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

% *Date of Decision: 13th May, 2025*

+ CM(M) 788/2025 & CM APPL. 25550/2025 & CM APPL. 25551/2025 & CM APPL. 25552/2025 & CM APPL. 25553/2025

DELHI TRANSPORT CORPORATIONPetitioner

Through: Mr. Rikky Gupta, Standing Counsel,
DTC.

versus

M/S ATMA RAM PROPERTIES (P). LTDRespondent

Through: Mr. Amit Sethi with Ms. Ekadhana
Sethi and Mr. B. Anand, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Petitioner herein is defending a suit for possession, recovery of *mesne* profits and is aggrieved by order dated 30.09.2024 whereby learned Trial Court has allowed the plaintiff to amend its suit.
2. Admittedly, when the amendment was allowed, though the issues had been framed already, no witness had graced the witness box.
3. Learned counsel for respondent appears on advance notice.
4. I have gone through the pleadings with respect to the suit in question which was earlier instituted before this Court on its Original Side and was numbered as CS(OS) No.574/2010. With the change in pecuniary jurisdiction, the suit was, eventually, transferred to District Courts.
5. The crux of the averments appearing in the suit is to the effect that plaintiff *M/s Atma Ram Properties (P). Ltd.* is owner-cum-landlord of a building known as Atma Ram Mansion (Scindia House), Connaught Circus. It was purchased by them *vide* Sale Deed dated 31.05.1980. When the



property was purchased, the defendant i.e. *Delhi Transport Corporation* (in short 'DTC') was already in occupation of part of the abovesaid property as tenant, and in terms of the abovesaid Sale Deed, the plaintiff got the right to collect rent from such tenant.

6. According to plaintiff, the property in question had been notified in the Delhi Gazette and the House Tax on the abovesaid property, situated in NDMC area, was leviable and assessable, on the basis of *Unit Area System*.

7. The defendant was occupying total built-up area of 1653.04 sq.metre [18000 sq.ft. approximately].

8. It will be also important to mention that the plaintiff averred in the suit that the total rent being payable for the tenanted premises was Rs.3,22,755.55 per month (Rs.3,22,128.05 + Rs.627.50) and that, therefore, the tenancy were not protected under Delhi Rent Control Act, 1958.

9. It was in the abovesaid factual backdrop that the suit was filed seeking decree of possession and recovery of *mesne* profit.

10. The suit has been resisted by the defendant and in their written statement, they, categorically, contended that they were the lawful tenant of the demised premises and had been paying rent @ Rs.627.50 per month and, therefore, the tenancy was protected under Delhi Rent Control Act, 1958.

11. After the completion of pleadings, the following issues were framed by the learned Trial Court:-

- “1. Whether the Plaintiff is entitled to a decree of possession in respect of the suit premises against the Defendant, as per prayer clause 'A' of the plaint? (OPP)
2. Whether the Plaintiff is entitled to decree of Rs. 1,20,00,000/- against the Defendant on account of the alleged unauthorized use and occupation of the suit premises w.e.f. 01.10.2009 to 28.02.2010 as per prayer clause 'B' of the plaint? (OPP)
3. Whether the Plaintiff is entitled to grant of mesne profits/damages



*against the Defendant, as per prayer clause 'C' of the plaint?
(OPP)*

4. *Whether the present suit is barred under Delhi Rent Control Act?
(OPD)*
12. The issue No.4 was treated as a preliminary issue.
13. Importantly, issues were framed when the matter was still pending before this Court on its Original Side and while dealing with the abovesaid preliminary issue, this Court, *vide* order dated 25.10.2013, observed as under:-

