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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 18th May, 2026**Pronounced on: 13th August, 2026*# **CNR No: DLHC010172592021**+ **RC.REV. 83/2021, CM APPL. 16009/2021 & CM APPL. 21468/2025****PAWAN KUMAR & ANR.Petitioners****Through: Mr. Deepak Bashta, Advocate.****versus****KAILASH CHANDER GUPTA & ORS.Respondents****Through: Mr. Arun Bhardwaj, Sr. Advocate with
Mr. Arun Gupta, Ms. Ashu Tiwari, Ms.
Muskan Jain, Mr. Pranava Rastogi and
Ms. Khushi Sood, Advocates.****CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Section 25B(VIII) of the Delhi Rent Control Act, 1958 seeks the following prayers:

“In view of the facts and circumstances stated hereinabove, it is most respectfully prayed that this Hon’ble Court may be pleased to set aside the eviction order dated 07.04.2017 passed by the Court of Sh. Rajinder Kumar, Additional Rent Controller, in E-535/14/09 (New No. 78245/16); as well as the order dated 06.04.2021 passed by the Court of Sh. Ajay Nagar, Additional Rent Controller, Central District, Tis Hazari Courts, Delhi in M-49/17.



Past such other order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.”

2. Relevant facts for adjudication of the present writ petition as pleaded are as follows: -

a) Premises bearing no. 4154/III, Plot no. 118, Ground Floor, Naya Bazar, Delhi-110006 (hereinafter referred to as “**subject premises**”), was initially let out by Mr. Haji Mohd. Sadiq and Mr. Haji Abdul Gani to Mr. Baij Nath Singh *vide* Rent Agreement dated 01.03.1941. In 1947, a portion of the subject premises was sublet, allegedly with the consent of the landlords, to Mr. Ram Kishan Dass, who was a partner in a partnership firm.

b) Following various reconstitutions of the aforesaid partnership firm over the decades, the petitioners herein (sons of late Banarsi Dass) became exclusive partners of the partnership firm in the name and style of M/s Shiv Nath Rai Banarsi Dass on 09.04.2001 and they are in exclusive possession of the subject premises.

c) Mr. Ram Kanwar Gupta and Mr. Ram Niwas Gupta purchased the premises nos. 4104, 4105 and 4154/III, Naya Bazar, Delhi *vide* sale deed dated 06.11.1980. Subsequently, they filed a suit for possession bearing Suit No. 110/81 with respect to the subject premises against the following persons:-

- i) Ram Dev Singh s/o late Baij Nath Singh
- ii) Brij Mohan s/o late Banarsi Dass



- iii) Suresh Chand s/o late Banarsi Dass
- iv) Pawan Kumar s/o late Banarsi Dass
- v) Narinder Kumar s/o late Banarsi Dass
- vi) Ram Kishan s/o Mr. Maheshwar Mal

d) On 30.05.1985, learned ADJ dismissed the aforesaid suit by observing as under:

“14. A plain reading of Sec. 50 of Delhi Rent Control Act shows that a suit for eviction of ant tenant cannot be entertained by Civil Court. It, therefore, follows that is the present suit is meant to evict the tenant the same shall not be maintainable in a civil court. The suit as framed at present is for possession of the godown is question from defendants no. 2 to 5, while seeking this decree for possession the plaintiffs have no where prayed that this decree should be passed for the benefit of the tenant defendant no. 1 or this after ousting the trespasser defendant no. 2 to 5 the possession be handed over to the tenant defendant no. 1. I have already pointed out that at the time of arguments. I had specifically enquired from Ld. Counsel for the plaintiff whether the plaintiffs are ready to make the statement in this regard but there was no positive response. Thus the suit as framed remains essentially a suit for dispossession of the tenant because of a decree for possession passed in favour of the plaintiff and against the defendants no. 2 to 5 and the plaintiff and against the defendants no. 2 to 5 and the plaintiffs get possession from the defendant no. 2 to 5 it will meant dispossession not only of the alleged trespassers but also the dispossession of tenant which is clearly barred by Sec. 50 of the Delhi rent Control Act. There is therefore, no escape form the conclusion that the suit as framed relates to the eviction of the tenant as well, and therefore, the same cannot be entertained by the Civil Court. I, therefore, hold that the Civil Court has no jurisdiction to try the present suit. This issue us decided accordingly in negative against the plaintiff.”

e) On 16.02.2009, respondents herein filed an eviction petition bearing no. E-535/14/09 u/s 14(1)(e) of the Delhi Rent Control Act, 1958 (hereinafter



referred to as “**DRC Act**”) against Mr. Devender Singh and Mr. Surinder Singh, grandsons of late Baij Nath Singh with respect to the premises bearing nos. 4104, 4105 and 4154/ III, Plot no. 118, Naya Bazar, Delhi. It is pertinent to mention that respondent no. 1 to 3 herein are sons of late Ram Kanwar Gupta, respondent no. 4 and 5 herein are grand children of Mr. Ram Kanwar Gupta and respondent no. 6 to 9 herein are sons of late Ram Niwas Gupta.

f) Learned Additional Rent Controller-02 *vide* order dated 07.04.2017 allowed the aforesaid eviction petition and observed and held as under:

“3. After filing of the eviction application, summons in the form prescribed in the Third Schedule of Act 59 of 1958 were sent to the respondents and the respondents were served on 14.03.2009. It is pertinent to mention here that only the respondent no.2 has filed an application for seeking leave to defend the present petition. It is further pertinent to mention here that *vide* statement dt. 24.11.2016, the application for seeking leave to defend filed by the respondent no.2 was withdrawn by the LR's of the said respondent no.2. It is further pertinent to mention here that there is no leave to defend application filed by the respondent no.1 in this petition.

