



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

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*Reserved on: 28th March, 2026
Pronounced on: 16th June, 2026*

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RSA 136/2018, CM APPL. 38040/2018, 39302/2019 & 68675/2025

M/S SHYAM LAL & SONS

Through

Shri Vijay Kumar & Shri Mahinder,
C/o Shop No.3, WZ-12B, Gulab Bagh,
Nawada, New Delhi.

.....Appellant

Through: Mr. Pankaj Vivek and Mr.
Naveen Malik, Advocates.

versus

SMT. MITHLESH DEVI

W/o Late Shri Inder Singh Chauhan
R/o WZ-12B, Gulab Bagh,
Nawada, New Delhi.

.....Respondent

Through: Mr. Abhishek Grover, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. **Regular Second Appeal** under Section 100 of the Civil Procedure Code, 1908 (*hereinafter referred to as 'CPC'*) has been filed against impugned Judgment dated 22.05.2018, whereby learned First Appellate Court has **upheld** the Judgment and Decree dated 19.01.2017 whereby **learned Civil Judge, dismissed the Civil Suit of the Plaintiff / Respondent**



/Smt. Mithlesh Devi for Declaration, Mandatory and Permanent Injunction.

2. The plaintiff/Appellant had filed a Suit *bearing No.427021/2016, seeking for Declaration, Mandatory and Permanent Injunction.*

3. **Brief facts**, as stated in the Plaint, were that the Plaintiff was real and absolute owner of the Property bearing No. WZ-12B, Gulab Bagh Nawada, New Delhi. One Shop bearing No.3, on the Ground Floor of Suit Property, admeasuring 8.4 x 14 ft., (*hereinafter referred to as 'Suit Property'*) was let out to Defendant / Appellant No.1, M/s Shyam Lal & Sons, *vide* Rent Agreement dated 01.01.2001, for shoe business.

4. Initially, the rent was agreed as Rs.1,000/-per month, but thereafter, rent was enhanced to Rs.1,460/- per month excluding water, electricity and other charges, payable by Appellant No.1 as per utility and meter readings.

5. Plaintiff asserted that she was a 70-year-old widow, living in a joint family, which included Late Sh. Kaushlender Singh, her elder son, Smt. Sarla, wife of elder son and two minor children; and family of Sh. Manoj Kumar, Plaintiff's younger son and his wife Smt. Pooja Chauhan and their two minor children.

6. Plaintiff submitted that both her daughters-in-law were jobless and not earning anything. Sh. Manoj Kumar, Plaintiff's younger son was working as a bus conductor in a private school. He was the only earning member in their family, whose income was not sufficient to meet the expenses of the entire family. Plaintiff was running a General Store in one of the Shops, admeasuring 10 x 14 ft., forming part of the suit property, and it was also not enough for meeting the expenses of the entire family.



7. Plaintiff thus, approached the Defendant to vacate the Suit Shop. However, Defendant avoided vacating the Shop, on one pretext or the other. Plaintiff asserted that after expiry of Rent Agreement dated 01.01.2001, the tenancy of Defendant became month to month.

8. She thus, filed the *Suit for Possession, Permanent and Mandatory Injunction*, to restrain the Defendant from creating third-party rights and further directions to the Defendant to pay all electricity, water and other charges.

9. Defendant, in *Written Statement*, took *preliminary objection* that the *Suit was barred under Section 50 of the Delhi Rent Control Act, 1958*(hereinafter referred to as 'DRC Act'). It was asserted that as Plaintiff was not the owner of the suit shop, and she had no right to file the present Suit.

10. It was further asserted that Suit was not maintainable, as *tenancy of the Defendant was not terminable*, having being created under an unregistered Rent Agreement, which required compulsory registration. No cause of action, has been disclosed in the Suit. Moreover, it was *bad for non-joinder of all the persons, being members of the Firm / Defendant / M/s Shyam Lal and Sons*.

11. *On merits*, it was claimed that no documents have been filed by the Plaintiff to establish her ownership in the Suit Property; rather she has suppressed the documents in her possession, if at all.

