Bala Barua and thereafter to the Respondent herein were not disputed by the Petitioner. It also noted that the Petitioner himself had categorically admitted in his leave to defend application that rent had been regularly paid to the Respondent till the month of December, 2014. The Respondent had placed on record rent receipts evidencing payment of rent until 30.06.2014. In view thereof, the Trial Court concluded that the Respondent is the landlord and there exists a landlord-tenant relationship between the parties. The said admitted rent receipts are tabulated as under for ease of reference:-

| Sl. No. | Period of Rent Receipt                     | Amount of Rent Received |
|---------|--------------------------------------------|-------------------------|
| 1.      | For the month of August in the year 1981   | Rs. 150/-               |
| 2.      | For the month of January in the year 1982  | Rs. 150/-               |
| 3.      | For the month of August in the year 1982   | Rs. 150/-               |
| 4.      | For the month of December in the year 1982 | Rs. 200/-               |
| 5.      | For the month of January in the year 1983  | Rs. 150/-               |
| 6.      | For the month of January in the year 1984  | Rs. 150/-               |
| 7.      | For the month of January in the year 1985  | Rs. 150/-               |
| 8.      | For the month of August in the year 1985   | Rs. 150/-               |
| 9.      | For the month of March in the year 1986    | Rs. 150/-               |
| 10.     | For the month of May in the year 1987      | Rs. 150/-               |
| 11.     | For the month of January in the year 1988  | Rs. 150/-               |



|     |                                            |                                        |
|-----|--------------------------------------------|----------------------------------------|
| 12. | From May to August in the year 1988        | Rs. 600/- (Rent per month Rs. 150/-)   |
| 13. | From October to November in the year 1989  | Rs. 300/- (Rent per month Rs. 150/-)   |
| 14. | For the month of December in the year 1990 | Rs. 200/-                              |
| 15. | For the month of June in the year 1991     | Rs. 200/-                              |
| 16. | For the month of April in the year 1992    | Rs. 200/-                              |
| 17. | For the month of October in the year 1995  | Rs. 200/-                              |
| 18. | For the month of November in the year 1995 | Rs. 200/-                              |
| 19. | For the month of February in the year 1996 | Rs. 250/-                              |
| 20. | For the month of April in the year 1997    | Rs. 300/-                              |
| 21. | For the month of August in the year 1998   | Rs. 300/-                              |
| 22. | For the month of February in the year 1999 | Rs. 300/-                              |
| 23. | From September to October in the year 2000 | Rs. 800/- (Rent per month Rs. 400/-)   |
| 24. | For the month of January in the year 2001  | Rs. 400/-                              |
| 25. | From November, 2001 to April, 2002         | Rs. 2,400/- (Rent per month Rs. 400/-) |
| 26. | From January, 2001 to March, 2003          | Rs. 1,200/- (Rent per month Rs. 400/-) |
| 27. | From April, 2003 to March, 2004            | Rs. 4,800/- (Rent per month Rs. 400/-) |
| 28. | From April, 2004 to February, 2005         | Rs. 4,400/- (Rent per month Rs. 400/-) |
| 29. | From October, 2005 to February, 2007       | Rs. 6,800/- (Rent per month Rs. 400/-) |
| 30. | From May to July in the year 2010          | Rs. 1,500/- (Rent per month Rs. 500/-) |
| 31. | For the month of October in the year 2011  | Rs. 500/-                              |
| 32. | For the month of December in the year 2013 | Rs. 500/-                              |
| 33. | From January to March in the year 2014     | Rs. 1,500/- (Rent per month Rs. 500/-) |



|     |                                     |                                        |
|-----|-------------------------------------|----------------------------------------|
| 34. | From April to June in the year 2014 | Rs. 1,500/- (Rent per month Rs. 500/-) |
|-----|-------------------------------------|----------------------------------------|

7.2. The Trial Court held that it was satisfied that the Respondent's son is dependent on the landlord and the Petitioner herein had not disputed the *bona fide* requirement of Respondent's son for running a fast-food restaurant from the tenanted premises.

