

* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 13th March, 2023
Pronounced on: 26th April, 2023

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RFA(OS) 7/2011 & CM APPL. 43534/2021

SHRI KRANTI ARORA

..... Appellant

Through: Mr. Rajiv Dutta, Senior Advocate
with Mr. Siddharth Dutta, Mr.
Armaan Verma and Mr. Harsh
Vardhan, Advocates

versus

M/S DIGJAM LTD.

..... Respondent

Through: Mr. Sanjiv K. Jha and Mr. Vikash
K. Singh, Advocates
Mr. Arjun Mitra, Advocate for
NDMC.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present appeal has been filed against the Judgment dated 07.12.2010, dismissing the suit of the plaintiff (*herein the appellant*) for recovery of possession and damages against the defendants (*herein the respondent*) in respect of property/flat bearing no. 12, situated at 3-4, South End Lane, New Delhi (*herein referred to as the suit property*).

2. The facts, as observed by the Ld. Single Judge, has been presented in the most convoluted manner but with some effort have been chronicled and are not in dispute. Briefly stated, Smt. Birender Amarjit Singh had

inducted M/s General Marketing & Manufacturing Company Ltd. (*hereinafter referred to as 'GMMCL'*) as a tenant in the property bearing no. 3-4, South End Lane, New Delhi in 1968. Subsequently, the owners decided for building and development of multi-storey Group Housing scheme in the property in question. Smt. Birender Amarjit Singh, the Land lady, entered into an Agreement dated 23.07.1971 in respect of the property in question with GMMCL. According to its Clause 9, the term of the Agreement was for 10 years. It read as under:

"9. This agreement will be valid for a period of 10 (Ten) years from the date the said flat in the proposed multi-storeyed building is handed over to the party hereto of the second part and thereafter will be renewable on terms and conditions as may be mutually agree."

3. Thereafter, Smt. Birender Amarjit Singh, Mr. Inder Vijay Singh, Ms. Tavleen Amarjit Singh and Ms. Uday Hardev Singh (collectively described as 'Singhs') entered into a Collaboration Agreement dated 08.09.1979 with M/s Kailash Nath & Associates for building and development of multi-storey Group Housing scheme in the property in question. The Agreement gave right to the Builder, Kailash Nath Associates to sell and dispose of residential flats after they were constructed.

4. Disputes arose about handing over of the flat in property in question in the Multi Storey Building in terms of 1971 Agreement and GMMCL initiated litigation which reached Supreme Court. The matter was eventually settled and Smt. Birender Amarjit entered into an Agreement dated 21.08.1984 with GMMCL (the tenant) on the basis of earlier Agreement dated 23.07.1971 and agreed that one flat of 1800 sq. ft.

situated on the first floor shall be given on rent by Smt. Birender Amarjit Singh to GMMC, and the possession of said flat shall be handed over within 10 days of grant of Completion Certificate for said building. This settlement was incorporated in the Order dated 25.09.1984 of Supreme Court.

5. In the meanwhile, GMMCL entered into a Deed of Assignment dated 30.11.1987 with O.P Khaitan (HUF) and assigned its rights in the suit premises to O.P Khaitan (HUF).

6. Thereafter, the appellant, Kranti Arora entered into a Tripartite Agreement dated 30.01.1989 with Singhs and partners of M/s Kailash Nath Associates for purchase of a flat admeasuring 2200 sq. ft which is the suit property and paid Rs. 6,90,000/- to Kailash Nath Associates towards the booking amount for a flat to be constructed in the proposed complex. Clause 15 of this Tripartite Agreement authorised the Singhs to handover the vacant and peaceful possession of the flat to GMMCL which would be deemed and treated as handing over of the peaceful possession to the plaintiff i.e. the buyer subject to the plaintiff having paid all the entire amount due to the sellers/Singhs and other authorities within the stipulated period. On 19.02.1990, the appellant paid a sum of Rs. 6,90,000/- vide Draft No. 683219 dated 19.02.1990 against the receipt issued by M/s. Kailash Nath Associates. The appellant also became member of Guari Apartments Society having his residence and being in occupation of flat bearing no. 12, 3-4 South End Lane, New Delhi. The flat was hypothecated by the appellant with New Bank of India which opened a loan account no. 533/38 in the name of appellant. On 31.05.1991, New Bank of India issued Letter dated 13.05.1991 in favour

of the appellant in regard to his request for deductions.

