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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th January, 2026

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RC.REV. 708/2019 & CM APPL. 55332/2019

SANJAY GUPTA

.....Petitioner

Through: Mr. Rajat Aneja and Ms. Sonali
Chopra, Advocates.

versus

JAKKI MULL & SONS

.....Respondent

Through: Mr. Sanjeev Sahay, Mr. Shagun
Saproo, Mr. Archit Rajput, Mr. Karan
Deep Singh and Mr. Nupur Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The hearing in the present case has been conducted through hybrid mode.

2. The present petition under Section 25B(8) of the Delhi Rent Control Act, 1958, (for short, 'DRCA'), has been filed seeking the following prayers:

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"In view of the facts and circumstances mentioned above it is most respectfully prayed that this Hon'ble Court may be pleased to:

i Call for the records of MISC SCJ No. 34/2019; *Sanjay Gupta Vs. Jakki Mull & Sons* and RC ARC No. 29/2018; *Sanjay Gupta*



Vs. *Jakki Mull & Sons* from the Court of the Senior Civil Judge-cum-Rent Controller, New Delhi District, Patiala House Court, Delhi;

ii Allow the present Petition and set aside the Order dated 02.09.2019 passed in MISC SCJ No. 34/2019; *Sanjay Gupta Vs. Jakki Mull & Sons* whereby while allowing the Review Application filed by the Respondent herein, the Court of Shri Bhupinder Singh, Senior Civil Judge-cum-Rent Controller, New Delhi District, Patiala House Court, Delhi erroneously set aside the Eviction Order dated 05.03.2019 passed by the Court of Ms. Namrita Aggarwal, Senior Civil Judge-cum-Rent Controller, New Delhi District, Patiala House Court, Delhi in RC ARC No. 29/2018; *Sanjay Gupta Vs. Jakki Mull & Sons*; and/or

iii. Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

3. The petitioner had filed an eviction petition, RC No.29/18, under Section 14(1)(e) read with Section 25B of the DRCA against the respondent with respect to Shop Nos.E-25; E-26; E-27, E Block, Connaught Place, New Delhi (hereinafter referred to as ‘demised premises’), on 17.04.2018 The respondent filed application seeking leave to defend the said eviction petition on 30.05.2018. Learned Rent Controller, *vide* judgment dated 05.03.2019, while dismissing the said application, allowed the eviction petition in favour of the petitioner. It was held that the respondent had failed to raise any triable issue, which required evidence to be proved and the petitioner had clearly established his *bonafide* requirement regarding the demised premises, and therefore, the petitioner was entitled to recovery of the demised premises.

4. Thereafter, a review application, MISC SCJ No.34/19, on behalf of the



respondent under Section 114 read with Order XLVII Rule 1 read with Section 151 of the CPC seeking review of the judgment dated 05.03.2019 was filed on 23.04.2019. By that time, the roster had changed. The newly constituted learned Rent Controller *vide* the impugned order dated 02.09.2019 allowed the review application filed by the respondent and set aside the judgment dated 05.03.2019.

5. It is pertinent to note the history of litigation between the parties. There were two other eviction petitions filed by the petitioner against the respondent. The first eviction petition, E.No.87/09/1998, was filed by the petitioner under Sections 14(1)(b) & (j) of the DRCA wherein, respondent denied the title of the petitioner and the existence of landlord-tenant relationship between the parties. Learned RC *vide* judgment dated 14.02.2014 dismissed the said petition as the petitioner had failed to prove his case of eviction under Sections 14(1)(b) & (j) of the DRCA. The petitioner assailed the said judgment dated 14.02.2014 by way of an appeal under Section 38 of the DRCA and *vide* order dated 07.04.2021, learned Tribunal had adjourned the said appeal *sine die* awaiting the judgment of this Court in the present petition. The second petition, RC ARC No.5434/2010, was filed by the petitioner on account of *bonafide* requirements of his wife, daughter, son, and himself, under Section 14(1)(e) of the DRCA. In this petition as well, the respondent denied the title of the petitioner and the existence of landlord-tenant relationship. Learned RC *vide* order dated 29.11.2012 in this petition granted leave to defend to the respondent. A challenge against the said order by way of a revision petition, RC.REV.106/2013, by the petitioner was disposed of by a consent order dated 14.10.2014 passed by learned Coordinate



Bench whereby, it was directed that both the parties will not get more than two opportunities to complete their respective evidence and learned ARC was directed to expedite the disposal of eviction petition by completing the hearing of final arguments within three months of completion of evidence. Thereafter, on an application of the respondent, learned RC adjourned the second petition *sine die vide* order dated 16.05.2015 till the appeal against the judgment dated 14.02.2014 is decided by learned Appellate Court. Subsequently, in 2018, the petitioner approached learned RC and *vide* order dated 16.04.2021, the petitioner withdrew the second eviction petition on the ground that the *bonafide* requirement as pleaded in the petition had since changed and the same no longer existed.

6. It is further pertinent to note that the petitioner is deriving title in the subject property on the ground that initially the subject property was taken, *vide* perpetual release dated 04.01.1926, by M/s L. Gopinath (HUF), which was taken over by the former's father in 1948. In 1964, the father of the petitioner filed a suit, Suit No.652/64, for partition of the joint family properties owned by M/s L. Gopinath and the same was decreed *vide* decree dated 02.11.1964. It is the case of the petitioner that all properties enumerated in Schedule-‘E’ of the report of the Court Commissioner to the said decree were to the exclusive and absolute ownership of the petitioner and all the members/coparceners of M/s L. Gopinath had duly accepted the said decree and never challenged the same in any Court of law, and thus, the decree dated 02.11.1964 had attained finality.

7. Learned counsel for the petitioner has firstly, submitted that the



respondent has grossly abused the process of the Court as it had remedy to approach this Court by way of a revision petition under Section 25B(8) of the DRCA, if it was aggrieved by the judgment dated 05.03.2019. He further submitted that the review application was filed by the respondent after expiry of two months of passing of the judgment dated 05.02.2019 and when the learned Presiding Officer who had passed the said judgment was transferred. It is further submitted that the ground taken in the review application was that there was an error apparent on the face of the record. It is the case of the petitioner that the respondent had waited for the transfer of the learned Presiding Judge and had then filed the review application. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Vedanta Limited v. Goa Foundation & Ors.**¹, and it is contended that the Hon'ble Supreme Court has disapproved the practice adopted by litigants of filing review applications after the learned Presiding Judge who had passed the judgment has retired or has been transferred.