12. Defendant admitted that the suit shop is in his possession, but it was claimed that the Rent Receipt was issued in the name of M/s Shyam Lal and Sons. As the Firm was un-registered, it cannot be sued. Therefore, Shyam



Lal and all his sons were required to be impleaded as parties and served independently.

13. It was claimed that the rent included water, electricity and other charges and on this account, the rent was enhanced from Rs.1,000/- to Rs.1,460/-.

14. It was further denied that the Plaintiff required the shop *bona fide* for her needs. It was claimed that at one stage, Plaintiff was fed up with her family and had come with a proposal to the Defendant that if they were ready and willing to purchase the Suit Shop, she would be agreeable to sell them, but at no cost, would she let the Property go to her family members. She would rather donate the property to some *panchayat*, *dharamshala* or temple, but would never take it for the benefit of her family.

15. Defendant further claimed that the suit shop had been let out to Sh. Shyam Lal as well as his sons. Defendant claimed that he was occupying the suit shop in his own right and the Plaintiff cannot, in any manner, curtail his rights.

16. It was further asserted that the Plaintiff had admitted that the suit shop can be sub-let, but only with her consent. She also once acknowledged the advance/*pagri* from the Defendant and had bound herself that the tenancy would not be terminable. Therefore, no cause of action is disclosed in the Plaintiff, which in fact was liable to be rejected under Order 7 Rule 11 of CPC.

17. The *Plaintiff in the Replication*, re-affirmed her assertions made in the Plaintiff and denied the allegations made in the Written Statement.



18. Thereafter, an *Application under Order 12 Rule 6 CPC* was filed by the Plaintiff, seeking the Decree of Possession on the admissions made in the Written Statement.

19. Learned *Civil Judge in the Judgment dated 19.01.2017*, observed that the Suit Property was located in village Nawada, to which the Delhi Rent Control Act was not applicable. Therefore, the Suit for Possession, was not barred under Section 50 of the DRC Act.

20. It was further observed that admittedly suit property had been taken from the Plaintiff / Landlady and the Defendant was estopped from challenging the ownership of the Landlord in terms of Section 116 of Indian Evidence Act, as had also been held in the Judgment dated 20.09.2012 passed by Hon'ble Supreme Court in the case of *M/s. Payal Vision Ltd. vs. Radhika Chaudhary*, AIR ONLINE 2012 SC 723.

21. The defendant was admittedly a tenant of the Plaintiff. The summons of the Suit constituted a Notice for termination of tenancy. *Therefore, the Suit for Possession in respect of Suit Property was decreed under Order XII Rule 6 of C.P.C.*

22. Aggrieved by this judgment, the Defendant/Appellant M/s. Shyam Lal and Sons preferred the present RCA No.19/2017. The **grounds of challenge** were that the tenancy of the Defendant *was perpetual in nature*, and the same could not have been terminated. It was stated that in the Rent Agreement, it was specifically noted that the First Party (Plaintiff) had received a *pagri* from the Second Party (Defendant) and therefore, the tenancy is not terminable by the First Party.



23. It is further submitted that in Clause 6 of the Rent Agreement, it was stated '*that the Second Party may vacate the tenanted shop by giving two months' Notice in advance to the first party.*' Admittedly, no Notice had been given to the Appellant, before institution of the Suit.

24. Furthermore, there was also a *MoU dated 01.01.2001* executed between the parties, which was not considered by the learned Trial Court. It was stated in that MoU that "*the first party (Respondent herein) before letting out above mentioned Property (i.e. premises in Suit) to the second party (Appellant herein) received a sum of Rs.1,48,000/- as advance/pagri from the second party. The market value of the tenanted shop in question on the date of letting out was Rs.2,00,000/- approximately and therefore, first party by way of pagri/advance received three-fourth of the market price approximately of the shop in question.*'

25. Furthermore, **Clause 1 of the MoU** read as under:

"1. That the first party hereby undertakes not to get the tenanted shop vacated from the second party as first party has already received three-fourth of the market price of the shop from the second party."