4. This is a petition filed u/s 14(1)(e) r/w. 25-B DRC Act wherein, the respondents are supposed to file an application for seeking leave to defend within 15 days of the service. After the withdrawal of the application by the LR's of the respondent no.2, there is no leave to defend application in this petition.

5. In the absence of the leave to defend application, the statement made by the applicants in the application for eviction shall be deemed to be admitted by the respondents and the applicants shall be entitled to an order for eviction on the ground mentioned in clause (e) of proviso to sub-section (1) of section 14 of Act 59 of 1958.

6. In view of above discussion and the mandate of sub-section (4) of section 25B of Act 59 of 1958, the present application for eviction is allowed. The applicants are found entitled to recover the possession of the premises i.e. Municipal No. of the premises bearing No. 4104, 4105, 4154/III, Plot No. 118, Naya Bazar, Delhi-06 as shown in colour red in the site plan attached with the application.”



g) It is alleged by the petitioners that they were not aware of the eviction proceeding since they were not arrayed as party in the said proceeding. They came to know about the said proceeding only after the eviction order dated 07.04.2017 was passed and the respondents informed them about the same. Subsequently, it is the case of the petitioners that they filed an application u/s 151 of the CPC before the learned Additional Rent Controller (hereinafter referred to as “ARC”), in the month of May 2017, seeking setting aside of eviction order dated 07.04.2017.

h) During the pendency of the aforesaid application, tenant in the premises no. 4105, 4154/III Naya Bazar, Delhi filed a revision petition before this Court and challenged the eviction order dated 07.04.2017, being RC. REV. 387/2017. On 25.08.2017, in the aforesaid revision petition, this Court passed the following order:

“RC.REV. 387/2017 & CMs No.30413/2017 (for stay) & 30498/2017 (for condonation of 2 days delay in re-filing)”

3. This Rent Control Revision Petition under Section 25B(8) of the Delhi Rent Control Act, 1958 impugns the order [dated 7th April, 2017 in E-535/14/09 (New No.78245/16) of the Court of Additional Rent Controller (ARC) (Central), Tis Hazari Courts, Delhi] of eviction of the petitioners and respondents No.10-A and 10-B from property No.4104, 4105, 4154/III, Plot No.118, Naya Bazar, Delhi-110006 for the reason of the petitioners having not filed any leave to defend and the predecessor of respondents No.10-A and 10-B though having filed the leave to defend, having withdrawn the same.

4. Though the impugned order does not record anything, but on a reading of the paper book it transpires that the petition for eviction was filed as far back as on 13th February, 2009 and the eviction order recording that the leave to defend had not been filed and/or had been withdrawn is of more than eight years thereafter.

5. It appears that in the interregnum, the proceedings for substitution of legal representatives of the petitioners/respondent No.2 and some of the respondents No.1 to 9 were taking place.



6. It is *inter alia* the case of the petitioners that the petitioners though had not filed leave to defend but had filed the written statement within the prescribed period of fifteen days from the service of summons of the petition for eviction.

7. Issue notice to the respondents by all modes including *dasti* and through the counsel for the respondents before the Trial Court returnable on 30th October, 2017.

8. The Trial Court record be also requisitioned.

9. Till further orders, the execution of the order of eviction impugned in this petition is stayed.”

Due to the aforementioned *ad interim* order, application u/s 151 of the CPC filed by the petitioners was kept pending before the ARC.

i) Occupants of premises no. 4104, Naya Bazar, Delhi had also filed a revision petition before this Court, being RC. REV. 447/2019, and challenged the eviction order dated 07.04.2017. In the said petition it was stated that the said occupants were not impleaded as parties to the eviction proceeding filed by the respondents, and the eviction order was passed with respect to their premises as well. In the said revision petition, the respondents submitted that no eviction petition has been filed by them in respect of the premises in which the said occupants are occupying the property. The respondents also submitted that they will not take any steps consequent to the eviction order dated 07.04.2017 in respect of the premises of the occupants of premises no. 4104, Naya Bazar, Delhi.

j) Petitioners had filed an application in RC REV 387/2017 under Order I Rule 10 r/w section 151 of the CPC seeking to be impleaded as a party. *Vide* judgment dated 16.12.2019, learned Single Judge dismissed the said revision



petition and the said application under Order I Rule 10 stood dismissed as withdrawn by passing the following orders:-

“CM APPL.20063/2019 (under Order I Rule 10 CPC)

1. Learned counsel for the applicant submits that since he has already raised a similar plea before the Rent Controller in execution proceedings, he seeks leave to withdraw the application with liberty to raise all available pleas before the Rent Controller.
2. In view of the above, application is dismissed as withdrawn.
3. All rights and contentions of the parties are reserved.”

k) Subsequently, respondents filed an execution petition no. 137/2021 before the ARC. On 27.03.2021, ARC passed warrant of possession with respect to premises no. 4104, 4105 and 4154/III, Naya Bazar, Delhi and listed the said execution petition before the learned ACJ for appointment of Bailiff on 05.04.2021 and before the Court on 13.04.2021.

l) On 29.03.2021, petitioners filed another application bearing no. M-49/2017 before the ARC u/s 151 of the CPC seeking to bring on record the orders passed by this Court and the Court of learned ARC. On 06.04.2021 (impugned order), learned ARC passed the following order:

