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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 29th November, 2023***+ **RFA 92/2020**

SHRI RAMESH KUMAR CHALLIYA Appellant
Through: Mr. Sanjay Aggarwal and
Mr. Sandeep Singh Nainwal, Advocates
along with Appellant-in-person.

versus

SMT. LAXMI Respondent
Through: Mr. S.C. Arora, Advocate

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Present Regular First Appeal has been filed by the Appellant under Section 96 CPC assailing the impugned judgment and decree dated 03.10.2019 passed in Suit No.578482/2016, whereby the learned Trial Court has dismissed the suit filed by the Appellant. Appellant herein was the Plaintiff in the suit and Respondent was the Defendant and parties are hereinafter referred to by their litigating status before the Trial Court.

2. Factual narrative emerging from the appeal is that Plaintiff is the owner/landlord of premises bearing No.92, Sawan Park Extension, Ashok Vihar, Phase-III, Delhi ('suit property'), built upon 67 sq. yds. Plaintiff constructed the first and second floor upon the already constructed ground floor in 2011-12 with his own funds. On 01.06.2012, Defendant was inducted as a tenant in respect of a portion



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situated at first floor consisting of two rooms, one kitchen, common WC and lobby on a built-up area of approximately 35 sq. yds. Rate of rent was Rs.6500/- per month exclusive of electricity and water charges. Defendant also agreed to pay fixed electricity charge of Rs.500/- per month and water charge of Rs.300/- per month in addition to the rent. Tenancy is stated to be month-to-month starting from First day of English Calendar month and ending on the last day. Rent was payable in advance and admittedly the tenancy was oral as there was no written rent agreement between the parties.

3. On 01.06.2012, Defendant paid a sum of Rs.6500/- in cash to the Plaintiff as rent for the month of June, 2012 and entered the premises. Rent was also paid for the next month i.e. July, 2012 at the same rate of Rs.6500/-. Thereafter, Defendant stopped paying rent despite requests of the Plaintiff. However, intermittently Defendant paid electricity and water charges amounting to Rs.19,000/-.

4. On 21.04.2015, Defendant admitted that the rate of rent was Rs.6500/- per month and also admitted her liability to pay an outstanding amount of Rs.2,46,500/- towards arrears of rent and electricity and water charges upto 25.03.2015. A written document was executed by the Plaintiff detailing the amounts due as well as the rate of rent, which was duly signed by the Defendant and her husband Sh. Madan Lal Verma. As the Defendant continued to default in payment of rent, etc. and the outstandings increased to Rs.3,18,400/-, Plaintiff sent a legal notice to the Defendant on 06.05.2016 asking her to hand over physical and vacant possession of the premises on or before 31.05.2016 and pay the outstanding amount along with interest @ 9% per annum along with charges of the legal notice. Notice was



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served upon the Defendant on 07.05.2016 as per the tracking report of the speed post through which the notice was sent.

5. Despite receipt of notice to vacate and pay the outstandings, when Defendant did not vacate the tenanted premises and failed to pay the outstanding amount, Plaintiff filed a suit for possession, recovery of arrears of rent of Rs.2,99,000/-, recovery of arrears of electricity and water charges as well as damages/mesne profits @ Rs.6500/- per month against the Defendant on 04.06.2016. After the Defendant filed written statement and Plaintiff filed replication, the learned Trial Court settled the following issues on 28.07.2016 and adjourned the matter for evidence of the Plaintiff for 20.10.2016:-

“(i) Whether this Court has no jurisdiction to entertain this suit in view of preliminary objection no. 3? OPD.

(ii) Whether the suit does not disclose any cause of action? OPD.

(iii) Whether the plaintiff is entitled to a decree of possession against the defendant on the premises as shown as red in the site plan, as prayed? OPP.

(iv) Whether the defendant is in arrears of rent and arrears of electricity and water charges. If so, at what rate and for which period? OPP.

(v) Whether the plaintiff is entitled to damages/mesne profits @ Rs. 6500/- per month? OPP.

(vi) Relief.”

6. Matter was thereafter adjourned to 09.01.2017 on account of the death of the counsel for the Plaintiff. In the meantime, Plaintiff filed two applications, one under Order VI Rule 17 CPC for amendment of the plaint and the other under Order VII Rule 14(3) CPC, both of which were allowed by the Trial Court on 10.02.2017. Defendant filed her written statement to the amended plaint and an application was filed by the Plaintiff under Order XXXIX Rule 10 CPC and Order XV



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Rule 5 CPC. Plaintiff filed replication to the amended written statement on 19.04.2017.

7. On the statement of counsel for the Defendant, she was directed to clear the arrears of rent @ Rs.1000/- per month including arrears of electricity and water charges @ Rs.800/- per month with a further direction to continue paying at the said rate. Based on the amended plaint, two additional issues were framed by the Trial Court on 19.04.2017, as follows:-

“i) Whether the defendant is in arrears of rent & arrears of electricity & water charges, if so at what rate & for which period? OPP.

ii) Whether the plaintiff is entitled to damages/mesne profits @ Rs.6500/-per month? OPP.”

8. Both sides tendered evidence by way of affidavits. Plaintiff examined 03 witnesses i.e. himself as PW-1, Sh. Arvind Tiwari, one of his other tenant as PW-2 and Sh. B.N. Srivastava, handwriting and finger print expert as PW-3. During examination-in-chief, PW-1 exhibited (i) site plan (Ex.PW-1/1); (ii) handwritten document mentioning the rate of rent and outstanding amount signed by the parties (Ex.PW-1/2); (iii) legal notice dated 06.05.2016 (Ex.PW-1/3); (iv) postal receipts (Ex.PW-1/4 and Ex.PW-1/5); (v) report obtained through the internet evidencing service of notice on the Defendant (Ex.PW-1/6); and (vi) certificate under Section 65B of the Indian Evidence Act, 1872 (Ex.PW-1/7). PW-1 was cross-examined on 07.07.2017. He reiterated that the rate of rent was Rs.6500/- per month which was evident from Ex.PW-1/2 bearing the signatures of the Defendant and her husband. He denied the suggestion that the signatures of the Defendant and her husband on the said document



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were forged and fabricated. He also denied the suggestion that the rate of rent was Rs.1000/- per month or that he had received rent from the Defendant up to August, 2015. Suggestion by the Defendant that Plaintiff had falsely claimed the rent as Rs.6500/- per month or that he had filed a false suit, was also denied.