8. Secondly, he has submitted that the impugned order dated 02.09.2019 was passed by learned Successor RC by overriding the scope of powers of a Court under Order XLVII Rule 1 of the CPC as *vide* the said order learned RC had re-appreciated the entire material on record and had reversed the findings contained in judgment dated 05.03.2019. Thirdly, it is submitted that learned RC while passing the impugned order had erred in holding that a patent error has been passed by overlooking the two findings of the respective Courts in earlier eviction petitions regarding non-existence of landlord-tenant

¹ (2021) 7 SCC 206



relationship and not giving due weightage to the concept of *res-judicata*. It is the case of the petitioner that in the first eviction petition, E.No.87/09/1998, filed in 1998, reliance was placed on certified copy of the partition decree dated 02.11.1964, which was prepared and attested on 14.05.1968 and during the course of final arguments, it was realised that an error has crept in the said certified copy, and on closer examination of the same with report of Court commissioner, it was noted that in paragraph 4, Schedule-‘F’ was incorrectly typed in place of Schedule-‘E’ and Ajay Gupta was incorrectly typed in place of petitioner – Sanjay Gupta. It is, however, pointed out that learned Predecessor RC with respect to the said examination, held that due to lack of clarity in respect of certain facts in question, the petitioner was not found to be the landlord, or owner of the demised premises and accordingly, the said eviction petition was dismissed *vide* judgment dated 14.02.2014. Attention of the Court has been drawn towards paragraph (iii) under heading, ‘Alleged dispute qua the ownership of the Tenant Premises:’ in the subject eviction petition filed by the petitioner as well as towards paragraph Nos.11 to 11.7 of the judgment dated 05.03.2019 passed in the subject eviction petition and it is contended that learned Predecessor RC had examined all the aforesaid issues with respect to the ownership as well as existence of landlord-tenant relationship amongst the parties and the same was not considered by learned Successor RC while reviewing the aforesaid judgment in the impugned order. Attention of this Court has also been drawn towards paragraph Nos.21 to 23 in judgment dated 14.02.2014 passed in E.No.87/09/98, the first eviction petition, to show the manner in which the issue of landlord-tenant relationship was dealt in the said judgment. It is also the case of the petitioner that the respondent had no *locus standi* to raise the dispute with respect to the title of



the petitioner *qua* him as the subject property was obtained from a partition decree which had attained finality way back in 1964-65 and the title of the petitioner has not been disputed by his other shareholders in the said HUF-M/s L. Gopinath and the standard of the proof to make out a case under Section 14(1)(e) of the DRCA was duly fulfilled. Thus, there cannot be *res-judicata* operating with respect to an issue to which the other party litigant never had *locus standi*. It is further submitted that the aforesaid rectification with respect to the name of the petitioner in the Schedule of the report of the Court Commissioner was done by learned ASCJ *vide* order dated 21.12.2015 in M.No.17/15, on an application filed jointly by the petitioner, his father-Y.N. Gupta, his brother-Ajay Gupta, seeking correction of certain typographical errors/mistakes in the certified copy of decree dated 02.11.1964, and accordingly, a fresh decree was directed to be drawn. It is submitted that in view of these circumstances, the second eviction petition filed by the petitioner was withdrawn as there was change in *bonafide* requirement of the petitioner and thereafter, the subject petition was filed. Reliance has been placed on the judgment passed by learned Coordinate Bench of this Court in **Mukesh Khanna v. Des Raj Jewellers**², to contend that in similar circumstances, it was held that mere disagreement with the view taken cannot be a ground to modify, or alter the findings passed by the Predecessor Court and the impugned order therein was set aside.

9. It is further the case of the petitioner that learned RC in the impugned order has completely ignored the settled principle of law that, under Section

² 2025: DHC: 10773



14(1)(e) of the DRCA landlord is not supposed to prove absolute ownership and is required to show that he holds the title better than a tenant. It is further submitted that in the impugned order, learned Successor RC has taken into account wholly irrelevant considerations and had given fact findings, which were already given by his predecessor on merits. It is further submitted that the observations made in paragraph 17 of the impugned order is totally misconceived as there were no erstwhile fact findings on merits with respect to the existence of landlord – tenant relationship between the petitioner and the respondents. It is, therefore, submitted that the impugned order suffers from illegalities, irregularities and perversity and the same is to be set aside.

10. Reliance has been placed on following judgments by learned counsel for the petitioner in support of his case: -

- a) **Haridas v. Usha Rani Bank (Smt) & Ors³,**
- b) **Shri Ram Gopal v. Shri Purshottam Dass⁴;**
- c) **Smt. Shanti Sharma & Ors v. Smt. Ved Prabha & ORs.⁵;**
- d) **Meenakshi v. Ramesh Khanna And Anr.⁶;**
- e) **Ramesh Chand v. Ugnati Devi⁷;**
- f) **N.R. Narayan Swamy v. B. Francis Jagan⁸,**
- g) **Baldev Singh Bajwa v. Monish Saini⁹,**

³ (2006) 4 SCC 78

⁴ 2014:DHC:3749

⁵ (1987) 4 SCC 193

⁶ 1995 SCC OnLine Del 373

⁷ 2008 LAWPACK (Del) 36791: 2009(157) DLT 450

⁸ (2001) 6 SCC 473

⁹ (2005) 12 SCC 778



- h) Sarla Ahuja v. United India Insurance Company Ltd.¹⁰,**
i) Harsh Kumar & Ors. v. Man Mohan & Ors¹¹.

11. *Per contra*, learned counsel for the respondent has submitted that the impugned order has been passed by learned Successor RC after taking into account, the error apparent and patent illegality on the face of the record in the judgment dated 05.03.2019 inasmuch as learned Predecessor RC had failed to take into account that there was no landlord – tenant relationship between the parties. It is submitted that the learned Predecessor had failed to take into account that, in the first eviction petition, it was specifically held by learned RC, after trial, that the petitioner cannot be treated as a landlord. It is further submitted that the second eviction petition was withdrawn by the petitioner citing changes in *bonafide* requirement; however, there was no change with respect to the title of the parties. Therefore, since there were findings given by two Courts with respect to the title of the parties and the same amounted to *res-judicata* between the parties and it was incorrectly recorded in judgment dated 05.03.2019 by learned RC that said findings given in earlier eviction petitions are not binding. It is the case of the respondent that since the petitioner was not able to obtain any favourable order in the two erstwhile petitions, which were dismissed, after substantial hearing, he had filed the subject petition. It is further submitted that by way of the subject petition, the petitioner was trying to achieve indirectly what he could not do directly.

¹⁰ (1998) 8 SCC 119

¹¹ 2012:DHC:1620



12. He further submitted that learned Predecessor RC had not taken into account the findings in the first eviction petition that the petitioner did not have any pre-existing right in the demised premises and same was not subject matter of the decree dated 02.11.1964 which was in the nature of compromise decree, and therefore, in absence of any registered document in favour of the petitioner pursuant to said decree, no title with respect to the demised premises could have been said to be devolved on the petitioner. It is pointed out that learned Predecessor RC had erred in holding that the petitioner was landlord as rent was never paid to the petitioner and instead, all the rent receipts were in the name of M/s L. Gopinath. It is pointed out that findings in the judgment dated 14.02.2014 given in first eviction petition were also to the effect that the petitioner was not the landlord and learned Predecessor RC had erred in concluding in paragraph 11.2 of the judgment dated 05.03.2019 that the petitioner was the owner of the properties mentioned in Schedule-‘E’ of the report of the Local Commissioner which included the demised premises. It is submitted that the respondent was inducted as a tenant in the demised premises by M/s L. Gopinath, HUF.

13. It is the case of the respondent that the petitioner in order to wriggle out the adverse findings against him had abused the process of the Court by filing multiple petitions. With respect to subsequent events, it is submitted that the demise of Y.N. Gupta, father of the petitioner, was rightly taken into account by learned Successor RC as the same was an important event for devolvement of the properties on the petitioner and other legal heirs. It is further submitted that the second eviction petition, RC No.5434/10, was withdrawn by the petitioner *vide* order dated 16.04.2018 by way of an application for



withdrawal under Order XXIII Rule 1 read with Section 151 of the CPC filed by the petitioner and the same was also to be taken into account as conduct of the petitioner.

