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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 08.10.2026**# **CNR No. DLHC010275682023**+ **RC.REV. 195/2023 & CM APPL. 36726/2023 (Stay)****IKRAMUDDIN**

.....Petitioner

Through: Mr. Rajat Aneja, Senior Advocate with Mr. Abhinav Chauhan and Mr. Mann Nankani, Advocates.

versus

HAKIMUDDIN

.....Respondent

Through: Mr. S.A. Khan & Mr. Kashif Ahmad Khan, Advocates.

CORAM:**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

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JUDGEMENT (Oral)

1. The present Rent Control Revision Petition has been filed under Section 25-B (8) of the Delhi Rent Control Act, 1958 [**"DRC Act"**], assailing the Order dated 22.03.2023 [**"Impugned Order"**] passed by the learned Rent Controller, Shahdara, Karkardooma Courts, New Delhi [**"learned RC"**] in Eviction Petition being E.P. No.1257/2016. By the Impugned Order, the application seeking leave to defend filed by the Petitioner was dismissed and an eviction order was passed against him in respect of the tenanted premises.

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RC.REV. 195/2023

Page 1 of 14



2026:DHC:8905



SUBMISSIONS ON BEHALF OF THE PARTIES:

2. Mr. Rajat Aneja, learned Senior Counsel appearing on behalf of the Petitioner, assails the Impugned Order on the sole ground that the learned RC failed to consider the specific defence raised by the Petitioner under Section 53-A of the Transfer of Property Act, 1882 [“**TP Act**”]. It is submitted that the learned RC rejected the said defence on the premise that the suit for specific performance instituted by the Petitioner in respect of the Agreement to Sell dated 18.08.2000 had been dismissed and that no relief had been granted to him even up to the Hon’ble Supreme Court. Learned Senior Counsel contends that the said reasoning overlooks the distinction between a claim for specific performance, which may be barred by limitation, and a defence seeking protection of possession under Section 53-A of the TP Act.

3. Learned Senior Counsel places reliance on the Judgment of the Hon’ble Supreme Court in ***Shrimant Shamrao Suryavanshi vs. Prahlad Bairouva Suryavanshi***¹, and submits that, even where a party is precluded from instituting an action to assert or enforce its rights under an agreement, such circumstance does not, by itself, foreclose the party from invoking Section 53-A of the TP Act as a defence to protect possession. It is urged that the present proceedings are precisely of such a nature, as the Respondent seeks eviction of the Petitioner and thereby his dispossession from the subject premises. The contention, therefore, is that the plea under Section 53-A of the TP Act was required to be considered on its own legal footing and that the failure to examine the same vitiates the Impugned Order.

¹ 2002 (3) SCC 676



2026:DHC:8905



4. **Per contra**, learned counsel appearing on behalf of the Respondent relies upon the Judgment of the Hon'ble Supreme Court in ***H.K. Sharma v. Ram Lal***², and submits that the terms of the Agreement to Sell dated 18.08.2000 must be examined to determine whether the requirements of Section 53-A of the TP Act are fulfilled. It is contended that the Agreement to Sell does not contain any provision recording that possession of the subject premises was handed over to the Petitioner pursuant thereto. In the absence of such stipulation, it is urged, the essential ingredients recognised in ***Shrimant Shamrao Suryavanshi*** (supra) are not satisfied and the Petitioner cannot claim protection under Section 53-A.

ANALYSIS:

5. This Court has heard learned counsel for the parties and, with their assistance, perused the Impugned Order and the judgments relied upon.

6. Before proceeding to examine the grounds of challenge urged on behalf of the Petitioner, it would be apposite to advert to the scope and ambit of the revisional jurisdiction vested in this Court under the *proviso* to Section 25-B(8) of the DRC Act.

