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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Order: 08.10.2024

+ RC.REV. 197/2018, CM APPL. 18744/2018, CM APPL. 51246/2018, CM APPL. 13577/2019 & CM APPL. 54331/2023

M/S ADAM PAPER PRODUCTS PVT LTD & ANR

.....Petitioners

Through: Ms. Aakanksha Kaul, Advocate with
Petitioner No.2 in person.

versus

VISHAN DASS NARANG

.....Respondent

Through: Mr. Kuldeep Kumar & Mr. G.P.
Lenka, Advocates.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (ORAL)****CM APPL. 51246/2018 & CM APPL. 13577/2019 [for Direction for user
and occupation charges]****CM APPL. 18744/2018 [for stay]**

1. The above applications, i.e., 51246/2018 and CM APPL. 13577/2019 have been filed by the Respondent/landlord seeking directions to Petitioners/tenants to pay user and occupation charges.
2. Learned Counsel for the Respondent/landlord submits that the prayers in the said Applications are same, and thus, the Respondent/landlord will only press CM APPL. 51246/2018.
3. Accordingly, CM APPL. 13577/2019 is dismissed as withdrawn.



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4. Learned Counsel for the Respondent/landlord submits that the subject premises is a Basement Hall, admeasuring 12X57 ft., situated at Premises No. II-I-56 Lajpat Nagar -II, New Delhi – 110024 [hereinafter referred to as “subject premises”].

4.1 Learned Counsel for the Respondent/landlord submits that the subject premises is on mixed land use and can be used for commercial as well as residential purposes. The subject premises are being used as a godown and that the user and occupation charges in the sum of Rs.2 lakhs per month are due and payable for such a godown.

5. Learned Counsel for the Petitioners/tenants submits that the subject premises are being used as a godown.

6. Learned Counsel for the Petitioners/tenants, on instructions from the Petitioner No.2, who is present in Court today, submits that the Petitioners/tenants are not in a position to pay any user and occupation charges, much less pay user and occupation charges for the last six years.

7. Learned Counsel for the Respondent/landlord submits that in terms of the judgment of the Supreme Court in *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*¹ and *Martin and Harris Private Limited and Another v. Rajendra Mehta and Others*², once the Eviction Order has been passed, the tenant is required to pay the use and occupation charges at market rent till the final disposal of the Revision Petition.

8. Concededly, the Revision Petition has been pending for the last six years. However, in view of the fact that the Eviction Order was passed on

¹ (2005) 1 SCC 705

² (2022) 8 SCC 527



04.01.2018 [hereinafter referred to as “Impugned Order”], and that the Petitioners/tenants have stated that the Petitioners/tenants are unwilling/not able to make any payment in user and occupation charges, this Court deems it expedient to vacate the interim orders/orders of protection passed by the Court on 07.05.2018.

9. Interim order dated 07.05.2018 is hereby vacated.

9.1 Accordingly, CM APPL. 18744/2018 is disposed of.

RC.REV. 197/2018

10. With the consent of the parties, the matter is taken up for final hearing and disposal today.

11. Learned Counsel for the Petitioners/tenants submits that the grievance of the Petitioners/tenants is that the Petitioners/tenants were served with defective summons as the same were not in compliance with the provisions of Section 25B (2), (3)(a) and (b) of the Delhi Rent Control Act, 1958 [hereinafter referred to as the “DRC Act”].

12. Learned Counsel for the Respondent/landlord refutes the submission of the Petitioners/tenants. It is contended that it is the admitted case of the Petitioners/tenants that the summons in the Eviction Petition were served on the Petitioners/tenants on 07.06.2017. He submits that annexed at Annexure P-6 is a copy of memo of appearance which sets out that the summons were received on 07.06.2017 and that the next date of hearing is 19.07.2017. He submits that this memo of appearance is signed by the Petitioner No.2/tenant as well as his Counsel.

12.1 In addition, learned Counsel for the Respondent/landlord seeks to rely



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upon the Leave to Defend Application, filed on behalf of the Petitioners/tenants, more specifically on paragraphs 1, 3 and 4 to state that the summons were received on 07.06.2017.

13. A Coordinate Bench of this Court by its order dated 07.05.2018 while passing interim directions, set out that whether power to condone the delay in filing an Application for Leave to Defend is available with this Court, is the subject matter of reference to a larger Bench in the matter of ***Director Directorate of Education & Ors. vs. Mohd. Shamim & Ors.***³, and had passed interim directions, staying the execution of the Impugned Order awaiting the judgment in this matter.

