



2026:DHC:1689-DB



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

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Judgment reserved on: 19.02.2026

Judgment pronounced on: 27.02.2026

Judgment uploaded on: 27.02.2026

+ RFA(COMM) 109/2026, CM APPL. 11739/2026 and CM APPL. 11740/2026

SUNMEET SINGH

.....Appellant

Through: Mr. Rakesh Patiyal, Advocate.

versus

DIVYANK BOSE & ORS.

.....Respondents

Through: Mr. Varun singh, Mr. Yatharth Kumar and Mr. Arun Sidhant, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant (arrayed as Defendant No.4 in the civil suit), assails the correctness of the judgment and decree dated 11.12.2025 [hereinafter referred to as Impugned Judgment/IJ] passed by the learned District Judge (Commercial Court), Tis Hazari Courts, Delhi [hereinafter referred to as LDJ]. By way of the impugned judgment and decree, the civil suit filed by Respondent No.1 (arrayed as Plaintiff in the civil suit) seeking possession by way of ejectment, recovery of arrears of rent and damages for wrongful use and occupation in respect of the built-up basement floor, without terrace roof rights of property bearing no.

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13/31, situated at WEA, Karol Bagh, New Delhi [hereinafter referred to as the 'suit property'], came to be decreed in his favour.

2. For the sake of clarity, consistency and ease of reference, the parties in the present appeal shall be referred to in accordance with their respective status before the LDJ.

FACTUAL MATRIX:

3. In order to comprehend the issue falling for consideration of this Court, relevant facts are required to be noticed.

4. The Plaintiff is the lawful owner of the suit property, having purchased the same *vide* a registered Sale Deed dated 24.06.2003. Thereafter, the suit property was leased out to Defendant No.1 for the purpose of carrying on his business, by way of a registered Lease Deed dated 01.06.2007 [hereinafter referred to as 'Lease Deed'], at an agreed monthly rent of Rs. 7,000/-, with a stipulation that the rent would stand enhanced by 5% after every 11 months. Subsequently, Defendant No.1, continued to occupy the suit property, through Defendant Nos.2, 3 and 4, who also paid the rent.

5. It may be highlighted that the Defendant No.2 and Defendant No.3 are the daughter and the son-in-law, respectively, of the Defendant No.1, whereas Defendant No.4 is the brother of Defendant No.3. It was the case of the Plaintiff that the Defendants paid the rent only upto 01.04.2020, at the agreed rate of Rs. 12,000/- per month, and that no further payments were made thereafter. Following the default of payment of rent, the Plaintiff approached them on several



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occasions, both in person and by way of a legal notice dated 21.12.2022, calling upon them to vacate the suit property. However, in the absence of any positive response from the Defendants, the Plaintiff was left with no choice but to terminate the Lease Deed *vide* notice dated 05.01.2023. Thereafter, the Plaintiff instituted the civil suit on 19.07.2023, which came to be contested only by Defendant Nos.1 and 4.

6. It was the case of Defendant No.1 before the LDJ that, after the initial lease period of 11 months, he surrendered the possession and has since not been residing in India. It was further stated that Defendant Nos.2 and 3 had also left India several years ago and have settled in Dubai. The Defendant No.4 filed a separate written statement, claiming that he had purchased the suit property from Smt. Bela Bose, the stepmother of the Plaintiff, in the year 2012 by virtue of an oral agreement, for a total sale consideration of Rs. 70,00,000/-, which, according to him, stood paid in full.

7. It was also his case that, upon payment of the entire sale consideration, he approached Smt. Bela Bose for execution of the sale deed; however, she refused to execute the same, claiming that the amount paid by him had been adjusted towards rent and insisting upon payment at the prevailing market rate. Following an altercation, the matter was reported to the police; although she initially expressed willingness to settle, the sale deed was ultimately not executed. It was further alleged that the Plaintiff, in collusion with Smt. Bela Bose, claimed ownership over the suit property and demanded that Defendant No. 4 should purchase the shop at prevailing market price

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to retain possession. Consequently, Defendant No. 4 lodged a criminal complaint dated 16.03.2024 at PS Karol Bagh, recorded *vide* DD No. 72.

8. The Trial Court on the basis of pleading of the parties, framed the following issues:-

“1. Whether the defendant no. 1 had handed over the possession of the suit property to the plaintiff after expiry of the rent agreement between plaintiff and defendant no. 1 and thereafter, he along with defendant nos. 2 and 3 had nothing to do with the suit property?

