



2025:DHC:9410-DB



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

Judgment reserved on: 19.09.2025
Judgment pronounced on: 29.10.2025

+ **RFA(COMM) 23/2023**

SHRI NEERAJ AGGARWALAppellant

Through: Mr. Sonal Anand, Mr. Aayush Sai and Ms. Surbhi Singh, Advocates.

versus

SHRI RAVINDER PARKASH PUNJ & ANR.
.....Respondents

Through: Mr. Raman Gandhi, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Regular First Appeal has been preferred under Section 13 of the Commercial Courts Act, 2015, read with Section 96 and Order XLI Rule 1 of the Code of Civil Procedure, 1908, assailing the **Judgment and Decree dated 31.10.2022¹** passed by the learned **District Judge (Commercial Court-03), Patiala House Courts, New Delhi²**, in CS (COMM) No. 42/2021, titled '*Ravinder Parkash Punj v. Neeraj Aggarwal & Anr.*'.

¹ Impugned Judgement

² Trial Court



2. By the Impugned Judgment, the learned Trial Court partly allowed the Suit filed by Respondent No. 1 and also partly allowed the Counter-Claim filed by the Appellant, while dismissing the remaining claims of both parties.

3. The Suit was instituted by Respondent No. 1 against the Appellant and Respondent No. 2, seeking reliefs of permanent and mandatory injunction, recovery of possession, and recovery of arrears of rent/licence fee in respect of the property, i.e., **the basement portion of Punj House Annexe, situated at Plot Nos. 4 and 5 (Rear Side Portion), M-13, Middle Circle, Connaught Place, New Delhi**³.

4. At the outset, it is made clear that the present Appeal has been preferred by Defendant No. 1, raising a limited challenge confined to Issue No. 9, wherein the learned Trial Court held that the rent of the suit property was Rs. 18,000/- per month, as against Rs. 2,000/- per month claimed by Defendant No. 1/Appellant. The said issue was decided in favour of the Plaintiff/Respondent No. 1. Since no other relief has been sought in the present appeal, the scope of adjudication is restricted solely to Issue No. 9.

5. For the sake of clarity, uniformity, and consistency, the parties in the present Appeal shall hereinafter be referred to as per their respective ranks before the learned Trial Court.

BRIEF FACTS:

6. Shorn of unnecessary details, the brief facts necessary for the present adjudication are as follows:

- (a) The present dispute pertains to the suit property, a portion of which is admittedly under the occupation of Defendant No. 1.

³ Suit Property



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The said property formed part of a larger estate owned by various members of the Punj family.

- (b) Pursuant to the directions of the Hon'ble Supreme Court in earlier proceedings, the disputes among the family members of the Plaintiff were referred to mediation under the aegis of Hon'ble Mr. Justice A.K. Mathur (Retd.). The mediation culminated in a "Memorandum of Family (Mediation) Settlement", which was duly approved by the Hon'ble Supreme Court *vide* order dated 17.08.2016. The said settlement delineated the ownership and possession of various portions of the estate amongst different family members, including the Plaintiff.
- (c) Under the said settlement, the suit property came to the share of the Plaintiff and his brother, Shri Nilender Prakash Punj. Prior to filing the present suit, the Plaintiff and his predecessor-in-interest had issued several Demand Notices in 2009, 2012, and 2017, calling upon the Defendants to pay rent/licence fee for the use and occupation of the suit property or intimating termination of the licence/lease in respect thereof.
- (d) Alleging non-payment of rent/licence fee despite earlier legal notices, the Plaintiff instituted the suit CS (COMM) No. 42/2021 on 05.02.2021 before the learned Trial Court, which was later amended, seeking recovery of possession, arrears of rent, and permanent as well as mandatory injunctions against the Defendants. The Plaintiff asserted that Defendants were tenants/licensees in respect of a portion of the basement, together with a staircase area, and were liable to pay a monthly rent/licence fee for the same.



- (e) Subsequently, Defendant No. 1 alleged that he was unlawfully denied re-entry into the suit property by the Plaintiff, whereupon Defendant No. 1 lodged an FIR on 09.02.2021 at Police Station Connaught Place, New Delhi.
- (f) During the course of proceedings, Defendant No. 2 failed to appear and was, therefore, proceeded against *ex parte* by the order dated 06.04.2021 passed by the learned Trial Court.
- (g) The learned Trial Court, *vide* order dated 06.09.2021, appointed a Local Commissioner to visit the suit property, prepare a plan of the area, and have it photographed and videographed. The Local Commissioner thereafter, submitted a detailed report.
- (h) Defendant No. 1 filed a written statement, which was later amended, wherein he admitted possession of the premises but denied the existence of tenancy and disputed liability to pay rent as alleged by the Plaintiff.
- (i) Defendant No. 1 also filed a counterclaim, under Section 6 of the Specific Relief Act, 1963, seeking restoration of possession of the suit property.
- (j) The Plaintiff filed a replication to the written statement, and Defendant No. 1 filed a rejoinder thereto. Both parties also filed their respective pleadings in the counterclaim.
- (k) Subsequently, the learned Trial Court framed the following issues for trial:

“....

1. Whether the plaintiff is entitled to equitable relief of permanent injunction as prayed for in prayer para (a)?
OPP
2. Whether the plaintiff is entitled to a relief of mandatory injunction, whereby, directing the defendant to remove their goods / articles lying in the portion of the property in question? **OPP**



3. Whether the plaintiff is entitled to recovery of possession in respect of the property measuring 530 sq.ft in the basement area of Punj House Annexe on plot no. 4 & 5 (back side portion), M-13, Middle Circle, Connaught Place, New Delhi as prayed for? **OPP**
4. Whether the plaintiff is entitled to recovery of a sum of Rs. 16,63,200/- towards arrears of rent of the period from January 2018 to December 2020? **OPP**
5. Whether the plaintiff is entitled to interest, if so, at what rate? **OPP**
6. Whether the suit is bad for misjoinder of defendant no. 2? **OPD**
7. Whether the defendants are lessee or the licensee of the premises in question? **OPP/OPD**
8. Whether the suit is barred under Section 50 of the Delhi Rent & Control Act? **OPD**
9. Whether the rate of rent was Rs. 18,000/- per month or Rs. 25,000/- per month or @ Rs. 2000/- per month? **OPP/OPD**
10. Whether the counter claimant / defendant no. 1 is entitled to restoration of possession as prayed for in the amended counter claim by the counter claimant / defendant no. 1? **OPD**
11. Whether the defendant no. 1 is in possession of the area measuring 530 sq. ft or 832 sq. ft or 1770 sq.ft of the premises in question? **OPP/OPD**
12. Relief.
....”

(l) Upon completion of pleadings, both parties led evidence in support of their respective claims. After hearing the parties and considering the evidence on record, the learned Trial Court, by its Impugned Judgment dated 31.10.2022, partly allowed the Suit as well as the Counterclaim. The learned Trial Court held that the relationship between the parties was that of landlord and tenant, and not of licensor and licensee. The learned Trial Court determined that Defendant No. 1 was a tenant in respect of the basement portion ad-measuring 1,353.42 sq. ft., together with a staircase area of 76.86 sq. ft., at a monthly rent of



Rs. 18,000/-, which was beyond the purview of the **Delhi Rent Control Act, 1958**⁴.