14. The reference culminated into a decision by a Division Bench of this Court on 29.11.2019 in the ***Directorate of Education*** case. A Division Bench of this Court, after discussing the law on this aspect, answered the reference holding that in order for an application for extension of time to file Leave to Defend to be allowed, a dual test, needs to be fulfilled. The tenant is required to show that he was prevented by reasons beyond his control from applying for Leave to Defend within the prescribed time. In addition, it was held that the tenant is to make out a substantial case of consideration in the Application for Leave to Defend. The Division Bench further held that the power to condone the delay is not available with the Rent Controller but the High Court has such power subject to the conditions as set out above, being satisfied. The relevant extract of the order passed by the Division Bench in the ***Directorate of Education*** case is set out below:

“25. We, therefore, hold that merely because the Controller has passed an order of eviction in a proceeding governed under Section

³ 2019 SCC OnLine Del 11490



25B, on failure of the tenant to, within the prescribed time, apply for leave to defend and merely because the Controller vide Prithpal Singh supra has been held to be not empowered to recall the said order, would not prevent this Court from, in exercise of powers under proviso to Section 25B(8), considering once a case for the landlord to be not entitled to an order of eviction to be deemed admission following non-filing of leave to defend within the prescribed time, the said order cannot be said to have been made according to law and would qualify as being contrary to law and liable to be set aside.

26. Having held so, we answer the question no.(A) framed in the referral order in the affirmative and with the condition that this Court would be empowered to set aside the order of eviction only if the tenant passes the dual test of prevented by reasons beyond control from applying for leave to defend within the prescribed time (as distinct from every default) and if makes out a substantial case for consideration of the application for leave to defend. We, however, in deference to Prithpal Singh supra choose/opt to not answer the question (B) framed in the referral order.

27. We answer the reference accordingly.”

[Emphasis supplied]

15. The primary ground raised by the Petitioners/tenants is that service was incomplete in view of the defective summons. In addition, it has been contended that the payment of Rs. 12,000/- was made for construction of a second basement by the Petitioners/tenants. It is the admitted case of the parties that the payment was adjusted at a monthly rent of Rs. 1,000/- for each of the three premises taken on rent from the Respondent/landlord i.e., two basements and a ground floor which form subject matter of the present Petition being R.C Rev No. 197/2018 and connected R.C. Rev No. 196/2018 and R.C Rev No.198/2018.

15.1 It is thus contended that since the triable issues were raised in terms of the judgment of the **Directorate of Education** case, a substantial defence had been raised by the Petitioners/tenants, entitling the Petitioners/tenants to



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Leave to Defend.

16. The Respondent/landlord, on the other hand, contends that the summons were duly served on the Petitioners/tenants and in the summons itself, it is stated that the tenant is required to appear within 15 days of service thereof to obtain leave of the controller to contest the Application for Eviction. In addition, it is contended that the Petitioners/tenants did not approach the Court with clean hands. The Impugned Order was challenged by the Petitioners/tenants in a Review Petition and the same was dismissed with costs by order dated 11.04.2018 by the learned Trial Court which costs have not been paid till today by the Petitioners/tenants.

17. It is further averred that the Petitioners/tenants have been in continuous occupation of the subject premises which is in a prime location in South Delhi area being right next to the Central Market, Lajpat Nagar, New Delhi. The premises is abutting a Master Plan Road and have been declared a "*Mixed Land Use Premises*". It is thus contended by the Respondent/landlord that the Respondent/landlord is entitled to user and occupation charges/damages in the sum of Rs. 2 lakhs per month for the subject premises.

18. Lastly, it is contended that the Petitioners/tenants owns several properties while the Respondent/landlord has no other alternate premises. Thus, the Petitioners/tenants have failed to make out any case for grant of Leave to Defend.

19. The record shows that an Eviction Petition was filed wherein it was stated that the subject premises is required by the Respondent/landlord for his son who is currently in the real estate agency business. It was stated in



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the Eviction Petition that the son of the Respondent/Landlord is operating his business from a premises in Zamrudpur village which has been taken by the Respondent/landlord on lease. It was contended that the son of the Respondent wants to expand his business to set up an office near Lajpat Nagar area (where the subject premises is situate) to increase his clientele, since there is an increase in demand for sale, purchase and renting of the properties in Lajpat Nagar and its adjoining areas.