26. Hence, there was no jurisdiction to entertain the Suit, as no cause of action was disclosed. Defendant, in fact, *was the owner of three-fourth of the premises in Suit and there was no relationship of landlord-tenant between the parties.*

27. It has also not been appreciated that Section 50 of DRC Act provides that jurisdiction of Civil Court is barred in respect of eviction proceedings and the tenancy is protected therein. Learned Trial Court, observed that



Section 50 of DRC Act is not applicable, but had failed to appreciate that till date, Plaintiff had failed to file any Notification / Circular of the Central Government that Nawada has ceased to be a Village under the Revenue Estate of Nazafgarh.

28. It has also not been appreciated that the Suit was barred for non-joinder of parties. The verification Clause of the Affidavit filed in support of the Plaint was defective and in fact, there was no Affidavit, in terms of Order VI Rules XIV and XV of CPC.

29. The impugned Judgment is silent on the question of *perpetual tenancy and dispute regarding the rate of rent*, though these aspects were argued at the time of final arguments.

30. It has been overlooked that for a Decree under Order XII Rule 6 of CPC, *there has to be a clear and unambiguous admission of the Defendant* in regard to: (i) relationship of landlord-tenant; (ii) rate of monthly rent; and (iii) service of notice of termination of tenancy. However, there were no unambiguous and clear admissions on any of these aspects.

31. The monthly rate of rent was Rs.1,160/- excluding other charges, but the Plaintiff has cleverly claimed the rent to be Rs.1,460/- per month excluding other charges. *No Notice under Section 106 of the Transfer of Property Act for termination of tenancy has been given.*

32. *Therefore, the impugned Judgment was liable to be set aside.*

33. *Learned District Judge vide Judgment dated 22.05.2017*, observed that during the pendency of the First Appeal, an Application under VI Rule 17 of CPC had been filed, which was also considered along with the Appeal. It was observed that the amendments sought at the Appellant stage, can only



be allowed in rare circumstances. The Appellant was seeking amendment to the Written Statement already filed before the learned Trial Court. If at all, the Amendment Application should have been filed before the learned Civil Judge and that too, before the passing of the Order under Order XII Rule 6 of CPC. Consequently, the Amendment Application, was dismissed.

34. *Ld. DJ further* observed that the relationship of landlord-tenant was admitted. Though it was asserted that the tenancy was not terminable being created under an un-registered Rent Agreement, the same was not tenable. Learned Civil Judge further held that the bar of Delhi Rent Control Act, was not applicable. In view of the admission of relationship of landlord-tenant, it was held that there was no infirmity in the judgment of learned Civil Judge and *the Appeal was dismissed, vide Judgment dated 22.05.2018.*

35. Aggrieved by the impugned Judgment dated 22.05.2018, present **Regular Second Appeal has been filed by the Appellants.**

36. The grounds of challenge are that the Application under Order VI Rule 17 of CPC as well as the First Appeal, have been dismissed erroneously. By way of the Application under Order VI Rule 17 of CPC, Appellant had sought to place on record an important document, which reflected the understanding between the Appellants and the Respondent in respect of the tenancy of Appellant No.1. MoU dated 01.01.2001 had been executed simultaneously with the Rent Agreement dated 01.01.2001, which mentions that the Plaintiff had received a good sum of money from the Appellant, in view of grant of tenancy in perpetuity, in favour of the Appellant.



37. It was an understanding of the Plaintiff that she would not get the suit property vacated, since the Appellant had paid three-fourth of the market price of the Suit Property. Moreover, the Appellants were vested with the first right, in the event the Respondent intended to sell the Suit Property. These aspects were critical and needed to be incorporated into the Written Statement by way of amendment, which ought to have been allowed.

38. It is further asserted that there was no admission in the pleadings, which could mandate a Decree under Order XII Rule 6 of CPC. The relationship of landlord-tenant was specifically denied, and it was asserted that the tenancy was not determinable in terms of MoU dated 01.01.2001. Moreover, no Notice of termination had been served. Moreover, the Amendment Application had been erroneously, rejected.