7.3. The Trial Court held that the reference made by the Petitioner to other rooms/ godowns (abutting a side road) available in the subject building is of no avail as the tenanted premises are admittedly located on the main road and therefore, it concluded that the said rooms/ godowns cannot be considered as suitable alternate accommodation.

7.4. The Trial Court, thus, concluded that there is no triable issue raised by the Petitioner herein.

***Existence of relationship of landlord, tenant***

8. Mr. Sudhir Nandrajog, the learned senior counsel for the Petitioner during the course of his oral arguments strenuously relied upon the fact that an ATS dated 06.07.1982 had been executed by the deceased mother of the Respondent in favour of the Petitioner and a civil suit for specific performance of the said ATS is pending adjudication before the Civil Court. He states that the possession of the Petitioner is protected under Section 53A of the TPA and the Petitioner occupies the tenanted premises as an owner and therefore, pending the final adjudication of the civil suit, the Trial Court should've either granted the leave to defend or adjourned the eviction petition *sine dine*.

8.1. The Petitioner, therefore, in these proceedings has confined his



challenge only to the finding of the Trial Court with respect to continued existence of the landlord-tenant relationship between the parties.

8.2. The facts which have been admitted by the parties before the Trial Court and are germane for deciding this issue are as under: -

- (i) The Respondent's mother, late Smt. Bidhu Bala Barua, is the recorded owner of the subject building. In fact, the subject building even as on date stands in her name in the records of the statutory authorities.
- (ii) The tenanted premises were let out to the Petitioner by late Smt. Bidhu Bala Barua in the year 1972.
- (iii) The current rent of the tenanted premises is ₹ 500/- per month.
- (iv) As per the Respondent, landlord, the rent was duly paid till 30.06.2014. As per the Petitioner, tenant, the rent was paid till the month December, 2014. The Petitioner, therefore, admits paying rent to the Respondent till the month of December, 2014 (even though the disputed ATS was executed on 06.07.1982).
- (v) The rent receipts issued by the Respondent to the Petitioner are also admitted between the parties. The said rent receipts duly bear the signatures of the Petitioner as the tenant and the Respondent as the owner.
- (vi) The house tax for the subject building is paid by the Respondent and this includes the house tax paid for the tenanted premises.

8.3. In the opinion of this Court, in view of the aforesaid admitted facts, the finding of the Trial Court with respect to the existence of landlord-tenant relationship between the parties is correct and does not suffer from any error.



8.4. In fact, the Petitioner in his leave to defend application has vehemently disputed that the Respondent is neither the owner nor the landlord of the tenanted premises. It is stated by the Petitioner that since late Smt. Bidhu Bala Barua was survived by the Respondent and his sisters, in the absence of letters of administration, the Respondent cannot claim ownership of the subject building and the tenanted premises therein.

8.5. In the opinion of this Court, the said plea raised by the Petitioner in the leave to defend is fallacious in view of the subsequent civil suit filed by the Petitioner herein seeking specific performance of the ATS dated 06.07.1982, wherein, the Petitioner has only impleaded the Respondent herein and not arrayed any of the daughters of late Smt. Bidhu Bala Barua. Therefore, the dispute raised with respect to the ownership of the Respondent in the eviction proceedings is false to the knowledge of the Petitioner. The Petitioner is liable to be saddled with costs for raising such false/frivolous pleas.

***ATS dated 06.07.1982 and Section 53A of TPA***

9. With respect to the ATS dated 06.07.1982 and Section 53A of the TPA, the Petitioner has made the following submissions: -

- (i) The total sale considerations reserved under the said ATS was ₹ 1,10,000/-.
- (ii) A payment of ₹ 81,000/- was made in cash, which is duly acknowledged in the said ATS.
- (iii) A further payment of ₹ 10,000/- was made in cash, six (6) years later to Mr. J.B. Barua and the receipt dated 25.07.1988 has been relied upon in support thereof.