9. PW-2 exhibited, during the recording of examination-in-chief, rent agreement dated 25.09.2015 executed between him as a tenant and Plaintiff as a landlord (Ex.PW-2/2), which was objected to by the defence and PW-3 proved his report, photographs and CD which were collectively exhibited as Ex.PW-3/1. Both these witnesses were cross-examined by the Defendant, who also objected to Ex.PW-1/2. In his cross-examination, PW-2 stated that he was a graduate and had entered into the tenancy through a Rent Agreement executed on a stamp paper and attested by Notary Public. He further stated that the Rent Agreement was signed by witnesses and was duly entered by the Notary Public in the register. He denied the suggestion of the Defendant that he was deposing falsely at the instance of the Plaintiff. PW-3 in his cross-examination stated that he had an experience of 45 years as hand-writing expert. The suggestion given by the Defendant that he had prepared a false, fabricated and biased report, was denied. He also denied the suggestion that the disputed signatures were forged and fabricated or that he was deposing falsely.

10. Defendant appeared in the witness box as DW-1 and tendered evidence by way of an affidavit exhibited as Ex.DW-1/A. Additionally, in the examination-in-chief, Defendant exhibited (i) reply dated 11.08.2015 to the legal notice (Ex.DW-1/1); (ii) Postal receipt (Ex.DW-1/2); and (iii) registered envelope (Ex.DW-1/3,



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though already exhibited as Ex.PW-1/D-1). In cross-examination, DW-1 deposed that she spoke Hindi language and signs in Hindi and does not recognise the signatures of her husband. She admitted the landlord-tenant relationship between the Plaintiff and herself with respect to the suit property. She further deposed that prior to shifting to the suit premises, she was residing in a *jhuggi* but denied the suggestion of the Plaintiff that she was inducted as a tenant at a monthly rent of Rs.6500/- exclusive of other charges and that she had paid a sum of Rs.19,000/- towards electricity and water charges from time to time to the Plaintiff. DW-1 further deposed that she used to pay rent in cash in respect of the suit property by the 10th of every month in advance. The factum of Arvind Kumar Tiwari being a co-tenant in respect of one room at the first floor of the tenanted premises was admitted *albeit* the rate of rent @ Rs.3500/- paid by the said tenant was denied for want of knowledge. DW-1 admitted that PW-2 was inducted as a tenant after two months of her induction as a tenant in the suit property which statement was modified to state that he came as a tenant after one year. DW-1 further deposed that she was paying Rs.1000/- per month as rent but never took any receipts.

11. After considering the evidence on record and hearing arguments, the Trial Court decided issues No.(iii), (iv) and (v) in favour of the Defendant and against the Plaintiff. Insofar as issues No.(i) and (ii) were concerned, the Trial Court held that the onus of proof was on the Defendant, however, in view of the findings on the other issues, there was no need to adjudicate on these two issues and dismissed the suit of the Plaintiff.



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12. Addressing issues No.(iii), (iv) and (v), the learned Trial Court observed that the centrality of the case of the Plaintiff hovers around document Ex.PW-1/2, which according to the Plaintiff shows acknowledgement by the Defendant that she was a tenant in the demised premises at a monthly rent of Rs.6500/- starting from June, 2012. Analysing the said document, Trial Court rendered a finding that the document Ex.PW-1/2 was only a notice/information given to the Defendant showing the arrears of rent, water and electricity charges, etc. and could not be called an 'acknowledgement'. The other reasons to come to a finding against the Plaintiff qua this document were that: (a) if the tenancy has started on 01.06.2012, there was no occasion to draw up the letter as late as on 25.03.2015; (b) if the Defendant was in arrears soon after inception of the tenancy, Plaintiff should not have waited for three years to execute the document; (c) to constitute acknowledgement, there should be an unequivocal and unambiguous admission on the part of the Defendant reflected on the document; (d) Defendant had only signed in token of the receipt of the document and not as an acknowledgement of either arrears or rate of rent; (e) Plaintiff was unable to explain why the document was in two parts; and (f) even if the signatures were that of the Defendant, it could not be taken as acceptance of liability. Trial Court also reasoned that when the rate of rent was as high as Rs.6500/-, it was not understood why the Plaintiff waited to send a legal notice in 2016 when the default started from August, 2012. Insofar as the rent @ Rs.4100/- per month paid by PW-2 was concerned, Trial Court observed that the circumstances of two tenants cannot be equated. Another reason that weighed with the Trial Court was that when a



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person shifts from a *jhuggi* to a place at Sawan Park Extension, why would one give such a high rent for the suit premises. Finally, Trial Court came to a conclusion that the Plaintiff had failed to establish that Defendant was inducted as a tenant at a monthly rent of Rs.6500/- or that she was in arrears of rent and therefore, it would not be appropriate in the eyes of law to eject the Defendant from the premises in question. Significantly, on the issue of alleged forgery of the signatures, Trial Court held in favour of the Plaintiff that the signatures appearing on the Ex.PW-1/2 were that of Defendant and her husband and there was no occasion on the part of the Plaintiff to have forged the signatures *albeit* it must be mentioned that due to a typographical error, Ex.PW-1/2 has been erroneously mentioned as Ex.PW-1/1 in para 28 of the impugned judgment. Having so held, Trial Court however concluded that the document was only in the form of acknowledgement of notice and not in the form of acknowledgement of liability.

13. Issue No.(i) importantly concerned the jurisdiction of the Court to entertain the suit in view of the preliminary objection taken by the Defendant that the suit was barred under Section 50 of the Delhi Rent Control Act, 1958 ('DRC Act') since according to the Defendant, the rate of rent was Rs.1000/- per month i.e. below Rs.3500/-. In view of the findings on the aforesaid issues, Trial Court did not decide issue No.(i). On issue No.(iv), Trial Court observed that it would not be appropriate to delve on the issue as to what exactly could have been the rate of rent, which issue could be decided at the appropriate forum.