7. O.P Khaitan (HUF) filed an application bearing no. I.A. 1/1990 in Civil Appeals No. 2684-2685 of 1984 pending between GMMCL and the owners, before the Hon'ble Supreme Court. The appellant, Kranti Arora also filed an application for impleadment bearing no. 2/1990 in C.A No. 2684-2685 which was dismissed by the Hon'ble Supreme Court vide its Order dated 18.11.1992 by observing that no ground was found to allow the application.

8. Vide I.A. No. 3 & 4 of 1992, GMMCL again sought intervention of the Supreme Court to get the possession of the suit flat which was not handed over till then despite the settlement in 1984 on the ground that the Completion Certificate was not forth coming. Smt. Birender Amarjit Singh filed an Affidavit of Undertaking dated 11.09.1990 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 18.11.1992 in I.A. NO. 2/1990, 3-4/1992 and 5-6/1992, directed that the flat may be delivered in compliance of the earlier Order . On 05.12.1992 the peaceful possession of the flat was handed over to VXL Birla and accordingly, I.A. No. 3-4/1992 were disposed of vide order dated 08.12.1992.

9. The respondent thereafter preferred an application bearing S.R. NO. 2/1993 titled as *VXL India Ltd. Vs. Smt. Birinder Amarjit Singh and Others* before Additional Rent Controller for fixation of Standard Rent of the suit premises. The Additional Rent Controller fixed interim rent of Rs. 1300/- per month vide its Order dated 19.05.1995. The appellant herein challenged this Order of fixation of interim rent vide Appeal No. Nil/1995. The Additional Rent Control Tribunal observed that where the

relationship of landlord and tenant is disputed, no order for interim rent can be made and set aside the impugned Order dated 19.05.1995.

10. The Additional District Judge, New Delhi, in view of the Order made in S.R. No. 62/2001 dismissed the suit preferred by Shri. O.P. Khaitan (HUF) vide Order dated 29.07.2005. O.P. Khaitan (HUF) preferred an appeal bearing no. R.F.A No. 650/2005 which is pending for disposal in this Court.

11. Shri. O.P Khaitan (HUF) filed an application for impleadment under Order I Rule 10 of Code of Civil Procedure, 1908 before the Additional Rent Controller and the same was allowed vide Order dated 10.01.2001. The Order was challenged before the Rent Control Tribunal who vide its Order dated 24.07.2004 allowed the appeal and rejected the application of O.P Khaitan (HUF) for impleadment. Against the said Order, CM (M) No. 1433/2004 was preferred by O.P Khaitan (HUF) which is pending for final arguments.

12. In this checkered background, the appellant filed the present Civil Suit No. 1444A/1998 in July 1998 for possession and recovery of damages against the respondent in respect of suit property, claiming him to be a trespasser.

13. The respondent filed **its Written Statement** and also filed an application bearing no. I.A. 3185/1999 dated 18.03.1999 under Order VII Rule 11 and Section 151 of the Code of Civil Procedure read with Article 141 of Constitution of India for dismissal of the suit as not maintainable under Section 50 of the Delhi Rent Control Act, 1958. The application was dismissed by learned Single Judge vide its Order dated 16.05.2005.

14. The **respondents took the preliminary objection** in the written

Statement in regard to the non-joinder of Singhs and O.P. Khaitan (HUF) in the suit and also took an objection that the suit was barred under Section 50 of Delhi Rent Control Act, 1958. It was also averred that since the market value of the flat was about Rs. 1.5 Cr, the suit was not properly valued for the purpose of Court Fee and jurisdiction.

15. **On merits**, the respondents asserted that they are the tenants of the plaintiff. Their rights flow from the various Orders dated 21.08.1984, 18.11.1992, 02.12.1992 and 08.12.1992 of Hon'ble Supreme Court in Civil Appeal No. 2684/1985 titled as *DMMCL Vs. Smt. Birinder Amarjit Singh and Another* which clearly demonstrate that their possession is in the capacity of a tenant and is lawful. It is asserted that the plaintiff in collusion with Shri. O.P. Khaitan (HUF) had filed a suit bearing No. 9354/1995 claiming damages @ 85, 000 per month from the defendant as has been claimed in the present suit. One Mr. Ashwani Kumar has also filed a suit no. 4352/1992 claiming himself to be the owner of the flat and hence a question mark has been raised about the ownership of the plaintiff of the suit flat.