- (iv) Mr. J.B. Barua died in the year 1992 and after his death Smt. Bidhu Bala Barua was depressed and she as well died on 13.01.1993 and therefore, sale deed could not be executed during her life time.
- (v) The rent for the tenanted premises was continued to be paid even after the execution of the ATS, till the month December 2014, since the entire sale consideration had not been paid.
- (vi) The balance payment of ₹ 19,000/- was paid with escalation in the month of May, 2015 to the Respondent towards inflation. An amount of ₹ 1,00,000/- was paid in cash, however, admittedly, no receipt was executed for this amount by the Respondent.

9.1. The Respondent has specifically denied the veracity of the ATS dated 06.07.1982 and the receipt dated 25.07.1988. He denies receipt of the alleged consideration said to be paid in cash in the month of May, 2015.

9.2. The aforesaid facts evidence that the existence of the ATS dated 06.07.1982 or the receipt dated 25.07.1988 is not admitted by the Respondent. The alleged payments towards sale consideration were also made in cash, which again is not admitted by the Respondent. These disputed facts will have to be established by the Petitioner in the Civil Court during trial and the same do not raise any *prima facie* case in favour of the Petitioner.

On the contrary, the Petitioner continued to admittedly make payments towards rent to late Smt. Bidhu Bala Barua during her life time and thereafter to the Respondent, admittedly till the month of December, 2014. The admitted fact, therefore, is that the Petitioner has continued to occupy the tenanted premises in his capacity as a tenant even after the execution of the alleged ATS dated 06.07.1982 and therefore, the character



of his possession of the tenanted premises as a tenant never changed to that of a proposed purchaser.

9.3. In these facts and circumstances, the Petitioner cannot place any reliance on Section 53A of the TPA, since the nature of his possession of the tenanted premises was always that of a tenant as is evident from the uninterrupted tender of rent from 1982 to 2014. This Court also finds no merit in the submission of the Petitioner that the tender of rent was towards the undivided portion of the tenanted premises equivalent to the unpaid sale consideration as the monthly rent amount which was ₹ 150/- prior to the execution of the disputed ATS remained the same for the subsequent period as well; as is evident from the rent receipts tabulated in the judgment. The rent receipt also do not make any distinction in the portion of the premises.

10. The contention of the Petitioner that he became the owner of the tenanted premises after the execution of the unregistered ATS dated 06.07.1982 has no basis in law. A plain textual reading of Section 54 of the TPA unequivocally states that an agreement to sell of an immovable property does not create any interest in the said property. The assertion of ownership by the Petitioner is, therefore, untenable in law and the Petitioner has only has a right to enforce the said agreement, if valid, in accordance with law. Section 54 of the TPA reads as under:-

*“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*

*Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*

*In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*



*Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*

***Contract for sale.***—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

***It does not, of itself, create any interest in or charge on such property.***

(Emphasis Supplied)

10.1. An immovable property can be legally and lawfully transferred only by a registered deed of conveyance as held by the Supreme Court in ***Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Anr., (2012) 1 SCC 656***. The relevant portion of the said judgment reads as under:-

*“24. We therefore reiterate that immovable property can be legally and lawfully transferred/ conveyed only by a **registered** deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in municipal or revenue records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered assignment of lease. It is time that an end is put to the pernicious practice of SA/GPA/will transactions known as GPA sales.”*

(Emphasis Supplied)

10.2. In this regard, the judgement of the Coordinate Bench of this Court in ***Jagdambey Builders Pvt. Ltd*** (supra) is also apposite and reads as under:-

*“17. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondent/plaintiff is found to have agreed to sell the property let out to the appellant to the appellant, the appellant/defendant would not get any right to occupy that property as an agreement purchaser. This Court in Jiwan Das v. Narain Das AIR 1981 Delhi 291 has held that in fact no rights enure to the agreement purchaser, not even after the passing of a*



*decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the appellant has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.*

*18. Section 53A of the Transfer of Property Act, 1882 codifies the doctrine of part performance. A purchaser of immovable property, who in pursuance to an agreement to sell in writing has been put into possession of the property, is entitled to so remain in possession. However, the writings relied upon by the appellant in this regard, even if were to be looked into (notwithstanding the contention of the counsel for the respondent that the same were not brought before the Trial Court), do not record the possession of the premises having been delivered to the appellant in pursuance to or in part performance of the agreement to sell. The writings do not even state that the appellant shall be entitled to continue in the premises free of rent as has been pleaded.*

(Emphasis Supplied)

10.3. In the opinion of this Court, the Trial Court has rightly concluded at paragraph 16 of the impugned eviction order that the Petitioner, tenant, cannot claim any right, title or interest in the tenanted premises on the basis of ATS dated 06.07.1982.