14. Being aggrieved, Plaintiff has preferred the present appeal. Learned counsel for the Plaintiff submits that judgment of the Trial



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Court is wholly perverse and deserves to be set aside. It is contended that in the document Ex.PW-1/2, which was duly signed by the Defendant and her husband, the rate of rent being Rs.6500/- per month was clearly stated, as also of the fact that there were outstanding amounts towards the Plaintiff on account of rent, water and electricity charges. No objection was ever raised by the Defendant to the execution or the contents of the said document until the filing of the written statement. In the legal notice dated 06.05.2016, also Plaintiff had stated that Defendant had admitted her liability to pay a sum of Rs.2,46,500/- towards arrears of rent/electricity/water charges upto 25.03.2015 and that the rent was Rs.6500/- per month and the document was signed by her and her husband. This notice was served upon the Defendant on 07.05.2016, which is evident from the tracking report of the speed post being Ex.PW-1/6, however, there was no rebuttal to this stand of the Plaintiff. In the same notice, Plaintiff had also stipulated the amounts paid by the Defendant intermittently towards electricity/water charges and delineated the outstandings. None of this was ever disputed by the Defendant till the present suit was filed and in response to which the written statement was filed.

15. It was further contended that the defence taken by the Defendant in the written statement in respect of Ex.PW-1/2 was that it is a forged and fabricated document and was never signed by her or her husband, which is totally contrary to the report of the handwriting expert. Since the Defendant was disputing her signatures on Ex.PW-1/2, Plaintiff moved an application under Sections 45 of Indian Evidence Act, 1872 and 75(e) CPC praying for sending the signatures of the Defendant on Ex.PW-1/2 to the Central Forensic Scientific



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Laboratory ('CFSL') for comparison. The application was allowed and Plaintiff was permitted to engage a handwriting expert for the said purpose. Report was submitted by the handwriting expert and he was also examined as PW-3. The expert clearly deposed that the disputed signatures of the Defendant marked as Q-1 and Q-2 matched with the signatures taken for comparison and therefore, there was evidence to show that the premises were let out to the Defendant @ Rs.6500/- per month giving jurisdiction to the Trial Court to entertain the suit and decree the suit for possession.

16. It was contended that the Trial Court has committed a grave error in not deciding the issue whether it had the jurisdiction to entertain the suit in view of the preliminary objection by the Defendant that the suit was barred under Section 50 of the DRC Act. It is a settled law that an issue settled with respect to the jurisdiction of a Court goes to the root of the matter and must be decided before entering upon merits of the case. Whether or not the Trial Court could entertain the suit depended on whether the suit premises were let out at a rent exceeding Rs.3,500/- in view of Section 50 of the DRC Act. However, the Trial Court decided the issues on merit and held that Plaintiff was unable to show that the rate of rent was Rs.6500/- per month and on this basis, erroneously further held that the issue of jurisdiction was not required to be adjudicated.

17. It was further contended that without prejudice to the aforesaid contention, the 12 reasons given by the Trial Court to dismiss the suit are wholly erroneous and based on mere presumptions of the Trial Court. It was observed by the Trial Court that there was delay in executing Ex.PW-1/2, without taking into account that admittedly,



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Defendant had made certain payments in between on 04.02.2013 and 25.03.2015 towards arrears of electricity and water charges and it is only thereafter that the necessity to execute the document arose. Trial Court has itself raised a presumption that Defendant had responded to the legal notice sent by the Plaintiff, which is factually incorrect since the letter sent by the Defendant was dated 11.08.2015 and could not be a reply or a rebuttal to a notice sent by the Plaintiff on 06.05.2016 i.e. on a subsequent date. The ground taken by the Trial Court to dismiss the suit that it is unbelievable and illogical that a person would shift from a *jhuggi* to a place where she would be required to pay much higher rent, is a mere conjecture. The question was not as to why and how the Defendant moved to the tenanted premises coming from a *jhuggi*, but the question was whether having taken the premises on rent and being in default, whether she was liable to vacate and hand over peaceful possession as well as pay the arrears of rent/water and electricity charges. This reasoning has weighed with the Court to dismiss the suit whereas the same was wholly irrelevant to the suit for possession and *mesne* profits. The observation also overlooks the admission of the Defendant in the written statement that she had paid rent and electricity and water charges till August, 2015.

18. It was further urged that the Trial Court has totally ignored and glossed over the evidence on record which pointed out to the fact that the rate of rent of the tenanted premises was Rs.6500/- per month. An additional issue was framed by the Trial Court on 19.04.2017 as to whether Defendant was in arrears of rent and if so, at what rate and despite this, no notice was taken of the extensive evidence led by the Plaintiff. Plaintiff examined himself as PW-1 and stated in the



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examination-in-chief that the rate of rent of the premises which were let out to the Defendant for residential purposes was Rs.6500/- per month, exclusive of electricity and water charges. It was further deposed that on 01.06.2012 and 01.07.2012, Defendant had paid a sum of Rs.6500/- as rentals for the two months i.e. June, 2012 and July, 2012. PW-1 proved the handwritten document in which the Defendant admitted her liability to pay the outstanding dues of rent and electricity and water charges upto 25.03.2015 as well as the rate of rent being Rs.6500/-. The document being Ex.PW-1/2 bears the signatures of the Defendant and her husband and was proved by PW-1. Additionally, PW-3, the handwriting expert deposed that the signatures on the said document matched the signatures of the Defendant, which demolished her only defence that the document was forged and fabricated. Therefore, while Plaintiff discharged the onus of proving that the premises were let out at the rent of Rs.6500/- per month, Defendant did not produce any evidence to establish her claim that the rate of rent was Rs.1000/-. In view of this overwhelming evidence, suit for possession could not be dismissed even on merits as in a suit for possession a landlord is only required to prove three parameters which can be culled out as: (a) relationship of landlord and tenant; (b) tenancy is not a protected tenancy under the DRC Act; and (c) tenancy has been terminated and tenant has failed to hand over possession. In the present case, each of the three ingredients were proved by the Plaintiff in as much as the landlord-tenant relationship was not disputed and rather admitted, since Defendant herself had taken a stand that electricity and water charges were paid for a certain period and more importantly, according to her, the rent was paid @



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Rs.1000/- per month. Insofar as the notice to terminate the tenancy is concerned, legal notice was sent to the Defendant and the postal receipts as well as service was proved. Plaintiff discharged the onus of proving that the rate of rent was Rs.6500/- and therefore it was established that the tenancy was not a protected tenancy. No contra evidence was brought by the Defendant.