- “1. By this order, I shall decide the application U/S 151 CPC filed on 22.05.2017 by the applicants, namely, Sh. Pawan Kumar and Sh. Narender Kumar, both sons of Late Sh. Banarsi Dass.
2. Reply thereto is already on record. I have carefully perused the application, reply thereto, documents and material on record.
3. Perusal of application shows that the applicants have claimed to have been possession of premises no.4154/III, G.F. Naya Bazar, Delhi since many years wherein they have claimed to have run the business of grain merchants and commission agents. Moreover, they have also claimed that they are having the ownership of the premises by way of adverse possession. They have also claimed that eviction petition is in respect of property no.4104, 4154/III, G.F. Naya Bazar, Delhi whereas neither the occupants of property no. 4104 nor the present applicants



of property no.4154/III, G.F. Naya Bazar, Delhi have been impleaded as respondent in the said petition no. E-535/14/09. It is also claimed that they were not aware of the pendency of the eviction petition and came to know only on 17.05.2017 when Sh. Rakesh Kumar showed them the eviction order dated 07.04.2017. It is also claimed that the present applicants have been paying house tax and other charges like electricity and water of property no. 4154/III, G.F Naya Bazar, Delhi. It is further claimed that Sh. Badrul Islam and Sh. Abdul Hanan were not the owner of the suit property and they had no right to transfer it. It is also stated that there exist no relationship of landlord and tenant between petitioners and applicants due to which this court has no jurisdiction. That the order of eviction has been obtained by playing fraud. Lastly, it is prayed that eviction order dated 07.04.2017 be set aside.

4. On the other hand, reply thereto has been filed inter-alia stating that this court has become functio officio. Moreover, the sub tenant is not compulsorily liable to be made a party in the eviction proceedings against the tenant. The present applicants are not necessary or proper party. That applicants were sub-tenants in the tenanted premises and a sub tenant once sub tenant is always a sub- tenant and he can not become owner. That premises under possession of firm Amir Chand & Sons is different premises for which no eviction petition was filed. That only Sh. Devender Singh and Sh. Surender Singh were in possession of the premises so rest of legal heirs were not made parties. That Sh. Suresh Chand is real brother of applicants and was in possession in tenanted premises along with them. That tenant if parted with the possession by himself or by another person through whom the possession is given to 3rd person, all the persons came in possession either directly or indirectly are evicted in eviction decree against the tenant. Lastly, it is prayed by the petitioners/Non-applicants that present application may be dismissed.

5. Perusal of application filed on 22.05.2017 by applicants shows that they have claimed to be trespassers in the tenanted premises and also claiming to be owner by way of adverse possession. But in application filed on 30.03.2021 and in the written arguments they have claimed to be sub tenants in the tenanted premises. The main thrust of the applicants in application filed on 30.03.2021 is that they are legal sub tenants in the tenanted premises and the petitioners/landlords were aware of the facts of sub tenancy but they did not implead the applicants in the eviction petition. As such, contradictory stand has been taken by the applicants.



On the other hand, the claim of the petitioners are that they were not required to be impleaded in the eviction petition.

6. It is expedient to reproduce Section 18 of the DRC Act which is as under:-

“18. Sub tenant to be tenant in certain cases (1) Where an order for eviction in respect of any premises is made U/S 14 against a tenant but not against a sub tenant referred to in Section 17 and a notice of the sub tenancy has been given to the landlord the sub tenant shall, w.e.f. the date of the order, be deemed to become a tenant holding directly under the landlord in respect of the premises in his occupation on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy have continued.”

It is also expedient to reproduce Section 17 of DRC Act which is as under:-

“Notice of creation and termination of sub tenancy-(1) whoever, after the commencement of this act, any premises are sub let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant or the sub tenant to whom the premises are sub let may, in the prescribed manner give notice to the landlord of the creation of the sub tenancy within one month of the date of such sub letting and notify the termination of sub tenancy within one month of such termination.”

7. As such, perusal of Section 18 shows that such protection as given in the provision is available to the sub tenant only when notice of sub tenancy has given to the landlord. In the instant case, admittedly, no such notice as prescribed U/S 17 of DRC Act has been given to the landlord either by the tenant or sub tenant/applicants. As far as plea of the applicants for impleadment in the eviction petition is concerned, it is expedient to reproduce Section 14(3) of DRC Act which is as under:-

“No order for the recovery of possession in any proceeding under sub section (1) shall be binding on any sub tenant referred to in Section 17 who has given notice of his sub tenancy to the landlord under the provisions of that Section, unless the sub tenant is made a party to the proceeding and the order for eviction is made binding on him”.

As such, Section 14(3) of DRC Act also lays down that order of recovery of possession shall not be binding on any sub tenant referred to in Section 17 who has given notice of his sub tenancy. But, admittedly, in the present case, no notice as prescribed in Section 17 of the DRC Act has been given by the sub tenant to the landlord. As such, in view of Section 14(3) of DRC Act, order for recovery of possession is binding upon the sub tenants/applicants also. Moreover,



it is also well settled law that sub tenant is not required to be impleaded in the eviction petition against the tenant unless the sub tenancy has been as per U/S 18 of DRC Act giving the notice as mentioned in Section 17 of DRC Act. Admittedly, the case of the applicants does not fall U/S 17 and 18 of the DRC Act. Ld. Counsel for the applicants have relied upon the case law titled as **Padam Chand Vaish Vs Chaman Lal Bajaj 2016 SCC online Del 2114 and Girdhari Lal and Sons Vs Balbir Nath Mathur & Ors. (1986) 2 SCC 237.**

I have carefully perused the case law relied upon by the applicants but in my considered view, the facts of aforementioned case is distinguishable from the present one as in the aforementioned case two documents in writing giving the consent for sub tenancy were produced and proved by the sub tenant but in the present case no such documents giving the consent in writing have been produced by the tenant or sub tenant. The applicants have merely relied upon the judgment of the then Ld. A.D.J Shri O.P Tewadi, dated 30.05.1985 claiming that in that case Ld. Counsel for the petitioner herein admitted during the arguments that sub letting is legal. One of the contentions of the applicants is that the petitioners were aware of the facts of sub tenancy but they did not implead sub tenants in the eviction petition.