14. Reliance has been placed on paragraph Nos. 20 to 20.2 in the judgment of Hon'ble Supreme Court in **Kamlesh Verma v. Mayawati & Ors.**¹², with respect to the principles and grounds of review and the circumstances in which review will be or will not be maintainable. It is submitted that there were concurrent findings with respect to the status/title of the parties and it was held that the parties do not have any landlord-tenant relationship and the said cogent findings cannot be brushed aside.

15. Reliance has also been placed on the judgment of **Bhoop Singh v. Ram Singh Major and Others**¹³, to contend that the petitioner did not have any registered document to show how he was deriving title of landlord/owner in the demised premises. It is the contention of respondent that the demised premises were not subject matter of the decree dated 02.11.1964, and therefore, no title could be stated to have transferred on the petitioner by the said decree insofar as the subject property is concerned for the want of stamp duty and registration.

16. Reliance has also been placed on the judgment of **Prem Kishore & Ors. v. Brahm Prakash & Ors.**¹⁴, to contend that in nearly similar

¹² (2013) 8 SCC 320

¹³ (1995) 5 SCC 709: AIR 1996 SC 196

¹⁴ (2023) 19 SCC 244



circumstances, wherein, earlier eviction petition was dismissed as the plaintiffs/appellants therein failed to appear before learned RC for the purpose of establishing the relationship of landlord and tenant between the parties despite several opportunities and subsequently, fresh eviction petition was filed after demise of original plaintiff, the Hon'ble Supreme Court had observed that where the issue of establishing landlord and tenant relationship between the parties was decided on merits, the fresh suit/petition is not maintainable on the principles of *res-judicata*. It is submitted that the case of the respondent in the present case stands on better footing as there were two concurrent findings in favour of the respondent which were not taken into account by learned Predecessor RC in judgment dated 05.03.2019. In view of the aforesaid submissions, it is prayed that the impugned order dated 02.09.2019 need no interference and the present petition be dismissed.

17. *In rejoinder*, learned counsel for the petitioner has drawn attention of this Court towards the following prayers in the suit, CS 58973/2016, filed seeking declaration and permanent injunction instituted by the respondent through its partner against the father of the petitioner, Y.N. Gupta, and other coparceners in M/s L. Gopinath, HUF, wherein the petitioner was also arrayed as Defendant No.2: -

“It is, therefore, most respectfully prayed that the Hon'ble Court be pleased to pass a decree with costs in favour of the plaintiff and against the defendants:

i. Declaring the partition Decree partition decree and certified copies of amended/corrected partition decree alleged to have been passed in CS No. 124/2015 (Old CS No. 652/1694)



title Yatender Nath Gupta Vs. Smt. Meenaxi Gupta and others illegal unlawful, void, non operative since the same has been obtained by playing fraud on the Hon'ble Court by concealment of facts as well as misrepresentation of facts in collusion with each other who have been the partiers to the said partition decree or amended/corrected partition and not binding on the plaintiffs.

ii. Restraining defendant No. 2 from claiming as well as representing himself as the owner/landlord of property No. E-27/1-3 (E-25 to E-27), Connaught Place, New Delhi-11001 on the basis of partition decree and certified copies of amended/corrected partition decree alleged to have been passed in CS No. 124/2015 (Old CS No. 652/1694) title Yatender Nath Gupta Vs. Smt. Meenaxi Gupta and others since the same has been obtained by playing fraud on the Hon'ble Court by concealment of facts as well as misrepresentation of facts in collusion with each other who have been the partiers to the said partition decree or amended/corrected partition decree till the disposal of the present suit.

iii. Any other relief which this Hon'ble Court may deem fit and proper be also passed in favour of the plaintiff and against the defendants.

iv. Cost of the suit be also awarded in favour of the plaintiff and against defendants."

It is pointed out that plaint in the aforesaid suit was rejected by the learned ACJ/CCJ *vide* order dated 21.03.2018 on the application moved on behalf of the defendant Nos.1&3 under Order VII Rule 11 of the CPC. Learned counsel for the petitioner has submitted that the learned ACJ/CCJ, in the said order, had observed that the plaintiffs (respondent herein) cannot seek declaration *qua* validity of the partition between the defendants (coparceners of M/s L. Gopinath, HUF) as it does not infringe their rights as tenant in the property in any manner, and further that, the respondent cannot seek



permanent injunction for restraining the petitioner herein from claiming and representing himself to be the landlord/owner of the suit property concerned as no cause of action was accrued in its favour.

18. Thus, it is submitted that the learned Successor RC had erred in reversing the findings given by learned Predecessor RC under review jurisdiction and granting leave to defend to the respondent. It is therefore prayed that the impugned order dated 02.09.2019 is to be set-aside.

19. Heard learned counsels for the parties and perused the records.

20. At the very outset, it is pertinent to note that learned RC in the impugned order dated 02.09.2019 had referred to the judgment of Hon'ble Supreme Court in **Kamlesh Verma v. Mayawati (supra)**, on which reliance has also been placed on by learned counsel for the respondent. In **Kamlesh Verma (supra)**, the Hon'ble Supreme Court had summarised the principles when a review of judgment/order is or is not maintainable. The relevant paragraphs of the said judgment read as under: -

“19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles



20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) Review proceedings cannot be equated with the original hearing of the case.
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
- (v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.



(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.”

21. In the impugned order dated 02.09.2019, on the review application filed on behalf of the respondent, learned Successor RC had proceeded to examine the case by observing as under: -

“11. In the present matter, the applicant has highlighted that this court, while passing order dated applicant 05/03/2019 failed to take into account many issues that were raised before it, in particular that of *res-judicata* and also the binding precedence/judgments. Also that the court did not take in account the important facts/documents (subsequent events) which were sought to be placed by the Applicant through applications.”

22. Perusal of the review application filed by the respondent shows that the grounds taken therein, with respect to plea of *res-judicata*, additional documents placed on record by way of subsequent application, question of title and the relationship of landlord and tenant, different standards of proof and conduct of the petitioner were duly dealt with by learned Predecessor RC. The aforesaid grounds taken in the review application for the sake of completeness are reproduced hereinunder: -

“A. BECAUSE the Learned Predecessor Court committed an error in not appreciating and considering the averments as set out in the leave to defend application, wherein the Applicant/ Respondent has been able to raise *prima facie*, triable issue which seems to have been overlooked by the Learned Predecessor Court, and which could not be prematurely decided, without adjudication by way of evidence. As such, the Applicant/Respondent cannot be thrown out of the tenanted



premises at the threshold at least till, the time, the Petitioner are able to make out their case of bona fide requirement of the same. The impugned order is thus liable to be recalled and set aside.

B. BECAUSE the Learned Predecessor Court erred in overlooking the vital issue of Res Judicata raised by the Applicant/Respondent, which the Learned Predecessor Court in its Order dated 07.01.2019 observed that the same shall be considered at the time of arguments on leave to defend and not considering the same since as per law laid down in Om Prakash Gupta Vs. Dr. Rattan Singh 1963 PLR 543. The law laid down by Hon'ble Supreme Court is binding on all the Courts in India as per Constitution of India and how the said decision of Om Prakash Gupta was not binding on Learned Predecessor Court is in itself is grave error of law.

