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

+ **RC.REV. 407/2018 & CM APPL. 49297/2022**

BHARAT BHUSHAN

..... Petitioner

Through: Mr. A.C. Bhasin and Mr. Amit
Bhasin, Advocates

versus

NASEEB KAUR

..... Respondent

Through: Mr. R.S. Choudhary, Advocate.

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Reserved on: 31st January, 2023

Date of Decision: 14th February, 2023

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

CM APPL. NO. 33916/2022

1. The present application under Section 151 of Code of Civil Procedure, 1908 ('CPC') has been filed by the Legal Representatives ('LRs') of the original Respondent, landlady ('original Respondent'), seeking dismissal of the present revision petition filed by the Petitioner, tenant, on the ground that the petition has abated on account of the Petitioner's failure to implead the LRs of the original Respondent.

2. Learned counsel the applicants states that the eviction order dated 26.07.2018 ('impugned eviction order') with respect to commercial premises bearing No. B-1458, Shastri Nagar, Delhi – 110052 ('tenanted premises') was passed in favor of the original Respondent.

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3. He states that original Respondent expired during the pendency of the present revision proceedings, i.e., on 25.02.2021. He states that the original Respondent executed a registered Will dated 01.11.2019 in favor of the applicants, who are the sons of the original Respondent. He states that in terms of the Will, the applicants herein have become the exclusive owners of the tenanted premises and the impugned eviction order which pertains to the estate of the original Respondent also enure in their favor.

4. He states that the Petitioner is well acquainted with the family members of the original Respondent and the applicants herein. He states that even after learning about the death of the original Respondent, the Petitioner has failed to take steps to bring on record the LRs of the original Respondent, in accordance with law.

5. He states that the limitation for bringing the LRs on record has expired and therefore, the present revision petition has abated. He therefore prays that the present petition be dismissed.

6. He relies upon the judgment in ***Leelawatibai (deceased) through LRs. Mahendra Kumar & Ors. v. Radhakishan (deceased) through L.Rs. Smt. Sajjanbai & Ors., AIR 2011 Madhya Pradesh 126 (Indore Bench).***

7. In reply, learned counsel for the Petitioner, tenant relies on the reply dated 10.11.2022 filed to the present application. He states that in the facts of this case the LRs of the original Respondent are not entitled to be brought on record.

8. He states that the eviction petition before the Trial Court was filed by the original Respondent in her capacity as a widow, under Section 14D of the Delhi Rent Control Act, 1958 ('the DRC Act') for her personal need. He states that on account of her death during the pendency of this revision

petition, the need or requirement as pleaded in the eviction petition does not survive after the death of the original Respondent.

9. He states that in fact the eviction order is liable to be set aside by this Court on account of the subsequent event of her death. He states that in view of the said facts, the Petitioner is not required in law to bring the LR's of the original Respondent on record as no rights under the eviction order can be said to have devolved on them. In support of his contention, he relies on the judgment of Supreme Court in ***Hasmat Rai and Another v. Raghunath Prasad, AIR 1981 SC 1711***.

10. This Court has heard the learned counsel for the parties and perused the paper book. The legal issue which arises for determination in the facts of this case is as under:

“Whether an eviction order passed on account of the need or requirement of the landlord/landlady, which has been stayed during the pendency of the revision petition filed by the tenant, can be set aside by the Court without bringing on record the legal heirs of the landlord/landlady?”

11. At the outset, it is pertinent to observe that in the reply dated 10.11.2022 filed by the Petitioner, he has categorically admitted about his knowledge of the death of the original Respondent on 25.01.2021.

12. The impugned eviction order was passed in favor of the original Respondent, directing the eviction of the Petitioner, tenant, from the tenanted premises. It is pertinent to mention that impugned eviction order was passed by the Trial Court during the lifetime of the original Respondent, which was stayed by an ad-interim order in the present proceedings on 08.01.2019. The original Respondent expired on 25.02.2021 during the pendency of the present revision proceedings.