8. In my considered view, mere knowledge of the landlord qua sub-tenancy is not sufficient to term the sub tenancy legal. As per Section 14(1)(b) of DRC Act, the tenant should not sub let or assign or part with the possession of the tenanted premises without obtaining the consent in writing of the landlord. What matter is consent in writing of the landlord and not the knowledge of the landlord in respect of sub tenancy. It is not the case of the applicants that the consent in writing was taken by the tenant or the sub tenant before sub-tenancy. Moreover, it is also not the case of the applicants that notice as mentioned in Section 17 and 18 of DRC Act was served upon the landlord. Perusal of record also shows that the applicants have relied upon the order dated 12.09.2019 and 16.12.2019 passed by Hon'ble High Court of Delhi. Perusal of order dated 16.09.2019 shows that in the aforementioned order, application of Saurab Kochar & Anr. was dismissed as withdrawn as the petitioner in that case did not wish to pursue it. That order does not assist the applicants herein. As far as order dated 16.12.2019 is concerned, one application filed by the applicant was dismissed as withdrawn by the Hon'ble High Court as the applicant submitted



that he has already raised the similar pleas before the Rent Controller in execution petition. Moreover, vide order dated 16.12.2019, the revision filed by the JD/respondent against the eviction order was dismissed by the Hon'ble High Court being devoid of any merit. As such, this order also does not assist the applicants herein.

10. In view of exhaustive discussion as earlier and material on record, the present application of applicants is without merit and in consequence thereof, it is dismissed with the cost of Rs.10,000/- to be deposited in the DLSA. Receipt be filed within two days from today.”

(emphasis supplied)

m) Thereafter, tenant of the premises no. 4105, 4154/ III Naya Bazar, Delhi, preferred a Special Leave Petition against the aforesaid judgment dated 16.12.2019 passed by this Court. The Hon'ble Supreme Court vide order dated 05.04.2021, while dismissing the petition of the said tenant, granted the said tenants six months' time to vacate the said premises.

n) Aggrieved by the orders dated 07.04.2017 (Order for eviction in E-535/14/09) and 06.04.2021 (Order dismissing application under Order I Rule 10 CPC), petitioners have preferred the present petition.

3. Learned Counsel for the petitioners, in support of the present petition made the following submissions: -

i) Suit no. 110/18 was filed by the predecessors in interest of the respondents against the tenant and the petitioners' predecessor, alleging them to be trespassers. However, during the proceedings in the said suit, predecessors in interest of the respondents admitted that sub-letting of the subject premises to the petitioners' predecessor was lawful. The same has



been categorically recorded in paragraph 8 of the judgment dated 30.05.1985, whereby learned ADJ dismissed the said suit by observing that the landlords could not seek possession from the occupants while the tenancy and lawful sub-tenancy still subsisted. Notably, the said judgment attained finality as the same has not been challenged. Further, at column no. 14 of the eviction petition, respondents have admitted that the tenanted premises was let out by the previous owners to Mr. Baijnath Singh and in column no. 16 of the eviction petition, they have admitted that Mr. Devender Singh and Surinder Singh have sublet, assigned and/ or part with the tenanted premises to Mr. Suresh Chand and others, who are in possession of part of the tenanted premises. Therefore, the petitioners should get protection in terms of Section 18 of the DRC Act.

ii) During the proceedings in eviction petition bearing no. E-535/14/09, respondents deliberately suppressed the judgment dated 30.05.1985 and did not array the petitioners as parties, despite fully knowing that the latter were lawful occupants of the premises no. 4154/III. Consequently, eviction order dated 07.04.2017 was obtained, behind the petitioners' backs. Further, respondents have made an attempt to take possession of three premises *i.e.* 4104, 4105, 4154/III, Naya Bazar, Delhi by filing an eviction petition only against the occupant of premises no. 4105 only namely Devender Singh & Surender Singh and not others.

iii) By intentionally excluding the petitioners from the eviction proceedings, the respondents have played a fraud upon the Court. Hence, in view of the law laid down by the Hon'ble Supreme Court in **S.P.**



Chengalvaraya Naidu v. Jagannath¹, that a judgment/ decree obtained by playing fraud on the Court is a nullity, eviction order dated 07.04.2017 is non-est in the eyes of law.

iv) Learned ARC erred in dismissing the petitioners application, being M-49/17, on the ground that no notice was served u/s 17 of the DRC Act. The respondents predecessors had admitted during the proceedings in Suit No. 110/81 that the sub-tenancy was legal. This Court in **Padam Chand Vaish v. Chaman Lal Bajaj & Anr.**², held that the requirement of a formal notice u/s 17(2) of the DRC Act is not absolute if the landlord is already aware of the sub-tenancy and that the purpose of Section 17 is to protect sub-tenants who have been inducted with consent. Further, Hon'ble Supreme Court in **Girdhari Lal & Sons v. Balbir Nath Mathur**³ held that strict adherence to the conditions imposed u/s 17 is not absolutely mandatory where the conduct of the landlord clearly demonstrates consent or constitutes an attempt to overreach the sub-tenant by dubious methods. Relevant paragraphs of **Girdhari Lal & Sons (supra)** are as follows:-

