$~5

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

Date of decision: 02.11.2026

\# **CNR No. DLHC010471582019**

\+ RC.REV. 683/2019 & CM APPL. 52163/2019 (Addl.Doc.)

SMT. KAMLESH .....Petitioner

Through: Mr. Ankita Patnaik, Advocate (DHCLSC).

versus

SH. BHAGWAN DASS AND ANR. .....Respondents

Through: Mr. Tushar Sinha, Advocate.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (Oral)**

1. The present Petition, filed under Section 25-B(8) of the **Delhi Rent Control Act, 1958**[1], read with Article 227 of the **Constitution of India, 1950**[2], seeks to assail the **Order dated 15.01.2019**[3] and the **Order dated 31.07.2019**[4], hereinafter collectively referred to as ***"Impugned Orders"***, passed by the learned **Additional Rent Controller, South District, Saket Courts, New Delhi**[5], in the Eviction Petition, being **RC ARC No. 67/2017 (E-19/2017)**[6], titled *"Kamlesh v. Bhagwan Dass & Another"*.

[1] DRC Act
[2] Constitution
[3] Dismissal Order
[4] Restoration Order
[5] ARC
[6] Eviction Petition

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:05.11.2026 15:59:42

BRIEF FACTS:

2. The Petitioner is the mother of Respondent No. 1 and the mother-in-law of Respondent No. 2. It is the case of the Petitioner that she is the owner of property bearing No. **F-II/168, Madangir, New Delhi-110062**[7], and that in July, 2015 she let out the **Second Floor of the Subject Premises**[8] to the Respondents at a monthly rent of Rs. 3,000. Alleging that no rent had been paid since July, 2015, and that the Legal Notice dated 03.03.2017 had gone unheeded, the Petitioner instituted the Eviction Petition, under Sections 14(1)(a) and 14(1)(e) of the DRC Act, seeking eviction of the Respondents along with the arrears of rent.

3. The Respondents contested the Eviction Petition and denied the existence of any relationship of landlord and tenant between the parties. They contended that Respondent No. 1, being one of the legal heirs of his late father, Sh. Kanhaiya Lal, resides in the Tenanted Premises as a co-owner, and that the General Power of Attorney and the Will relied upon by the Petitioner are forged and fabricated.

4. Upon completion of pleadings, the Petitioner filed her evidence by way of Affidavit on 27.10.2017, and the matter was listed for Petitioner's Evidence. By Order dated 24.11.2018, the learned ARC dismissed an Application filed by the Respondents under Order VII Rule 11 of the **Code of Civil Procedure, 1908**[9], observing that the relief in the Eviction Petition was claimed only under Section 14(1)(a) of the DRC Act. The matter was thereafter listed for Petitioner's Evidence on 15.01.2019.

---

[7] Subject Premises
[8] Tenanted Premises
[9] CPC

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:05.11.2026 15:59:42

5. On 15.01.2019, the record reflects that none appeared on behalf of the Petitioner despite calls, and the matter was passed over. As there was no appearance on behalf of the Petitioner even upon the matter being taken up again, the learned ARC, *vide* the Dismissal Order, dismissed the Eviction Petition for non-appearance and non-prosecution, observing that the Petitioner did not appear to be serious about pursuing the same.

6. The Petitioner thereafter moved an **Application under Order IX Rule 9 read with Section 151 CPC, dated 30.04.2019**[10], seeking restoration of the Eviction Petition. In the Restoration Application, the Petitioner stated that she is an aged lady suffering from various ailments and dependent upon her younger son for her movement. She further stated that her counsel was attending to his newborn child on the date of hearing, and that the proxy counsel deputed by him was unable to appear before the learned ARC. By the Restoration Order, the learned ARC dismissed the Restoration Application on three grounds, *namely*, that the Petitioner had been absent on 15.11.2017 and on the two dates preceding the Dismissal Order; that no medical document had been placed on record in support of her alleged illness; and that the Restoration Application had been filed beyond the period of thirty days, without any explanation for the delay.

7. Aggrieved thereby, the Petitioner has preferred the present Petition.

SUBMISSIONS ON BEHALF OF THE PARTIES:

8. Learned counsel appearing on behalf of the Petitioner submits that the Petitioner is an aged widow, presently being represented

[10] Restoration Application

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:05.11.2026 15:59:42

through counsel appointed by the Delhi High Court Legal Services Committee, who has been regularly pursuing the Eviction Petition and has appeared before the learned ARC on most of the dates of hearing. It is fairly submitted that on 24.11.2018, neither the Petitioner nor her counsel was present before the learned ARC, as a result of which the next date of hearing, *i.e.*, 15.01.2019, was not known to the Petitioner. On that date, owing to their absence, the Eviction Petition came to be dismissed.