C. BECAUSE the Learned Predecessor Court failed to appreciate that the binding precedence/judgments, which in itself is sufficient to 'review the impugned order.

D. BECAUSE the Learned Predecessor Court while passing the Impugned Order dated 05.03.2019, miserably failed to and infact denied to consider the important facts/documents, sought to be placed on record through different applications, which facts were subsequent and documents, which came to knowledge of the Applicant late but all having the immense impact on the merits of the case. But the Learned Predecessor Court, adopting a strange procedure declined to consider the same.

E. BECAUSE the Learned Predecessor Court while passing the Impugned Order dated 05.03.2019 committed a grave errors in law by ignoring well settled principles of law that in cases of eviction on the ground of requirement of laid down by Hon'ble additional accommodation as Supreme Court in Santosh Soni Vs. Chand Kiran 2000 JT (3) SC 397 and Hon'ble High Court of Delhi in numerous (1) Ashok Kumar Gupta Vs. Rajesh judgments such as Kuman & Another by Hon'ble Mr. Justice V.K. Shali, 2016 (154) DRJ 75, (2) Gulab Singh Versus Sher Singh by Hon'ble Ms. Justice Mukta Gupta, 2015 (6) AD Delhi 137 on the point of subsequent events, (3) Sudershan Kumar Versus Harish Chand Garg by Hon'ble Mr. Justice Manmohan Singh, 2014 (143) DRJ 489 (4) Sanjay Chugh versus Opendar Nath Ahuja by Hon'ble Mr. Justice Manmohan Singh, 2014 (4) AD Delhi



83; (5) Depak Gupta Versus Sushma Aggarwal by Hon'ble Mr. Justice Manmohan Singh, 2013 (202) DLT 121 (6) ritpal Singh Versus Ramesh Kumar Dora by Hon'ble Mr. Justice Manmohan Singh, 2014 (143) DRJ 489 (7) Kishore Versus Prabodh Kumar by Hon'ble Mr. Justice M. L. Mehta, 2012 (132) DRJ 562, (8) Sukh Dev Raj Sharma Versus Kuljeet Singh by Hon'ble Mr. Justice M. L. Mehta, 2012 (195) DLT 56, (9) S.K. Seth & Sons Versus Vijay Bhalla, by Hon'ble Mr. Justice M. L. Mehta, 2012 (191) DLT 722, (10) Rajinder Singh Versus Mange Lal by Hon'ble Mr. Justice Manmohan Şarin, 1998 (73), DLT 177, (11) Shrimani Arora Versus A.K. Garg, by Hon'ble Ms. Justice Usha Mehra, 1997 (67) DLT 140 and subsequent judgments.

D. BECAUSE the Learned Predecessor Court erred in closing its eyes to the Overseas Citizenship of India Scheme Card of the Petitioner and his wife mentioning the profession of the Petitioner as "Airline Staff" and that of his wife as "Transliterator". From the said documents it is evident that the Petitioner and his wife are gainfully employed in USA and therefore filing of the present. Petition is nothing but manipulation and vexatious attempt to evict the Applicant/Respondent.

E. BECAUSE the Learned Predecessor Court had erred in not appreciating that under the Overseas Citizenship of India Scheme the said person is permitted to practice only certain professions. The proposed business sought to be carried on by the Petitioner cannot be professed by him under the said scheme being a foreigner.

F. BECAUSE the Learned Predecessor Court committed an error of law in not appreciating and failure to examine that the question of title and the relationship of the landlord & tenant between the parties regarding the premises in question, which was not only expressly raised in an earlier Eviction Petition No. E-87/09/98 titled "Sanjay Gupta Vs. M/ Jakki Mull & Sons & Others" under Section 14 (1) (b) & M(j) but was also expressly decided between the parties by the Learned Predecessor Court of Sh. Prashant Sharma (the then ARC, New Delhi District, Patiala House Courts, New Delhi), vide judgment/order dated 14.02.2014 after full trial, as such there was no question for the Learned Predecessor Court herself, to hold that the said earlier decision dated 14.02.2014 does not operate as Res-judicata. It is submitted that the Learned Counsel for the Respondent neither filed any replies to the applications dismissed by the Learned



RC vide the impugned order, nor argued against the proposition of law of Res-judicata at the time of arguments.

G. BECAUSE the Learned Predecessor Court also, miserably rather overlooked, failed to. appreciate and the conspicuous and malafide conduct of the Petitioner, of withdrawing the earlier eviction petition (under Section 14 (1) (e) of DRC, Act) wherein not only the leave to defend was granted by the court of Shri Manoj Kumar, the then (the then RC, New Delhi District, Patiala House Courts, New Delhi) but the said petition was also consigned as sine die vide order dated 16.05.2015 by Ms. Kiran Gupta (the then RC, New Delhi District, Patiala House Courts, New. Delhi), after passing of the judgment dated 14.02.2014. The entire exercise of withdrawing the earlier similar petition and then filing of the present eviction petition In question, was nothing but to somehow by-pass the orders of grant of leave to defend as well as of consigning the said petition as sine die which order otherwise had become final. It is submitted that the Respondent has indulged himself in forum shopping and also misusing the procedure of the law.

H. BECAUSE the Learned RC also miserably failed to appreciate and apply the binding precedence of law passed by the Constitution bench of Hon'ble Supreme Court in India in the case titled "Om Prakash Gupta Vs. Dr. Rattan Singh" 1963, Punjab Law Reporter 543. The relevant extract of the judgment is being reproduced herein below for the convenience of this Hon'ble Court:

"If a person moves eviction of a person on the ground that he is a tenant who had, by his acts and omissions, made himself liable to be evicted on any one of the grounds for eviction, and if the tenant denies that the landlord, the Controller has to decide the question as to whether there was a relationship of landlord and tenant. If the Controller decides that there is no. such relationship the proceedings has to be terminated, without deciding the main question in controversy namely, the question of eviction."

It is, humbly submitted that since the decision dated 14.02.2014 by the earlier competent court had already been taken, clearly holding that the Respondent herein/petition in the eviction petition is neither



the legal owner and/or landlord of the property in question; the Learned RC should have hold its hand and adjourned the eviction petition sine-die, in view of the fact that appeal against the said decision is pending adjudication before the RCT and there was soon likelihood of passing the binding judgment by Learned RCT; instead of dismissing the leave to defend application filed by the Petitioner without any basis, on absurd grounds/reasons.

I. BECAUSE the Learned Predecessor Court also miserably failed to appreciate that infact the judgment dated 14.02.2014 passed by Sh. Prashant Sharma (the then ARC, New Delhi District, Patiala House Courts, New Delhi), in an earlier Eviction Petition No. E-87/09/98 titled "Sanjay Gupta Vs. M/ Jakki Mull & Sons & Others" under Section 14 (1) (b) & (j); has almost become final. It is so, as on 30.7.2018 the Petitioner had given up the grounds of eviction in the said appeal filed /pending before the RCT, while seeking to press the grounds of relationship of landlord and tenant. It is most humbly. submitted that with the withdrawl of the eviction grounds nothing survives in the said appeal since rent court in the absence of any grounds the rent court have no jurisdiction to decide the relationship of landlord and tenant/ownership etc. But the Learned RC did not appreciate the same at all and passed the impugned order.