2. Whether there is no relationship of landlord and tenant between plaintiff and defendant no, 4?

3. Whether defendant no. 4 entered into oral agreement to sell in respect of the suit property with Ms. Bela Bose and entered into possession of the suit property pursuant to the said oral agreement to sell after making the entire sale consideration over a period of time?

4. Whether the plaintiff has received rent @ Rs.12,000/- per month from the defendants upto 31.03.2020?

5. Whether the plaintiff is entitled for recovery of possession in respect to the suit property bearing no.13/31 out of Khasra no. 1509/1147 situated at WEA Karol Bagh, Delhi- 110005 admeasuring 100 sq. yards?

6. Whether the plaintiff is entitled for decree of arrears of rent of Rs. 4,92,000/- against the defendants as prayed for? (OPP)

7. Relief.”

9. The Plaintiff placed on record, *inter alia*, the complete chain of title documents along with the Notice dated 05.01.2023 *vide* which the Lease Deed came to be terminated. He also stepped into the witness



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box to substantiate his case. On the other hand, Defendant No.4 examined himself as DW-4/1, Constable Imsusanen as DW-4/2 and Smt. Bela Bose as DW-4/3.

10. Upon appreciating the evidence on record, the LDJ by way of the Impugned Judgment decreed the suit for possession in favour of the Plaintiff, thereby awarding him recovery of *mesne* profit at the rate of Rs. 12,000/- per month with effect from 01.08.2020 till the date of institution of the suit. Additionally, Defendant No.4 was also held liable to pay *mesne* profit for use and occupation of the premises to the Plaintiff, with an enhancement of 10% per annum from the date of institution of the suit until handing over of vacant and physical possession of the suit property to the Plaintiff.

11. Aggrieved by the aforesaid findings given by way of the Impugned Judgment, the Defendant No.4 has now approached this Court seeking our indulgence in the matter at hand.

12. We have heard learned counsel for the parties, and with their able assistance have perused the paperbook.

CONTENTIONS OF THE PARTIES:

13. At the outset, learned counsel representing the Defendant No.4, admits that in compliance with the direction of the LDJ forming part of the Impugned Judgment, the possession of the suit property has already been taken over by the Plaintiff.



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14. Learned counsel representing the Defendant No.4, controverting the findings rendered by the LDJ, has made the following submissions:

14.1 It is the case of the Defendant No.4 that, he is not liable to make any payment to the Plaintiff, since there exists no privity of contract between the Plaintiff and Defendant No.4.

14.2 Relying on the deposition of Smt. Bela Bose, examined as DW-4/3, it has been argued that the Defendant No.4, undisputedly has made a payment of Rs. 70,00,000/- for purchase of the suit property from her. In order to substantiate the aforesaid claim, a reference is also made to the WhatsApp chat between Smt. Bela Bose and Defendant No.4.

14.3 Further, it is submitted that the deposition of the Defendant No.4 remains unchallenged in cross-examination, hence, payment of Rs. 70,00,000/- is proved.

15. *Per contra*, learned counsel representing the Plaintiff has supported the Impugned Judgment rendered by the LDJ, contending that, the suit only came to be decreed in his favour following proper acquisition of evidence placed on record.

ANALYSIS:

16. At the outset, this Court deems appropriate to highlight that it is an admitted position that the Defendant No.1 took possession of the suit property as a lessee pursuant to the Lease Deed executed with the Plaintiff. Further, it may also be noted that the Defendant No.1 has



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failed to appear as a witness. In view of the aforesaid, the LDJ rightly concluded that the Defendant No.1 has failed to establish that he surrendered possession of the suit property to the Plaintiff upon expiry of the initial lease period of 11 months.

17. Additionally, Defendant No.3 is the son-in-law of Defendant No.1, whereas Defendant No.4 is the brother of Defendant No.3. To put in differently, the Defendant no.4 is the brother of son-in-law of the Defendant No.1, the original lessee with respect to the suit property.

18. Moreover, it is not the case of Defendant No.4 that he was not in possession of the suit property. On the contrary, it has been claimed by him that, he had met Smt. Bela Bose, the alleged stepmother of the Plaintiff, in the year 2012 and purchased the suit property from her against a sale consideration of Rs. 70,00,000/-, which, stood paid in full by January 2022. However, no documentary evidence has been produced by the concerned party to substantiate that Smt. Bela Bose was ever an owner of the suit property, or he was ever put in possession of the suit property by Smt. Bela Bose.