16. **In the replication**, the appellant had denied the contentions made by the defendant. It was reiterated that there was no relationship of landlord and tenant between the parties. The defendant was the trespasser and was having illegal possession, entitling the plaintiff to seek possession and also the mense profits.

17. **The issues were framed on 29.10.2001** which read as under:

"1. Whether in view of the orders dated 21.08.1984 and 18.11.1992 passed by the Hon 'ble Supreme Court in CA 2684-85/84, the present suit is maintainable ? If so, its effect?"

2. *Whether the plaintiff can claim title in respect of the undertaking dated 18.11.1992 filed by one Smt. Birinder Amarjit Singh in the Hon 'ble Supreme Court in CA 2684-85/84?*

3. *Whether the plaintiff has purchased and is the owner and in occupation and possession of the flat bearing no. situated at 3-4, South End Lane, New Delhi?*

4. *Whether the plaintiff has carried out massive renovation/reflooring/alterations in the suit flat out of his own resources? If so its effect?*

5. *Whether the defendant is a trespasser and has no legal right to continue in occupation?*

6. *Whether the defendant and one Shri. O.P Khaitan and one M/s General Marketing are in collusion with each other in depriving the plaintiff of his rightful legal rights in the property?*

7. *Whether the plaintiff is entitled to the relief claimed?*

8. *Relief."*

18. Though 8 issues as stated above were framed, however, *the plaintiff did not press Issue Nos. 2, 3, 4 and 6 in view of the admissions made by the defendant in the Written Statement. Accordingly, it was held vide Order dated 07.10.2010 that the Court is not required to give any findings on these issues.*

19. The plaintiff/appellant in support of his case examined **PW-1 Mr. Satish Bhalla**, ASG being the contractor engaged by the appellant for carrying out the renovation work. The plaintiff also examined **PW2 Mr. Sunil Mendiratta**, Clerk, Punjab National Bank, **PW3 Mr. Manmohan Sharma**, and **PW4 Mr. Ashok Kr. Gupta**.

20. The defendant/respondent in support of their case examined only one witness, namely **DW1 Mr. R.C. Tiwari**.

21. The name of the defendant from VXL Limited to Digjam Limited

was allowed to be amended vide Order dated 05.11.2008.

22. The learned Single Judge vide impugned Judgement dated 07.12.2010 on appreciation of the pleadings and the evidence, concluded that GMMCL was a tenant initially in the entire property i.e. South End Lane Plot. Smt. Birinder Amarjit Singh then entered in 1971 Agreement but subsequently tried to renege for which proceedings were initiated which reached the Hon'ble Supreme Court where a Settlement dated 21.08.1984 was arrived at whereby it was agreed that Smt. Birinder Amarjit Singh would hand over the suit flat admeasuring 1800 sq. yds. located on the first floor which was marked with the red colour in the building plan, to GMMCL or its successors or assignee. It was agreed that the rent of the flat would be the standard rent as determined by the learned ARC, Delhi. In addition, the tenant was given a right to sell, assign, transfer or part with the possession of the flat in favour of corporate body of firm.

23. GMMCL, in terms of the Agreement, assigned its rights in favour of O.P Khaitan (HUF) for a consideration sum of Rs. 5000/-. O.P Khaitan (HUF) sub let the flat to VXL Limited (*now Diagem ltd.*) on payment of security deposit of Rs. 18.50 Lakhs. The rent of the property was to be fixed by ARC.

24. The plaintiff entered into the picture in 1990 when he paid a sum of Rs. 11.50 lakhs to Kailash Nath Associates for purchase of suit flat.

25. It was further observed that the defendant/ respondent came into the possession pursuant to the Orders of the Hon'ble Supreme Court dated 08.12.1992 and therefore, the contention of the appellant that defendant is a trespasser and not in lawful possession of the flat in question, is contrary

to record. In the impugned judgement, Ld. Single Judge concluded that defendant was not a trespasser but was amenable to the jurisdiction of the Additional Rent Controller and the suit was barred under Section 50 of the Delhi Rent Control Act, 1958. In view of the findings of the suit being barred, all the other issues were dismissed and the suit was also dismissed vide Order dated 07.12.2010.