- (m) The learned Trial Court further held that since the suit had been instituted by only one of the co-owners, i.e., the Plaintiff herein, he was entitled to recover only his proportionate share of rent, i.e., Rs. 9,000/- per month. Consequently, arrears of Rs. 3,24,000/- for the period January 2018 to December 2020 were decreed in his favour, along with interest at the rate of 9% per annum from the date of institution of the suit till realization. However, the Plaintiff's claims for possession and injunction were dismissed, while the counterclaim of Defendant No. 1 seeking restoration of possession of the suit property was allowed to that extent.
- (n) Aggrieved by the findings of the learned Trial Court regarding Issue No. 9, whereby the rent of the suit property was determined at Rs. 18,000/- per month as against Rs. 2,000/- per month claimed by Defendant No. 1, he has preferred the present appeal before us.

CONTENTIONS OF THE PARTIES:

7. Learned Counsel for Defendant No. 1 would submit that grave prejudice has been caused by the Impugned Judgment, as the erroneous determination of rent at Rs. 18,000/- per month has deprived Defendant No. 1 of the statutory protection under the DRC Act, and has simultaneously subjected him to double jeopardy of enhanced financial liability and loss of tenancy protection.

⁴ DRC Act



8. Learned Counsel for Defendant No. 1 would further submit that the Impugned Judgment dated 31.10.2022 is erroneous both in law and on facts, for the learned Trial Court wrongly determined the rent of the suit premises as Rs. 18,000/- per month under Issue No. 9, and such finding, based on conjectures and surmises, lacks any admissible or cogent evidence on record.

9. Learned Counsel for Defendant No. 1 would submit that the Plaintiff's entire action is *malafide*, for no steps were taken for recovery of rent or eviction between 2010 and 2021, and the sudden initiation of proceedings after Defendant No. 1's arrest in January 2021 reveals an attempt to usurp possession through fabricated documents, and thus, the chronology itself exposes that the alleged default and rent figures are mere afterthoughts designed to unlawfully oust Defendant No. 1 from lawful possession.

10. Learned Counsel for Defendant No. 1 would also submit that the Plaintiff took contradictory and inconsistent stands before the Trial Court on the quantum of rent, first claiming Rs. 30,000/-, then Rs. 25,000/-, and finally Rs. 18,000/- per month, and such inconsistency not only weakens the Plaintiff's case but also exposes its falsity, for if the rent had truly been higher, it would have appeared in the 2016 Family Settlement or in the Plaintiff's financial records, which it does not.

11. Learned Counsel for Defendant No. 1 would contend that the Plaintiff's claim of rent being Rs. 18,000/- per month is implausible and untenable, for it is inconceivable that a businessman of such standing would part with a valuable commercial property without executing a written rent agreement specifying rent, duration, and other



terms of tenancy, and this omission clearly discredits the Plaintiff's version.

12. Learned Counsel for Defendant No. 1 would further contend that the learned Trial Court erred in shifting the burden of proof upon the Defendant to disprove the alleged rent, whereas it was the Plaintiff's duty to establish his claim by producing cogent evidence; however, no rent receipts, account books, or income tax records reflecting rent were produced, and therefore, the Plaintiff failed to discharge the burden resting upon him.

13. Learned Counsel for Defendant No. 1 would also contend that reliance placed by the learned Trial Court upon two alleged rent receipts dated 23.03.2009 and 23.04.2009 is wholly misplaced, for these were issued in the name of Defendant No. 2, who had no concern with the property, and since neither Defendant No. 1 nor his late father signed them, they are self-serving, fabricated, and devoid of any evidentiary worth.

14. Learned Counsel for Defendant No. 1 would submit that in the absence of a written rent agreement and in view of Defendant No. 1's long-standing possession, his tenancy stands protected under the DRC Act, for the rent being below Rs. 3,500/- per month brings it within Section 50 thereof, and hence, the jurisdiction of the Commercial Court to entertain the suit stood barred.

15. Learned Counsel for Defendant No. 1 would further submit that the finding in Paragraph 79 of the Impugned Judgment, that Defendant No. 1 did not refute the alleged rent of Rs. 18,000/- per month, is manifestly erroneous, for Defendant No. 1 had categorically disputed the same in his reply dated 30.03.2017 to the Plaintiff's legal



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notice, clearly stating that “*you have wrongly mentioned the rate of rent per month*” and such material evidence was overlooked.

16. Learned Counsel for Defendant No. 1 would also submit that the learned Trial Court failed to appreciate that in the notice dated 14.03.2017, the Plaintiff claimed that as per the books of accounts of M/s Punj Sons Pvt. Ltd. a sum of Rs. 18,000/- had been paid for the period December 2009 to November 2011, yet no such record was produced in evidence, and the absence of corroboration on this vital aspect goes to the root of the matter.

17. Learned Counsel for Defendant No. 1 would submit that the learned Trial Court erred in drawing an adverse inference from the alleged non-reply of Defendant No. 2 to the notice dated 14.03.2017, for Defendant No. 2 had no concern with the suit property, and since Defendant No. 1 had duly replied on 30.03.2017 disputing the alleged rent, the conclusion of the Trial Court is both unjustified and contrary to record.

18. Learned Counsel for Defendant No. 1 would further submit that the letters dated 25.03.2009 and 23.04.2009 were addressed to Defendant No. 2 at an incorrect and incomplete address, which the Plaintiff’s own witnesses admitted during cross-examination, and even the courier receipts bear wrong addresses; hence, there could be no presumption of valid service under Section 27 of the **General Clauses Act, 1897**⁵.

19. Learned Counsel for Defendant No. 1 would also submit that the Plaintiff’s conduct, remaining inactive for over a decade, fabricating rent receipts, and taking contradictory stands, clearly demonstrates *mala fides* and ulterior motive to dispossess Defendant

⁵ GC Act



No. 1, and therefore, the finding of the learned Trial Court on Issue No. 9 is perverse, unsustainable, and liable to be set aside.

20. **Per contra**, learned Counsel for the Plaintiff would contend that the limited issue in this appeal pertains solely to the quantum of rent, and that the learned Trial Court, after a careful and balanced appreciation of the oral and documentary evidence, rightly determined the monthly rent at Rs. 18,000/-. The said conclusion, it would be urged by the learned Counsel for the Plaintiff, stands firmly supported by contemporaneous correspondence, rent receipts, and other documentary materials placed on record.

21. Learned Counsel for the Plaintiff would submit that the Impugned Judgment contains a proper and reasoned analysis of evidence, and that both the legal notice dated 14.03.2017 and Defendant No. 1's reply dated 30.03.2017, wherein the figure of Rs. 18,000/- was never effectively controverted, were admissible and correctly relied upon by the learned Trial Court. The Plaintiff's stand, thus, rests on unambiguous documentary corroboration and sound evidentiary footing.