7. The contours of the aforesaid jurisdiction are well settled. The Hon'ble Supreme Court, in ***Sarla Ahuja v. United India Insurance Co. Ltd.***³, ***Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh***⁴, and, more recently, in ***Abid-Ul-Islam v. Inder Sain Dua***⁵, has consistently held that the jurisdiction exercised by the High Court

² (2019) 4 SCC 153

³ (1998) 8 SCC 119

⁴ (2014) 9 SCC 78

⁵ (2022) 6 SCC 30



2026:DHC:8905



under the *proviso* to Section 25B(8) of the DRC Act is supervisory and revisional in character and cannot be equated with the exercise of appellate jurisdiction.

8. The aforesaid principles have also been reiterated and relied upon by Coordinate Benches of this Court, *inter alia*, in **Pankaj Pahwa v. Prem Wati & Ors.**⁶, and **Sanjeev Hiranandani v. Sunny Grover**⁷.

9. In **Abid-Ul-Islam** (supra), the Hon'ble Supreme Court, while elucidating the legislative intendment underlying Section 25(B) of the DRC Act, observed that the omission of an appellate remedy against an Order passed by the learned Rent Controller is conscious and deliberate. The jurisdiction conferred upon the High Court is, therefore, one of superintendence over the decision-making process, including the legality and propriety thereof, and does not permit the High Court to substitute its own view for that of the learned Rent Controller merely because another view on the material available on record may be possible. The relevant observations of the Hon'ble Supreme Court read as under:

“23. The proviso to Section 25-B(8) gives the High Court exclusive power of revision against an order of the learned Rent Controller, being in the nature of superintendence over an inferior court on the decision-making process, inclusive of procedural compliance. Thus, the High Court is not expected to substitute and supplant its views with that of the trial court by exercising the appellate jurisdiction. Its role is to satisfy itself on the process adopted. The scope of interference by the High Court is very restrictive and except in cases where there is an error apparent on the face of the record, which would only mean that in the absence of any adjudication per se, the High Court should not venture to disturb such a decision. There is no need for holding a roving inquiry in such matters which would otherwise amount to converting the

⁶ 2024:DHC:9322

⁷ 2025:DHC:11285



2026:DHC:8905



power of superintendence into that of a regular first appeal, an act, totally forbidden by the legislature.”

10. In **Pankaj Pahwa** (supra), a Coordinate Bench of this Court, upon considering the principles enunciated in **Abid-Ul-Islam** (supra), reiterated that the jurisdiction exercised by this Court under the *proviso* to Section 25B(8) of the DRC Act is limited in scope and that this Court is not expected to substitute or supplant its view for that of the learned ARC. The revisional scrutiny is confined to examining the decision-making process and determining whether the Impugned Order suffers from an error apparent on the face of the record or an absence of adjudication warranting interference.

11. In view of the foregoing discussion, the position which emerges is that, while exercising jurisdiction under the *proviso* to Section 25B(8) of the DRC Act, this Court is neither required nor permitted to undertake a fresh appreciation of the material on record with a view to arrive at an independent conclusion on the merits of the dispute. Interference would be warranted only where the Impugned Order suffers from a jurisdictional error, manifest illegality, material irregularity or perversity, or where the conclusion arrived at by the learned ARC is wholly unreasonable or founded upon an erroneous premise of law. Equally, where a material plea has been left unconsidered, or the decision-making process otherwise discloses an error apparent on the face of the record, exercise of revisional jurisdiction may be warranted.

12. It is within the aforesaid limited parameters of revisional scrutiny that the grounds urged by the learned Senior Counsel on behalf of the Petitioner against the Impugned Order are required to be



2026:DHC:8905



examined. In this backdrop, it would be apposite for this Court to extract the relevant portion of the Impugned Order, which reads as under:

“1. Vide this order I shall decide the leave to defend filed by respondent u/s 25 B (4) of the Delhi Rent Control Act.