26. Aggrieved by the said judgement, the present appeal has been preferred.

27. **Learned counsel on behalf of the appellant has argued** that the learned Single Judge *vide* Order dated 16.05.2000 had taken into consideration the proceedings before the Rent Control Tribunal, Delhi and the Tribunal *vide* its Order dated 03.04.1998 held that the Rent Controller was not competent to pass the interim order under Section 10 of the Delhi Rent Control Act, because the condition precedent of the existence of the relationship of the landlord and tenant was under challenge.

28. The application under Order VII Rule 11 of the Code of Civil Procedure filed by the respondent claiming that the suit was not maintainable under Section 50 of the Delhi Rent Control Act, had been dismissed *vide* Order dated 16.05.2000. Since the issue of maintainability of this Suit had already been decided by the said Order, the same could not have been reconsidered in the impugned Judgement. Further, the learned Single Judge has failed to consider that the validity of the Agreement between the GMMCL and the original owner was for a period of 10 years, to be reckoned from of handing over the possession of the flat in the new complex by Smt. Birender Amarjeet Singh to GMMCL as mentioned in Clause 9 of the Agreement dated 23.07.1971 and thereafter

was renewable on terms and conditions to be mutually agreed between the parties. After the expiry of 10 years, the respondent became a trespasser, amenable to civil jurisdiction. The Agreement dated 23.07.1971 was the basic and fundamental Agreement from where the subsequent Agreements emanated which are to be read in totality. The GMMCL could not have passed on a better status to the present respondent, then what it itself held. The contention of the respondent (who is the assignee of GMMCL) claiming perpetual tenancy, is entirely erroneous and illegal and it amounts to nothing but grabbing of property.

29. The original tenant i.e., GMMCL's right to assign their tenancy rights, if at all, emanated from the Lease Agreement of the year 1968, but it ended when 1971 Agreement was entered in respect of new construction/ subsequent tenancy. Even though the respondent was in possession due to the order of the Supreme Court, their present status is that of a trespasser since the period of 10 years has expired, as any further continuation could have been only on terms of an Agreement which was to be mutually agreed between the parties in terms of the 1971 Agreement.

30. Lastly, the learned Single Judge has failed to take note of the fact that the Rent Control Tribunal had concluded by its Order dated 03.04.1998, while setting aside the Order dated 19.05.1995 passed by the Rent Controller fixing the interim Rent of Rs. 1300/- per month, that the Supreme Court never conferred permanent or irrevocable tenancy on the respondent. The said Order has also attained finality as the same was never challenged by the respondent. The parties had entered into a compromise on 21.08.1984 before the Supreme Court and the undertaking

was given subsequently which is a fall out of the original Agreement of 1971. The respondent cannot contend that they got the possession of the premises as tenants perpetually, because of the compromise entered in before the Supreme Court. The 1971 Agreement categorically incorporated the clause that the Agreement was valid only for 10 years and any further letting out could have been only on the terms mutually agreed between the parties.

31. Though the 1971 Agreement incorporated that the rent would be paid at the rate of Rs. 1300/- per month, but the final standard rent that was payable, was to be determined by the Rent Controller under the provisions of the Delhi Rent Control. It was argued that this further supplements the argument that while the respondent had been admitted as a tenant, the standard rent could be fixed only under the provisions of Delhi Rent Control Act. However, after the lapse of 10 years from the date when the Agreement came into existence, the respondent ceased to be a tenant, and no standard rent can be fixed by the Delhi Rent Control Act as has been decided by the Rent Control Tribunal in its Order dated 03.04.1998. After the completion of 10 years, the respondent is liable to pay the market rent for the period for which he has occupied the premises illegally after the expiry of the contemplated 10 years. Accordingly, the respondent is liable to vacate and hand over the possession of the suit property in the same manner as the Agreement of 1971 was got enforced by the Supreme Court against Smt. Birender Amarjeet Singh, the erstwhile landlady.

32. **Learned counsel on behalf of the respondent** has controverted the submissions made on behalf of the Appellant and argued that all the

aspects have been cogently and correctly appreciated in the impugned Judgment dated 07.12.2010. It is further submitted that in the impugned judgment, the learned Single Judge after considering the entire evidence rightly concluded that (i) the respondent is not a trespasser; (ii) suit filed by the plaintiff is not maintainable in view of the bar of Section 50 of the Delhi Rent Control Act; and (iii) the suit is hit by Section 50 of the Delhi Rent Control Act.