19. Responding to the arguments of the Plaintiff, learned counsel for the Defendant urged that there is no merit in the appeal and the same should be dismissed as no error can be found in the judgment of the Trial Court. Defendant had taken a categorical objection to the jurisdiction of the Trial Court to entertain the present suit as the rate of rent of the premises was Rs.1000/- per month and the tenancy was thus protected giving jurisdiction only to the Rent Controller to entertain the suit in view of the bar under Section 50 of the DRC Act. It was denied that the rent of the premises was Rs.6500/- as alleged by the Plaintiff, since the parties had agreed that the rate of rent was Rs.1000/- per month with electricity charges @ Rs.10/- per unit, as Defendant's family was a very small family and there was hardly any use of electricity. No written tenancy agreement was executed between the parties, which would substantiate the false stand of the Plaintiff that the rent was Rs.6500/-.

20. It was further argued that in order to substantiate his false stand that the rate of rent was Rs.6500/-, Plaintiff forged and fabricated a handwritten document Ex.PW-1/2 claiming that the signatures on the document were that of the Defendant and her husband. The document itself shows that it was fabricated and the dates on the same are apparently tampered to create jurisdiction in the Trial Court and



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extract money from the Defendant. When the parties had agreed to the rent @ Rs.1000/- per month, there was no reason why the Defendant and her husband would have signed the handwritten document mentioning a higher rate of rent or admitting liability to pay any outstanding amount. In fact, it was the Plaintiff who was shying away from executing a rent agreement or issuing the rent receipts to the Defendant despite her repeated requests, so that he could create a false case. The opinion of the handwriting expert heavily relied upon by the Plaintiff is of no consequence as at the highest, it is only an opinion and advisory in nature and cannot bind the Trial Court.

21. Defendant was living in a *jhuggi* prior to moving to the tenanted premises at a meagre rent and it was not within her means to pay a rent of Rs.6500/- per month and thus it was only logical for the Trial Court to presume that no person would move to a premises for which he or she cannot afford the rent. Trial Court has correctly held that the rent of Rs.4100/- per month payable by another tenant in the adjoining portion of the suit premises is irrelevant as the circumstances of DW-2 cannot be equated with the circumstances of the Defendant. Trial Court has also disbelieved the case of the Plaintiff that the rent was Rs.6500/- and rightly so on the ground that it was not understood why the Plaintiff waited for over 3 years to send a legal notice if the Defendant was in arrears of such a high rate of rent and moreover, Defendant had signed the document Ex.PW-1/2 more in token of the receipt of the document rather than acknowledgement of either arrears or rate of rent and the signatures cannot be construed as token of acceptance of liability. Trial Court also rightly took cognizance of the



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fact that in the reply dated 11.08.2015 to the legal notice of the Plaintiff, Defendant had clarified her stand.

22. I have heard learned counsels for the parties and examined their contentions.

23. The points that arise for determination before this Court in the present appeal are: (a) whether the suit was maintainable in view of the preliminary objection raised by the Defendant under Section 50 of the DRC Act; (b) whether the Plaintiff was entitled to decree of possession against the Defendant in respect of the suit property; (c) whether the Defendant was in arrears of rent and water and electricity charges and whether the Plaintiff is entitled to damages/mesne profits and if so, at what rate.

24. Having carefully examined the impugned judgment, the pleadings and the evidence on record and heard the counsels for the parties, this Court is of the view that the present case is a text book case of assumptions, presumptions and conjectures drawn by the Trial Court besides ignoring the evidence on record and rendering findings in favour of the Defendant beyond the case set up by the Defendant in the written statement and the amended written statement. There are apparent errors in the impugned judgment besides a glaring illegality in failing to adjudicate the preliminary issue of jurisdiction in light of findings rendered on merits and thereby following a procedure unknown to law. This Court has come to the said conclusion for reasons that follow hereinafter.

25. Indisputably, the suit from which the present appeal arises was a suit for possession filed by the Plaintiff along with relief of recovery of arrears of rent etc. and damages/mesne profits. It is no longer *res*



integra that in order to seek a decree of possession against a tenant, landlord is required to fulfil three parameters, which can be culled out as: (i) Relationship of landlord and tenant; (ii) Tenancy is not a protected tenancy under the DRC Act; and (iii) Tenancy has been terminated and the Defendant tenant has failed to hand over possession.

26. In this context, I may refer to the judgment of Supreme Court in ***Payal Vision Limited v. Radhika Choudhary, (2012) 11 SCC 405***, relevant paras of which are as follows:-

“7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act.....”

27. The case of the Plaintiff is, therefore, to be tested on the touchstone of the three parameters laid down by the Supreme Court in ***Payal Vision Limited (supra)***. Insofar as two parameters, i.e. landlord-tenant relationship and notice of termination are concerned, these need not detain this Court as it is admitted by the Defendant that the Plaintiff is the owner/landlord of the suit premises and she was inducted as a tenant. Receipt of legal notice on 07.05.2016 terminating the tenancy and seeking possession as well as arrears of rent etc. is also admitted. In fact, this clearly finds mention in paragraph 22 of the impugned judgment, which is extracted hereunder for ready reference:-

“22. In her cross examination, DW1 has admitted her tenancy and has further stated that she used to reside in a jhuggi before shifting to the tenanted premises. She has further admitted that she was residing at House No. 17, Harijan Colony, Sawan Park, Delhi, as a tenant, but she denied the suggestion that she used to pay the rent @



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Rs. 3000/- (rupees three thousand only) per month as rent for that house. She has further admitted that after vacating the said jhuggi she became the tenant in the property. DW1 has further stated in the cross examination that she used to pay the rent in cash in respect of the tenanted by 10th day of every month in advance. She has further stated in her cross examination that at present there are four other tenants in the building and when she became the tenant in the said property there was no other tenant in the entire building. She has admitted that Virender Kumar Singh is a tenant at the ground floor, but she does not know that he is paying Rs. 3500/- (rupees three thousand five hundred only) per month as rent. She has further admitted that Arvind Kumar Tiwari is a tenant in respect of one room situated at the first floor adjoining her tenanted premises, but she does not know if he is paying Rs. 3500/- (rupees three thousand five hundred only) per month to the plaintiff as rent. She has further admitted that she had paid Rs. 4000/- (rupees four thousand only) to the plaintiff towards electricity charges on 04.02.2013, but she does not remember whether she had paid Rs. 5000/- (rupees five thousand only) to the plaintiff towards electricity charges on 21.04.2013. She has further stated in her cross examination that whenever the plaintiff used to ask she used to make the payment of electricity charges to him. She has further admitted that she had made payment of Rs. 5000/- (rupees five thousand only) and Rs. 3000/- (rupees three thousand only) on various dates to the plaintiff regarding electricity and water charges. She has denied the suggestion that she has paid the rent @ Rs. 6500/- (rupees six thousand five hundred only) per month w.e.f. July 2012 and has admitted that she had received the legal notice on 07.05.2016. She has further stated that Ex. DW1/1 is the copy of reply which was sent by her through her Counsel."