19.1 The Eviction Petition was contested by the Petitioner No.2 on behalf of himself and as the Managing Director of the Petitioner No.1/Company.

20. As stated above, the only ground that was taken by the Petitioners/tenants in the Application for Leave to Defend filed on 27.07.2017 were that the summons were not in accordance with Schedule III of the DRC Act, and were not duly served on the Petitioners/tenants. It was further stated that the summons received failed to set out the next date of hearing and that since, the Courts were closed for vacation from 10.06.2017 to 30.06.2017, the Petitioners/tenants could not appear.

20.1 The Application for Leave to Defend further goes on to state that the summons are not in accordance with law as they failed to inform the next date of hearing. In addition, it is stated therein that upon receipt of summons, the Petitioner No.2 approached his regular Counsel who was unavailable as he was travelling. It is further stated therein that the other Counsel of the Petitioners/tenants was hospitalised at that time.

20.2 It was further stated by the Petitioners/tenants, that Petitioner No.2/tenant went to the Court to enquire about the case and on 05.07.2017, he was informed about the case and the next date of hearing. In addition, it is



also stated that on 19.07.2017, once again the Petitioner No.2/tenant appeared before the Court.

20.3 Paragraphs 1, 3 and 4 of the Leave to Defend Application [annexed at page 143 and 144 of the case file] are extracted below:

*“1. The Respondent No.2, who is Managing Director of Respondent No.1 Company, who had received summons in the present proceedings filed under section 14(1)(e) read with section 25B of the Delhi Rent Control Act, **1958 on 07.06.2017.***

xxx

3. Be that as it. may, upon receipt of the summons the Respondent no.2 tried to approach his regular counsel i.e. Mr. Manish Kumar, however, it was informed that he had gone abroad during summer vacations. Thereafter, the Respondent No.2 tried to approach his other counsel Mr. J.P. Sharma who also takes care of matters of the Respondents in trial courts, however, unfortunately, at that point of time MR. J.P Sharma was hospitalized and could not be approached.

*4. It is submitted that the courts were closed from 10.06.2017 till 30.06.2017 and therefore, during the aforesaid period the Respondents could not appear before this Hon'ble Court. **On 05.07.2017, the Respondent no.2 went to the Court and inquired about the case. Consequently, the Respondent No.2 was informed about the next date of hearing which was 19.07.2017.** It is stated that the Respondent no.2 being unaware of the legal requirements of filing leave to defend, in his own wisdom filed an application entering appearance, under a conception that the summons will be issued to his address.”*

[Emphasis supplied]

21. Since, the Trial Court record was available, the summons were examined by the Court during the hearing. The summons set out the date of the order, the proceedings and also that they were issued on 03.06.2017. The record also shows that the summons are in accordance with Schedule III of the DRC Act.

21.1 The contentions of the Petitioners/tenants are belied from the record



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and his pleading itself. A memo of appearance was filed by Petitioners/tenants on 05.07.2017. The fact that the first summons was received by the Petitioners/tenants admittedly on 07.06.2016, the Leave to Defend was not filed within 15 days thereof.

22. In addition, the summons clearly set out therein that the Petitioners/tenants are required to appear before the Controller within 15 days of the service to obtain Leave to Defend. However, the Petitioners/tenants entered appearance before the Court on 05.07.2017 and filed his memorandum of appearance. In addition, the Petitioner No.2/tenant also appeared on 19.07.2017 before the Court.

22.1 Since the Application for Leave to Defend/Contest the Eviction Petition is required to be filed within 15 days from the date of receipt of summons, there is no significance as regards to the next date of hearing. The response of a tenant is required to be filed within 15 days in terms of Sub-section (4) of Section 25(B) of the DRC Act and the third Schedule of the DRC Act.

23. Thus, quite clearly the Petitioners/tenants were aware of the proceedings and in pursuance of receipt of summons on 07.06.2017, Petitioner No.2/tenant first made enquires with his lawyers and when they were found to be unavailable, he himself visited the Court on 05.07.2017 and filed a memo of appearance through his Counsel. As stated above, the memo of appearance sets out that he had received summons on 07.06.2017. The memo of appearance being brief, is extracted below:

"1. That the abovesaid case is pending before the Hon'ble, Court and the same is fixed for appearance of the defendant.