33. It was further argued that the 1971 Agreement was not acted upon and as such was substituted by 1984 Agreement on which the Supreme Court had passed its Order dated 21.08.1984 directing that in terms of the Agreement, standard rent shall be fixed by the Rent Controller considering the Agreement dated 23.07.1971. The 10-year clause of 1971 Agreement was not retained in the 1984 Agreement and no benefit of the same can be claimed by the plaintiff. The 10-year clause became inoperative and unenforceable and ceased to exist.

34. Pertinently, it is a settled law that the occupation of tenant in the premises governed by the Delhi Rent Control Act, would become unauthorized only after the tenant suffers an eviction order under the Rent Act and till then, he remains a protected tenant. There is no eviction order passed against the respondent till date and he continues to be protected as a tenant under the Rent Control Act.

35. It is further argued that Smt. Birender Amarjeet Singh, in whose shoes the appellant stepped in, could not have sold, transferred, assigned or sublet the flat without fulfilling the obligation of handing over a flat in terms of Clause 2 of the 1971 Agreement. Even the plaintiff has not claimed in the plaint that he had acquired the flat in dispute by virtue of

the 1971 Agreement.

36. The civil litigation was initiated by GMMCL, the erstwhile tenant, which reached up to the Supreme Court by virtue of Civil Appeal Nos. 2684-2685/1984. The landlady and the GMMCL entered into a fresh Agreement on 21.08.1984 before the Supreme Court and in terms of the Agreement, the Supreme Court directed that the litigation pending in the District Courts be disposed of in terms of the settlement dated 21.08.1984. The GMMCL in terms of the settlement, had assigned its right in favour of O.P. Khaitan, HUF through Karta, Shri O.P. Khaitan on 30.11.1987. Shri O.P. Khaitan, in turn, assigned his right to the respondent by executing various documents. It is argued that from the chain of events, it is evident that the respondent had stepped into the shoes of GMMCL. The proceedings and the orders of the Supreme Court would demonstrate that the suit property is governed by the Delhi Rent Control Act and the respondent is not a trespasser.

37. It is further argued that a tripartite Agreement dated 30.01.1989 was executed between Smt. Birender Amarjeet Singh, Kailash Nath & Associates and Kranti Arora, the appellant herein. This Tripartite Agreement narrated that the understanding as recorded in the 1984 Agreement which had got merged into the decree, but it nowhere mentioned that the flat had been handed over in terms of 1971 Agreement. The said Agreement was given effect in Civil Appeal Nos. 2684-85/1984 before the Supreme Court.

38. The respondent has argued that it had also filed a petition under Section 6 of Delhi Rent Control Act, 1956 bearing M. No. 11/09/93 and the learned ARC-ACJ-CCJ, Patiala House Courts, New Delhi after

appreciating the records, including the Agreements of 1971 and 1984 had determined the standard rent of the Suit Premises at Rs. 650/- per month *vide* Judgment dated 17.08.2015. The appellant herein had preferred an Appeal against the Judgment dated 17.08.2015 fixing the standard rent which is pending adjudication.

39. It is further argued that O.P. Khaitan (HUF) had also preferred the Civil Suit bearing No. 62/2001 which was decided *vide* Judgment dated 29.07.2005 by the Additional District Judge.

40. O.P. Khaitan (HUF) filed the RFA No. 650/2005 against the Judgment dated 29.07.2005 and the respondent herein also filed a cross-objection being CO No. 15767/2006 with regard to certain observations made by the Additional District Judge. The parties had arrived at a compromise and the appeal was disposed of on the Application under Order XXIII Rule 3 of CPC. The parties had primarily agreed to make endeavour to bring an end to RFA (OS) 7/2011. Subsequently, O.P. Khaitan (HUF) filed an application for impleadment in these proceedings.

41. It is argued that the appellant had submitted himself to the jurisdiction of the Rent Controller for fixation of standard rate and he cannot in the same breath allege that the rent laws are not applicable or that the Civil Court would have jurisdiction over the issues between the parties. It is further argued that whether 1971 Agreement got substituted and some of its clauses got subsumed in the Agreement of 1984 is a question of fact which cannot be undergone in the present proceedings as the suit premises are covered under the Delhi Rent Control Act. In the end, it is argued that Ld. Single Judge has rightly held that the present

suit is barred by Section 50 of Delhi Rent Control Act and has dismissed it. There is no merit in the present Appeal.