22. Learned Counsel for the Plaintiff would further submit that Defendant No. 1's case is marred by material inconsistencies and evident afterthoughts, including belated assertions regarding payment of pagri, conflicting statements about the duration and nature of tenancy, and divergent accounts of meetings and transactions; all of which, taken cumulatively, were rightly found by the learned Trial Court to be unreliable and unworthy of credence.

23. Learned Counsel for the Plaintiff would also submit that Defendant No. 1's inconsistent statements as to whom rent was paid to, coupled with the introduction of new defences for the first time in



the replication and affidavit, clearly demonstrate suppression of facts and subsequent improvement of pleadings, and therefore, justify the learned Trial Court's adverse finding on the credibility and *bona fides* of Defendant No. 1.

24. Learned Counsel for the Plaintiff would contend that the service of demand notices by the Plaintiff and his predecessor-in-interest, as well as the role and involvement of Defendant No. 2, have been duly considered by the learned Trial Court; and that earlier correspondence returned marked "Refused", along with admissions elicited in cross-examination, sufficiently establish that Defendant No. 2 once occupied the premises and that Defendant No. 1 later assumed exclusive possession without the consent or approval of the landlord.

25. Learned Counsel for the Plaintiff would submit that Defendant No. 1 has failed to demonstrate any legal infirmity, perversity, or misappreciation of evidence in the findings of the learned Trial Court, and that no ground for appellate interference is made out.

ANALYSIS:

26. We have heard the learned counsel for the parties at length and with their able assistance, carefully perused the pleadings, documents, and evidence placed on record, as well as the findings recorded by the learned Trial Court in the Impugned Judgment.

27. In the present Appeal, Defendant No. 1 has confined his challenge solely to Issue No. 9 of the Impugned Judgment, which pertains to the determination of the rate of rent of the suit property. However, while doing so, Defendant No. 1 has also sought to raise certain contentions touching upon the maintainability of the suit itself.



28. At the outset, we find no substance in the contentions advanced by Defendant No. 1 regarding the maintainability of the suit. The Plaintiff has not sought any specific relief before this Court concerning such a plea, and, in any event, Defendant No. 1 himself had succeeded in the counterclaim filed in the very same proceedings, thereby obtaining restoration of possession of the suit property and continuing to enjoy its benefits.

29. Having thus availed himself of the fruits of the decree passed in his favour, Defendant No. 1 cannot now be permitted to turn around and assail the maintainability of the very suit under which he has derived such benefit. The law does not permit a party to approbate and reprobate simultaneously, or to both accept and reject the same proceeding depending upon convenience.

30. Before adverting to the merits of Issue No. 9, as raised by Defendant No. 1 in the present Appeal, we deem it appropriate to extract the relevant findings and observations of the learned Trial Court on that issue from the Impugned Judgment, which read as under:

“20. In order to substantiate his case against the defendants, plaintiff examined Sh. Sunil Kumar Jain, Manager (Accounts) his Attorney as PW-1, Sh. Anil Chand Sharma (A.C Sharma), Director in Punj Sons Private Limited as PW-2 and Sh. Chand Khan, Real Estate Manager of the plaintiff as PW-3.

21. To rebut the claim of the plaintiff and to substantiate his counter claim, defendant no.1 examined himself as D1W1 and Sh. Pramod Aggarwal, his brother as D1W2.

22. **PW-2** tendered his affidavit Ex.A-2 in evidence. He stated that he has been the Director in Punj Sons Private Limited since 2000. He admitted that he never met the defendants at any point of time and what he stated in the affidavit was on the basis of the input provided by his office and on the basis of initial correspondences male by him in the form of letters. He stated that the terms of tenancy was settled between the Chairman of Punj



Sons Private Ltd (Sh. V.P Punj and Sh. Pramod Aggarwal) and not in his presence. He denied that the terms were settled between Sh. V.P Punj and Sh. Niranjana Lal Aggarwal. He stated that the permission to use the premises was given in around 2000 for stocking of materials in the part of the property i.e. basement annexe but he denied that at the time of settling the tenancy, Sh. V.P Punj was paid a pargi of Rs. 5.0 lakh by Sh. Niranjana Lal Aggarwal or that it happened about 40 years ago. He admitted that personally, he never received rent from any of the defendants but stated that one Pandita, who used to work with Sh. V.P Punj used to receive the rent. He stated that the lease agreement was never reduced into writing in respect of the basement. He stated that he had not physically visited the basement after 2000. As to the extent of area in the occupation of defendants, he stated that when the letter Ex.PW-2/12 was written, the addressee were in occupation of the area admeasuring 1770 sq.ft. approximately. He gave similar answer in respect of letter Ex.PW-2/9, where the area in occupation of defendant Pramod Aggarwal is stated to be 1770 sq.ft. He stated that total area of the basement is 2500 sq.ft. He stated that electric meters are installed on the wall under the staircase and it is not in his notice whether there was any other tenant in the remaining portion of the basement other than 1770 sq.ft. He stated that he had issued the letter Ex.PW-2/12 in the capacity of the Director. He admitted that counter foils of the rent receipt do not bear the signature/acknowledgment of the defendants. He denied that Pandita used to collect the rent at Rs. 2000/- per month and he never issued the rent receipt. He admitted that Pramod Aggarwal used to operate a shop at M-1/3, Middle Circle, Connaught Place since 2000 but he stated that he does not know if Niranjana Lal Aggarwal was operating the shop in 1973. He stated that CBI raid was not conducted in his presence.

He stated that there was no electricity in the basement. He denied that there was electric supply to the basement and Niranjana Lal and Neeraj Aggarwal used to pay electricity charges as per the sub meter reading besides rent and their electricity was disconnected illegally.

23. PW-3 Sh. Chand Khan is the Real Estate Manager of the plaintiff since 21.08.2017. He tendered his affidavit Ex.A-3 in evidence and stated that he used to look after and manage the affairs relating to the immovable properties of the plaintiff including the portion in occupation of the defendants. He stated that the plaintiff never visited the basement area after acquiring the ownership including the area in occupation of the defendants and he used to convey the instructions to him. On his instructions, he had asked the defendants to pay monthly rent at Rs. 25000/- which was never paid. He stated that except a hall admeasuring 530 sq.ft., rest of the area of the basement is completely vacant and there has



never been any electricity connection in the basement area. He stated that entry to the area is from the Middle Circle of Connaught Place and there is no other entry to that area. One key used to be with the defendants and second key used to be with him but since the major part of the basement was lying vacant, there was hardly any necessity to access the basement area. He stated that after the CBI raid, the doors were opened and he put the lock on the door. He stated that he has been working with the plaintiff since 2017 but prior thereto, since 2003-2004, he used to work at his residence. He saw the defendant operating in the basement when he joined the job i.e. in August, 2017. He stated that no two ice cube machines were lying in the basement during the inspection of the Local Commissioner. He however admitted that photographs of the spot were taken and crates of mineral water and cold drinks were lying in large quantity in the room. He did not give any definite answer about the two machines installed in the room but stated that 'kuchrakhahuahai' but he later admitted that machines were there. He stated that in a separate room, electricity meters are installed but these meters have nothing to do with the basement and the door towards electricity meter is from the front side of the building. He admitted that rate of rent was not settled in his presence. He stated that he does not know when the basement was given to the defendants.