39. The Suit of the Plaintiff was barred under Section 50 of Delhi Rent Control Act, as the rent was admittedly less than Rs.3,500/-per month. It was thus, submitted that the impugned Judgment dated 22.05.2018 be set aside.

40. Substantial questions of law are as under:

“A. Is a suit instituted by a landlord against a tenant [seeking the relief of ejection of the validly/tenant from the tenanted premises] maintainable in the civil court even before the landlord has lawfully terminated / determined the tenancy of the tenant/ defendant [particularly where the tenancy is a tenancy from month to month, where the law warrants that the tenancy can be determined by the landlord only by serving upon the tenant a 'notice to quit', as envisaged by Section 106 of the Transfer of Property Act, 1882 (as amended



uptodate)]?

B. Whether a Court can entertain a plaint / suit, which, on a holistic reading of the plaint, does not, ex facie, disclose a 'cause of action' entitling the plaintiff to sue for the relief/s claimed in the plaint?

C. Whether the law permits that a suit (where the plaint does not disclose a cause of action) can be summarily decreed (in terms of the extraordinary discretionary jurisdiction conferred upon the learned trial court by Order XII Rule 6 CPC), particularly on ostensible admissions purportedly set out by the defendant / tenant?

D. Does the law prohibit the defendant to amend his written statement at the appellate stage (particularly when defendant is himself the appellant at the appellate stage), in a matter which has been summarily decreed by the learned trial court, exercising discretionary jurisdiction under Order XII Rule 6 CPC?

E. Is it not permissible in the eyes of law for a defendant to amend his written statement at the appellate stage particularly in a matter in which he has suffered a decree in terms of Order XII Rule 6 CPC as to further elucidate the pleadings?

F. Whether the finding by the learned Rent Controller of Delhi (in any District) that the learned Rent Controller does not possess inherent jurisdiction to entertain a cause under the Act [inasmuch as the Delhi Rent Control Act, 1958 does not govern the 'premises in suit'] is a finding which can be propounded in a subsequent matter to be res judicata between the parties to the aforesaid former proceeding decided by the learned Rent Controller



(particularly on the issue of jurisdiction).

G. Does a defendant lose forever the protection accorded to him by the Delhi Rent Control Act, 1958 if in a suit for ejection instituted by the landlord/Plaintiff against the tenant/Defendant in the Civil Court the tenant/Defendant denies the existence of relationship of landlord and tenant between the parties qua the 'premises in suit'?"

41. Learned counsel for the Respondent has submitted that similar eviction orders have been made on 03.07.2018 and 07.07.2018 for the adjoining properties / shops. It is submitted that learned Civil Judge has rightly appreciated the Rent Agreement dated 01.01.2001 and the admissions in respect thereof and has rightly Decreed the Suit of the Plaintiff / Respondent.

Submissions heard and record perused.

42. Plaintiff, as the owner of Suit Property, admittedly, had rented out the Suit Shop to Appellant No.1 / M/s Shyam Lal and Sons through Mr. Vijay Kumar and Mr. Mahinder (both are sons of Sh. Shyam Lal), *vide Rent Agreement dated 01.01.2001*, on monthly rent @ Rs.1,000/-, payable by the 07th day of each month.

43. Defendant / Appellants have not denied the Rent Agreement or rate of rent specified therein as Rs.1,000/- per month. According to the Plaintiff / Respondent, rent was subsequently enhanced to Rs.1,460/- per month.

44. *The first defense* taken by the Appellants is that the tenancy was non-terminable. It was explained that in fact, an advance / *pagri*, in the sum of Rs.1,48,000/-, which was three-fourth of the sale consideration of the suit shop, had simultaneously been paid by the Appellants to the Respondent, of



which there is reference in the Rent Agreement itself, wherein it is recorded that *'the first party before letting out abovementioned shop to second party received pugree from the second party and therefore tenancy is not terminable by first party.'*

45. The Appellant has further contended that simultaneously, MoU dated 01.01.2001 was recorded, wherein the payment of Rs.1,48,000/- by way of *pagri*, was specifically mentioned. It is claimed that as the *pagri* amount was paid, the tenancy became non-terminable, and Appellants cannot be evicted from the suit property.