### ***The filing of the suit for specific performance after 32 years***

11. Another material fact which weighs against the reliance placed by the Petitioner on the unregistered ATS dated 06.07.1982 is the delay of 32 years in filing the suit for specific performance.

11.1. The Petitioner states that the cause of action for filing the civil suit for specific performance arose after he was served with a legal notice dated 20.07.2015 by the Respondent demanding arrears of rent followed by eviction petition filed under the DRC Act. The civil suit was filed on 03.11.2016, after the present eviction petition already stood filed on 06.10.2016.

11.2. The ATS is dated 06.07.1982 and Smt. Bidhu Bala Barua died on



19.01.1993, however, the civil suit was neither filed during her life time nor filed for 23 years after her death. The Petitioner continued to pay rent uninterruptedly from 1982 to 2014 and elected to file the civil suit only after an eviction petition was filed by the Respondent against him.

11.3. The payment of the sale consideration is said to have been made in cash, which is not admitted by the Respondent. The execution of the ATS itself is disputed by the Respondent. In these circumstances, as observed above there is no *prima facie* case made out in favour of the Petitioner and all these disputed facts will have to be established during the trial before the Civil Court.

11.4. Thus, in these facts no case has been made out by the Petitioner for grant of leave to defend or stay of the eviction proceedings to await the outcome of the civil suit. For these reasons, the reliance placed by the Petitioner on the judgement of the Division Bench in *Jai Singh Rana* (Supra) is not attracted in the facts of this case.

11.5. The reliance placed by the Petitioner on the judgement of the Supreme Court in *R. Kanthimathi and Anr. v. Beatrice Xavier, 2000 SCC OnLine SC 347*, is not attracted in the facts of this case. Unlike, in the present matter, the execution of the agreement to sell and receipt of part consideration was admitted between the parties in the said case. This is evident from paragraph '2' of the said judgement. Further, in the said case, the tenant therein did not continue to pay any further rent to the landlady after the execution of the agreement to sell. The paragraph 2 of the said judgment reads as under:-

*"2. The present appeal is by the tenant who received decree of eviction against him by the order of the trial court confirmed by the appellate authority and finally affirmed by the High Court. The respondent landlord*



*filed a suit for eviction on the ground of wilful default and also of committing an act of waste under Sections 10(2)(i) and 10(2)(iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. Her case is that though the tenant paid rent regularly up to March 1977, but thereafter did not pay rent regularly. But on request of the appellant tenant to the landlady she agreed to sell the disputed premises. As a consequence, the agreement of sale was executed on 4-5-1977. According to the landlady, a breach was committed by the appellants, hence she repudiated that agreement by returning the amount she received under it and then she filed a suit for eviction against the tenant. It is not in dispute that in terms of the said agreement, the total sale consideration was a sum of Rs. 25,000. Out of this, the tenant paid Rs. 20,000 to the landlady on the date of the agreement itself. The balance of Rs. 5000 remained to be paid on the date of registration of the sale deed.*

(Emphasis supplied)

11.6. The reliance placed by the Petitioner on the order dated 17.01.2018 passed by the Coordinate Bench in **Ran Singh v. Lilu Ram** (supra) is of no assistance to the Petitioner as it is evident that the said order was passed in the peculiar facts of that case. There is no discussion on the legal principles governing the eviction proceedings under Section 14(1)(e) of the DRC Act, in the circumstances, where the tenant has admittedly continued to pay the rent to the landlord even after execution of the alleged agreement to sell.

### ***Application for electric connection***

12. The Petitioner in support of ATS has also relied upon the fact that the electric connection in the tenanted premises stands in his name. This Court is not persuaded by the said fact as it is a matter of law and fact that a tenant is permitted to obtain an independent electric connection in the tenanted premises.