24.PW-1, Sunil Kumar Jain is the Special Power of Attorney of the plaintiff. He tendered his affidavit in evidence Ex. A-1 and stated that the plaintiff is more than 8 years of age. He has not moved out from his residence for about 3-4 years except for getting medical treatment. He being the Accounts Manager of the plaintiff for about 32 years, is aware of the facts of the case. He stated that the suit property measures 832 sq.ft. but later he said that the property measuring 530 sq.ft. has fallen to the share of plaintiff as per the settlement. He stated that he was present during the inspection conducted by the Local Commissioner appointed by the court. In para 19, he stated that the lock on the left side was opened by defendant no.1 which had access to a hall admeasuring 530 sq.ft. where defendant no.1 had stocked his material and the remaining part of the basement was empty. However, there was some scrap material lying in a very small portion of the basement say, 25-30 sq.ft. and the rest of the basement area measures 1700 sq.ft. which was completely vacant and there was no electricity supply to the basement. From the portion of the basement, there was no access to the other side. He proved the family memorandum settlement Ex.PW1/1 and stated that prior to 2016, he never visited the suit property and it was only in 2016, he came to know about the basement. He stated that he does not know Niranjana Lal Aggarwal. He stated that defendant may be tenant since 2004. He stated that portion measuring 832 sq.ft. of basement is owned by Ravinder Prakash Punj and other portion belongs to



his brother Nilender Prakash Punj and total area of the basement is 1800-1900 sq.ft. He denied that entire basement was under the occupation of the defendant. He stated that he has no idea if any site plan of specific area of 530 sq.ft. was filed in the court. He stated that he was not present when CBI conducted the raid. He stated that though the premises was given on rent to Pramod Aggarwal in 2000 by Punj Sons Private Limited but now, Neeraj Aggarwal has been continuing in the suit property.

25. D1W1 Neeraj Aggarwal is defendant no.1 himself. He tendered his affidavit in evidence Ex.DA-1 in evidence and deposed that his father N.L Aggarwal was inducted as tenant by Sh. V.P Punj in the entire basement except the electric room as shown red in the site plan Ex.DW-1/1/PW-3/D1. At that time, Sh. V.P Punj had taken huge pagri amount of Rs. 5.0 lakh and the rate of rent was settled at Rs. 2000/- per month excluding electricity charges. His father was carrying on the business of cold drinks, mineral water, ice cubes etc in the name of *Aggarwal Store*. His father used to make ice cubes in the basement in one room and for that purpose, he had installed to ice cubes machines which are still lying in one of the room of the basement which the Local Commissioner during inspection also noticed. In the basement, he has a stall, gallery cum office and godown. He stated that for about 6-7 years, he has not been making ice cubes as his brother has installed a plant at Noida from where he purchases ice cubes. He stated that keys of the door at the ground floor to the basement always remained with him and his father was never the licensee in the suit property. He regularly paid the rent at Rs. 2000/- per month besides electricity charges to Sh. V.P Punj but he did not issue any rent receipt. He stated that it is an admission on the part of the plaintiff/his predecessor that he is tenant in respect of an area 1770 sq.ft. but later the plaintiff falsely pleaded that he is licensee not the tenant though overall control over the entire basement shown red in the site plan Ex.DW-1/1 exclusively remained with him as tenant since the day it was let out. He stated that he was falsely arrested by CBI and when he was released from custody, he found that plaintiff's representative/PW-3 illegally broken open the lock of the entrance gate and put his lock. Although he requested him to open the lock but he threatened him with dire consequences for which he lodged the complaint. In the Police Station Connaught Place, he was called. IO made an enquiry from the neighbours and thereafter, FIR 19/21 was registered on his complaint against the plaintiff under Section 448 IPC. He stated that he has a shop at M-1/3, Connaught Place. He stated that he has paid rent upto December, 2020 at Rs. 2000/- per month. He stated that no notice dated 17.02.2012 was served on defendant no.2 nor any letter dated 14.03.2017 was sent by the brother of the plaintiff. It was sent by A.K Srivastava who had no authority to send the letter which he had responded vide reply dated 30.03.2017 Ex.PW-2/11. He never



dealt with the plaintiff or Nilender Prakash Punj. He stated that since the plaintiff agreed to take rent at Rs. 2000/- per month, he started paying the rent in cash to Chand Khan but he did not issue any receipt. He denied that rate of rent was Rs. 18000/-, Rs. 25000/- or Rs. 30,000/-per month at any time.

He stated that he has been sitting in the shop when he was 15 years of age. His father expired in 2011. His father started using the basement since 1980. Before pandemic, he used to earn Rs. 2.0-2.5 lakhs and file income tax returns. Pramod Aggarwal has Coca Cola Agency at Haily Lane, Connaught Place, New Delhi. He never met/saw Sh. V.P Punj. After death of his father in 2011, he started sitting at the shop. His father had not executed any deed or will in his favour and there was an oral understanding that shop and the basement area will be used by him and not by his other brothers. He admitted that no such permission in this regard was obtained from Sh. V.P Punj. He stated that Pandita/Rakesh used to collect rent. His father was 70-75 years old at the time of his death and before his death, he stopped coming to the shop. He stated that Pramod Aggarwal used to come to the shop to assist his father but stated that he never sat at the shop regularly though he used to assist him. He stated that he does not know A.K Srivastava or A.C Sharma. He stated that he did not approach anyone in the Punj Family when Pandita and Rakesh refused to issue rent receipts nor he went to the residence of the plaintiff. He stated that there was sub meter for the electricity in the basement and the electricity charges were Rs. 10/- per unit. He stated that Pramod Aggarwal is 12 years elder to him. He denied that in 1985, market rate of rent of the basement area was around Rs. 15000/- or Rs. 20000/- per month. He was confronted with the lease agreements with Indian Overseas Bank. Mark A/D1W1/P, Mark B/D1W1/P and Mark C/D1W1/P. He stated that after having talks with the plaintiff and on his demand, he started paying rent to Chand Khan. He denied that he was in occupation of an area admeasuring 530 sq.ft. only.

26. D1W2 is defendant no.2/Pramod Aggarwal, elder brother of D1W1 and son of Sh. Niranjana Lal Aggarwal. He tendered his affidavit in evidence Ex.DA-2 and stated that his father was inducted as tenant by Sh. V.P Punj in the entire basement except the electric room in the backside of the property. Sh. V.P Punj had taken Rs. 5.0 lakh as pagri from his father for letting out the premises and rate of rent was fixed at Rs. 2000/- per month excluding electricity charges. His father had paid Rs. 5.0 lakh in cash to him. He proved the site plan Ex.DW-1/1 of the property. He stated that his father was never the licensee and Sh. V.P Punj never put any lock at the gate of ground floor to the basement being used by the defendant and the rate of rent never remained as Rs. 18000/- or Rs. 25000/- or Rs. 30,000/- per month. He stated that the rent receipts produced by the plaintiff dated 25.03.2009,



23.04.2009 are the false receipts and no letters dated 17.02.2012, 14.03.2017 and 22.06.2017 were received by him and on the letters, wrong address has been mentioned. He stated that electricity connection was given at the basement by Sh.V.PPunj and a sub meter was installed.