46. There is no denial to *pagri* amount being taken by the Plaintiff / Respondent at the time of letting out the Suit Shop. The question, which thus arises, is whether acceptance of *pagri* amount, would make the tenancy non-terminable. The Rent Agreement itself gave a right to the tenant to terminate the tenancy by giving a two-month Notice. *Inherently, this tenancy was not a non-terminable one.*

47. Appellant had relied on an MoU dated 01.01.2001, which he had sought to place on record for the first time during the First Appeal and had sought the amendment of his Written Statement, which had been declined by the First Appellate Court on the grounds that the Written Statement, if it was required to be modified, should have been done before the learned Civil Court.

48. Even though this MoU has not been permitted to be incorporated in the Written Statement, but it merely recorded the payment of amount of Rs.1,48,000/- and further that in case, the landlord intended to sell the Property, the first right of purchase would be of the Defendant / Tenant; and



in case, he declined to purchase, then he would be entitled to a share to the extent of third-fourth value of the sale consideration, realised by the Plaintiff from the sale of Suit Shop.

49. Even if this document and the averments made in the Rent Agreement are accepted and it is assumed that an amount of Rs.1,48,000/- was taken by the Plaintiff, but the fact remains that it does not inherently change the nature of the relationship between the parties, which was that of landlord-tenant.

50. The defence taken by the Appellants *firstly*, was not mentioned in the Written Statement and *secondly*, even if considered, does not change the relationship of landlord-tenant between the parties.

51. Learned Civil Judge thus, rightly concluded that Plaintiff was landlord / owner of the Suit Property, and this observation has been rightly upheld in the Regular First Appeal, by learned ADJ.

52. The *second aspect* was in *respect of the rate of rent*, which the Plaintiff claimed to be Rs.1,460/-, while the Defendants denied that the rent was ever enhanced from Rs.1,000/- per month. In this regard, it may be noted that learned Civil Judge has extensively discussed that for Delhi Rent Control Act to be applicable, there has to be a requisite Notification under Section 2 of Delhi Rent Control Act, which admittedly, has not been notified.

53. By way of Notification, the Delhi Rent Control Act has not been made applicable to the area where the Suit Property was located. Therefore, The Delhi Rent Control Act was not applicable. The Appellants had not been able to rebut or show that the Revenue Estate, in which the Suit



Property was located, has been notified, or Delhi Rent Control Act has been made applicable.

54. Learned Civil Judge rightly concluded that Section 50 of DRC Act was not applicable to the Suit Premises, and this finding has also been rightly upheld in the Regular First Appeal, **by learned ADJ.**

55. The *third aspect*, which has been challenged by the Appellants, is that there was *no prior Notice of two months* served by the Plaintiff/Respondent-Landlord, before seeking eviction of the Appellants/ Defendants-Tenant.

56. However, it is well settled, as has been held in the case of *Nopany Investments (P) Ltd. v. Santokh Singh (HUF)*, (2008) 2 SCC 728, that the filing of the Suit itself is a Notice to the tenant, to vacate the premises. Therefore, this ground of the Appellant is also not tenable.

57. An objection had been taken that the Partnership Firm M/s Shyam Lal and Sons was not a registered Partnership Firm and therefore, no Suit was maintainable against it and that all the partners should have been arrayed as Defendants in their individual capacity. The tenancy was in the name of M/s Shyam Lal and Sons and the Suit had been validly filed against the Defendant / Appellant No.1.

58. *Also, in the present Regular Second Appeal, no substantial questions of law have been raised.*

59. Learned Civil Judge and learned ADJ have rightly concluded that there existed a relationship of landlord-tenant; Delhi Rent Control Act was not applicable; and that the filing of the Suit itself amounted to the Notice to the tenant to vacate the premises.



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60. Therefore, the Suit of the Plaintiff/Respondent has been rightly Decreed, and there is no merit in the present Regular Second Appeal, which is hereby, **dismissed** along with pending Applications.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 16, 2026/R