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2. That the defendant received a summon for appearance from this Hon'ble Court on 7.6.2017.

3. That the appearance of the defendant be entered in the present case.

4. That the address of the defendant is "SH. MOHAN SINGH, MANAGING DIRECTOR OF M/S ADAMS INTERNATIONAL EXPORT PVT. LTD., I-56, GROUND FLOOR, LAJPAT NAGAR-II, NEW DELHI-110024", to serve the summons.

PRAYER

It is, therefore, most respectfully prayed that the appearance of the defendant may kindly be taken on record, in the interest of justice.

Sd/-
DEFENDANT

NEW DELHI
DATED 5.7.2017

(MOHAN SINGH)
MANAGING DIRECTOR
M/S. ADAM PAPER PRODUCTS PVT. LTD. "

[Emphasis supplied]

23.1 Subsequently, an Application for Leave to Contest/Defend was filed by the Petitioners/tenants wherein in addition to setting out that summons have been received on 07.06.2017, there is a clear admission by the Petitioner No.2/tenant that he went to the Court on 05.07.2017 and enquired about the case.

24. The record also shows that in the Application for Leave to Defend, no grounds have been taken that would entitle the Petitioners/tenants for leave. The relationship of the landlord-tenant is not disputed. With respect to the *bona fide* need, it has been contended in paragraph 12 of the Affidavit dated 27.07.2017 filed along with the Application for Leave to Defend/Contest by the Petitioners/tenants, that the Respondent has not disclosed how much area



is required for setting up of the boutique. However, admittedly the Eviction Petition was filed setting out requirement for the son of the Respondent who wants to expand his business and open up an office near Lajpat Nagar area to increase his clientage. Thus, the *bona fide* need has effectively not been disputed at all. A general statement has also been set out in the Affidavit dated 27.07.2017 filed by the Petitioners/tenants, that the Respondent/landlord has alternate properties available without providing any details of the properties. The relevant extract is reproduced below:

“12. That the fallacy in the Petitioner's plea is also evident from the fact that the Petitioner has not disclosed as to how much area of the property is actually required for setting up of the alleged boutique. The Petitioner has alleged that the first floor of the property would be used for storage purposes, admittedly, the said portion can be utilized for running a boutique smoothly and all the requirements can be taken care of by utilizing first floor itself. The averment regarding need for enhancement is completely vague. Even otherwise, when the Petitioner has alternate properties available for any purposes there is no need much less a bonafide need to evict the Respondents.”

[Emphasis supplied]

24.1 The Supreme Court in the case of ***Prativa Devi (Smt) v. T.V. Krishnan***⁴ has held that tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. This Court while relying on the ***Prativa Devi case*** has in the ***R.S. Chadha (thr. SPA) v. Thakur Dass***⁵ held:

“13.1 It is settled law that the tenant cannot dictate the terms of use of a property to a landlord and that the landlord is the best judge of his requirements. It is not for the Courts to dictate in what manner and how a landlord should live. It is also not for the Courts to adjudicate that the landlord has a bonafide need or not. The Courts will

⁴ (1996) 5 SCC 353

⁵ 2024 SCC OnLine Del 47



generally accept the landlords need as bonafide. The Supreme Court in the case of Prativa Devi (Smt) v. T.V. Krishnan [(1996) 5 SCC 353] has directed:

“2. The proven facts are that the appellant who is a widow, since the demise of her husband late Shiv Nath Mukherjee, has been staying as a guest with Shri N.C. Chatterjee who was a family friend of her late husband, at B-4/20, Safdarjung Enclave, New Delhi. There is nothing to show that she has any kind of right whatever to stay in the house of Shri Chatterjee. On the other hand, she is there merely by sufferance. The reason given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. **The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own.** The High Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a lookout of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. **There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bona fide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances.**”

13.2 In any event, it is only the Respondent/landlord and his family who can decide what is sufficient space as per their needs and requirements. Sufficiency of residential accommodation for any person would essentially be dependent on multiple factors, including his living standard and general status in society. In view of the fact that admittedly the Respondent/landlord has a large family, it is not open to the Petitioner/tenant to contend that requirement of 6 rooms as pleaded by the Respondent/landlord, is not bonafide.

13.3 The Trial Court has dealt with the sufficiency of accommodation of the Respondent/landlord in the Impugned Order. This Court finds no reason to impugn these findings.”