J. BECAUSE the Learned Predecessor Court cannot ignore the fact that after passing of the judgment dated 14.02.2014 passed by Sh. Prashant Sharma (as mentioned aforesaid), the Respondent herein/Petitioner has no cause of action to claim himself as owner/ landlord of the premises till he is able to prove the same in appeal pending before Learned RCT or by filing the suit for declaration before the Civil Court so that the decision of Learned ARC Sh. Prashant Sharma could be quashed and set-aside.

K. BECAUSE the Learned Predecessor Court miserably failed to appreciate that the standard of proof of the petition under Section 14 (1) (e) and petition under Section 14 (1) (b) & (j) has nothing to do, with the issue of relationship of landlord and tenant as well as the ownership of the premises. The learned RC also miserably failed to appreciate that basis of conclusion of the judgment dated/order dated 14.02.2014 was the evidence (both oral and documentary), which was led by the parties to prove their respective stands i.e. after full fledged



trial and not that the then RC decided the said questions incidentally or collaterally.

L. BECAUSE the Learned Predecessor Court wrongly relied upon the judgment dated Ramesh Chander Vs. Uganti Devi 157, (2009) DLT 450, to hold that the absolute ownership is not required to be proved by the landlord which judgment is never applicable to the facts of the present case. Learned Predecessor Court miserably failed to appreciate the contents/facts/ratio of said complete judgment on the one hand and the acts of the present case on the other hand are different, while applying the said judgment in the present case. It is submitted that the correct ratio of the said judgment is as under:

"It is. settled preposition of law that in the concept of order to consider ownership under Delhi Rent Control Act, the court has to see the title and right of the landlord qua the tenant. The only thing to be seen by the Court is that the landlord had been receiving rent for his own benefit and not for and on behalf of someone else. If the landlord receiving rent for himself and not on behalf of someone else, he is to be considered as the owner howsoever imperfect his title over the premises may be. The imperfectness of the title of the premises cannot stand in the way of an eviction petition under Section 14 (1) (e) of the DRC Act, neither the tenant can be allowed to raise the plea of imperfect title or title not vesting in the landlord and that too when the tenant has been paying rent to the landlord. Section 116 of the Evidence Act creates estoppels against such a tenant. A tenant can challenge the title of landlord only after vacating the premises and not when he is occupying the premises. In fact, such a tenant who denies the title of the landlord, qua the premises, to whom he is paying rent, acts dishonestly"

M. BECAUSE the Learned Predecessor Court had apparently passed the impugned Order dated 05.03.2019 without the application of equity and good conscience and also without any caution and circumspect.



O. BECAUSE the Learned Predecessor Court has not only failed to apply the ratio of law settled by the judicial pronouncements under the said provisions of law by High Court and the Apex Court but has allowed himself to be guided by irrelevant considerations while applying law to the facts of the case.

P. BECAUSE the impugned order on the face of the record is patent and latent violation of provisions of law and the binding precedents as the same has been passed in gross disregard to the same.”

23. Perusal of the aforesaid grounds would show that the purpose of the review application was to challenge the findings of learned Predecessor RC. The observations made by learned Successor RC in the impugned order were without any cogent or satisfactory reasons in respect of the grounds of review provided under Order XLVII Rule 1 of the CPC.

24. With respect to the contention raised on behalf of the respondent regarding the non-consideration of submission of plea of *res-judicata* in respect of non-existence of landlord-tenant relationship between the parties, and non-consideration of subsequent event, it will be apposite to refer to the relevant observations given by learned Predecessor RC *vide* judgment dated 05.03.2019 and learned Successor RC *vide* impugned order dated 02.09.2019, which have been reproduced in tabulation form as under: -

Issues Referred	Judgment dated 05.03.2019 passed by learned Predecessor RC	Judgment dated 02.09.2019 passed by learned Successor RC
Ownership as well as existence of landlord-	11 The respondent has disputed the ownership of petitioner over the tenanted	13 There is no denial that initially, on 13/04/1998 a petition u/s 14(1)(b) and (j) of