2. In eviction petition, petitioner has stated that he is owner of the property bearing no. B-11-A, Khasra no. 82-83, Gali no. 3, Jyoti Colony, Loni Road, Shahdara, Delhi-32 and respondent was inducted as a tenant in respect of shop no. 2 in the said property in the year 1987 and currently he is paying Rs. 3,000/- per month as rent. It is further stated that petitioner and his son are unemployed and their business of confectionery which was started in a rented shop by petitioner's son on a monthly rent of Rs. 5,000/- has not paid off well due to the health problem and excessive rent and the said shop has been vacated. It is further stated that petitioner requires the tenanted shop for starting a confectionery business for himself and his son and he has no alternative suitable accommodation for the same. It is stated that there are two shops in the property in question including the tenanted shop and the other shop is very small and has been rented out to other tenant. It is further stated that petitioner is having another residential property at B-12, Gali no. 3, Jyoti Colony, Loni Road, Shahdara, Delhi-32 and he has also let out one of the room in the said property.

3. In leave to defend affidavit, respondent has stated that petitioner has not filed any document to show the existence of landlord-tenant relationship between the parties and to show that rent of the subject shop is less than Rs. 3,500/- per month. It is further stated that respondent was initially inducted as a tenant by the petitioner in the year 1987 but in the year 2000 petitioner executed an agreement to sell dated 18.08.2000 with him to sell the tenanted shop for a consideration of Rs. 7,50,000/- and respondent paid Rs. 1,00,000/- as earnest money and paid Rs. 50,000/- on 11.10.2000 and Rs. 5,90,000/- on 03.03.2001 and as a part performance of the agreement, the permanent possession of the shop was handed over to the respondent and consequently, respondent is no longer a tenant in the said shop but is owner thereof. It is further stated that in the year 2012 respondent file a suit for specific performance and permanent injunction but the same was held to be time barred and was dismissed and the same was not adjudicated on merits and the appeal filed by him in the Hon'ble High Court against the dismissal of suit was dismissed on 18.04.2016 and the SLP was dismissed on 17.08.2016. It is further stated that petitioner did not execute the title document in favour of

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RC.REV. 195/2023

Page 6 of 14



2026:DHC:8905



the respondent because the petitioner himself is a trespasser. It is further stated that respondent has never paid any rent to the petitioner after the agreement to sell was made on 18.08.2000. It is further stated that petitioner's son had taken a shop on rent in the year 2012 and surrendered in the year 2013 and if petitioner wanted to start business for his son he could have started the same in the year 2013 by taking possession of other two shops but he waited till the dismissal of SLP. It is further stated that petitioner is running in partnership with one Javed at his allegedly rented out shop at B-12, Gali no. 3, Jyoti Colony, Loni Road, Shahdara, Delhi-32. The respondent has further stated in his application filed u/o 6 Rule 17 CPC that he filed an RTI application and it has been revealed that owner of the subject property is Hamida Khatun and not the petitioner and it has also been revealed that stamp paper on which agreement dated 27.08.2012 has been executed was issued in the name of Nabi Raza and Nazim but petitioner has added name of his son. It is further stated that stamp of notary is also forged.

4. In reply, it is stated that leave to defend has been filed by the respondent beyond the period of limitation of 15 days and that respondent is not entitled to dispute the title of the petitioner.

5. I have heard arguments and perused the record.

6. Respondent is entitled to leave to defend the application of eviction filed by the petitioner if the affidavit filed under sub-section 4 of section 25 DRC Act discloses such facts which would disentitle the landlord/petitioner from obtaining the order of eviction. The tenant is required to raise triable issues putting forth disputed facts which can be decided only after production of evidence in a trial. The sole purpose of the summary procedure provided u/s 25B of DRC Act is to shift the initial burden from the landlord to the tenant to satisfy the Controller that he has good and plausible defense.

7. In the present case, respondent has not raised any triable issue which may call for any trial. Respondent has admitted that he was inducted as a tenant by the petitioner and as such the relationship of landlord and tenant cannot be said to be a disputed fact. Respondent also admits that petitioner is owner of the tenanted shop inasmuch as he himself claims to have purchased the same from the petitioner by virtue of agreement to sell dated 18.08.2000. In other words, he has admitted the ownership of the petitioner qua the subject shop. The plea taken by the respondent that agreement to sell dated 18.08.2000 was executed between the petitioner and the respondent for sale of the tenanted shop to the respondent and he has paid consideration of Rs. 7,40,000/- to the petitioner is of no significance in view of the fact that the suit for

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RC.REV. 195/2023

Page 7 of 14



2026:DHC:8905



specific performance filed by the respondent in respect of the said agreement to sell has been dismissed and he has not got any relief upto the Hon'ble Supreme Court. Consequently, this fact is not a triable issue and no evidence is required to prove the same.