42. Submissions Heard.

43. The appellant herein had filed a suit for recovery of possession and damages in respect of the suit premises claiming that respondent is a trespasser. The respondent has taken the objection that since he is a tenant in the suit property, Civil Suit for possession is not maintainable, being barred under Section 50 of the Delhi Rent Control Act. The entire controversy revolves around the issue whether there exist a relationship of landlord-tenant between the parties and whether the provisions of Delhi Rent Control Act are applicable to the suit premises.

44. The facts in the present case are essentially, not in dispute. Admittedly, GMMCL (predecessor in interest of the respondent) was the original tenant who had been inducted in the property in question i.e. the premises No.3 Southend Road, New Delhi vide the first letter dated 05.07.1968 (as mentioned in 1971 Agreement) of the original Landlady Smt. Birender A. Singh. Thereafter, Smt. Birender A. Singh and other owners intended to raise a multi story construction on the premises in question and consequently GMMCL and Birender A. Singh entered into an Agreement dated 23.07.1971 Ex.A2 (hereinafter referred to as “1971 Agreement”). The relevant terms of the said Agreement were that GMMCL shall hand over the vacant possession of the property to Birender A. Singh on or before 31.07.1971. The construction on the said plot shall be completed by July, 1974 or earlier. The GMMCL would be entitled to get a flat on the ninth floor (on the swimming pool side) along with 1800 Sq. Ft. partitioned terrace on top with stairs to terrace from the

wall or from the dining room verandah having a floor area of approximately 3600 Sq. Ft. in the corner of the proposed multi story building *on a rent of Rs.1300/- per month*. It was further agreed that in case the possession of the flat was not handed over by July, 1974, the landlady shall pay a compensation @ Rs.2500/- per month to GMMCL. The Agreement further gave a right to the tenant to sub-let, assign or part with the possession of the suit premises to any other corporate body or firm with the only rider that in case the rent was charged more than Rs.1300/- then any additional tax liability shall be borne by the tenant. This Agreement was to remain valid for a period of ten years from the day from which the flat in the multi story building was handed over to the tenant and thereafter was renewable on terms and condition as may be mutually agreed.

45. Evidently, there was a novation of rent Agreement of 1968 by virtue of the 1971 Agreement and as agreed GMMCL, the erstwhile tenant handed over the property in question with an understanding that it would be re-inducted as a tenant in a flat so constructed in the high rise multi storey building, in terms of the 1971 Agreement. It is also not in dispute that after the multi storey building was constructed, disputes arose as the possession of the flat was not handed over to GMMCL which resulted in civil litigation which went up to the Supreme Court vide Civil Appeal No.2684-85/1984. While the litigation was pending, the parties arrived at a settlement which was recorded in the Agreement dated 21.08.1984 Ex.A3. According to this Agreement, a flat of 1800 Sq. Ft. on first floor (instead of ninth floor) was agreed to be given by the owners i.e. Smt. Birender Amarjeet Singh and others to GMMCL or to their

assignee, on a rent to be determined by the Rent Controller, Delhi under the Rent Control Act, 1958 taking into the account the Agreement dated 23.7.1971. The flat which was originally agreed to be on the 9th floor, was changed to the first floor as earmarked in red in the Building Plan. The possession of the flat was agreed to be handed over within ten days of receiving the Completion Certificate without waiting for fixation of standard rent. It was further agreed that pending adjudication of standard rent, the tenant shall continue to pay the interim rent as may be determined by the Rent Controller. The other litigation pending before the District Judge, Delhi was agreed to be disposed of in terms of the Agreement. This 1984 Agreement was presented before the Supreme Court which was accepted vide Order dated 25.09.1984.

46. This settlement was followed by another round of litigation as the Landlady, Smt. Birender Amarjit Singh again faltered in honouring the Agreement and failed to hand over the possession of suit flat apparently on the ground of Completion Certificate not forthcoming. Again, on the application of the erstwhile tenant, the Apex Court intervened and finally the possession was handed over on 05.12.1992.