28. Therefore, the only thing at this stage that needs to be examined is whether the tenancy was a protected tenancy under the DRC Act. In this context, at the cost of repetition, it needs to be stated that Defendant had raised a preliminary objection that the suit was barred under Section 50 of the DRC Act and Court had settled an issue on the jurisdiction *albeit* as noted above, this issue was not directly adjudicated upon. Section 50 of the DRC Act bars jurisdiction of Civil Courts in respect of certain matters, which includes civil suits for eviction of tenants from premises fetching rent below Rs.3500/- per



month by virtue of Clause (c) of Section 3 of the Act. The moot question that thus arises is whether the Plaintiff had let out the suit premises to the Defendant at a rent exceeding Rs.3500/- per month or below the said amount.

29. Trial Court has come to a finding that the Plaintiff failed to prove that the premises was rented out at a rent of Rs.6500/- based on 12 reasons, which find mention in paragraphs 24 to 26 of the judgment and are extracted hereunder:-

*“24. From Ex. PW1/2, it clearly emerges **firstly** that primarily it is in the form of notice given to the defendant showing the arrears of rent, water and electricity charges etc. By Ex. PW1/2, the plaintiff is trying to bring to the notice of the defendant and her husband that they were inducted as a tenant in the year 2012 and till 2014 and that they are in arrears of rent including water and electricity charges to the tune of Rs. 1,98,700/- (rupees one lac ninety eight thousand seven hundred only).*

*25. **Secondly**, Ex. PW1/2 is in two parts, one part is till 28.10.2014 which is written underneath the signatures of the plaintiff and the second till 25.03.2015 which is also written under the signatures of the plaintiff. From Ex. PW1/2, it is clearly reflected that it is only in the form of information given to the defendant and her husband regarding the rate of rent and the arrears of rent etc.*

*26. The aforesaid document cannot be called as an acknowledgment on the part of the defendant for the reasons **firstly** it emerges from Ex. PW1/2 that, as observed above, it is only in the form of notice to the defendant and no-where the defendant has acknowledged either the arrears of rent or the rate of rent. **Secondly**, what was the occasion to draw this letter as late as on 25.03.2015 when according to the plaintiff the tenancy in question started as far as back as on 01.06.2012. **Thirdly**, if the defendant fell in arrears soon-after the inception of the tenancy in question, the plaintiff was well within his rights to have terminated the tenancy there itself in the year 2012 and should not have waited for as much a longer period of three years for drawing Ex. PW1/2. **Fourthly**, had Ex. PW1/2 been a piece of acknowledgment, there should have been unequivocal and unambiguous admission/statement on the part of the defendant which should have been reflected in the said document. **Fifthly**, it appears that the defendant had signed the same in token of receipt of the document and not as an acknowledgment of either arrears of rent or the rate of rent. **Sixthly**, why Ex. PW1/2 is in two parts first ending on 28.10.2014 and then moves on to*



25.03.2015, this has not been explained by the plaintiff at all. **Seventhly**, Ex. PW1/2 reflects suo moto drawn facts of the matter which cannot be construed as an admission of the facts by the defendant. **Eighthly**, even if the signatures appearing on Ex. PW1/2 are that of the defendant, the same cannot be treated and termed as signed in "token of acceptance of liability". **Ninthly**, Ex. DW1/1 i.e. the reply dated 11.08.2015 to the legal notice was written prior to the legal notice Ex. PW1/3 got issued by the plaintiff. **Tenthly**, when according to the plaintiff, the defendant had paid the rent only for two months i.e. for June 2012 and July 2012 then why legal notice was sent as late as on 06.05.2016. For the sake of arguments, it can be said that when the rate of rent was as high as Rs. 6500/- (rupees six thousand five hundred only) per month why the plaintiff has waited for so long to have asked for the arrears of rent so belatedly. The plaintiff could have immediately shot a legal notice to the defendant asking for arrears of rent etc. It appears that the legal notice sent by the plaintiff is prompted by the legal notice sent by the defendant which is earlier in time. **Eleventhly**, when a person is shifting from jhuggi to a place at Sawan Park Extension, Ashok Vihar, Phase-3, Delhi, why would one give such a high rent for the present place. **Twelvethly**, it sounds to reason that PW2 Arvind Tiwari had taken premises on rent @ Rs. 4100/- per month commencing from 25.09.2015. The circumstances of PW2 cannot be equated with the circumstances of the defendant herein. It cannot be said that under all circumstances the rate of rent would be same or more in comparison with the rate of rent between the plaintiff and PW2 Arvind Tiwari."

30. *Albeit*, each of the reasons enumerated in the aforementioned paragraphs are based on mere assumptions and conjectures which shall be adverted to in the later part of the judgment, the most glaring error committed by the Trial Court that it has completely glossed over the defence taken by the Defendant in the written statement. Perusal of the written statement shows that the Defendant does not dispute the landlord-tenant relationship and/or receipt of the termination notice. It is the case of the Defendant that the tenancy was from 15th day of each English calendar month and the rate of rent was Rs.1000/- per month and not Rs.6500/-. In response to the categorical stand taken by the Plaintiff that the Defendant had admitted the rate of rent being



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written document along with her husband i.e. Ex.PW-1/2, the Defendant denied having signed on the handwritten document alleging that the signatures were forged and fabricated. In light of this stand in the written statement, Plaintiff preferred an application under Section 45 of the Indian Evidence Act, 1872 and Section 75(e) CPC for sending the signatures of the Defendant on the said document to the CFSL for examination. Upon the application being allowed, a handwriting expert was engaged, who submitted his report opining that the disputed signatures of the Defendant in Hindi on Ex.PW-1/2 marked as Q1 and Q2 matched with the signatures on documents A-1 to A-36 sent for comparison. The handwriting expert was also examined by the Plaintiff as PW-3, who tendered his evidence by way of affidavit and stated that he had 45 years of experience as handwriting and fingerprints expert and had so far given opinion/evidence in around 4000 cases in different Courts. PW-3 exhibited his report which has been placed on record. Nothing material was elicited in the cross-examination by the Defendant, save and except, suggestions that the report was false and fabricated and that PW-3 was deposing falsely, which suggestions were denied by PW-3. Significantly, the Trial Court has rendered a finding on this in favour of the Plaintiff in paragraph 28 of the judgment holding that the signatures are that of the Defendant and her husband and there was no occasion on the part of the Plaintiff to have forged and fabricated these signatures. Once the limited defence raised in the written statement was that the signatures on Ex.PW-1/2 were forged and this issue was decided in favour of the Plaintiff premised on the evidence of a handwriting expert, there was no reason for the Trial Court to