“20. We have before us two parties, both affluent. No tears need be shed either for the one or the other. The tenant before us, or to be precise the subtenant, is a firm which does not deserve any sympathy from us and that for an excellent reason. They had given an undertaking before this Court that they would withdraw the suit filed by them for fixation of fair rent. This undertaking they did not respect till now, obviously with the oblique motive of compelling the landlord to get the rent reduced and at the same time walk away with an order from this Court avoiding eviction. Left to myself, I would have declined relief to the appellants or at least directed them to pay a sum of Rs 5000 every month as rent. However, in the peculiar facts

¹ (1994) 1 SCC 1

² 2016 SCC OnLine Del 2154

³ (1986) 2 SCC 237



and circumstances of this case, where the conduct of the landlord is anything but wholesome, I agree with my learned brother in the order passed by him allowing the appeal. But, I would like to make my position clear regarding the scope and purpose of Sections 17 and 18 of the Act.

21. The normal rule is that all rights created by a tenant disappear along with the disappearance of his tenancy unless there are special statutory safeguards for the subtenants. A subtenant has no independent existence de- hors the tenant who inducted him into possession. In the Act before us a subtenant is given a special right, not available to him under the general law, but that right is circumscribed by specific conditions laid down in Section 17. We have chosen to rescue the appellants before us only because of the hide and seek conduct displayed by the so-called tenant and the so-called landlord in this case. The facts speak for themselves. Even a man who runs can see that the so-called tenant in this case is the alter ego of the so-called landlord. There is a total identification between the two. It is their attempt to overreach the appellants by dubious methods that has, in fact, imperilled their case, and it is for this reason that the appellants get relief from us, even though strict adherence to the conditions imposed under Section 17 is absent.”

Hence, once the landlord judicially admits the legality of the sub-tenancy, the statutory requirement of a written notice u/s 17 of the DRC Act is rendered redundant.

4. Refuting the submissions made on behalf of the petitioners, learned counsel for the respondents made the following submissions: -

i) In the application u/s 151 of CPC seeking setting aside of order dated 07.04.2017, petitioners categorically stated that no relationship of owners/ landlords and tenants/ sub-tenants exists between the respondents and the petitioners. Further, in RC. REV. 387/2017, the petitioners had filed an C.M. Application no. 20063/2019 u/o I Rule 10 CPC in which again the same plea



was taken that there do not exist any landlord-tenant relationship between the petitioners and the respondents. In fact, it was submitted that the petitioners are trespassers and hence, owners thereof after passing of 12 years. The same clearly nullifies the stand taken by the petitioners in the present petition that they are sub-lettees.

ii) This Court had heard arguments on the application u/o I Rule 10 and had categorically stated that the petitioners have no rights, however, some time was granted by this Court to the petitioners and on the next date the petitioners submitted that similar plea is taken in the application before the Trial Court and withdrew the said application. Thereafter, application u/s 151 of CPC was heard and was dismissed by the learned ARC-02 *vide* Order dated 06.04.2021, in which all the points taken by the petitioners herein were dealt with. After dismissal of the application u/s 151 CPC, the present revision petition was filed, wherein, petitioners herein have now completely changed their stand that predecessors of the respondents had admitted the sub-tenancy in favour of the petitioners in the suit no. 110/81. The said stand taken by the petitioners in the present Revision Petition is completely incorrect.

iii) As per law, the sub-tenants are not necessary parties in Eviction Petition on the ground of *bonafide* requirement. Moreover, Revision Petition u/s 25-B and the Eviction Petition can be filed only by a tenant or owner/landlord. Hence the present petition filed by the alleged sub-tenants is not maintainable. In support of the same, reliance is placed upon **Shri Siri Pal**



Jain v. Shri Brij Kishore & Ors.⁴ and Madhumati Kaur v. Hari Chander Khanna⁵.

iv) In the suit no. 110/81, there was no admission by the respondents or their predecessors as alleged by the petitioners about the alleged legal sub-tenancy. Moreover, legal sub-tenancy cannot be treated even by the admission on behalf of the respondents, though there is no admission at all. It is an admitted case of the petitioners that they are in possession of part of the subject premises since 1979. As per Section 16 of the DRC Act, after 09.06.1952, if the tenant let out part of the premises to the sub-tenant than the same cannot be alleged to be lawfully sub-let. It is not the case of the petitioners that they were let out part of the premises by obtaining the consent in writing from the landlord, which is the requirement of law u/s 16 of the DRC Act. In support of the same, reliance is placed upon **Kapil Bhargava (Mrs.) v. Subhash Chand Aggarwal & Ors.⁶, Ved Prakash v. Rashid & Anr.⁷, Roshan Lal v. Bhagwati Devi & Ors.⁸ and Murari Lal v. Abdul Gaffar⁹.**

v) Petitioners are in unlawful possession of the premises since 1979 or when the Hon'ble Supreme Court gave six months' time to vacate the tenanted premises *i.e.* 05.10.2021. The petitioners herein have also not ever given any rent/use and occupation charges to the respondents at any point of

⁴ (1982) RLR (Note) 50

⁵ 1997 (40) DRJ

⁶ (2001) 6 SCC 645

⁷ (1970) SCC Online Delhi 237

⁸ (1969) 5 DLT 261

⁹ (1974) RLR 39



time for which C.M. No. 21468/2025 has been filed by the respondents in the present petition u/s 151 CPC for fixation and recovery of use and occupation charges. According to respondents, the same cannot be less than Rs. 1,75,000/- per month.