He stated that he stopped coming at the shop/basement area after 1986, however, he used to come occasionally on the call of his father. His father had stopped coming to the shop in 2007/2008/2010 and Neeraj Aggarwal started sitting at the shop thereafter. He stated that ice cube machine was purchased by his father. He stated that office was being used for billing purposes only and they had employed some persons who used to keep the accounts in the basement. Neeraj Aggarwal was also using the office. There were 2-3 employees apart from the accountant who used to sit in the shop/basement area. He stated that no permission was required for keeping the ice cube machines from the landlord. He stated that sometimes, he used to tender rent and sometimes, his father used to go and tender rent and sometimes, persons of Sh. V.P Punj used to come and collect the rent. Sh. V.P Punj had office either at the second / third floor and he used to go in the office to tender the rent. He stated that he had face to face talk with Sh. V.P Punj 4- 5 times. He stated that his father had told him that he had talked to Sh. V.P Punj on taking the basement area on rent on payment of pagri of Rs. 5.0 lakh and rent at Rs. 2000/- per month. He stated that there was no dispute between him and Neeraj Aggarwal nor with the landlord. He stated that he separated his business in 1985-1986 and prior thereto, he used to sit with his father. He stated that area of the shop is about 100 sq.ft and it is at a distance of 25 ft. from the basement. He admitted that there is no witness to confirm payment of pagri of Rs. 5.0 lakh to Sh. V.P Punj.

27. I have heard Id. Counsel Sh. Raman Gandhi for the plaintiff and Sh. Pramod Singhal, Id. Counsel for the defendants.

45. Before recording any findings on the issues, it is relevant to reproduce some of the letters/correspondences exchanged between the parties and the relevant terms of memorandum of family (mediation) settlement Ex.PW-1/1 which includes the layout plan of the basement area Ex.PW-3/D2 and the Local Commissioner's report.

Letter dated 25.03.2009 by Punj Sons Private Limited

Ex.PW-2/1 (colly).

Regd.AD

Date: 25.03.09



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To,
Mr. Pramod Aggarwal
At Basement Floor Punj House Annexe
M-Block Inner Circle
New Delhi

Sub: Demand for rent for the months of February and March, 2009

Dear Mr. Aggarwal,

We have not received the rent for the months of February and March 2009. We request you to send us immediately an amount of Rs. 36,000/- (Rs. Thirty Six Thousand only) in this regard.

We have already handed over to you a rent receipt of Rs. 18,000/- dtd. 16.02.09 for the month of December, 2008. Find enclosed hereto the rent receipt no 02/2008-09 dtd. 23/03/2009 of Rs. 18,000/- for the month of January, 2009.

Thanking you in anticipation.

For Punj Sons Put. Ltd.
AC Sharma
Director

Encl: Receipt No 02/2008-09 dtd. 23/03/09 for the rent of January 09.

Letter dated 23.04.2009 by Punj Sons Private Limited

Ex.PW-2/4 (colly).

Regd.AD

Date: 23.04.09

To,
Mr. Pramod Aggarwal
At Basement Floor Punj House Annexe
M-Block Inner Circle
New Delhi

Sub: Demand for rent for the months of March and April, 2009

Dear Mr. Aggarwal,

We have not received the rent for the months of March and April 2009. We request you to send us immediately an amount of Rs. 36,000/- (Rs. Thirty Six Thousand only) in this regard.



2025:DHC:9410-DB



Find enclosed hereto the rent receipt no 03/2008-09 dtd, 20.04.09 against the payment of Rs. 18,000/- for the month of February, 2009.

Thanking you in anticipation.

For Punj Sons Put. Ltd.

AC Sharma

Director

Encl: a/a

**Notice dated 17.02.2012 by Punj Sons Private Limited
Ex.PW-2/6.**

Regd.AD/Courier/by hand

February 17, 2012

Mr. Promod Aggarwal

At Basement Floor Punj House Annexe

M-Block Inner Circle

Connaught Place

New Delhi-110001

Also at:

Aggarwal Steres,

M-1/3, M-Block Inner Circle

Connaught Place, New Delhi-01

Sir,

You were allowed to use the premises /part of basement admeasuring 1770 sq. ft of the building known as Punj House Annexe situated on the rear of plots No. 4 and 5, M Block, Connaught Place, New Delhi which is owned by M/s Punj Sons Private Limited. Consequent to your request, you were allowed to use the said premises as licensee against license fee of Rs. 18,000/- per month payable in advance on or before 7th day of each English Calendar month.

You, for the reasons best known, have failed to tender the license charges for the months of December, 2011 and January, 2012. Even otherwise, Punj Sons Private Limited requires premises for its use and is no longer interested in an arrangement with you. Hence, this notice.



2025:DHC:9410-DB



Kindly take notice that the license to use the above mentioned premises in your favour is hereby terminated with immediate effect. You are called upon to clear the arrears and/or to pay license charges for the period you continued to use the premises including arrears for the months of December, 2011 and January, 2012 within three days from receipt of this notice.

In case, you fail to comply with the aforesaid, perforce we may have to initiate legal proceedings so as to stop you from using the above premises and also from recovering the arrears. Kindly note that in such an event, you shall be liable to pay license fee/usage charges at the rate prevailing in the market which is Rs. 200/- per sq. ft. per month in addition to the cost of the said proceedings.

Yours Sincerely,

For Punj Sons Put. Ltd.
(AC Sharma)
Director

***Letter dated 14.03.2017 by Sh. Nilender Prakash Punj
Ex.PW-2/9.***

Speed Post

March 14, 2017

Shri Pramod Aggarwal
c/o Aggarwal Stores,
M-1/3, M Block, Inner Circle,
Connaught Place,
New Delhi
Also at
Shri Pramod Agrawal
S/o Mr. Niranjana Lal Agrawal
F-72, Shakarpur, New Delhi-92

Sir,

You are in occupation of basement admeasuring 1770 sq. ft. of the building known as Punj House Annexe constructed on plot nos. 4 and 5, M-Block, Connaught Place, New Delhi. You were allowed to use the aforesaid premises for storing bottles and other goods being sold by you in the adjoining shop in the name and style of "Aggarwal Stores" by Late Shri VP Punj, who was the Chairman of M/s Punj Sons Pvt Ltd at the relevant time. You had been paying a sum of Rs. 18,000/- per month as rent for use and occupation of the basement as aforesaid.

Kindly note that in settlements amongst Punj brothers, i.e. legal heirs of Late Pt. Kanhaiya Lal Punj by way of Awards and before Learned Mediator whereby various businesses, assets etc. were divided amongst them, Punj House Annexe of which the portion under your possession forms part, has fallen to the share of undersigned jointly with Mr. Ravinder Prakash Punj.