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have gone beyond the defence to analyse if the signatures were in acknowledgement of the notice or liability and/or contents of the notice. This exercise by the Trial Court is beyond the pleadings of the Defendant as also contrary to the law on the subject. This issue arose before the Supreme Court in the case of ***Rao Saheb v. Rangnath Gopalrao Kawathekar (Dead by L.Rs.) and Others, (1972) 4 SCC 181***. The question that fell for consideration before the Supreme Court was whether the suit properties fell to the share of the first Defendant or the second Defendant. It was pleaded in the plaint that the second Defendant had specifically admitted in a document executed by him that the suit properties were in the exclusive ownership of his brother and he had no right on the same. In the written statement, second Defendant pleaded that the deed in question was a forgery and he had not executed it. Both the Trial Court and the First Appellate Court rejected the plea of the second Defendant. In an appeal before the Supreme Court, contention of the Appellant was that when the execution of a document is denied, the party seeking to prove that document must not only prove that the alleged executant has signed that deed, but he must also prove that the executant has signed the same with knowledge of its contents. Rejecting the contention, the Supreme Court held that what facts and circumstances have to be established to prove the execution of a document depend on the pleas put forward. If the only plea taken is that the executant has not signed the document and the same is a forgery, party seeking to prove the execution of the document need not adduce evidence to show that party who signed the document knew the contents of the document. Ordinarily, no one is expected to sign a document without knowing its



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contents but only when it is pleaded that the party who signed the document did not know the contents, then it may in certain circumstances be necessary for the party seeking to prove the document to place material before the Court to satisfy that the party who signed the document had knowledge of its contents. In the present case, there is no pleading that the Defendant was unaware of the contents of Ex.PW-1/2 and the only pleading is that the signatures of the Defendant and her husband were forged on the said document. The Trial Court is, therefore, gravely erred in its reasoning that the signature was in token of receipt of the document and not an acknowledgement of the rate or arrears of rent as the contents were never disputed. For ready reference, English translation of Ex.PW-1/2 which is in Hindi is scanned and placed hereunder:-

NECESSARY INFORMATION

I, Ramesh Kumar Walia (R.K. Walia) son of Shri Amar Singh Walia do wish to inform you to Shri Madan Lal son of Late Aman Varma and Smt. Laxmi alias Leela wife of Shri Madan Lal as house owner of 92 Sawan Park, Extension.

You on 01.06.2012 i.e. 01st of June, 2012 had admitted to give Rs.6,500/- (*Rupees Six Thousand Five Hundred Only*) per month towards rent of two rooms, one kitchen and toilet and bathroom at first floor of house of 92 Sawan Park Extension and electricity expenses of both rooms as per reading of the sub meter according to the bill of Tata Distribution Ltd. and Water expenses Rs.250/- per month and meter expenses of Rs.150/- per month with the calculation of per room.

Description of payable amount towards house rent, electricity and water expenses since your arrival in this house as tenant on 01.06.2012 to till the date has been shown as under:-

Signature Not Verified

Digitally Signed
By: KAMAL KUMAR
Signing Date: 01.12.2023
16:38:27

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Date/ Month/ Year	Rent	Electricity Expenses	Payable amount of Water	Expenditure of Water Meter
June, 2012	Rs.6500/-	X	X	X
July, 2012	Rs.6500/-	X	X	X
August 2012 to December 2012	X	X	X	X
January 2013 to March 2013	X	X	X	X
On 21 st April, 2013	X	Rs.5000/-	X	X
May 2013 to January 2014	X	X	X	X
On 05 th of February, 2014	X	Rs.4000/-	X	X
March, 2014 to July, 2014	X	X	X	X
On 14 th of August & 18 th of August	X	Rs.3000/- + Rs.2000/-	X	X
September 2014 to 31.10.2014	X	X	X	X

August, 2012 to

Balance tenancy amount:- December, 2012 @ 5 x
6500 = Rs.32,500/-

From 01st January, 2013 12 x 6500 = Rs.78,000/-
to 31st December, 2013

From 01st January, 2014 10 x 6500 = Rs.65,000/-
to 31st December, 2014

Balance amount of Water 29 x 500 = Rs.14,500/-

Amount of Water Meter 29 x 300 = Rs.8,700/-

Total Balance Amount Rs.1,98,700/-

Balance amount of 29 x 1000 = 28300 -
Electricity 15500 = Rs.12,800/-

Hence, you are requested to make immediate
payment of Rs.2,11,500/- (Rupees Two Lacs Eleven
Thousand Five Hundred Only) towards the balance
rent, electricity and water charges.

Signature Not Verified

Digitally Signed
By: KAMAL KUMAR
Signing Date: 01.12.2023
16:38:27

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Sd/-	Sd/- House Owner
Shri Madan Lal	Ramesh Kumar Walia
Smt. Laxmi alias Leela	S/o Amar Singh Walia
W/o Shri Madan Lal	92, Sawan Park Extn.
	Delhi-52

On 25.03.2015 only partly payment of electricity bill
28/10 to 25/03/14 Bal. Amt. of Water 5x500 = 2500
Amount of Water Meter - 5x 300 = 1500
Electricity Amount 5 x 500 = 2500
Total = 6500 + 211500 = Rs.218000
5 x 6500 + Rent = Rs.31,500
Upto March, 2015 Rs.2,49,500/-
Received on 25.03.2015 Rs.3000/-

Sd/-
25.03.2015
Balance = Rs.2,46,500/-

Electricity part payment paid on 21.04.15 Rs.2000/-

Sd/-
25.03.2015
LAXMI

31. From a reading of Ex.PW-1/2, it is clear that what the Plaintiff had endorsed therein was that the suit premises was taken on rent by the Defendant at a rent of Rs.6500/- per month with electricity expenses to be assessed on the basis of meter reading in accordance with bill issued by Tata Power Distribution Limited and water expenses of Rs.300/- per month. The document also details the



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amounts outstanding towards the Plaintiff and in view of the finding that the signatures of the Defendant were not forged, Plaintiff has clearly established that the rate of rent at which the suit premises was let out to the Defendant was Rs.6500/- per month and thus the tenancy was not a protected tenancy disentitling the Trial Court to exercise jurisdiction to entertain the suit.