13. Pertinently, the Petitioner after being served within the present application under consideration, has now filed CM No. 49297/2022 seeking an order for taking on record the subsequent event of the death of the original Respondent and consequently setting aside the impugned eviction order on this ground alone. However, the Petitioner seeks the said relief without bringing on record the LRs of the original Respondent.

14. The Petitioner's right to sue the LRs of the original Respondent for maintaining this revision petition and C.M. No. 49297/2022, is governed under Order XXII Rule 4 (1) of CPC which reads as under:

“4. Procedure in case of death of one of several defendants or of sole defendant.—(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.”

15. The contents of C.M. No. 49297/2022 are the Petitioner's admission wherein he acknowledges that his right to sue the LRs of the original Respondent survives after the death of the landlady for seeking the setting aside of the impugned eviction order.

16. The reading of Order XXII Rule 4(1) CPC makes it clear that it is the 'right to sue' of the Petitioner herein, which is the subject matter of the said Rule.

17. This Court therefore does not find merit in the contention of the Petitioner that the Petitioner is not obliged in law to bring on record the LRs of the original Respondent on her death.

18. The impugned eviction order passed by the Trial Court in favor of the landlord/landlady survives his/her death. The said impugned eviction order unless set aside by the order of the superior Court is final between the parties

and continues to bind the tenant. However, after the death of the landlord/landlady, the impugned eviction order cannot be set aside by the superior Court, if the Petitioner elects not to bring the LRs of the landlord/landlady on record. The issue of law framed above is answered accordingly.

19. Therefore, in the facts of this case, before this Court can adjudicate on the merits of the present revision petition or CM 49297/2022, it is the mandate of law that the LRs of the original Respondent are brought on record. Hence, the plea of the Petitioner that he is not obliged in law to bring on record the LRs of the original Respondent and he can maintain the present revision petition for seeking setting aside of the impugned eviction order is untenable and contrary to law.

20. In this regard, it would be instructive to refer to the judgment of the Supreme Court in ***Manovikas Kendra Rehabilitation & Research Institute v. Prem Prakash Lodha, (2005) 7 SCC 224*** wherein it was held as under:-

“2. A suit seeking eviction of the respondent was filed by one Namita Gupta on the ground available under Section 13(1) (ff) of the West Bengal Premises Tenancy Act, 1956. The suit was decreed by the trial court. The decree was upheld in appeal. Feeling aggrieved, the respondent tenant filed a second appeal before the High Court which was admitted for hearing the parties. It appears that during the pendency of the appeal, the landlord (respondent in the High Court) died. On behalf of the appellant in the High Court, there was no application filed under Order 22 Rule 4 of the Code of Civil Procedure. However, the appellant herein moved an application for being brought on record in place of the deceased respondent in the High Court submitting that the suit property was donated to it by the late landlord. This application was contested by the tenant (appellant in the High Court) submitting that the suit having been filed on the ground of reasonable requirement of the landlord for his own occupation, the cause of action could not survive to the applicant seeking to be brought on record. The plea has prevailed with the High Court and the application filed by the appellant herein has directed to be dismissed. Feeling aggrieved thereby, this appeal has been filed by special leave.

*3. **Having heard the learned counsel for the parties, we are satisfied that the impugned order of the High Court cannot be sustained. What***

would be the effect of the death of the landlord on the decree for eviction, passed by two courts below, shall have to be examined by the High Court if it can take note of such subsequent event, but before a decree under appeal may be reversed someone shall have to be heard in support of the decree.

The term “legal representative” has been defined in clause (11) of Section 2 of the Code of Civil Procedure as meaning a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased. The question of abatement would arise only when there is no legal representative. The appellant before us who claims to be donee of the suit property certainly falls within the definition of “legal representative” as noticed hereinabove. The appellant’s prayer for being brought on record in place of the deceased respondent in the High Court could not have been denied. Whether the decree under appeal can be sustained or not in view of the subsequent event, would be a question to be examined by the High Court but only after the applicant before it was permitted to be brought on record. We do not express any opinion on that aspect of the issue as the same would be examined by the High Court on its own merits.