19. Further, what gives rise to serious doubt in the mind of this Court is that Defendant No.4 has not placed on record any agreement of sale executed between him and Smt. Bela Bose. While Defendant No.4 claims to have paid Rs. 70,00,000/- over a period of nearly six years, however, he has failed to adduce any evidence to substantiate such payments. At this stage, a reference may be made to a settled principle of law of *nemo dat quod non habet*, no one can transfer a



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better title than he himself possesses. Consequently, a purchaser is expected to verify the title of the purported vendor before making payment of such a substantial amount. Equally, he is also not expected to remit the entire sale consideration without obtaining any formal receipt or acknowledgment of such payment.

20. From a perusal of the deposition of Smt. Bela Bose, who appeared as DW-4/3 before the LDJ, it becomes evident that Defendant No.4 has failed to prove the alleged payment of Rs. 70,00,000/-. Hence, it was incumbent upon the Defendant No.4 to lead some cogent evidence to prove that the alleged WhatsApp messages were ever sent by Smt. Bela Bose. Moreover, Smt. Bela Bose had denied any exchange of WhatsApp messages relied upon by the Defendant No.4. As already stated in the preceeding paragraph, it is inconceivable, in the ordinary course of prudent conduct, that a sum so substantial could be remitted over a period of six years without the production of a single receipt or acknowledgment. Such uncorroborated assertion, unsupported by documentary evidence, rings hollow and fails to discharge the burden cast upon the Defendant No.4.

21. In these circumstances, Defendant No.4 has failed to establish any independent right whatsoever to remain in possession of the suit property. Further, there is no evidence to substantiate the fact that he was ever put in possession by Smt. Bela Bose. Furthermore, notably, the Defendant No.4 took a risk of examining Smt. Bela Bose, as his witness, however, she did not support his case. Subsequently, the witness was declared hostile and cross-examined by learned counsel

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representing the Defendant No.4. The aforesaid, further underscores the absence of any right or title claimed by Defendant No.4 at the behest of Smt. Bela Bose.

22. The standard of proof adopted in disputes of civil nature is the pre-ponderance of probabilities of evidence, and it is on this basis that the disputes are finally adjudicated upon. In the present factual matrix, keeping in view the familial relationship between the Defendant No.1 and Defendant No.4, it is reasonable to infer that the possession of the suit property was transferred in favour of Defendant No.4 by Defendant No.1. Hence, once the tenancy in favour of Defendant No.1 stands terminated, Defendant No.4, who came in possession of the suit property through Defendant No.1, has no right to continue with such possession.

23. The LDJ rightly decreed the suit for possession filed by the Plaintiff, in the absence of any independent or proprietary right on the part of Defendant No.4, rendering his possession wholly unauthorized and untenable in law. The tenancy in favour of Defendant No.1 stood lawfully terminated by the Notice dated 05.01.2023. In such circumstances, the contention advanced by the learned counsel for Defendant No. 4, that no privity of contract exists between the Plaintiff and Defendant No.4, is bereft of merit and finds no sustenance in the record. It is a settled principle that possession without lawful title is but a shadow of right and cannot stand against the claim of rightful owner.



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24. This Court has also examined the deposition of Defendant No.4 who appeared as DW-4/1. Notably, he was put to a thorough cross-examination by the learned counsel for the Plaintiff. During the course of cross-examination, the case of the Plaintiff was put to the Defendant No.4, who denied the same. The contention of the learned counsel representing Defendant No.4, that the cross-examination was defective or inadequate, is without merit and is unsustainable in law, since the vigorous cross-examination is the acid test of veracity, and in the present case, the examination conducted leaves no room for doubt regarding its adequacy and propriety of the process undertaken.

25. The Trial Court rightly directed the Defendants to pay *mesne* profits at the rate of Rs. 12,000/- per month with effect from 01.08.2020 until the institution of the suit on 19.07.2023. Further, during the pendency of the proceedings, Defendant No. 4 was directed to pay *mesne* profits, enhanced at the rate of 10% per annum, from the date of institution of the suit until full realization. The quantum of *mesne* profits assessed by the Court is neither excessive nor unreasonable, particularly in light of the fact that the premises was originally leased at Rs. 7,000/- per month on 01.06.2007. Over the intervening period, the prevailing market rent in NCT Delhi has increased manifold, and thus, the enhancement of *mesne* profit is both just and commensurate with the principle of equitable compensation for unlawful occupation.



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CONCLUSION:

26. In view of the foregoing discussion, this Court finds no merit for interfering with the observations and findings rendered by the Learned District Judge by way of the Impugned Judgment.

27. Accordingly, the present Appeal, along with pending applications, stands dismissed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

FEBRUARY 27, 2026

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