8. The respondent has not denied the fact that the petitioner and his son are not employed and they need the shop to start their confectionery business. Respondent has also not furnished details of any other property which may be available to the petitioner for his business. So far as the plea set out by the respondent that in the RTI some other person has been revealed as owner of the property in question is concerned, the respondent is precluded from disputing the title of the petitioner in respect of the suit property.

9. In *Keshar Bai v. Chhunulal*, (2014) 11 SCC 438, the Hon'ble Supreme Court has held:

In eviction proceedings the question of title to the properties in question may be incidentally gone into, but cannot be decided finally. Similar question fell for consideration of this Court in *Bhagadi Kannabalu*. In that case it was argued that the landlady was not entitled to inherit the properties in question and hence could not maintain the application for eviction on the ground of default and sub-letting under the A.P. Tenancy Act. This Court referred to its decision in *Tej Bhan Madan v. II Additional District Judge and Ors.* (1988) 3 SCC 137 in which it was held that a tenant was precluded from denying the title of the landlady on the general principle of estoppel between landlord and tenant and that this principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust to allow a person to approbate and reprobate. Section 116 of the Evidence Act is clearly applicable to such a situation. This Court held that even if the landlady was not entitled to inherit the properties in question, she could still maintain the application for eviction and the finding of fact recorded by the courts below in favour of the landlady was not liable to be disturbed. The position on law was stated by this Court as under:

“In this connection, we may also point out that in an eviction petition filed on the ground of sub-letting and default, the court needs to decide whether relationship of landlord and tenant exists and not the question of title to the properties in question, which may be



2026:DHC:8905



incidentally gone into, but cannot be decided finally in the eviction proceeding.”

10. Therefore, respondent cannot be permitted to dispute the title of the petitioner with regard to the tenanted premises. The petitioner and his son who are currently unemployed need the tenanted premises to start confectionery shop. Both of them have experience in the said business because petitioner’s son did the same work in a tenanted shop.

The genuineness of the need of the petitioner in respect of the tenanted premises is evident and no material has been brought on record by the respondent to refute the same. The respondent has failed to set forth any triable issue in his leave to defend affidavit. Leave to defend is declined.

11. The eviction order is passed in favour of petitioner and against the respondent thereby directing the latter to vacate the tenanted premises i.e. shop no. 2 situated in property no. B-11-A, Gali no. 3, Jyoti Colony, Loni Road, Shahdara, Delhi-32 as shown in red colour in the site plan filed by the petitioner in terms of Section 14 (1)(e) of the Delhi Rent Control Act. However, as per stipulation u/s 14(7) DRC Act, the petitioner shall not be entitled to obtain possession thereof before the expiry of a period of six months from the date of this order.

File be consigned to record room.”

13. The material issue for consideration in the present revision is whether dismissal of the suit for specific performance on the ground of limitation, by itself, was sufficient to reject the Petitioner’s distinct plea under Section 53-A of the TP Act. In ***Shrimant Shamrao Suryavanshi*** (supra), the Hon’ble Supreme Court held that Section 53-A of the TP Act does not prohibit a transferee from raising a defence to protect possession taken in part-performance of a contract merely because the period of limitation for instituting a suit for specific performance has expired. The Court clarified that limitation ordinarily bars the remedy of instituting an action and does not, in the absence of a statutory bar, necessarily extinguish a defence otherwise available in law.