tenant relationship	premises as well as the existence of landlord tenant relationship between the petitioner and respondent. It is the case of respondent that M/s. L Gopi Nath was the owner / landlord of the tenanted premises and as such the property belonging to it could not be partitioned. That the partition decree of 1964 is no decree in the eyes of law being obtained by fraud wherein the respondent was not even a party and even otherwise being unregistered and unstamped. Per contra, it is submitted by the petitioner that he is the owner / landlord of the tenanted premises and that the respondent has also paid rent to petitioner on various occasions. 11.1 I have heard the contentions of both the parties and perused the records. Perusal of the records shows that in the petition the petitioner has clearly mentioned in para 19 the entire history by virtue of which the suit property devolved upon the petitioner from M/s. L Gopi Nath. It is an admitted fact between the	the DRC Act, 1958 was filed by the Non -Applicant which was dismissed vide order dated 14/02/2014. Also in the petition u/s 14(1)(e) of the DRC Act filed on 20/11/2010, leave to defend was granted to the Applicant, vide order dated 29/11/2012. The said order, was challenged before Hon'ble High Court which was disposed off vide order dt. 14th October 2014 on joint consent of the parties that evidences shall be led, meaning thereby that the appellant (Non - Applicant herein) admitted that evidences has to be led to prove the issue of landlord-tenant between the parties. 14 The said petition u/s 14(1)(e) of the DRC Act was adjourned sine die awaiting outcome of the Appeal preferred by the Non Applicant against the order dated 14/02/2014 whereby petition u/s 14(1)(b) & (j) of the DRC Act was disposed off as dismissed. The said Appeal bearing No. RCT 12/2014 (renumbered as RCT No. 157/16) is stated to be still pending before Ld. RCT.
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	petitioner and respondent that the tenanted premises belonged to the firm of M/s. L Gopi Nath Further, it has nowhere been disputed that the petitioner is one of the family member of L Gopi Nath who was earlier the proprietor of M/s. L Gopi Nath. The respondent tried to dispute the ownership of M/s. L Gopi Nath stating that M/s. L Gopi Nath has claimed its ownership only on the basis of a perpetual lease deed dt. 04.01.1926. However, respondent himself has admitted at various places in its leave to defend application that it was inducted as a tenant by M/s. L Gopi Nath and till date continues to pay rent in the name of M/s. L Gopi Nath. That being the case, the respondent cannot dispute the title of M/s. L Gopi Nathi over the premises in question. Further, it is also not in dispute that Sh. Y N Gupta , father of petitioner was the successor in interest of M/s. L Gopi Nath who was the proprietor of M/s. L Gopi Nath. Now being the eldest member of family, after Sh. Gopi Nath, Mr. Y N Gupta	15 As such the Applicant on the aspect of landlord-tenant issue, succeeded in full fledged trial in petition u/s 14(l)(b) and (j) of the DRC Act as well as in Petition u/s 14(l)(e) DRC Act filed in 2010 which when challenged before Hon'ble High Court was not set aside and matter has sent back for trial. 16 In the meantime petition u/s 14(l)(e) of the DRC Act which was filed on 20/11/2010 RC ARC No.5434/2010 was withdrawn on 16/04/2018 and the present petition was filed citing change in the bonafide requirements. However no change was averred in the issue of landlord -tenant relationship between the parties. 17 This court is of the view that a patent error has been committed by overlooking the two findings of the courts in respective petitions E No. 87/09/98 (under section 14(1) (b) &(j) of DRC Act) and E. No. 5434/2010 (under section 14(l)(e) of DRC Act) regarding non existence of the landlord and tenant relationship and not giving due weightage to the
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	decided to partition the property of the firm M/s. L Gopi Nath between all the family members for which a partition suit bearing no. 652/64 titled as Sh Yatinder Nath Vs. Minaxi Gupta & Ors was filed . In fact the said suit was decreed on 02.11.1964 by which all the properties of M/s. L Gopi Nath was partitioned by metes and bounds among the family members. The objection raised by the respondent that the said partition decree is forged and fabricated since the respondent was not made a party to it is without any substance, since the respondent is merely a tenant in the premises in question and a tenant who has no right, title or interest over the property by any stretch of imagination can not be made party to a partition suit which is filed between the owners i.e the family members to divide the properties amongst themselves. Further, the respondent has also disputed that the said partition deed dt. 02.11. 1964 stating that it is no decree in the eye of law since it is unstamped and	concept of res-judicata. 18 In <i>Om Prakash vs Rattan Singh(Supra)</i>, it was held that <i>"DRC act postulates the relationship of landlord and tenant which must be a preexisting relationship. The act is directed to control some of the terms and Incidents of the relationship. Hence, there is no express provision In the act empowering the controller, or the tribunal, to determine whether or not there is a relationship of landlord and tenant. In most cases such a question would not arise for determination by the authorities under the act. <u>The act proceeds on the assumption that there is such a relationship. However. If the relationship is denied . the authorities under the act have to determine the questions also, because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the act. It is true that the act does not in terms authorize the authorities under the act to determine finally the questions of the landlord and tenant. <u>The act proceeds on the</u></u></i>
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	unregistered. The documents on which the registration is compulsory are given in clauses A to E Sub clause (1) of Section 17 of the Registration Act. The decree dt. 02.11.1964 effects the partition of the immovable property and therefore, it falls under section 14(1)(b) of Registration Act. However, by virtue of the provisions contained in Section 17(2) (vi) of the Registration Act, clause (b) of Sub Clause (1) of Section 17 of the Registration Act does not apply to any decree or order of a court except a decree or a order expressed to be made on a compromise and comprising of immovable property other than that which are subject matter of suit or proceedings. The decree dt. 02.11.1964 is made on a compromise. However, it does not comprise of immovable property other than that which is subject matter of the suit and therefore, the said decree does not come within the provisions of Section 17 of the Registration Act and thus does not require compulsory registration. Moreover none	<u>presumption that there is such a relationship. If the relationship is denied, the authorities under the act have to determine the questions also, because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the act.</u> "If a person moves a controller for eviction of a person on the ground that he is a tenant who had, by his acts and omissions, made himself liable to be evicted on any one of the grounds for eviction, and if the tenant denies that the plaintiff is the landlord, the controller has to decide the question as to whether there was a relationship of landlord and tenant. If the controller decides that there is no such relationship the proceedings has to be terminated, without deciding the main question in controversy namely, the question of eviction." 19 There is no gainsaying the tribunals within the provision of the Act, are tribunals of exclusive jurisdiction and their orders are finals and not liable to be questioned by way of
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	of the family members of L Gopi Nath who are effected by the said partition deed had ever challenged the said decree dt. 02.11.1964, meaning thereby that the said decree has become final and binding upon all. 11.2 It is also averred by the respondent that in an earlier eviction petition filed by the petitioner against the respondent under section 14(1)(b)& 14(1)(j) of DRC Act bearing no. E 87/09/98 it was held by the Ld. ARC, Patiala House Courts, New Delhi vide judgment dt. 14.02.2014 that there was a doubt as to the status of Sh. Y N Gupta qua the tenanted premises due to his actions and depositions and that Sh. Y N Gupta is not the owner of the premises. However, perusal of the record shows that the certified copy of the partition decree filed before the said court was the one which was obtained on 14.05.1968 in which there was a typographical error. However, today the petitioner has placed on record the certified copy of the partition	subsequent petitions. However, the findings of the tribunals can be questioned by way of separate suit or appeal. An error apparent on the face of the record seems to have been committed by overlooking the findings of the court in eviction petitions no E 87/09/98 and 5434/2010. 20 In Brahm Prakash vs Chando Devi C.R.P No. 1332/2002 , DoD 04/05/2010, of Hon'ble Delhi High Court, it was observed as under <i>"12. The conditions necessary for applying the principles of res- judicata are also fulfilled in the present case, the matter at hand in the second case, subject matter of the present petition, was directly and substantially in issue in the earlier petition. The earlier petition as also the second petition are between the same parties, as the respondents claim under Sh. Samey Singh, petitioner in the first eviction petition. Both petitions related to the same premises. The Court, which had decided the former petition, was a Court competent to try the</i>
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	decree which was obtained by him on 20.01.1965. The said certified copy of the partition decree clearly mentioned that all the properties mentioned in schedule E of the report of the Local Commissioner were under the ownership of the petitioner ie Sh. Sanjay Gupta. Further Ld. ASCJ, Tis Hazari Court was pleased to hold that even in the certified copy of the partition decree which was obtained on 14.05.1968, there was typographical error. Thus, the filing of the correct partition decree having no typographical error and with all the parties to the partition suit approaching the court that passed the decree and getting error rectified, the controversy can be put to rest and it can be safely concluded that Sh. Sanjay Gupta was held to be the owner of the properties mentioned in schedule E of the report of the Local Commissioner which includes the tenanted premises. Even otherwise the respondent is trying to create a confusion regarding the status of petitioner over the tenanted premises knowing	<i>subsequent petition as well. The matter, directly and substantially in issue in the second petition, was heard by the Rent Controller in the earlier petition and was finally decided by dismissing the eviction petition in view of failure on the part of Shri Samey Singh to establish the relationship of landlord and tenant between the parties.</i> 18. By filing a subsequent eviction petition, the respondents cannot be permitted to do directly, what they could not do indirectly. Failure to ad(duce evidence, resulting in dismissal of the claim of the respondents for want of proof, is in reality, a decision on merits. Just as if the petitioner therein had produced evidence, which the Court had considered as inadequate proof and had dismissed it upon the said ground. Applicable to such a situation is the legal maxim. 'De non apparentibus et non existentibus eadem est ratio'. It is a rule which applies to those things, which do not appear, and to things which do not exist. So, for maintaining
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	very well that the respondent is nothing more than a tenant in the premises in question and was inducted in that capacity by the predecessor in interest of the petitioner L Gopi Nath who at that time was proprietor of M/s. L Gopi Nath. In all the petitions under Section 14(1)(e), the petitioner is not required to prove his absolute ownership over the tenanted premises but he is only required to show that he is something more than a tenant in the premises in question. Reliance in this regard is placed upon the judgment titled as Ramesh Chander Vs. Uganti Devi. 157 (2009) DLT 450 wherein it has been held that <i>“In petition under section 14(1)(e) of the DRC Act the absolute ownership is not required to be proved by the landlord. The landlord is just required to show that he is something more than a tenant. Further if the landlord was receiving the rent for himself and not on behalf of someone else, he is to be considered as the owner, however imperfect is title over the premises may</i>	his right to claim arrears of rent, if Sh.Samey Singh was required to prove that he was the landlord of the petitioner, but he failed to do so, the Rent Controller had no option but to decide the issue against him on account of non-production of evidence. In other words, what does not appear, must be regarded as non-existent. 19. In these circumstances, the decision of the Rent Controller dated 27.01.1998, has to be taken as a decision on the merits of the matter. Merely because a subsequent cause of action has been pleaded by the respondents in the second eviction petition by claiming arrears of rent not only for the period for which the first eviction petition was filed, but also for the subsequent period upto 18.05.2001, cannot be a ground to hold that the second eviction petition was maintainable. <u>The relationship of landlord and tenant between the parties was not established in the earlier proceedings and the same point is directly and substantially in issue in the second petition wherein the foundation to claim the arrears</u>
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	<i>be."</i> 11.3 In the present case as well, the petitioner has successfully proved that his title qua the tenanted premises is more than that of the respondent being successor in interest and a family member of M/s. L Gopi Nath, having a partition decree in his favour and above all considering the fact that the respondent till date is depositing rent qua the tenanted premises in favour of M/s. L Gopi Nath which was earlier a proprietorship firm of the grandfather of the petitioner and later the father of petitioner. Thus the title of the petitioner over the tenanted premises definitely better than that of respondent which is the only requirement which is required to be proved in a petition under section 14(1)(e) of DRC Act. 11.4 Further, it is clear that under a Hindu law the moment a son is born, he gets share in his father's property and became part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the	<u>of rent is the stand of the respondents (petitioners therein) that they are the landlords of the petitioner herein. The findings returned by the Rent Controller in his order dated 27.01.1998 passed in the first petition have to be held to be findings on merits and having been adjudicated conclusively, are final in nature and act as a bar of res judicata on the second eviction petition preferred by the respondents."</u> 21 Reliance on the judgment titled : "Shri Ram Gopal v. Sh. Purshottam Dass (Supra), by Ld. Counsel for the Non- Applicant is misconceived, being distinguishable on facts. Here no such sale deed has been filed to have no doubt about the ownership of the Non Applicant. The issue of ownership can always be agitated in subsequent judicial proceedings but at the same time it has to be proved. Sale deed would have put an end to the controversy but that is not in the present case. 22 In the said the
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	father but with the very fact of his birth. That whatever be the source of the property of the father, his son must have a share in that and the said property becomes the part of joint family property of his son and grandson and other members who forms joint Hindu Family with him. In the same way, premises in question was joint Hindu Family property of M/s. L Gopi Nath of which the father of petitioner Sh. Y N Gupta was the first coparcener and a Karta. The existence of this fact is not disputed by the respondent and thus the respondent cannot dispute the title of the petitioner. Further, the respondent had also filed a suit for declaration of the partition decree 02.11.1964 as null and void bearing no. 58973/16. However, the said suit was dismissed as rejected by the court under Order 7 Rule 11 CPC on the ground that the respondent has no locus to challenge the said partition decree entered between the family members of L Gopi Nath. 11.5 Further, the observations	backdrop/admitted facts , this court is of the the view that there appears to an error apparent on the face in holding that standards of proof of ownership in petition u/s 14(1)(b) & {j) of the DRC Act and that of petition u/s 14(1)(e) of the DRC Act are different. 23 There also seems to be wrong interpretation of the ratio of judgment titled Ramesh Chandler v. Uganti Devi 157(2009)DLT 450 by observing that the absolute ownership is not required to be proved by the landlord. As per the said judgment, the person receiving rent for himself was to be considered as the owner irrespective of the imperfectness of his title, but the same is not so in the present case. <u>Though averred in the petition . no rent receipts in his favor were produced by the Non Applicant.</u> 24 Applicant's application dt 18/12/2018 for staying of the proceedings was dismissed by this court vide order dt. 09/01/2019. The said order was changed before Hon'ble High court and vide order
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	made by d. ARC in a petition under section 14(1)(b) & (j) of DRC Act regarding the existence of landlord tenant relationship between the petitioner and the respondent has no relevance to the present petition since the standard of proof required to be proved by the petitioner in petition under section 14(1)(e) of DRC Act is entirely different from the standard of proof required in a petition under section 14(1)(b) & (j) of DRC Act. Thus, from the totality of the facts and circumstances and the fact that the petitioner today has brought to light the correct certified copy of the partition decree dt. 02.11.1964, wherein it has been clearly held by the court that the petitioner is exclusive owner of the property in question, it is held that for the purpose of present petition, petitioner is the owner/ landlord of the tenanted premises and thus his very well entitled to file the present petition for his bonafide requirement against the respondent.	dt.04/02/2019 the said petition was disposed off by observing as under: "In view thereof, the present petition is disposed of to the effect that the submissions that are sought to be made by the petitioner as prayed in its application in relation to the contentions that the proceedings under sections 14(1)(e),14(1) (b) & 14(1)(j) of the DRC Act ,1958 as amended in relation to the aspect of the relationship of landlord and the tenant would be on a similar footing <u>and thus the consequential aspect of the principles of res-iudicata being applicable.</u> would be considered by the learned Rent Controller.New Delhi without being uninfluenced by the observations made in the <u>impugned order dated 07.01.2019."</u> 25 However the said aspect of applicability of res judicata seems to have been got overlooked in the order dated 05/03/2019 and no reasons of applicability of different standards of proof in petition u/s 14(1)(e) and u/s 14(1)(b) and
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	11.6 It has also been averred by the respondent that earlier also the petitioner had filed an eviction petition against the respondent under section 14(1)(e) of DRC Act which was withdrawn and now the petitioner has again filed a petition under the same provision without pleading any changed circumstances. However, as per the petitioner the cause of action to file the present eviction petition is different from that of the earlier eviction. The cause of action for filing a petition under section 14(1)(e) of DRC Act is a continuous cause of action and merely because the petitioner had earlier filed an eviction petition for bonafide requirement against the respondent does not disentitle the petitioner from again filing a petition for his own bonafide requirement against the respondent specially in the light of the fact that after withdrawing the earlier eviction petition, the wife of petitioner had obtained an order in her favour for her bonafide requirement qua property	(j) of the DRC Act was discussed.. 26 There seems to be an error in deciding the issue of landlord-tenant between the parties just on the basis of arguments, which is still pending adjudication before Ld. RCT. Detailed orders on this issue has been passed by Ld. ARC while disposing petition u/s 14(1)(b) S((j) of the DRC Act vide order dt. 14/02/2014, after full fledged trial and Ld. RC while allowing leave to defend in petition u/s 14(1)(e) of the DRC Act vide order dt. 29/11/2012. Arguments /Affidavits could not have taken place of trial. 27 The non applicant could not have been allowed to abuse the process of the court by filing subsequent petitions with the malafide intention of overturning the previous findings of Ld. Rent Controller in petition bearing E No. 87/09/98 and E No. 5434/2010. It is clear that the petitioners tried to wriggle out of the adverse finding against
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	bearing no. E 27/4. Even otherwise the earlier eviction petition filed by the petitioner against the respondent under section 14(1)(e) of DRC Act was for the composite use of himself, his wife and his children whereas a lot has changed over the span of so many years and now the bonafide requirement of the petitioner in the present petition is for his use only and not for his other family members. 11.7 It is also the case of the respondent that the present petition is not maintainable since all the tenants being the other partners of M/s. Jakki Mull and Sons have not been impleaded as a party to the present case. However, perusal of the record shows that a single tenancy was created in the name of firm M/s. Jakki Mull & Sons which has duly been arrayed as a respondent in the present petition. Even otherwise the partnership firm and each of its partners are mutual agents of each other as per the principle of mutual agency and therefore, the partnership	them by means of subsequent petitions.
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	firm or any of its partner represents all others. Thus the present petition against the respondent is perfectly maintainable.	
Subsequent Event(s)	13.4 Further, at the stage of arguments, the respondent has filed an application to place on record the additional documents in the form of copy of the lease deed dt. 25.09.2017 and 20.03.2014 entered into between the petitioner and other tenants qua the other properties. The respondent cannot be allowed to place these documents at this stage since these lease deeds were executed way back and the respondent had all the opportunity to place these documents alongwith the leave to defend application or immediately thereafter when the said documents were executed . At this stage, when the matter is at the stage of arguments on leave to defend application, no new document which was executed way back can be filed by the respondent. Even otherwise, these documents are sought to be placed on record only to show that the	28 While relying upon the judgment titled Gulab Singh Vs. Sher Singh (supra), it was also urged by the applicant that this court failed to consider the important facts and documents which were sought to be placed on record through different applications which came to the knowledge of the applicant late but all were having immense impact on the merits of the case. This court failed to consider the fact that the petitioner had inherited certain more properties during the pendency of the petition after the death of his father. The same fact was brought to the notice of the court, however the same was left without considering. It was mentioned in the application that in the alleged partition decree of 1964 the petitioner(Non Applicant herein) have shown shop No.(s) 5490(E- 15), 5491(E-16), 5492{E-17), 5493(E-18), 5494{E-19),5495(E-20), 8251(E-21),