2025:DHC:9410-DB



As per books of accounts of Punj Sons Pvt Ltd maintained in regular course of business, a sum of Rs. 18,000/- only had been paid for the has been received either by Punj Sons Pvt Ltd or anyone else. Record period December, 2009 till November, 2011. Thereafter, no amount further reveals that notice dated 17th February, 2012 was sent by Punj Sons Pvt Ltd, inter alia, the arrears, calling upon you to clear however, you refused to receive the same

In these circumstances, you are hereby called upon to clear the arrears at the rate of Rs. 18,000/- per month w.e.f. December, 2011 till date within one week from receipt of this letter/notice jointly to the undersigned and Shri RP Punj by issuing two separate cheques of equal amount. Also note that we do not wish to continue with you as user/tenant. The arrangement/tenancy is hereby terminated and you are further called upon to remove all your stocks and vacate the premises and hand over vacant, physical and peaceful possession to the undersigned on or before 31st March, 2017.

Kindly note that in case the requisite is not done, besides claiming possession, we shall be claiming damages at the rate prevailing in the market. The premises in your occupation if let out in the market would fetch Rs. 225/- per sq. ft. per month. Besides damages, you shall also be liable to pay cost of proceedings which we may initiate for recovery of possession and damages against you.

Be advised accordingly.

Nilender Prakash Punj
45/0 Late Pt. Kanahiya Lal Punj,
R/o 10, Prithviraj Road,
New Delhi
through Shri Arun Krishna Srivastava
duly constituted Attorney

Reply by defendant no.1 Neeraj Aggarwal dated 30.03.2017
Ex. PW-2/11.

Speed post/Reed. AD

Dated- 30th March, 2017

Sh. Nilender Prakash Punj,
S/o Late Sh. Pt. Kanahya Lal Punj,
R/o 10, Prithvi Raj Road, New Delhi

Dear Sir,

My client Sh. Neeraj Aggarwal S/o Late Sh. Niranjana Lal Aggarwal C/o Aggarwal Store, M-1/3, M Block, Middle Circle, Connaught Place, New Delhi, has placed your letter dated 14th March, 2017 into my hands with the instructions to reply the same as under.

That the content of your letter is false and frivolous. It seems that you have not been apprised with the true and correct facts and you have been kept into dark



2025:DHC:9410-DB



That you have wrongly issued the letter dated 14.03.2017 in the name of Sh. Parmod Aggarwal C/o Aggarwal Store, M-1/3, M Block Middle Circle, Connaught Place, New Delhi. In fact, my client is the tenant and in use and occupation of the aforesaid tenanted premises and he is carrying the business therein. My client had never dealt with you in respect of the aforesaid tenanted premises at any time You are completely unknown to my client. In the said letter you have stated regarding the award whereby various businesses, assets etc. were divided amongst the legal heirs and you have further stated that the portion under possession of my client falls to the share of Sh. Nilender Prakash Punj Jointly with Mr. Ravinder Prakash Punj. In the reply to this para, it is stated that you have not sent the copy of the award and the documents pertaining to the fact that the tenanted premises under the possession of my client falls under your and Sh. Ravinder Prakash Punj's share. That the person who sent this letter i.e. Sh. Arun Kumar Srivastav has not sent any copy of the attorney on your behalf and hence he has no authority to issue the said letter. You are firstly requested to send the above mentioned papers so that my client can peruse the same before answering to your letter. My client is regularly paying the rent of the abovesaid premises to the concerned persons and no rent is due on my client upto February, 2017. My client reserves his right to reply the letter dated 14.03.2017 in detail as and when my client will receive the required aforesaid documents. You have no right to issue this letter to Sh. Parmod Aggarwal who is not a tenant in the above said premises. Also, you do not have right to terminate the tenancy and to ask to handover the possession of the above said premises and you have wrongly mentioned the rate of rent per month.

Under the circumstances, I hereby call upon you on behalf of my client and request you to send the required documents mentioned in your letter and other relevant papers if any of the alleged tenancy of Sh. Parmod Aggarwal within 15 days from the date of receipt of this reply so that my client can reply to your letter in detail.

Please note that the copy of the aforesaid reply is being retained in my office for further reference.

Rahul Singhal
(Advocate)

***Letter dated 22.06.2017 by Punj Sons Private Limited
Ex. PW-2/12.***

Registered post

June 22, 2017

1. Shri Pramod Aggarwal, C/o Aggarwal Stores,
M-1/3, M Block, Inner Circle, Connaught Place,
New Delhi
2. Shri Neeraj Aggarwal
C/o Aggarwal Stores,
M-1/3, M Block, Inner Circle, Connaught Place,



2025:DHC:9410-DB



New Delhi

Subject: Attornment

In Ref: Basement Floor of Punj House Annexe, CP

Sir,

1. That you are in occupation of basement admeasuring 1770 sq. ft. (approx) of the building known as Punj House Annexe constructed on plot nos. 4 and 5, M-Block, Connaught Place, New Delhi. You were allowed to use the aforesaid premises for storing bottles and other goods being sold by you in the adjoining shop in the name and style of "Aggarwal Stores" by Late Shri VP Punj, who was the Chairman of M/s Punj Sons Pvt Ltd at the relevant time. You had been paying a sum of Rs. 18,000/- per month as rent for use and occupation of the basement as aforesaid.

2. As per books of accounts of Punj Sons Pvt Ltd, maintained in regular course of business, a sum of Rs. 18,000/- only had been paid the period December, 2009 till November, 2011. Thereafter, no amount has been received either by Punj Sons Pvt. Ltd., inter alia, calling upon you to clear the arrears, however, you refused to receive

3. In these circumstances, you are hereby called upon to clear the arrears at the rate of Rs. 18,000/- per month w.e.f. December, 2011 till date along with interest @24% per annum, within one week from receipt of this letter, jointly to Shri RR Punj and Shri NP Punj by issuing two separate cheques of equal amount.

4. That the Hon'ble Supreme Court of India in the SLP (C) No. 20958/2008 out of disputes amongst Punj family members and their entities referred the parties to the Mediator to resolve various disputes. With the assistance of Hon'ble Mr. Justice A.K Mathur (Retd.), Mediator appointed by the Hon'ble Supreme Court, parties resolved disputes with regard to various properties executed Memorandum of Family (Mediation) settlement. The Memorandum of Family (Mediation) Settlement has been accepted by the Hon'ble Supreme Court vide its order dated 17th August, 2016 passed in SLP (C) No. 20958/2008.

5. In terms of settlement the basement admeasuring 1770 sq. ft (approx) of the building known as Punj House Annexe constructed on plot nos. 4 and 5, M-Block, Connaught Place, New Delhi has been allocated to party of fifth part, Shri RP Punj and party of sixth part Shri N.P Punj.

6. The party of fifth part Shri RP Punj and party of sixth part Shri N.P Punj have become the landlords and acquired all the rights in the aforesaid basement including the right to collect rent from you the addressee. Therefore, you are hereby called upon to attorn and deal with the above named for all intents and purposes including payment of arrears of rent and rent for the future period.