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Signing Date: 12/10/2026
15:27:06

RC.REV. 195/2023

Page 9 of 14



2026:DHC:8905



14. The Hon'ble Supreme Court also made clear that protection under Section 53-A of the TP Act is conditional upon fulfilment of its statutory requirements, including the existence of a written contract for consideration signed by the transferor, ascertainable terms of transfer, possession taken in part-performance, an act in furtherance of the contract, and performance or willingness to perform the transferee's obligations. Thus, the Petitioner's plea cannot be accepted merely on assertion, and equally, it cannot be rejected solely because the suit for specific performance was dismissed on limitation, without examining the distinct legal principle governing a defence under Section 53-A of the TP Act. The relevant portion of ***Shrimant Shamrao Suryavanshi*** (Supra) is reproduced hereinbelow:

“7. A perusal of Section 53-A shows that it does not forbid a defendant transferee from taking a plea in his defence to protect his possession over the suit property obtained in part-performance of a contract even though the period of limitation for bringing a suit for specific performance has expired. It also does not expressly provide that a defendant transferee is not entitled to protect his possession over the suit property taken in part-performance of the contract if the period of limitation to bring a suit for specific performance has expired. In absence of such a provision, we have to interpret the provisions of Section 53-A in a scientific manner. It means to look into the legislative history and structure of the provisions of Section 53-A of the Act.

13. When the Transfer of Property Act was enacted, Section 53-A did not find place in it. In the absence of Section 53-A, there arose difference of opinion between various courts in India as regards the application of English doctrine of part-performance of contract as it was then prevailing in England. Since there was a difference of opinion on the question of the application of English equitable doctrine of part-performance in various courts of India, the Government of India resolved to set up a Special Committee for making recommendations, amongst others — whether the British equitable doctrine of part-performance be extended in India also. The Special Committee was of the view that an illiterate or ignorant buyer who had partly performed his part of contract required statutory protection. The Committee was of the further



2026:DHC:8905



view that where a transferee in good faith that lawful instrument i.e. a written contract would be executed by the transferor, takes possession over the property, the equity demanded that the transferee should not be treated as a trespasser by the transferor and subsequently evict him through process of law in the absence of lawful transfer instrument. The Special Committee also considered the question whether protection under the proposed Section 53-A to a transferee would also be available even if the period of limitation for bringing an action for specific performance of an agreement to sell has expired. On the said question, the Committee was of the view that even after expiry of the period of limitation, the relationship between the transferor and transferee remains the same as it was within the period of limitation and, therefore, the possession over the property taken in part-performance of an agreement is required to be protected even if the period of limitation for bringing an action for specific performance has expired.

14. The aforesaid recommendations of the Special Committee were accepted by the Government of India as the same is well reflected in the aims and objects of the amending Act, 1929 whereby Section 53-A was inserted in the Act.

15. The Special Committee's report which is reflected in the aims and objects of the amending Act, 1929 shows that one of the purposes of enacting Section 53-A was to provide protection to a transferee who in part-performance of the contract had taken possession of the property even if the limitation to bring a suit for specific performance has expired. In that view of the matter, Section 53-A is required to be interpreted in the light of the recommendation of the Special Committee's report and aims, objects contained in the amending Act, 1929 of the Act and specially when Section 53-A itself does not put any restriction to plea taken in defence by a transferee to protect his possession under Section 53-A even if the period of limitation to bring a suit for specific performance has expired.

16. But there are certain conditions which are required to be fulfilled if a transferee wants to defend or protect his possession under Section 53-A of the Act. The necessary conditions are:

- (1) there must be a contract to transfer for consideration of any immovable property;
- (2) the contract must be in writing, signed by the transferor, or by someone on his behalf;
- (3) the writing must be in such words from which the terms necessary to construe the transfer can be ascertained;
- (4) the transferee must in part-performance of the contract take possession of the property, or of any part thereof;
- (5) the transferee must have done some act in furtherance of the contract; and

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Signing Date: 12/10/2026
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RC.REV. 195/2023

Page 11 of 14



2026:DHC:8905



(6) the transferee must have performed or be willing to perform his part of the contract.