	petitioner is earning huge amount of rent from various other premises. However, as it has been already mentioned above, mere earning of rental income by the petitioner is of no consequence to a petition for bonafide requirement of petitioner since petitioner being the landlord is well within his right to start independent business from the premises in question when he is admittedly presently not running any other business nor is engaged in other employment in India. Hence, the respondent has failed to prove the availability of any suitable accommodation with the petitioner which can be used by petitioner for his bonafide requirement.	Flat No.5496,5497,5498 and 5499 situated in Connaught Place ,New Delhi to have been owned by Late Sh.Y. N Gupta and as such after his death devolved upon the petitioner and other legal heirs of Late Sh.Y.N Gupta. Order dt. 05/03/2019 of this court which was passed subsequent to the death of Late Sh.Y. N Gupta and placing these facts before the court does not reflect if status of these properties was considered. 29 It is settled law that an error which is not self evident and has to be dictated by a process of reasoning can hardly be said to be an error apparent on the face of the record. However in the present case, there exist an error in overlooking the fact that the said issue of landlord - tenant has not been put to rest in litigation between the parties in other judicial proceedings. There seems to be an error in holding that the standard of proof required to be proved in petition u/s 14(1)(e) of DRC Act . By withdrawing earlier petition u/s 14(1)(e) DRC Act and filing the present one just on the
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		basis of change in bonafide requirement , the issue of landlord-tenant did not got settle. Earlier petition was adjourned sine die for that very reason. Before Ld. RCT, the non applicant (appellant therein) gave up the appeal on the ground of unauthorized construction and subletting and only pressed the ground of ownership and landlord-tenant relationship, as is reflected in the order sheet dt. 30.07.2018 of RCT No. 157/16. Thus the issue of ownership and landlord-tenant relationship was admittedly in dispute. Error seems to be apparent by ignoring the said fact which was evident and highlighted.
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25. A perusal of the aforesaid tabulation demonstrates that all the grounds taken by the respondent in its review application before the learned Successor RC were thoroughly dealt with on merits and decided by the learned Predecessor RC. The plea of *res judicata* as taken by the respondent herein with regard to the findings in earlier two eviction petitions was dealt with in detail and it was concluded by the learned Predecessor RC *vide* judgment dated 05.03.2019, that in view of the correct certified copy of the partition decree dated 02.11.1964, a fresh cause of action had accrued in favour of the petitioner herein. It was further observed by the learned Predecessor RC that