32. There is another aspect of the matter which the Trial Court has erred to notice. After the Defendant failed to pay the agreed rent and/or vacate the suit property and the defaults continued, Plaintiff sent a legal notice to the Defendant on 06.05.2016 asking her to hand over physical and vacant possession on or before 31.05.2016 and pay the outstanding amount. Receipt of the legal notice on 07.05.2016 was admitted by the Defendant and this is noted by the Trial Court in paragraph 22 of the impugned judgment, which has been extracted above. Reading of the legal notice shows that Plaintiff had categorically stated that Defendant was inducted in the suit property at a monthly rent of Rs.6500/- excluding electricity and water charges and the rent was payable in advance. It was also asserted that sum of Rs.6500/- towards rent was only paid for the months of June and July, 2012. Paragraph 9 of the notice contains an assertion that Defendant admitted her liability and acknowledged that a sum of Rs.2,46,500/- was due towards arrears of rent/electricity/water charges upto 25.03.2015 and had executed documents on which both she and her husband had signed. Defendant elected and chose not to respond to the notice and thus it can be legally and factually inferred that Defendant accepted the rate of rent as well as her liabilities. In ***Kalu Ram v. Sita Ram, 1980 RLR (Note)***, the Court held that if no response is given to



the legal notice, adverse presumption will be drawn. Relevant paragraph is as follows:-

“It was held that the plaintiff before filing suit had served defendant with a notice making serious allegations that defendant was a trespasser and that his possession was illegal. Defendant did not refute these charges and remained silent by ignoring to reply the notice. Silence showed that he had nothing to deny and hence it was a fit case for raising adverse presumption. Besides the defendant also failed to prove the two contentions that he had raised. There is nothing on record to support the pleas that he had taken. His appeal is without force. The appeal of the plaintiff is supported by the provisions of O. 20 R. 12, CPC and trial court should have ordered mesne profits till the delivery of possession. Plaintiff is held entitled to same.”

(Emphasis supplied)

33. The judgment of the Division Bench of this Court in ***Metropolis Travels & Resorts (I) Pvt. Ltd. v. Sumit Kalra & Anr., 2002 SCC OnLine Del 521***, is also relevant in this context and relevant paragraph is as follows:-

“13. There is another aspect of the matter which negates the argument of the respondent and that is that the appellant served a legal notice on the respondent vide Ex. PW-1/3. No reply to the same was given by the respondent. But inspite of the same no adverse inference was drawn against the respondent. This Court in the case of Kalu Ram v. Sita Ram, 1980 RLR (Note) 44 observed that service of notice having been admitted without reservation and that having not been replied in that eventually adverse inference should be drawn because he kept quiet over the notice and did not send any reply. Observations of Kalu Ram's case (Supra) apply on all force to the facts of this case. In the case in hand also despite receipt of notice respondent did not care to reply nor refuted the averments of demand of the amount on the basis of the invoices/bills in question. But the learned Trial Court failed to draw inference against the respondent.”

34. Therefore, the Trial Court has completely erred in holding that the Plaintiff failed to discharge the onus that the agreed rate of rent with regard to the suit premises was Rs.6500/-. The suit has been thus wrongly dismissed *albeit* it be noted at the cost of repetition that



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despite framing an issue on the maintainability under Section 50 of DRC Act, the Trial Court erroneously declined to adjudicate the issue separately, in view of its findings on merits.

35. I may also pen down after reading of the judgment in its entirety that substantial part of the judgment is primarily on conjectures and presumptions drawn by the learned Trial Court and that too rendering findings beyond the pleaded case of the parties. Factors that have weighed with the Trial Court to hold against the Plaintiff, erroneously, were that there was no occasion for the Plaintiff to wait till 2015 when the default took place in 2012; if the Defendant had paid rent only for two months in June and July, 2012, why was the legal notice sent as late as on 06.05.2016; why would a person shift from a *jhuggi* to a place of high rent, etc., which to my mind, were wholly irrelevant to the issue in question, both legally and factually, besides the fact that none of these defences were even pleaded by the Defendant. It is a settled law that the Trial Court cannot travel outside the defence pleaded by a party in the written statement and I may allude to a judgment in ***Shivaji Balaram Haibatti v. Avinash Maruthi Pawar, (2018) 11 SCC 652***, wherein the Supreme Court held as follows:-

“19. Now coming to the facts of the case, we find that the High Court had admitted the second appeal by framing the following question of law: (Avinash case, SCC OnLine Kar para 6)

“6. ... ‘Whether the courts below have committed an error in the manner of considering the pleadings as well as the evidence available on record and as to whether the same is contrary to the recitals in the documents at Ext. P-15?’ ”

Reading of the aforementioned question shows that the only question, which the High Court was required to consider in the appeal, was whether the trial court and the first appellate court decided the case contrary to the pleadings and evidence and especially contrary to the recitals of Ext. P-15.



xxx

xxx

xxx

23. In our considered opinion, the aforesaid finding of the High Court is wholly illegal and unsustainable in law besides being against the pleading and evidence. This we say for following reasons.

24. First, the respondent (defendant) had not raised such plea in his written statement. In other words, the respondent did not set up such defence in the written statement. Second, the trial court, therefore, had no occasion to frame any issue on such plea for want of any factual foundation in the written statement. Third, the trial court and the first appellate court, in these circumstances, had no occasion to record any finding on this plea either way. Fourth, in the light of these three reasonings, the High Court ought to have seen that such plea really did not arise for consideration because in order that any question is involved in the case, the party concerned should lay its factual foundation in the pleading and invite finding on such plea. Fifth, the High Court failed to see the case set up by the respondent in his written statement. As mentioned above, the defence of the respondent was that he had denied the appellant's title over the suit shop and then set up a plea of adverse possession contending that he has become the owner of the suit shop by virtue of adverse possession, which according to him, was from time immemorial.

25. It was clear that the respondent never claimed that he was in possession of the suit shop as tenant of the appellant's predecessor-in-title. On the other hand, the respondent had asserted his ownership right over the suit shop on the strength of his long adverse possession.