“10. Further to decide the issue whether the house tax levied can be treated as rent, intention of the parties while entering into the lease agreement has also to be looked into. Thus since this would be an issue to be decided also on the facts of the case besides law the same cannot be treated as preliminary issue. It is no longer res-integra that an issue for which the evidence is required to be led cannot be treated as a legal issue and therefore, cannot be treated as a preliminary issue vide Ramesh B. Desai v. Bipin Vadilal Mehta, 2006 (5) SCC 638. It was held that Order XIV Rule 2 of Code of Civil Procedure confers no jurisdiction on a Court to decide mixed questions of fact and law as preliminary issues. There is no provision in the TP Act much less in the DRC Act that the House Tax forms part of the rent. Further there is no admission in the rent agreement that the Defendant is liable to pay house tax by treating the same as part of rent. Therefore, whether house tax is or is not part of rent is a disputed question of fact which requires trial and cannot be decided as a preliminary issue.

11. Therefore, the Issue No. 4 is decided partially in favour of the Plaintiff and against the Defendant holding that the present suit as regards prayers (b) and (c) is not barred by the provisions of DRC Act. However, whether a decree of possession can be passed in favour of the Plaintiff or not due to applicability of the provisions of DRC Act would have to be decided by this Court after the parties have led their evidence.”

14. Before evidence could be recorded, the plaintiff moved an application seeking amendment in the suit and they averred in such application that while looking for some old files in their Store Room, their employee came across some files which pertained to eviction petition filed in the year 1969 by the



erstwhile owners namely Sh. S. Khushwant Singh and Brigadier Gurbax Singh against DTC and, after learning about such record, they traced out the file as such from the Record Room (Civil) with the help of *Goshwara* number and applied for the certified copies of the eviction petition as well of the written statement.

15. According to them, said eviction petition was filed by their *predecessor-in-interest* on the ground of sub-letting and unauthorised construction.

16. In para 11 of the abovesaid eviction petition, the *predecessor-in-interest* of the plaintiff claimed as under:-

11.	<i>Monthly rent together with details of house-tax electricity water and other charges paid by the tenant.</i>	11.	<i>Rs. 878/75 exclusive of electricity charges.</i>
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17. In response thereto, the defendant/tenant claimed as under:-

“11. That para No.11 of the petition is wrong and denied. The rate of rent is Rs.627.50 p inclusive of House Tax, water charges, lift charges etc.”

18. According to plaintiff, it was not aware about the previous eviction petition and it was only when its employee, accidentally, found some old documents that it applied for the certified copies of the relevant record. They contended that the primary question in the suit was to the effect whether House Tax is component of the rent or not and the abovesaid admission made by the same defendant in the earlier eviction petition filed by their *predecessor-in-interest* goes on to demonstrate that even the defendant/tenants had no qualm that House Tax was part of the rent and, therefore, they should be permitted to amend their plaint and to make reference to the same.

19. It was also contended that the amendment sought was important,



genuine and germane to the controversy in question and did not change the nature of the suit or the relief sought therein.

20. Such application was opposed by defendant and, according to them, the application was not only highly belated but the amendment sought was barred by limitation. The tenant relied upon *Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka and Ors.*: (2013) 9 SCC 485 and contended that the representatives of the plaintiff were, all along, aware about the previous proceedings and, therefore, they should have mentioned about the same at the first available opportunity, when the suit in question was instituted way back in 2010. It also argued that a corporate entity cannot be permitted to plead ignorance in this regard and since they did not make any mention with respect to the previous case, it was too late for them to make reference about the same, by seeking amendment in the plaint.

21. It was also argued by them that the proposed amendment was, merely, a dishonest attempt on the part of the plaintiff to overcome one decision given by Hon'ble Supreme Court in *Atma Ram Properites Pvt. Ltd. vs. M/s. Oriental Insurance Company Ltd.*: (2018) 2 SCC 2017 and that in order to overcome the abovesaid decision, the plaintiff was attempting to plead that there was some admission on the part of the defendant and that the rent was always inclusive of House Tax.