12.1. The Petitioner has also relied upon the fact that he has paid conversion charges to MCD for use of the tenanted premises for



commercial purposes. In this regard, he has placed reliance on affidavit filed with MCD on 29.06.2007. A perusal of the contents of the said affidavit does not reflect any assertion of the Petitioner with respect to the capacity in which the said affidavit was filed. The affidavit neither describes the Petitioner as an owner nor as a tenant. Further, the Petitioner in his own rejoinder to the leave to defend at paragraph 'K' has stated that payment of property taxes to MCD would not confirm any ownership rights on the tenderer. The relevant extract of the pleadings reads as under:-

*“.....However, it is well settled law that the person paying the tax, cannot give him the right of the ownership over the property, thus the Petitioner's mere claim that he is paying one or other tax, cannot make him legible to be the owner of Shop, so the story put by the Plaintiff is absolutely false and frivolous. All the allegations, averments, incidents and occasions as alleged by the Petitioner are false, frivolous and contrary to the fact. Reference be made in the preceding paras. The Respondent is reaffirming and relying on the grounds placed in the para no. K of the Application filed by the Respondent.”*

(Emphasis Supplied)

12.2. Thus, on the Petitioner's own showing the payment of charges/taxes to MCD cannot be sufficient to accept the Petitioner's claim of ownership. As held above, title in an immovable property can be acquired by a person only by a registered conveyance deed. The record of the statutory authorities providing essential and municipal services cannot confer ownership on a person who admittedly occupied the premises as a tenant.

13. The Petitioner has not challenged the Trial Court's findings on *bona fide* requirement of Respondent's son and absence of alternate accommodation before this Court during oral arguments. This is also evident from the written submissions filed on 15.05.2023. The challenge raised in the grounds of the revision petition on these findings was not



pressed and therefore, the said findings have become final.

14. The Supreme Court in the case of *Abid-ul-Islam v. Inder Sain Dua*, (2022) 6 SCC 30, has after discussing the law held that the scope of the revisional jurisdiction under Section 25B(8) of the DRC Act is limited. The relevant para 23 reads as under:

*“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”*

15. In view of the dicta of the Supreme Court, this Court is of the view that the pleas raised by the Petitioner herein do not merit any interference with the findings of the Trial Court as they do not suffer from any infirmity.

16. Accordingly, in view of the aforesaid discussion, this Court finds no merit in this revision petition, which is hereby dismissed and the eviction order dated 17.08.2022 is upheld. The pending applications, if any, are disposed of.

17. The eviction petition was filed by the Respondent on 06.10.2016 under Section 14(1)(e) read with Section 25-B of the DRC Act, which is intended for facilitating a speedy possession of the tenanted premises. However, in this case, the application for leave to defend itself was decided on 17.08.2022 i.e., after six (6) years. The statutory period of six (6) months granted by the Trial Court was due to expire on 17.02.2023 and the



Petitioner filed this revision petition at the eleventh hour, therefore, evidencing that the Petitioner is prolonging the eviction proceedings to the prejudice of the Respondent. In the application seeking leave to defend frivolous pleas disputing the title of the Respondent in the tenanted premises were raised to protract the proceedings. The frivolity of the said plea was exposed by the prayers sought in the civil suit for specific performance by the Petitioner against the Respondent. The present revision petition is, therefore, without any merits and dismissed with cost of ₹ 1,00,000/- payable to the Respondent within two (2) weeks. In case, the said costs are not paid, the Respondent will be entitled to recover the said costs in execution proceedings.

18. It is clarified that the findings returned with respect to the ATS dated 06.07.1982 is only for deciding the present revision petition as well as the correctness of the eviction order dated 17.08.2022 and will not bind the Civil Court, which will be at liberty to decide the civil suit for specific performance of the said ATS on its own merits and in accordance with law without being influenced by the findings in the present proceedings. The rights and contentions of the parties with respect to the ATS dated 06.07.1982 are to this extent left open.

**MANMEET PRITAM SINGH ARORA, J**  
**JULY 06, 2023/rhc/hp/aa/asb**