26. It is these issues, which were gone into by the two courts and were concurrently decided by them against the respondent. These issues, in our opinion, should have been examined by the High Court with a view to find out as to whether these findings contain any legal error so as to call for any interference in second appeal. The High Court, however, did not undertake this exercise and rather affirmed these findings when it did not consider it proper to frame any substantial question of law. It is a settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the court cannot record any finding on the issues which are not part of pleadings. In other words, the court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the case. Any finding recorded on an issue dehors the pleadings is without jurisdiction. Such is the case here."

36. I may also refer to the following passages from the judgment of the Supreme Court in **Bachhaj Nahar v. Nilima Mandal and**



Another, (2008) 17 SCC 491, relevant paragraphs of which are as under :-

“10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court.

(ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

11. The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure. Be that as it may. We will briefly set out the reasons for the aforesaid conclusions.

12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an



appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

14. The High Court has ignored the aforesaid principles relating to the object and necessity of pleadings. Even though right of easement was not pleaded or claimed by the plaintiffs, and even though parties were at issue only in regard to title and possession, it made out for the first time in second appeal, a case of easement and granted relief based on an easementary right. For this purpose, it relied upon the following observations of this Court in *Nedunuri Kameswaramma v. Sampati Subba Rao* [AIR 1963 SC 884] : (AIR p. 886, para 6)

“6. ... No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion.”

But the said observations were made in the context of absence of an issue, and not absence of pleadings.

15. The relevant principle relating to circumstances in which the deficiency in, or absence of, pleadings could be ignored, was stated by a Constitution Bench of this Court in *Bhagwati Prasad v. Chandramaul* [AIR 1966 SC 735] : (AIR p. 738, para 10)

“10. ... If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by



evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.”

(emphasis supplied)

16. The principle was reiterated by this Court in *Ram Sarup Gupta v. Bishun Narain Inter College* [(1987) 2 SCC 555 : AIR 1987 SC 1242] : (SCC pp. 562-63, para 6)

“6. ... It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a



party to raise the question of absence of pleadings in appeal.”

(emphasis supplied)

17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in Bhagwati Prasad [AIR 1966 SC 735] and Ram Sarup Gupta [(1987) 2 SCC 555 : AIR 1987 SC 1242] referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu.”

37. Another glaring error that the Trial Court has committed and which touches upon the legal notice terminating the tenancy is that the Trial Court has come to a conclusion that Defendant had replied to the legal notice taking a stand in her favour and for this, placed reliance on Ex.DW-1/1 i.e. reply dated 11.08.2015. This Court fails to understand that if the legal notice was sent by the Plaintiff on 06.05.2016, how could the Defendant reply to the notice on 11.08.2015 and rebut its contents. In the same vein, learned Trial Court has also disregarded the evidence of PW-2 Arvind Tiwari, who was a co-tenant in the premises *albeit* he had a smaller portion in his possession. PW-2 had categorically deposed that he had taken the



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premises on rent @ Rs.4100/- commencing from 25.09.2015. The evidence was disregarded by a sketchy and erroneous observation that circumstances of PW-2 and Defendant cannot be equated, overlooking the fact that PW-2 was a co-tenant on the same floor and had taken the premises on rent after Defendant was inducted as a tenant and was occupying one room including kitchen on the same floor as the Defendant, who was admittedly a tenant occupying two rooms, one kitchen, common W.C. and a lobby allegedly to be @ Rs.1000/- per month. It was not pleaded by the Defendant that PW-2 was not a co-tenant. The rate of rent paid by him or the portion of property occupied by him was also undisputed and this important evidence was completely ignored by the Trial Court, merely on presumptions aforementioned. Plaintiff has thus proved all the 3 parameters required to be established by a Plaintiff in a suit for possession and is held entitled to the relief of possession of the suit premises.

38. Plaintiff is also held entitled to rent @ Rs.6500/- per month w.e.f. August, 2012 till termination of the tenancy on 07.05.2016. From the order of the Trial Court dated 19.04.2017, it is reflected that counsel for the Defendant had volunteered to pay rent @ Rs.1000/- per month along with electricity and water charges @ Rs.800/- per month without any default. Therefore, whatever amounts have been paid by the Defendant to the Plaintiff will be adjusted by the Plaintiff and the balance will be paid by the Defendant after adjustment of the amount paid. Insofar as recovery of electricity and water charges are concerned, it is undisputed that Defendant had agreed to pay fixed electricity charges of Rs.500/- per month and fixed water charges of



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Rs.300/- per month. Plaintiff has stated that some amounts towards these charges, amounting to Rs.19,000/- were intermittently paid upto 21.04.2015. Plaintiff is therefore entitled for recovery of the balance electricity and water charges @ Rs.500/- per month and Rs.300/- per month, respectively, from August, 2012 till vacation of the suit premises by the Defendant, after adjusting the amounts already paid by the Defendant. Insofar as *mesne* profits are concerned, this Court has already come to a finding in the earlier part of the judgment that Plaintiff has successfully established that the suit premises were let out at a monthly rent of Rs.6500/- to the Defendant and the Defendant has been unable to establish that the rate of rent was Rs.1000/-. Therefore, Plaintiff is held entitled to *mesne* profits @Rs.6500/- per month from the date of institution of the suit till the date of handing over possession. In coming to this methodology of calculation of *mesne* profits, this Court is fortified by the judgments of this Court in ***Arbinder Singh Kohli & Anr. v. Gobind Kaur Kohli, 2018 SCC OnLine Del 9663*** and ***Hindustan Motors Limited v. Seven Seas Leasing Ltd., 2018 SCC OnLine Del 11391***. Plaintiff is also held entitled to simple interest @ 6% per annum in accordance with Section 2(12) CPC, payable from the end of the month from which *mesne* profits are payable to him by the Defendant, in accordance with the judgments of this Court in ***Durgesh Saini v. Premwati Saini and Ors., 2018 SCC OnLine Del 12840*** and ***M/s. Basant & Co. v. M/s. Osram India Pvt. Ltd., 2018 SCC OnLine Del 7776***.

39. The suit is accordingly decreed in favour of the Plaintiff directing the Defendant to vacate the suit premises and handover vacant and peaceful possession to the Plaintiff, within eight weeks



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from today as well as pay the *mesne* profits along with interest as directed. Decree sheet be prepared accordingly.

40. Appeal is allowed with no orders as to cost.

JYOTI SINGH, J

NOVEMBER 29, 2023/shivam/kks/KA