4. The appeal is allowed. The impugned order of the High Court is set aside. Instead, the application filed by the appellant before us, as applicant in the High Court, seeking to be brought on record in place of the deceased plaintiff (respondent in the High Court) is allowed. After the cause-title has been corrected, the appeal shall be heard and decided on its own merits by the High Court.”

(Emphasis supplied)

21. The aforesaid judgment sets at rest the issue that in a proceeding initiated under the rent control acts, after the death of the landlord/landlady in whose favor the decree of eviction is passed, the LRs of the deceased landlord/landlady have to be brought on record before the superior Court where the decree of eviction is challenged by the tenant.

22. The Petitioner’s reliance on the judgment in **Hasmat Rai v. Raghunath Prasad (supra)** has no bearing for deciding the effect of the Petitioner’s non-compliance with the statutory mandate of the provision of Order XXII Rule 4 of CPC.

23. The contention of the Petitioner that on account of the subsequent event of the death of the original Respondent, the need or requirement shall cease to exist and requires no further consideration by this Court in the

present revision petition is contrary to the law settled by Supreme Court in its judgments.

24. In *Kamleshwar Prasad v Pradumanju Agarwal (Dead) by LRS : (1997) 4 SCC 413*, it was held as follows:

“2. On behalf of the tenant, it was urged before the High Court that the landlord having died, the bona fide requirement which was found to have existed by the appellate authority no more survives, and therefore, taking into consideration the subsequent event the High Court must quash the order of eviction passed by the appellate authority. On behalf of the landlord it was contended that the order of the appellate authority in the eviction proceedings, is a decree and that decree having become final, in a proceeding under Article 226 of the Constitution, the High Court will not be entitled to take into consideration any subsequent event that had occurred and on that score it would not be appropriate for the High Court to interfere with the decree passed by the appellate authority. It was also contended that the requirement in question must exist on the day the application for eviction was filed and the same requirement having been found to be established by the competent forum who was required to go into the said question, it is no longer open to the High Court to interfere with the said finding in exercise of its supervisory jurisdiction under Article 226 of the Constitution. The High Court by the impugned judgment came to the conclusion that the decree for eviction had become final and the said finality cannot be disturbed on the application under Article 226 of the Constitution by taking into account the facts that the original landlord died during the pendency of the writ petition.

3. Xxx xxx xxx
 Having given an anxious consideration to the contention raised by the learned counsel for the appellant and under the facts and circumstances of this case we are of the considered opinion that this case does not warrant interference by this Court under Article 136 of the Constitution. Under the Act the order of the appellate authority is final and the said order is a decree of the civil court and a decree of a competent court having become final cannot be interfered with by the High Court in exercise of its power of superintendence under Articles 226 and 227 of the Constitution by taking into account any subsequent event which might have happened. That apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any elder (sic other) son. In this view of the matter, we find no force in the contention of Mr Manoj Swarup, learned counsel appearing for the appellant and we do

not find any error in the impugned judgment of the High Court warranting interference by this Court under Article 136 of the Constitution. The appeal, accordingly, fails and is dismissed but in the circumstances without any order as to costs.”

(Emphasis supplied)

25. The said judgment was followed by the Supreme Court in ***Shakuntala Bai and Others v Narayan Das and Others***, (2004) 5 SCC 772. The relevant portion of the said judgment reads as under:

“5. The question which requires consideration is whether on account of death of a landlord during the pendency of the appeal, a suit validly instituted by him for eviction of a tenant on the ground of his personal need, is liable to be dismissed.

xxxx xxxx xxxx

15. As the preamble shows, the Madhya Pradesh Accommodation Control Act, 1961 has been enacted for expeditious trial of eviction cases on the ground of bona fide requirement of landlords and generally to regulate and control eviction of tenants. If the subsequent event like the death of the landlord is to be taken note of at every stage till the decree attains finality, there will be no end to litigation. By the time a second appeal gets decided by the High Court, generally a long period elapses and on such a principle if during this period the landlord who instituted the proceedings dies, the suit will have to be dismissed without going into merits. The same thing may happen in a fresh suit filed by the heirs and it may become an unending process. Taking into consideration the subsequent events may, at times, lead to rendering the whole proceedings taken infructuous and colossal waste of public time. There is no warrant for interpreting a rent control legislation in such a manner, the basic object of which is to save harassment of tenants from unscrupulous landlords. The object is not to deprive the owners of their properties for all times to come.”