47. The first line of argument of Ld. Counsel for the appellant is that because GMMCL got possession of the property on the directions of the Supreme Court, it was not inducted as a tenant. This argument is completely fallacious in the light of terms of Agreement of 1984 which referred that it was in continuation of the 1971 Agreement, on the basis on which the premises were eventually returned to GMMCL. It not only stipulated that the erstwhile tenant was being handed over the possession in reference to 1971 Agreement but also provided for the liability to pay

rent according to the standard rent to be fixed by the Rent Controller. Merely because the settlement was accepted before the Supreme Court, would not change the nature of possession which was that of a tenant.

48. It was further specifically stated in the two Agreements of 1971 and 1984 that the rate of rent shall be determined by the Rent Controller, Delhi. In fact, these aspects have not even been seriously disputed or contested by the plaintiff. The parties continued to be expressly governed by Delhi Rent Control Act.

49. The **second argument** is that in terms of 1971 Agreement, the period of induction was 10 years, and thereafter the terms were to be mutually agreed. The parties never agreed to mutually extend the Agreement. Consequently, on expiry of 10 years from the date of getting possession, the status of the respondent became that of a trespasser, liable to be evicted by virtue of a Civil Suit.

50. The protection of the rent laws is available not only to the contractual tenant but continues to be available even after the termination of tenancy which may happen due to express termination by Notice, efflux of time or breach of terms of tenancy. The tenant whose tenancy gets terminated continues to be a tenant by sufferance and is recognised as a “statutory tenant” entitled to the protection of rent law. Therefore, even if it is accepted that respondent’s term to continue in the premises had expired, it still continues to have protection of rent laws as statutory tenant and this protection continues till its eviction. The argument on behalf of the appellant that in the absence of renewal of tenancy terms after expiry of 10 years making the respondent as a trespasser is against the law and is not tenable.

51. By virtue of 1971 Agreement, admittedly GMMCL was given a right to assign, sub-let, transfer or part with the possession of the suit property to any other “Corporate Body” or “Firm”. Admittedly, GMMCL assigned its tenancy rights to O.P. Khaitan (HUF) who in turn assigned the rights to the present defendant i.e. VXL whose name has changed to Digjam Ltd. The respondent has acquired the possession of the suit property from GMMCL, which had a right to assign and it enjoys the same status as GMMCL which was in occupation of the suit premises in the capacity of a tenant. The appellant cannot claim any different status for the respondent.

52. Incidentally it may be observed that as per the 1971 Agreement, admittedly, the tenancy was assigned to O.P. Khaitan, (HUF) which is neither a Corporate Body nor a Firm. However, whether O.P. Khaitan(HUF) and thereafter the present respondent, was a lawful or an unlawful sub-tenant in terms of the 1971 Agreement, is not relevant for the determination of applicability of Section 50 of the Act to the present suit. We find that we need not go into this controversy because in either case, the eviction of the tenant, sub-tenant, legal or illegal, can be sought only under the Delhi Rent Control Act and not by way of present suit. .

53. We, therefore, agree with the findings of the learned Single Judge that defendant is in occupation of the premises through GMMCL which was a tenant. The rent of the property being less than Rs.3,500/-, the premises are covered by Delhi Rent Control Act and the present suit is not maintainable, being barred under Section 50 of the Delhi Rent Control Act.

54. An argument was advanced by the appellant that the same ground

for rejection of Suit was agitated in the application under OVII Rule 11 of C.P.C. at the initial stage which was rejected. Once an issue was determined, and has attained finality, it cannot be re-agitated at the final stage. This argument is based on misconception of law. The earlier Order under O VII Rule 11 C.P.C. was solely confined to the averments made in the plaint while an issue was specifically framed about maintainability of suit under Section 50 of Delhi Rent Control Act and after considering the evidence led by the parties, it has been found to be barred under S,50 of Delhi Rent Control Act. Ld Single Judge has rightly rejected this argument.

