



\$~70

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

*Date of Decision: 09.01.2025*

+ **RC.REV. 415/2019**

MANOHAR LAL BHATIA

.....Petitioner

Through: Mr. Rajiv Bajaj & Mr. Vidur,  
Advocates.

versus

HARPAL SINGH LAMBA

.....Respondent

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**TARA VITASTA GANJU, J.:** (Oral)

**CM APPL. 781/2025** [*seeking recall of order dated 19.11.2024*]

1. This is an Application filed on behalf of the Petitioner seeking recall of the order dated 19.11.2024 to the extent of recovery of use and occupation charges.
2. Learned Counsel for the Petitioner submits that the Petitioner has handed over the possession of the subject premises to the Respondent but now the Respondent is seeking arrears of the mesne profits/use and occupation charges.
3. Learned Counsel for the Petitioner submits that the Petitioner was unwell and the father of the counsel appearing for the Petitioner was also not well and thus could not file the affidavit as directed by order dated 09.10.2024.
4. The Application as filed by the Petitioner is without merit. The record



of the Court shows flagrant disobedience of the orders of the Court from time to time.

5. This Court, 31.10.2023, had affixed use and occupation charges, which were payable in terms of the judgment of the Supreme Court in the case of *Atma Ram Properties (P) Ltd. vs. Federal Motors (P) Ltd.*; (2005) 1 SCC 705. On that date, the Court had directed payment of use and occupation charges including arrears of the use and occupation charges, which were required to be paid in four equal instalments. The said order had also specified, in paragraph 8 therein, that in the event that there is any default in the payment of use and occupation charges on behalf of the Petitioner, interim protection granted by this Court shall automatically stand dissolved. The relevant extract of order dated 31.10.2023 is reproduced below:

*“5.1 The Petitioner/tenant shall pay to the Respondent/landlord use and occupation charges in the following manner during the pendency of the Revision Petition:*

*(i) The use and occupation charges for the period from 22.09.2019 to 31.03.2020 shall be paid by the Petitioner/tenant at the rate of Rs.20,000/- per month;*

*(ii) The use and occupation charges for the period from 01.04.2020 to 31.03.2022 shall be paid by the Petitioner/tenant at the rate of Rs. 17,500/- per month; and*

*(iii) The use and occupation charges for the period from 01.04.2022 to 30.10.2023 shall be paid by the Petitioner/tenant at the rate of Rs.20,000/- per month; and*

*(iv) The use and occupation charges from 01.11.2023 onwards, shall be paid by the Petitioner/tenant at the rate of Rs.22,000/- per month, on or before 7th day of each calendar month;*

*(v) The use and occupation charges as set forth in paragraphs 5.1 (i), (ii) and (iii) shall be paid by the Petitioner/tenant to the Respondent/landlord in four equal instalments, i.e., 30.11.2023, 31.01.2024, 31.03.2024 and 15.05.2024.*



6. *All payments shall be made into the bank account of the Respondent/landlord. The details of the bank account shall be provided by the learned Counsel for the Respondent/landlord to the learned Counsel for the Petitioner/tenant on his email address within three days.*

7...

8. *In the event that there is any default in the payment of use and occupation charges on behalf of the Petitioner/tenant, interim protection as granted by this Court on 06.09.2019 shall automatically stand dissolved.”*

6. The order dated 31.10.2023 was not complied with by the Petitioner. Thereafter, the Respondent was constrained to file an application for seeking initiation of execution proceedings being CM APPL. 8458/2024 in view of the fact that the arrears and use and occupation charges were outstanding.

7. On 13.02.2024, a Coordinate Bench of this Court had put to the Petitioner, after a submission was made that he is unable to pay the arrears and use and occupation charges, as to whether he would like to take additional time and vacate the subject premises. On that date, the Petitioner submitted that he cannot pay the outstanding amounts and is also not ready to vacate. The relevant extract of the order dated 13.02.2024 passed by a Coordinate Bench is reproduced below:

*“7. Even today, the petitioner/tenant was asked as to how much time he needs to vacate the subject premises or to pay the entire outstanding amount. But the petitioner/tenant submits that he cannot pay the amount and is not ready to vacate.”*

7.1 In these circumstances, the Coordinate Bench of this Court, on 13.02.2024, allowed CM APPL. 8458/2024 granting liberty to the Respondent to initiate execution proceedings against the Petitioner.