5. Heard learned counsel for the parties and perused the records.

6. The main thrust of argument on behalf of the petitioners is that the respondents despite having knowledge of the petitioners being sub lessees did not make them a party in the eviction petition and obtained a decree of eviction dated 07.04.2017 behind their back. Reliance for the same, is placed on the column 14 of the eviction petition, where the respondents have admitted that the tenanted premises were let out by the previous owners to Mr. Baij Nath Singh and in column no. 16 of the said petition, they further admit that tenants had sub-let tenanted premises to the petitioners, who are in possession of the part of the tenanted premises and therefore, they were entitled for protection under Section 18 of the DRC Act. The said section reads as under:-

“18. Sub-tenant to be tenant in certain cases-

(1) Where an order for eviction in respect of any premises is made under section 14 against a tenant but not against a sub-tenant referred to in section 17 and a notice of the sub-tenancy has been given to the landlord, the sub-tenant shall, with effect from the date of the order, be deemed to become a tenant holding directly under the landlord in respect of the premises in his occupation on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.

(2) Where, before the commencement of this Act, the interest of a tenant in respect of any premises has been determined without



determining the interest of any sub-tenant to whom the premises either in whole or in part had been lawfully sub-let, the sub-tenant shall, with effect from the date of the commencement of this Act, be deemed to have become a tenant holding directly under the landlord on the same terms and conditions on which the tenant would have held from the landlord, if the tenancy had continued.”

7. The aforesaid protection under Section 18 of the DRC Act is provided to a sub-tenant, who are covered under Section 16 and 17 of the DRC Act. The said Sections read thus:

“16. Restrictions on sub-letting-

(1) Where at any time before the 9th day of June, 1952, a tenant has sub-let the whole or any part of the premises and the sub-tenant is, at the commencement of this Act, in occupation of such premises, then, notwithstanding that the consent of the landlord was not obtained for such sub-letting, the premises shall be deemed to have been lawfully sub-let.

(2) No premises which have been sub-let either in whole or in part on or after the 9th day of June, 1952, without obtaining the consent in writing of the landlord, shall be deemed to have been lawfully sub-let.

(3) After the commencement of this Act, no tenant shall, without the previous consent in writing of the landlord,--

(a) sub-let the whole or any part of the premises held by him as a tenant; or

(b) transfer or assign his rights in the tenancy or in any part thereof.

(4) No landlord shall claim or receive the payment of any sum as premium or pugree or claim or receive any consideration whatsoever in cash or in kind for giving his consent to the sub-letting of the whole or any part of the premises held by the tenant.

17. Notice of creation and termination of sub-tenancy-

(1) Where, after the commencement of this Act, any premises are sub-let either in whole or in part by the tenant with the previous consent in writing of the landlord, the tenant or the sub-tenant to whom the premises are sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within one month of the date of such sub-letting and notify the termination of such sub-tenancy within one month of such termination.



(2) Where, before the commencement of this Act, any premises have been lawfully sub-let either in whole or in part by the tenant, the tenant or the sub-tenant to whom the premises have been sub-let may, in the prescribed manner, give notice to the landlord of the creation of the sub-tenancy within six months of the commencement of this Act, and notify the termination of such sub-tenancy within one month of such termination.

(3) Where in any case mentioned in sub-section (2), the landlord contests that the premises were not lawfully sub-let, and an application is made to the Controller in this behalf, either by the landlord or by the sub-tenant, within two months of the date of the receipt of the notice of sub-letting by the landlord or the issue of the notice by the tenant or the sub-tenant, as the case may be, the Controller shall decide the dispute.”

8. In Kapil Bhargava (Mrs.) (*Supra*), the Hon’ble Supreme Court while interpreting the aforesaid provisions observed and held as under:-

10. Next it is submitted, since the sub-tenancy was created before 9-6-1952 the appellant became a deemed tenant i.e. a lawful sub-tenant which has been held both by the Rent Controller and the Rent Control Tribunal, thus question of his eviction under Section 14(1)(d) would not arise.

12. The submission is, once the appellant is a lawful sub-tenant being deemed sub-tenant by virtue of Section 16(1), question of his giving any notice under Section 17 would not arise, so also Section 18 would have no application.

13. On the other hand, learned Senior Counsel for the respondent Mr G.L. Sanghi submits, if no notice is served by such a sub-tenant as contemplated under Section 17(2), which has not been served, as finally recorded in this case, the appellant could not resist a decree of eviction even if passed against a tenant. Unless such a notice is served, a decree against a tenant would bind even a sub-tenant.

14. We have given our due consideration to these submissions on behalf of both the parties. We find that Section 16 refers to the restrictions of sub-letting. It classifies the cases of sub-letting into three categories. Sub-section (1) of Section 16 refers to cases where a sub-tenant is inducted by a tenant before 9-6-1952, without the consent of the landlord but is deemed to be a lawful sub-tenant, if he is in occupation of such premises at the commencement of the Act. Sub-section (2) deals with cases where a sub-tenant is inducted on or after



the aforesaid date, and if it is without a written consent of the landlord, he is not treated to be a lawful sub-tenant and sub-section (3) mandates a tenant, after the commencement of the Act, not to sub-let any premises without written consent of the landlord. The present case admittedly falls under sub-section (1) of Section 16, under which the appellant could claim to be a deemed sub-tenant. On one hand, it confers on a sub-tenant a statutory right, on the other hand, Section 17(2) casts an obligation on such sub-tenant to serve a notice on a landlord.