Sincerely,

For Punj Sons Pvt Ltd.

A.C. Sharma,



Director

B. Regarding lease and license:-

72. The plaintiff had originally filed suit for mandatory and permanent injunction, arrears of rent, however, subsequently, the plaint was amended while incorporating prayer for possession of the premises and correspondingly, the suit was valued for the purposes of court fee and jurisdiction as per Section 7 (ix) (cc) of the Court Fees Act, 1870. To say, there is twin and parallel pleading by the plaintiff as if the defendant was a licensee as well as a tenant, while emphasizing that in some of the record, a loose expression of 'lease' or 'license' or license fee' or 'rent' has been mentioned, however, for the following reasons, based on the material on record, there existed the relationship of the landlord and the tenant between the plaintiff and defendant no.1:

i) It is settled law that intention of the parties and surrounding circumstances lay down the relationship of the parties and in case, there are documentary written record, it also reflects the intention of the parties (reliance is placed on *Delta International Ltd v/s ShyamSundrGaneriwala*, 1999 I AD SC 521).

ii) The plaintiff has brought on record counter foil of receipts Ex.PW-2/1 and Ex.PW-2/4 (colly) annexed with Ex.PW- 2/D1, although the same were not bearing the acknowledgment of the defendants, however, it is the documentary record of the plaintiff and in these counter foils, it has been specifically mentioned that the same are the rent receipts and not the amount received against the license fee.

iii) The Local Commissioner had visited the premises after her appointment and the report has also been furnished which remained unchallenged that after entering the premises, the lock of internal door was opened by the defendant, which was reflecting the exclusive possession of the defendants.

iv) From the evidence of the parties coupled with the report of the Local Commissioner, it is also apparent that the ice cube machines were lying and installed in the premises, which were also functional at one point of time, therefore, lying of the key with the defendant and using the installed ice cube machines at one point of time reflect the surrounding circumstances that the defendants had interest in the premises. Whereas in case of license, it is a permissible use vis-a-vis, license is a right purely personal between the grantor and the licensee, however, the circumstances of the present case are not suggesting such purely personal rights between the grantor and the licensee.

(v) The plaintiff in the notices dated 30.03.2017 and 22.06.2017 specifically refers the addressee as tenant, the later letter also attorns after approval of memorandum of understanding to the addressees being tenant as well as to deal for rent or future rent



respectively with Nilender Prakash Punj and Ravinder Prakash Punj, and,

vi) Last but not the least, paragraph 25 and paragraph 9 of memorandum of settlement also reflect names of tenants in the building, inclusive of Aggarwal Store as tenant apart from the tenants who were paying electricity and water charges. This also corroborates the testimony of defendants that electricity charges were also being paid to the landlord as arranged between them.

73. In the case of *Associated Hotels v/s R.N Kapoor, AIR 1962 SC 1262*, it was held that there is a marked distinction between 'lease' and license. Section 105 of the Transfer of Property Act defines lease of immovable property as a transfer of right to enjoy such property made for a certain time in consideration for a price promised. Under Section 108 of the Act, lessee is entitled to be put in possession of the property. A Lease is therefore, a transfer of an interest in land. Section 52 of the Indian Easement Act, defines a license thus, where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property of a guarantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or only an interest in the property, the right is called as license. When a document gives only a right to the property in a particular way or under certain terms while it remains in possession and control of the owner, it will be a 'license'. The real test to ascertain whether it is a 'lease' or license', the intention of the parties is to be seen and if it relates to interest in the property, it is a lease' but if it relates to permit another to make use of the property of which, legal possession continues, it is a 'license'.

74. It is also seen in the testimony of DW-2 that the office at the basement was being used for billing purposes and they had kept one person who had been keeping the accounts in the basement. The defendant no.1 was also using/maintaining this office and at that time, Neeraj Aggarwal used to sit regularly at the shop and the basement area but thereafter, on account of there being decline in business, the account persons started to work on part time basis. He has stated that at the time his father was sitting in the shop and the basement area, there were 2-3 employees apart from the accountant.

75. Further, looking at the videographs and the photographs, I do not find substance in the evidence of PW-3 that the machines/so called scrap had occupied only 30 sq.ft of space in another hall/room. The photographs and videograph clearly demonstrate that whole of the space of the hall has been occupied by the machines/so called scrap.

76. It is thus concluded that there is relationship of the landlord and tenant between the plaintiff and the defendant no.1 in respect of the



portions specified in Annexure A, page 2 of page 8 being part of memorandum of settlement read with site plan Ex. PW-3/D2.

C. Regarding rate of rent-

77. The suit has been filed for arrears of rent too, apart from other reliefs. The plaintiff has claimed the arrears from January, 2018 to December, 2020 at the rate of Rs. 30,000/-per month, whereas on the other side, defendant no.1 has opposed the plea stating that the rent is Rs. 2000/- per month. Thus, it needs to peep into the evidence and to analyze the same.

78. At the outset, I say that there is no written agreement or contract between the parties with regard to rate of rent, consequently, the surrounding circumstances are to be seen to come to the conclusion of rate of rent. The plaintiff has filed the counterfoil of rent receipt, claiming that the rate of rent was Rs. 18000/- per month but when it was challenged by defendant no.1, there was no production of books of account to authenticate the rate of rent. Simultaneously, the defendant no.1 also asserts the rate of rent as Rs. 2000/- per month and when defendant no.1 was confronted about documentary record, defendant no.1 admitted that he never tendered the rent by way of cheque or other such mode nor there is any contemporary record of notice or depositing in the court of Additional Rent Controller. The premises is located in the commercial and premium place of Connaught Place and keeping in view the rival oral testimony of both the sides, it appears that the rent of Rs. 18000/- as claimed by the plaintiff is carrying weight particularly, defendant no.2 was sent legal demand notice dated 14.03.2017 calling upon him to clear the arrears of rent at Rs. 18000/- per month w.e.f. December, 2011 (i.e. prior to memorandum of settlement) for an area admeasuring 1770 sq.ft. in occupation of the defendants. In Kalu Ram v/s Sita Ram (supra), it was held that when serious allegations are made in the legal notice and in case, the same are not opposed or responded, the same shall be treated to be admitted by the addressee. Accordingly, this ratio of law applies to the situation in hand in respect of rate of rent of Rs. 18000/- as defendants had not made any response to the said notice served on them.