9. Learned counsel for the Petitioner further submits that the absence of the Petitioner was neither deliberate nor intentional. It was occasioned by her ill-health, by her dependence upon her son, who was himself unable to accompany her, and by the inability of her counsel to attend the proceedings. It is submitted that the dismissal of the Eviction Petition, and the refusal to restore it, have resulted in grave prejudice to the Petitioner.

10. Learned counsel for the Petitioner, in light of the foregoing submissions, submits that the Impugned Orders be set aside.

11. ***Per contra*****,** learned counsel appearing on behalf of the Respondents submits that the Impugned Orders are well-reasoned and call for no interference. It is submitted that the Petitioner failed to appear on multiple dates, did not place any medical document on record before the learned ARC in support of her alleged illness, and filed the Restoration Application beyond the period of limitation without any explanation for the delay.

12. Learned counsel for the Respondents further submits that there exists no relationship of landlord and tenant between the parties, Respondent No. 1 being in occupation of the Tenanted Premises as

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR
BHATIA
Signing Date:05.11.2026
15:59:42

one of the legal heirs of his late father.

13. Learned counsel for the Respondents also submits that the Petitioner has preferred proceedings under the **Maintenance and Welfare of Parents and Senior Citizens Act, 2007**[11], seeking eviction of the Respondents, and that there is, therefore, no requirement for the Impugned Orders to be set aside.

ANALYSIS:

14. This Court has heard learned counsel appearing on behalf of the parties and, with their able assistance, perused the material available on record, including the relevant documents and the Impugned Orders.

15. A perusal of the record reveals that on 06.09.2018, though the Petitioner herself was not present, she was represented by her counsel, while on 24.11.2018, there was no appearance either by the Petitioner or by her counsel. On 15.01.2019, despite the matter having been passed over, there was again no appearance either by the Petitioner or by her counsel, and the Eviction Petition came to be dismissed for non-prosecution. The Dismissal Order is thus founded upon the absence of the Petitioner and her counsel on two consecutive dates of hearing.

16. This Court also takes cognizance of the fact that the Petitioner is a woman of advanced age and is presently being represented through counsel appointed by way of legal aid. The record further reveals that, prior to the aforesaid dates, the Petitioner had appeared before the learned ARC on several dates of hearing, including on dates on which the proceedings could not be taken up for reasons not attributable to her.

[11] Senior Citizens Act

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR BHATIA
Signing Date:05.11.2026 15:59:42

17. This Court also cannot lose sight of the unfortunate circumstances in which the dispute has arisen, which are set out in the present Petition. The proceedings have been instituted by a mother against her son and daughter-in-law, in respect of the very premises in which they reside.

18. Insofar as the submission of learned counsel for the Respondents premised upon the proceedings preferred by the Petitioner under the Senior Citizens Act is concerned, this Court is of the view that the mere filing of a petition under the Senior Citizens Act would not disentitle the Petitioner from pursuing the remedies available to her under the DRC Act. The two proceedings operate in their respective spheres, and the pendency of the former cannot be a ground to sustain the dismissal of the latter for non-prosecution.

19. Considering the advanced age of the Petitioner and her limited resources, and in particular the fact that the Petitioner and her counsel were unable to be present on only two occasions, this Court is of the considered view that the dismissal of the Eviction Petition was a disproportionate consequence of such absence. The Petitioner, who has already filed her evidence by way of Affidavit, ought not to be non-suited without an adjudication of the Eviction Petition on its merits.

20. In view of the foregoing discussion, this Court is of the considered opinion that the Impugned Orders cannot be sustained and that the interests of the Respondents can adequately be safeguarded by the imposition of costs.

DECISION:

21. The Impugned Orders are, accordingly, set aside, subject to the

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR
BHATIA
Signing Date:05.11.2026
15:59:42

payment of costs of Rs. 5,000/- (Rupees Five Thousand only) by the Petitioner to the Respondents, within a period of three (03) weeks from today.

22. Subject to the payment of the aforesaid costs, the Eviction Petition, being RC ARC No. 67/2017, shall stand restored to its original number and position before the learned ARC, at the stage at which it stood on 15.01.2019. The learned ARC shall proceed with the Eviction Petition in accordance with law.

23. It is clarified that nothing stated herein shall be construed as an expression of opinion on the merits of the rival contentions of the parties, including the existence or otherwise of the relationship of landlord and tenant between them, or on the proceedings pending under the Senior Citizens Act, which shall be decided on their own merits and in accordance with law.

24. The present Petition, along with pending Application(s), if any, stands disposed of in aforementioned terms.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 02, 2026/tk/DJ

Signature Not Verified
Digitally Signed
By:HARVINDER KAUR
BHATIA
Signing Date:05.11.2026
15:59:42