15. Thus the question which arises for our consideration is, whether by mere declaration of a sub-tenant as deemed sub-tenant, he could resist his eviction, if it is against a tenant under Section 14 without performing the obligation cast on him under Section 17(2). Sub-section (2) of Section 17 spells out, before the commencement of this Act, if any premises have been lawfully sub-let by a tenant in the prescribed manner, a sub-tenant is obliged to give notice to the landlord of the creation of sub-tenancy within six months of the commencement of this Act. Though an attempt was made on behalf of the appellant before the courts below that such a notice was served on the landlord but this has been disbelieved on facts by the courts below. So, it cannot be disputed that no notice was served by the appellant on the landlord in terms of sub-section (2) of Section 17.

16. Submission for the appellant is that once a sub-tenant is a lawful sub-tenant by virtue of Section 16(1), the notice under sub-section (2) of Section 17 would be a mere formality which is procedural. Thus its non-compliance cannot take away his substantive right created under Section 16(1). This submission misses the purpose for which this sub-section (2) of Section 17 is enacted. On performance of this obligation, a right is conferred on a sub-tenant to become a tenant under Section 18. This service of notice saves a sub-tenant from eviction even if a decree is passed against a tenant under Section 14 and further confers on such sub-tenant an independent right as that of a tenant. Thus notice under Section 17(2) cannot be construed as mere procedural, in fact it confers substantive right on such a sub-tenant. So, a conjoint reading of Sections 16, 17 and 18 makes it clear that a sub-tenant falling under Section 16(1) is deemed to be a lawful sub-tenant even without written consent of the landlord. But Section 17(2) casts an obligation on such sub-tenant to give notice to the landlord under sub-section (2), within six months of the commencement of the Act. The legislature has used in sub-section (2) the words, "lawfully sub-let". So even if the appellant is a lawful sub-tenant by virtue of Section 16(1), still an



obligation is cast on such lawful sub-tenant to serve a notice on the landlord for gaining a right under Section 18. This as we have said is as a protective measure in favour of a sub-tenant. So, the submission that by mere declaration as lawful tenant under Section 16(1), no decree for eviction is enforceable against the sub-tenant has no merit and is hereby rejected. Hence we hold, unless notice under sub-section (2) of Section 17 is served by the sub-tenant, he cannot take the benefit of Section 18 and any decree passed under Section 14 against a tenant is executable against a sub-tenant.

17. The next and the last submission is that the landlord was not only aware of the fact that it is not the tenant but the sub-tenant who was residing exclusively in whole of the premises, since before 9-6-1952 and the landlord was accepting the rent from this sub-tenant, hence compliance with Section 17(2) could at best be said to be a mere formality. This submission has also no merit. Neither is there any such finding by any court nor any evidence pointed out that after the tenant left, the rent was paid by the sub-tenant on his own behalf and not on behalf of the tenant. A person in possession may continue to live and continue to pay rent which would be payment on behalf of the tenant, unless specific evidence is led that the incumbent in possession started paying rent as sub-tenant, receipt issued as sub-tenant or there exists any document of this nature. We have not been shown any such plea, evidence or any finding by any of the courts below in this regard.”

9. Thus, for the purposes of protection under Section 18 of the DRC Act, two conditions *i.e.* consent under Section 16 and notice under Section 17(2) of the DRC Act have to be complied with.

10. The petitioners in the present case, have sought to place reliance on a judgment dated 30.05.1985 passed in suit no. 110/81 decided by the learned ADJ, to argue that the predecessors in interest of the respondents herein had admitted them to be their sub-lessees and, therefore, conditions under Sections 16 and 17 stands complied with. The said submission is not borne out from the records. The said judgment nowhere records the admission on the part of the predecessors in interest of the respondents that the petitioners



were inducted as sub-lessees with their consent or there was lawful sub-tenancy in their favour. It was the case of predecessors in interest of the respondents that the petitioners herein, who were arrayed as defendant nos. 4 and 5 were unlawful occupants of the subject premises. Further, para 6 of the judgment dated 30.05.1985 records that “*Plaintiff has further denied that defendant no. 2 to 5 are the sub-tenant of defendant no. 6.*” It is not the case of the petitioners, that any notice was issued as contemplated under Section 17(2) of the DRC Act with respect to sub-lease. Moreover, since defendant no. 1 was admittedly a tenant, the said suit was decided on the following issues-

- “1. Whether the Civil Court has jurisdiction in view of the fact that the dispute is covered by Delhi Rent Control Act; and OPP
2. Whether before filing the present suit the permission of the authorities under the slum Areas Improvement and Clearance Act was obtained.... OPP.”

11. It is further noted that in the application u/s 151 of CPC seeking setting aside of order dated 07.04.2017, petitioners stated that no landlord-tenant relationship exists between the respondents and the petitioners. Further, in C.M. Application no. 20063/2019 u/o I Rule 10 CPC in RC. REV. 387/2017, the petitioners again took the same plea that there do not exist any landlord-tenant relationship between the petitioners and the respondents. However, in the present petition, petitioners took the stand of being sub-lessees.

12. Thus, as noted hereinbefore, mere knowledge of existence of sub-tenancy is not sufficient and for a sub-tenant to claim protection under Section 18 of the DRC Act, the two conditions as envisaged under Sections 16 and 17(2) of the DRC Act *i.e.* consent and notice are essential. In the present case,



both the said conditions are missing. Therefore, learned ARC while passing the impugned order 06.04.2021 has rightly held that what matters is the consent in writing of the landlord and not the mere knowledge of landlord with respect to sub-tenancy.