8. The matter did not end there. Thereafter, the Petitioner filed an



application for modification of the order dated 13.02.2024 being CM APPL.10952/2024, which was also dismissed by the Coordinate Bench of this Court on 22.02.2024.

9. Again, a second application seeking modification of order dated 13.02.2024 was filed by the Petitioner being CM APPL. 59894/2024. This Court, on 09.10.2024, had examined the said Application, and even on that date, a submission was made by the Respondent that the present matter was pending for the last five years and arrears and use and occupation charges were not paid despite the order dated 31.10.2023. Once again, the learned Counsel for the Petitioner, on instructions from the Petitioner and his wife, who were present in Court, stated that they have no means to pay the arrears or use and occupation charges and that they would vacate the subject premises on or before 31.12.2024.

10. Based on the submissions made on 09.10.2024, this Court had directed that an Undertaking by way of an Affidavit be filed by the Petitioner within two weeks. The Court had also recorded a contention of the Respondent that they are willing to waive of user charges, in order to put a quietus to the disputes *inter-se* between the parties and the Revision Petition was disposed off on that date. It is apposite to extract paragraphs 7, 8 and 9 of the order dated 09.10.2024, which is reproduced below:

*"7. Learned Counsel for the Petitioner/tenant on instructions from the Petitioner/tenant and his wife who are present in Court today submits that the Petitioner/tenant has no means to pay the arrears as well as the user charges. He further submits, on instructions, that the Petitioner/tenant shall vacate the demised premises on or before 31.12.2024.*

*7.1 The Court has also interacted with the wife of the Petitioner/tenant in the vernacular.*



8. Learned Counsel for the Respondent/landlord on instructions submits that with a view to put a quietus to the disputes between the parties, the Respondent/landlord is willing waive of use and occupation charges which are outstanding.

9. Let an Undertaking by way of an Affidavit be filed by the Petitioner/tenant within two weeks stating that:

(i) The Petitioner/tenant shall hand over the physical possession of the property i.e. property bearing Municipal No. 10518-A, first floor, second floor and third floor situated at Bagichi Peerji Ram Bagh Road, Subzi Mandi, Delhi-110007 [hereinafter referred to as "demised Premises"] to the Respondent/landlord on or before 31.12.2024..."

[Emphasis supplied]

11. Since no Affidavit/Undertaking was filed by the Petitioner within two weeks, the Respondent was once again constrained to file an Application being CM APPL. 66347/2024 on 11.11.2024. Notice in this Application was issued on 13.11.2024, when the Court directed service *dasti* to the Respondent, returnable on 19.11.2024.

11.1 The Petitioner was duly served on 11.11.2024. However, none appeared for the Petitioner on 19.11.2024 despite the service. In addition, despite the lapse of five weeks since the matter was disposed of by the Court directing that an affidavit by way of an undertaking be fixed, no Affidavit/Undertaking was filed by the Petitioner.

12. In view of the foregoing and since the order dated 09.10.2024 was also not complied with by the Petitioner, this Court had passed an order on 19.11.2024 granting liberty to the Respondent to take recourse to appropriate proceedings for recovery of possession and for recovery of the use and occupation charges in accordance with law.

13. Learned Counsel for the Petitioner, as stated above, has informed the



2025:DHC:126



Court, that thereafter, the possession of the subject premises has been recovered in Execution proceedings.

14. Given the conduct of the Petitioner, this Court finds no reason to recall the order dated 19.11.2024. The Application is dismissed with costs in the sum of Rs.25,000/- to be payable to “*Bar Council of Delhi-Indigent and Disabled Lawyers Account*”.

15. The parties will act based on the digitally signed copy of the order.

**TARA VITASTA GANJU, J**

**JANUARY 9, 2025/ ha/r**

*Click here to check corrigendum, if any*