26. In view of the aforesaid judgments of the Supreme Court in ***Manovikas Kendra Rehabilitation & Research Institute (supra)***, ***Kamleshwar Prasad (supra)*** and ***Shakuntala Bai (supra)***, this Court is of the considered opinion that the Petitioner ought to have brought the LRs of the original Respondent as per the provision of Order XXII Rule 4(1) of CPC so that the impugned eviction order be defended by them, before the revision petition is finally heard and decided. However, on account of the failure of

the Petitioner to take appropriate steps to bring the LR's on record, within the statutory time, the present revision petition has abated as against the original Respondent and her LR's.

27. The original Respondent expired on 25.02.2021. The statutory time limit of ninety (90) days for bringing on record the LR's of the deceased Respondent expired on 26.05.2021. The present Petition therefore, abated on 26.05.2021 in view of the failure of the Petitioner to bring the LR's of the original Respondent on record.

28. Accordingly, the present application of the LR's of the original Respondent is allowed and the present revision petition is dismissed as having abated on 26.05.2021.

CM No. 34140/2018 (for stay)

29. This is an application filed by the Petitioner along with the Revision Petition seeking stay of the impugned eviction order dated 26.07.2018. This Court passed an *ex-parte ad-interim* order dated 08.01.2019 staying the operation of the impugned eviction order.

30. The original Respondent had filed reply dated 13.02.2020 to the present application and sought fixation of use and occupation charges of Rs.20,000/- per month, till the date of delivery of the physical, vacant and peaceful possession of the tenanted premises, in terms of the judgment of Supreme Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705*. The Respondent had annexed with the said reply two registered rent agreements and one unregistered rent agreement in support of her plea of seeking fixation of the use and occupation charges at the rate of Rs.20,000/- per month.

31. No rejoinder was filed by the Petitioner to the said reply.

32. This Court has been apprised that the Petitioner is in possession and occupation of the tenanted premises on account of the interim order dated 08.01.2019 passed by this Court.

33. During the course of arguments as well, the learned counsel for the Petitioner has not disputed the averments made by the Respondent in the said reply or the contents of the rent agreement.

34. At the outset, it is pertinent to observe that the relief sought by the original Respondent for the payment of use and occupation charges will devolve her estate. Therefore, this Court also deem it appropriate to adjudicate on the payment of the use and occupation charges as the Petitioner herein is enjoying the possession of the tenanted premises on account of the ad interim stay granted by this Court, during the pendency of the revision proceedings.

35. The Supreme Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, (2005) 1 SCC 705, has categorically held that after the passing of an eviction order by the Rent Controller in favour of the landlord, during the pendency of the revision petition, the tenant is liable to pay to the landlord the use and occupation charges of the tenanted premises at the same rate at which the landlord would have been able to let out the premises and earn rent, if the tenant would have vacated the premises. The relevant paragraph of this judgment reads as follows:

“19. To sum up, our conclusions are:

(1) While passing an order of stay under Rule 5 of Order 41 of the Code of Civil Procedure, 1908, the appellate court does have jurisdiction to put the applicant on such reasonable terms as would in its opinion reasonably compensate the decree-holder for loss occasioned by delay in execution of decree by the grant of stay order, in the event of the appeal being dismissed

and insofar as those proceedings are concerned. Such terms, needless to say, shall be reasonable.