the standard of proof required to be proved by the petitioner in a petition under Section 14(1)(e) of the DRCA is entirely different from the standard of proof required in a petition under Sections 14(1)(b) & (j) of the DRCA. With respect to the aforesaid, learned Successor RC in the impugned order has given findings to the effect that the view taken by the learned Predecessor RC appears to be an error apparent on the face of the record as standards of proof of ownership required in a petition under Section 14(1)(e) and Sections 14(1)(b) and (j) of the DRCA are different and has also observed that the learned Predecessor RC had wrongly interpreted the ratio of judgment **Ramesh Chandler v. Uganti Devi**¹⁵, observing that absolute ownership is not required to be proved by the landlord. Learned Successor RC has also observed that the aspect of applicability of *res judicata* seems to have been overlooked in the judgment dated 05.03.2019 and no reasons of applicability of different standards of proof in a petition under Section 14(1)(e) and Sections 14(1)(b) and (j) of the DRCA was discussed.

26. Similarly, the issue of subsequent events was considered by learned Predecessor RC by observing that the same were of no consequence as no new document which was executed way back can be filed by the respondent. Sufficient reasons were also given for the same by the learned Predecessor RC that such documents merely tend to show that the petitioner was then earning a huge amount of rent. The said issue was again considered by the learned Successor RC by observing that non-consideration of the said subsequent events, *i.e.*, death of the father of the petitioner-Y.N. Gupta and

¹⁵ 157 (2009) DLT 450



devolvement of his properties on legal heirs including the petitioner, which were brought on record by the respondent by way of an application was again an error apparent by the learned Predecessor RC.

27. In these circumstances, this Court is of the considered opinion that the review application preferred on behalf of the respondent was an appeal in disguise whereby the same arguments, which had been rejected by learned Predecessor, were re-heard and decided in the impugned order. In **Kamlesh Verma (supra)**, the Hon'ble Supreme Court has already held that mere possibility of two views on the subject cannot be a ground for review, and also, the review is not maintainable when the same relief sought at the time of arguing the main matter had been negated. The respondent always had an option to exercise its legal remedy of filing revision under Section 25B(8) of the DRCA challenging the findings given by learned Predecessor RC *vide* judgment dated 05.03.2019 both, factually and legally. However, by way of the impugned order learned Successor RC has effectively exercised powers of an appellate Court in review jurisdiction and proceeded to re-open the case between the parties.

28. Thus, there is manifest error in the impugned order dated 02.09.2019 passed by learned Successor RC and the same is set aside.

29. Consequently, the original eviction judgment dated 05.03.2019 passed by learned Predecessor RC is restored. The parties shall remain bound by the terms/directions of the said original eviction judgment and will act in consonance thereof.



30. Interim order dated 10.01.2020 stands vacated.
31. Copy of the judgment be sent to the concerned learned Senior Civil Judge-cum-Rent Controller, New Delhi District, Patiala House Courts, Delhi, for necessary information and compliance.
32. The present petition is allowed and disposed of.
33. Pending applications, if any, also stand disposed of accordingly.
34. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA
(JUDGE)**

JANUARY 13, 2026/sn/ns