17. We are, therefore, of the opinion that if the conditions enumerated above are complied with, the law of limitation does not come in the way of a defendant taking plea under Section 53-A of the Act to protect his possession of the suit property even though a suit for specific performance of a contract is barred by limitation.

18. The matter may be examined from another angle. The established rule of limitation is that law of limitation is not applicable to a plea taken in defence unless expressly a provision is made in the statute. The law of limitation applies to the suits and applications. The various articles of the Limitation Act show that they do not apply to a defence taken by a defendant in a suit. Thus, the law of limitation bars only an action in a court of law. In fact, what the Limitation Act does is, to take away the remedy of a plaintiff to enforce his rights by bringing an action in a court of law, but it does not place any restriction to a defendant to put forward any defence though such defence as a claim made by him may be barred by limitation and cannot be enforced in a court of law. On the said principle, a defendant in a suit can put forward any defence though such defence may not be enforceable in a court of law, being barred by limitation.

19. In *M.K. Venkatachari v. L.A.R. Arunachalam Pillai* [AIR 1967 Mad 410 : (1967) 2 MLJ 265] it was held, thus: (AIR p. 414, para 10)

“[T]hat the defence to limitation is a creature of positive law and therefore cannot be extended to cases which do not strictly fall within the enactment. It is an established canon of construction of the law of limitation not to enlarge the scope of statutory provisions of limitation by analogy or logic.”

20. It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part-performance of the contract to protect his possession, though he may not be able to enforce that right through a suit or action.”

15. In the present case, the Petitioner specifically pleaded that the parties had entered into an Agreement to Sell dated 18.08.2000 and that, pursuant to the said Agreement, his existing possession of the subject premises as a tenant assumed the character of possession in part-performance of the Agreement, thereby bringing the relationship

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RC.REV. 195/2023

Page 12 of 14



2026:DHC:8905



of landlord and tenant between the parties to an end. The Respondent, on the other hand, disputes the availability of protection under Section 53-A of the TP Act on the ground that the Agreement does not record delivery of possession, relying upon **H.K. Sharma** (supra). This objection concerns the applicability of the statutory requirements under Section 53-A of the TP Act and, therefore, warrants consideration in the light of the terms of the Agreement to Sell, the material available on record and the applicable judicial precedents.

16. The learned RC, however, rejected the aforesaid plea of the Petitioner herein as being of no consequence solely on account of the dismissal of the suit for specific performance, without independently examining whether the Petitioner could nevertheless invoke Section 53-A of the TP Act by way of defence, or whether the statutory requirements for attracting the said provision stood satisfied in the facts of the present case. The dismissal of the suit for specific performance, on the ground of limitation, could not, by itself, dispense with the need to examine this distinct defence in accordance with the principles governing Section 53-A of the TP Act. This Court, however, expresses no opinion on the merits of the said plea, which remains open for consideration by the learned RC in accordance with law.

17. The aforesaid omission in the Impugned Order assumes significance even within the limited revisional jurisdiction under Section 25B(8) of the DRC Act. The summary procedure under Section 25B requires the learned RC to examine whether the affidavit discloses facts which, if established, would disentitle the landlord from obtaining an order of eviction and thereby raise a triable issue.

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RC.REV. 195/2023



2026:DHC:8905



While a mere assertion does not entitle a tenant to leave to defend, a material defence founded upon a distinct legal principle must be examined in accordance with the law governing that defence. The failure to undertake such examination constitutes an infirmity in the decision-making process warranting interference.

18. In view of the foregoing discussion, the Impugned Order dated 22.03.2023 is set aside. The matter is remanded to the learned RC for *de novo* consideration of the Application seeking leave to defend, particularly with regard to the plea under Section 53-A of the TP Act, in light of the observations made hereinabove and the material available on record, and for disposal of the matter in accordance with law.

19. Accordingly, the present Petition, along with pending application(s), if any, stands disposed of in the aforesaid terms.

20. List the matter before the learned RC on 29.10.2026.

HARISH VAIDYANATHAN SHANKAR, J.
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RC.REV. 195/2023