[Emphasis supplied]



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25. Another ground that has been sought to be agitated by the Petitioner/tenant is that in the year 2003, the Respondent/landlord had filed a civil suit seeking recovery of possession of the subject premises, *mesne profits/damages* which was dismissed on 30.09.2011. It is thus contended The copy of the order dated 30.09.2011 passed by the learned District Judge Central Delhi shows that the suit was dismissed as being barred by the provisions of Section 50 of the DRC Act since the rate of the rent claimed, was within the threshold of premises covered by the DRC Act. Thus, the defence of a higher rate of rent as set out in the Revision Petition is also without any merit.

26. The Impugned Order was initially challenged by way of filing a review before the learned Trial Court. The learned Trial Court by its order dated 11.04.2018 dismissed, the Application for review of the Impugned Order filed by the Petitioners/tenants on 11.04.2018 and imposed costs of Rs. 20,000/- on the Petitioners/tenants to be deposited with the Army Welfare fund Battle Casualties. The Court is informed that even this payment has not been made by the Petitioners/tenants.

27. The test as set out in the *Directorate of Education* case is a dual requirement fulfilment test. The Petitioners/tenants have failed to show that there were any reasons beyond its control for applying Leave to Defend within the prescribed time. The Petitioners/tenants were admittedly served and on basis such service, the enquiries were made and applications/memos of appearance were filed as is set out in the narration above. The Petitioners/tenants contention that they were not aware of the proceedings and was not served is belied from the record itself.



28. In addition, no case much less a substantial case for consideration has been made out by the Petitioners/tenants. Neither the relationship of landlord-tenant nor the ownership of the Respondent/landlord has been disputed. The receipt evidencing payment of Rs. 12,000/- to the Respondent/landlord by the Petitioners/tenants has been explained as advance rent for the basement. As set out in paragraph 24 above, the *bona fide* need of the Respondent/landlord has not even been controverted by the Petitioners/tenants.

28.1 The ***Directorate of Education*** case sets out that a substantial defence is required to be shown by the tenant to entitle him extension of time to file an Application for leave to defend. In addition, what has been stated in the Eviction Petition is that the Petitioner is a habitual defaulter and has even failed to make payment of electricity and other charges for the last several years. In addition, the Respondent/landlord has clearly stated that he has no other suitable alternate accommodation and no averment or document has been placed on record with respect to the availability of suitable alternate accommodation with the Respondent/landlord. Thus, the Petitioners/tenants have failed to raise any defence as would entitle the Petitioners/tenants Leave to Defend under the provisions of sub-Section (4) and (5) of Section 25(B) of the DRC Act.

29. As is evident from the above discussion, the test as set out in the ***Directorate of Education*** case, is not satisfied in the present case.

30. In terms of the law as settled in the answer to the reference, we find that the Impugned Order does not suffer from any infirmity.

31. The Supreme Court in ***Atma Ram*** case and ***Martin and Harris*** case



sets out that user and occupation charges are to be paid by the Petitioners/tenants during the pendency of a Revision Petition upon the Execution.

31.1 In the ***Martin and Harris*** case, the Supreme Court has held that if the appellate court grants a stay, delaying the execution of the decree of eviction, it has to compensate the decree holder for the loss occasioned by the delay by imposing reasonable terms and conditions including payment of *mesne profits* at market rent. The relevant extract of the ***Martin and Harris*** case is below:

“17. In *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, this Court held that the appellate court does have jurisdiction to put reasonable terms and conditions as would in its opinion be reasonable to compensate the decree-holder for loss occasioned by delay in execution of the decree while granting the stay. The Court relying upon the provisions of the Delhi Rent Control Act, observed that on passing the decree for eviction by a competent court, 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 in present and earn the profit if the tenant would have vacated the premises. The Court has explained that because of pendency of the appeal, which may be in continuation of suit, the doctrine of merger does not have 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 later date.”

[Emphasis Supplied]

31.2 After the eviction order was passed, the Petitioners/tenants have remained in occupation of the subject premises since 04.01.2018 without making any payment for the loss occasioned for the delay in execution of the Impugned Order. Thus, the Respondent/landlord is at liberty to file appropriate proceedings for the recovery of use and occupation charges/*mesne profits* in accordance with law.



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32. The Petition and all pending Applications are accordingly dismissed.
Consequently, all interim orders stand vacated.

TARA VITASTA GANJU, J

OCTOBER 8, 2024/ha/SA