22. Learned Trial Court, however, on careful perusal of the entire matter, came to the conclusion that the amendment was necessary to decide the real question in controversy between the parties, and also that the amendment it was not going to change the nature of the suit but was merely introducing an additional approach to the stand already taken by the plaintiff i.e. the property was outside the protection of Delhi Rent Control Act, 1958.



23. Resultantly, the application was allowed subject to cost of Rs.30,000/-
24. Learned Trial Court while allowing the abovesaid amendment, also relied upon *LIC vs. Sanjeev Builders: 2022 SCC OnLine SC 1128* and *Chakreshwari Construction (P) Ltd v. Manohar Lal: (2017) 5 SCC 212*.
25. Such order is under challenge.
26. According to learned counsel for the petitioner (tenant), the request is not only belated but highly malafide in nature. It is submitted that in the previous eviction petition filed by the *predecessor-in-interest* of the present owner, the present owners were also got impleaded, pursuant to one application moved under Order XXII Rule 10 CPC. Such application was moved way back in the year 1987 and it is not believable that the plaintiff would not be aware about they being substituted in the previously instituted eviction petition and its consequent execution petition.
27. A careful perusal of the instant plaint would indicate that there is no reference about the abovesaid eviction petition. Similarly, the tenant/defendant also, for the reasons best known to them, did not make any reference about the abovesaid eviction petition in their written statement.
28. The alleged admission made by the defendant in the previously instituted eviction petition has already been extracted above and the contention that the attempt of the plaintiff to amend the suit is malafide and motivated, stands deflated, automatically, for the reason that if the plaintiff was actually aware about the abovesaid eviction petition and the alleged admission appearing in the written statement, they would have, rather, made immediate reference to the same in their plaint. Moreover, there is nothing on record which may indicate that they were ever aware about any such admission, when the suit was instituted.



29. Since the above eviction petition was also on the ground of Section 14(1)(k) of Delhi Rent Control Act, 1958, admittedly, certain proceedings in the nature of Section 14(11) of Delhi Rent Control Act, 1958 remained pending and it was during the consideration of the abovesaid proceedings that the present owners were brought on record by moving application under Order XXII Rule 10 CPC.

30. Be that as it may, the entire controversy in the present suit, primarily, revolves around the fact whether the House Tax can be said to be part of rent or not.

31. Naturally, since the plaintiff has filed a civil suit, according to him, House Tax is also one of the components of the rent, which fact has been seriously disputed and opposed by the tenant.

32. Of course, there is a delay in moving the abovesaid application but at the same time, it is also quite palpable and manifest that the pleadings pertaining to the previous eviction petition have direct and proximate bearing with respect to the abovesaid important issue.

33. Moreover, there is, actually speaking, nothing which may, clearly, indicate that the application was moved with some ulterior motive or having some *malafide* intention and since the trial had yet not begun, this Court does not find any illegality and perversity in the impugned order, whereby the learned Trial Court, while exercising its discretionary powers, has allowed the amendment. The question whether amendment is a ploy to overcome the abovesaid judgment of *Atma Ram Properites Pvt. Ltd.* (supra) is not to be adjudicated at the moment and such aspect can be always, appropriately, looked into by the learned Trial Court, during trial. Importantly, if defendants feel that their case is squarely covered by said



judgment, they, instead of opposing amendment, should have sought for rejection or dismissal of suit.

34. Finding no merit or substance in the present petition, the same is, hereby, dismissed.

35. Needless to emphasize, the observations made hereinabove are tentative in nature and merely with the purpose to evaluate whether the amendment was liable to be allowed or not and the question whether the rent is inclusive of House Tax or not, can be, appropriately, gone into by the learned Trial Court only when there is comprehensive trial as the real intention of the parties is the sole governing factor in this regard, besides there being any agreement in writing to that effect.

36. The petition is, accordingly, disposed of in aforesaid terms.

37. Pending applications, if any, also stand disposed of.

(MANOJ JAIN)
JUDGE

MAY 13, 2025
st/pb