55. The other aspect for consideration is whether the plaintiff has a locus-standi to file the present suit. Though initially the status of plaintiff vis-a-vis the suit property was under a cloud, but in the pleadings it was admitted that Kranti Arora, the plaintiff was the landlord of the suit property. It is in evidence that Smt. Birinder Amarjeet Singh and other owners of the property intended to raise a multi storey building and consequently entered into an Agreement to Sell with the builder M/s Kailash Nath and Associates for raising the construction. Vide Agreement to Sell dated 30.01.1989 a tripartite Agreement between the original owners, the builder M/s Kailash Nath & Associates and Kranti Arora the plaintiff was entered into, wherein it was mentioned that Smt. Birinder Amarjeet Singh, Inder Vijay Singh, Ms. Tavleen Amarjit Singh and Ms. Uday Hardev Singh were the co-owners in the property in question and they had entered into the Agreement dated 08.09.1979 with M/s Kailash Nath & Associates for building the multi-storey building for Group Housing Scheme at the suit premises. Pursuant to the said

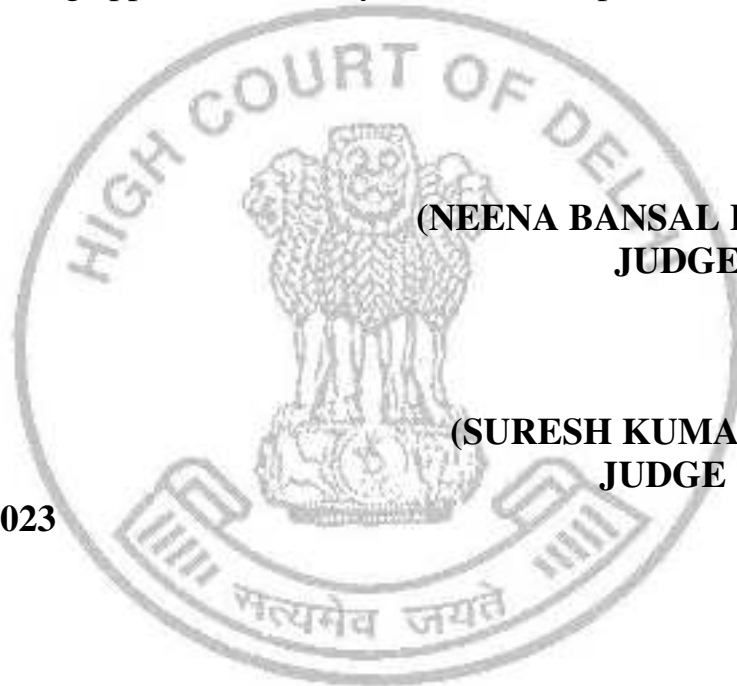
Agreement dated 08.07.1979, the requisite permissions were obtained. Subsequently, Kranti Arora the buyer, one of the third party to the Agreement to Sell dated 30.01.1989 agreed to purchase the residential flat No.12 on the first floor and a Garage No. NIL (which is the suit property) in the building that was under construction at that time. A reference was also made in that Agreement about the court Decree in the suit M/s GMMCL vs. Birinder Amarjeet Singh. It was indicated that original owners and the builders/ developers Kailash Nath & Associates having a joint share of ownership, M/s GMMCL was a tenant in the property in question which had filed a civil suit against the original owners/ landlord Smt. Birinder Amarjeet Singh for recovery of the vacant premises which was mutually settled in a compromise before Supreme Court on 21.08.1984 according to which the landlord had agreed to hand over Flat No.12 on the first floor to GMMCL within ten days of grant of Completion Certificate. It was also agreed that handing over of possession to the tenant would be deemed to be the possession of Kranti Arora. Furthermore, a separate Agreement was executed by the owners in favour of Kranti Arora the buyer in respect of sale of the suit property for the sale consideration of Rs.11,50,000/-. This Agreement, therefore, proves that the suit premises were sold by Smt. Birinder Amarjeet Singh to Shri Kranti Arora, who stepped into her shoes as a landlord and therefore, was entitled to seek the possession of the premises. We agree with the observations of the learned Single Judge that being the landlord, he had a right to file the suit for possession, but because the suit property came within the purview of Delhi Rent Control Act since the respondent was a tenant and rent was less than Rs.3500/-, he can seek possession only by

resorting to proceedings under the Delhi Rent Control Act and a suit for recovery of possession in a civil court is barred by Section 50 of the Delhi Rent Control Act.

56. We find no reason to interfere with the conclusions of holding the present suit for possession being barred by Section 50 of the Act and it is held that the suit has been rightly dismissed.

57. The appeal is accordingly dismissed.

58. The pending applications, if any, also stand disposed of.



(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

APRIL 26, 2023
PA/VA