13. The next contention of the learned counsel for the petitioner was that they will be covered under Section 16(1) of the DRC Act as the sub-tenancy existed prior to 9th June 1952 and therefore, the same would be lawful sub-tenancy. Learned counsel for the respondents submitted that the same is factually incorrect as in para 5 of the present petition, it has been stated that the petitioner are in possession of the subject premises since 1979.

14. In **Kapil Bhargava (Mrs.) (Supra)**, the case of the tenant was admittedly covered under Section 16(1) of the DRC Act. However, it was held that for protection under Section 18 of the DRC Act, compliance of notice within six months of the commencement of the DRC Act as contemplated under Section 17(2) of the DRC Act was mandatory. Admittedly, no such notice had been issued in the present case. At the sake of repetition, it is noted that the said stand was never taken. In fact, it was the case of the petitioner that there was no landlord-tenant relationship.

15. The learned counsel for the petitioners has relied upon the following judgments which are distinguishable in the following manner.

15.1. In **Girdhari Lal & Sons (Supra)**, Hon'ble Supreme Court observed and held as under:-



“17. Bearing these broad principles in mind if we now turn to the Delhi Rent Control Act, it is at once apparent that the Act is primarily devised to prevent unreasonable eviction of the tenants and subtenants from demised premises and unreasonable enhancement of rent. In particular, the purpose of Sections 17 and 18 is clearly to protect the subtenants from eviction where a landlord obtains a decree for eviction against the principal tenant. In an action for eviction by a landlord against the principal tenant, the subtenant has no defence of his own under the ordinary law, even if he has been inducted into possession with the consent of the landlord. He has to go with the tenant. He can claim no right to sit in the premises apart and distinct from the right of the tenant. Showing an awareness of the problems of subtenants, the legislature enacted Sections 17 and 18 for their protection. The protection was afforded to subtenants who had been inducted into possession with the consent of the landlord. While so extending a protecting hand to the subtenant the legislature wanted to make sure that subtenants who had genuinely obtained the consent of the landlord alone should be entitled to that protection. The legislature wanted to prevent persons who had somehow managed to get into possession, having been inducted into such possession by the tenant or otherwise from putting forward baseless claims that they were inducted into possession with the consent of the landlord. So the legislature while offering protection to a subtenant who has been inducted into possession by a landlord has limited the protection to the subtenant who can establish the consent of the landlord by documentary evidence to which the landlord and the tenant or sub-tenant are parties. So it is provided that the previous consent of the landlord has to be in writing and that a notice in the prescribed manner has to be given to the landlord by the tenant or the subtenant. The essence of the requirement, therefore, is that the consent of the landlord to the subtenancy and the notice of the creation of the subtenancy have to be evidenced by writing. The writing is to be such as to indicate clearly the consent of the landlord to the creation of a subtenancy and his knowledge of the particular subtenancy after its creation. The writing relating to the consent and the writing relating to the knowledge (notice) may be by different documents or they may telescope into the same document. Where, as in the present case, the agreement or the letter of the subtenancy in respect of the demised premises is attested by the landlord himself, there can be no question that the landlord has given his previous consent and that he has notice in writing of the subtenancy in respect of the particular



premises. The requirements of Sections 17 and 18 both as regards to his consent and the notice to him are satisfied. There is no magical form in which the consent is to be given nor any charmed form in which the notice is to be sent. As we said, the essence of the matter is that the consent to the subtenancy and the notice of the subtenancy in respect of the premises must be evidenced by writing signed by the landlord and the tenant or the subtenant.

In this view of the matter, the appellant in the present case is clearly entitled to the protection of Sections 17 and 18 of the Delhi Rent Control Act and he cannot, therefore, be evicted in execution of the decree obtained by Balbir Nath Mathur against Om Prakash & Company. We do not consider it necessary to embark into a discussion of the two cases cited before us: Jagan Nath v. Abdul Aziz [AIR 1973 Del 9 : 1972 RLR 80 : 1973 Ren CJ 503] and Murari Lal v. Abdul Gaffar [ILR (1974) 1 Del 45] .”

(emphasis supplied)

In the present case, there is no such document in writing which can show that the respondents consented to the sub-tenancy of the petitioners.

15.2. In Padam Chand Vaish (*Supra*), there were two documents to place on record, one was a letter by erstwhile owner granting permission to a tenant permitting him to give half portion of the suit property on sub-tenancy and the second document was the sale deed by virtue of which the landlord had purchased the property from the erstwhile owner, where it is specifically recorded that the new owner had permission to sublet the property. Thus, this Court on the basis of the said documents, concluded that the landlord had full knowledge of the sub-tenancy as well as had granted permission to the tenant *qua* the sub-tenancy. In the present case, there is no document signifying the consent of the respondents to the sub-tenancy of the petitioners.



15.3. Further, **S.P. Chengalvaraya Naidu (*Supra*)**, was the case where the preliminary decree was obtained by playing fraud on the court by non-production or non-mentioning of a lease deed, which had bearing on the issue in the suit. In the present case, it is the contention of the learned counsel for the petitioners that non-impleading of the petitioners as respondents in the eviction petition amounts to fraud. The said contention is not tenable. It is an admitted case that the respondents had shown the petitioners to be sub-tenant in the eviction petition but had not made them a party, as the respondents had not consented their sub-tenancy and neither was the condition under Section 17(2) of the DRC Act being complied with by the petitioners.

16. In the facts and circumstances, no interference with the impugned orders is called for.

17. The petition is dismissed and disposed of, accordingly.

18. Pending application(s), if any, also stands disposed of.

19. Order be uploaded on website of this Court, *forthwith*.

**AMIT SHARMA
(JUDGE)**

AUGUST 13, 2026/nk/sg