(2) In case of premises governed by the provisions of the Delhi Rent Control Act, 1958, in view of the definition of tenant contained in clause (l) of Section 2 of the Act, the tenancy does not stand terminated merely by its termination under the general law; it terminates with the passing of the decree for eviction. With effect from that date, the tenant is liable to pay mesne profits or compensation for use and occupation of the premises at the same rate at which the landlord would have been able to let out the premises and earn rent if the tenant would have vacated the premises. The landlord is not bound by the contractual rate of rent effective for the period preceding the date of the decree.

(3) The doctrine of merger does not have the effect of postponing the date of termination of tenancy merely because the decree of eviction stands merged in the decree passed by the superior forum at a latter date.”

(Emphasis Supplied)

36. Recently, the aforesaid law has been re-affirmed by the Apex Court in ***Martin and Harris Private Limited and Another v. Rajendra Mehta and Others, (2022) 8 SCC 527*** at paragraphs 18, 19 and 20, which reads as follows:-

“18. Thus, after passing the decree of eviction the tenancy terminates and from the said date the landlord is entitled for mesne profits or compensation depriving him from the use of the premises. The view taken in Atma Ram [Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd., (2005) 1 SCC 705] has been reaffirmed in State of Maharashtra v. Super Max International (P) Ltd. [State of Maharashtra v. Super Max International (P) Ltd., (2009) 9 SCC 772 : (2009) 3 SCC (Civ) 857] by three-Judge Bench of this Court. Therefore, looking to the fact that the decree of eviction passed by the trial court on 3-3-2016 has been confirmed in appeal; against which second appeal is pending, however, after stay on being asked the direction to pay mesne profits or compensation issued by the High Court is in consonance to the law laid down by this Court, which is just, equitable and reasonable.

19. The basis of determination of the amount of mesne profits, in our view, depends on the facts and circumstances of each case considering the place where the property is situated i.e. village or city or metropolitan city, location, nature of premises i.e. commercial or residential area and the rate of rent precedent on which premises can be let out are the guiding factor in the facts of individual case.

20. In the case at hand, the High Court in the impugned order [Martin & Harris (P) Ltd. v. Rajendra Mehta, 2018 SCC OnLine Raj 3524] observed that the tenanted property is located on the main road of New Colony near Panch Batti which is a commercial area in the heart of Jaipur City. The said finding has been arrived at considering the voluminous documentary record dispelling the plea taken by the appellants. However, the Court in the facts and circumstances found it reasonable to determine Rs 2,50,000 per month as mesne profits. As per the discussion made hereinabove so far as the area of the tenanted premises and the location of the property is concerned, the findings of fact have been recorded by the High Court, in our considered opinion, those findings are based on the material brought on record which are neither perverse nor illegal. The amount of mesne profits as fixed @ Rs 2,50,000 is also just and proper looking at the span of time i.e. 10 years from the date of fixing of the standard rent and six years from the date of passing of the decree of eviction. Therefore, the amount of mesne profits has rightly been decided by the High Court while passing the order impugned.”

(Emphasis supplied)

37. In view of the submissions of both the parties, the use and occupation charges of the tenanted premises are fixed at a rate of Rs. 12,000/- per month, retrospectively payable by the Petitioner with effect from February, 2019 (after excluding the period of six (06) months granted by the Trial Court) till the date of handing over of the physical, vacant and peaceful possession of the tenanted premises to the LR's of the original Respondent.

38. The arrears of the use and occupation charges from February, 2019 shall be paid within a period of four (04) weeks from today.

39. It is directed that in case the Petitioner defaults in making the payment of the current use and occupation charges, as directed in this order, the LR's of the original Respondent shall be entitled to recover the amount in accordance with the law.

40. With the aforesaid directions, the said application is disposed of.

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41. In view of the orders passed in CM Appl. 33916/2022, the present revision petition stands dismissed. All pending applications, if any, stand disposed of. Interim order dated 08.01.2019 stands vacated.

MANMEET PRITAM SINGH ARORA, J

FEBRAURY 14, 2023

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