79. It is also manifest from the record that the said notice was served on both the defendants as evident from the reply of the defendant no.1 dated 30.03.2017 (i.e. after memorandum of settlement) addressed to Nilender Prakash Punj where he never disputed the rate of rent as Rs. 18000/- per month as claimed in the letter/notice dated 14.03.2017. He had only demanded the documents/relevant papers of the tenancy of defendant no. which the plaintiff had supplied with the letter dated 22.06.2017. There is no correspondence thereafter on behalf of defendant no.1 denying the rental at Rs. 18000/- per month as claimed in the letter dated 14.03.2017. Moreover, plaintiff has not led any evidence to establish rate of rent as Rs. 25000/- or Rs. 30,000/- per month. The



rate of rent has been disputed by the defendant no.1 for the first time in his written statement to the plaint filed by the plaintiff for mandatory injunction and arrears of rent. Even payment of pagri amounting to Rs. 5.0 lakh to Sh. V.P Punj was claimed only in the rejoinder to the counter claim and not in the main pleadings of the case filed by the plaintiff. No document has been placed in this regard as to the payment of the said amount which cannot be said to be a small amount when the basement was allegedly taken on rent by the father of defendant no.1. It appears that the concept of payment of pagri has been introduced by the defendant no. to bring this suit within the purview of Delhi Rent Control Act barring the jurisdiction of the civil court by virtue of Section 50 of the Delhi Rent Control Act. Facts and circumstances rather show that prevalent rate of rent at that time even before the memorandum of settlement was Rs.18000/- per month which the defendant is liable to pay to the plaintiff for the use and occupation of the premises question.

80. Since it has been determined on the basis of plaintiffs own record of memorandum of settlement that the premises has been halved in two parts, the portion shown in orange colour came to Ravinder Prakash Punj/plaintiff and other portion in brinjal colour came to Nilender Prakash Punj, the total area was claimed to be 1770 sq.ft. (or on the basis of Local Commissioner's report, the area comes to 1738.65 sq.ft.). When the rent of Rs. 18,000/- per month in the said notice was for an area of 1770 sq.ft, then this rate of rent cannot be for an area of 832 sq.ft. or for modified claimed area of 530 sq.ft. as claimed in the amended plaint. The memorandum of settlement also depicts Clause no. 25 that half of the rent in respect of Aggarwal Cold Storage will go to fifth party/Ravinder Prakash Punj. Therefore, the claim of rent of Rs. 18,000/- per month cannot go to the plaintiff as per his own document. Half of the rent comes to Rs. 9000/-per month in respect of the portion falling to the share of the plaintiff, Ravinder Prakash Punj; although the plaintiff has not sought possession of the entire area as shown in the memorandum of settlement but has confined to 530 sq.ft. area, which is partial area of the area coming to the plaintiff Ravinder Prakash Punj.

Issues no. 8 and 9-

8. Whether the suit is barred under Section 50 of the Delhi Rent & Control Act? OPD

9. Whether the rate of rent was Rs. 18,000/- per month or Rs. 25,000/- per month or @ Rs. 2000/- per month? OPP/OPD

87. Both the issues are taken together since a common discussion was involved and made. The onus to prove issue no.8 was on defendant no.1, however, the onus to prove issue no.9 was on the plaintiff and the defendant no.1. The evidence of the parties have been discussed in detail in paragraph no. 22 to 26, B (para 72-76)



and C (para 77-80), wherein it has been specifically held that there exists the relationship of the landlord and the tenant respectively between the plaintiff and the defendant. It has also been concluded in that discussions that the rent was Rs. 18000/-per month for the entire premises of 1770 sq.ft. (or 1738.65 sq.ft). The rent has to be halved equally on the basis of sharing of area as per the memorandum of settlement in respect of the premises. The half of the rent comes to Rs. 9000/- per month which is more than Rs. 2000/- per month. Consequently, the defendant could not establish that the suit is barred by Section 50 of Delhi Rent Control Act.

88. Accordingly, issue no.8 is decided against the defendant. Moreover, it has also been discussed and held that plaintiff could not prove the monthly rent at Rs. 25000/-. Therefore, issue no.9 is partly decided in favour of plaintiff *inter alia* that the rent was Rs. 18000/- per month and not Rs. 25000/- per month. Simultaneously, the other part of issue no.9 is decided against the defendant *inter alia* that he could not establish that the monthly rent was Rs. 2000/- per month. Accordingly, issue no.9 is disposed of.”

31. From the foregoing analysis, it is evident that the learned Trial Court conducted a thorough and detailed examination of the pleadings, submissions, and evidence presented by the parties. In the process of determining the fixation of rent for the suit property, the learned Trial Court, *inter alia*, arrived at the following conclusions:

- (a) The Plaintiff’s pleadings were inconsistent, referring to the Defendant as both a licensee and a tenant; however, the Court, after examining the evidence, held that the relationship was that of landlord and tenant between the parties.
- (b) The Plaintiff claimed arrears of rent from January 2018 to December 2020 at Rs. 30,000/- per month or Rs. 25,000/- per month, while Defendant No. 1 asserted the rent was Rs. 2,000/- per month.
- (c) In the absence of a written rent agreement, reliance was placed on surrounding circumstances and available documentary evidence.



- (d) The Plaintiff produced rent receipt counterfoils showing rent of Rs. 18,000/- per month, though not supported by account books.
- (e) Defendant No. 1 admitted that rent was never paid by cheque or deposited before the Rent Controller and produced no evidence of rent being Rs. 2,000/- per month.
- (f) Considering the commercial character and prime location of the premises at Connaught Place, the Court held Rs. 18,000/- per month to be reasonable and credible.
- (g) The legal notice dated 14.03.2017 demanding rent at Rs. 18,000/- per month went unreplied to by Defendant No. 2, and Defendant No. 1's reply dated 30.03.2017 did not dispute the rent rate, amounting to an admission under ***Kalu Ram v. Sita Ram***⁶.
- (h) The Plaintiff's higher rent claims of Rs. 25,000/- and Rs. 30,000/- per month were rejected for lack of proof.
- (i) The Defendant's belated claim of paying *pagri* of Rs. 5 lakh was deemed an afterthought to bring the case under the DRC Act, as no proof or documentation was produced.
- (j) Under the Memorandum of Settlement, the property was divided equally between the Plaintiff and his brother. Since the total rent for 1770 sq. ft. was Rs. 18,000/- per month, the Plaintiff's share was Rs. 9,000/- per month.

32. It is a well-established principle in civil jurisprudence that the standard of proof in civil proceedings is the preponderance of probabilities and not proof beyond reasonable doubt. This standard requires the Court to weigh the evidence presented by the parties and

⁶ 1980 RLR (Note 44).



to determine which version of events is more probable, based on the balance of probabilities. In the present matter concerning the determination of rent for the suit property, the Plaintiff initially claimed a significantly higher rent, but subsequently moderated the claim to Rs. 18,000/- per month.

33. In stark contrast, Defendant No. 1 contended that the rent was much lower, asserting it to be Rs. 2,000/- per month. In doing so, Defendant No. 1 sought to invoke the protection under Section 50 of the DRC Act, contending that the rent being below the statutory threshold would exclude the premises from the jurisdiction of the civil courts and afford protection under the Rent Control framework. This fundamental disagreement between the parties formed the central issue regarding the fixation of rent, necessitating a careful and detailed evaluation of the evidentiary record.

34. Confronted with such directly contradictory contentions, the learned Trial Court correctly recognized the need to allocate the burden of proof in a structured manner. As the party advancing the primary claim, the Plaintiff was required to establish the truth of his assertion regarding the rent, and this involved producing credible evidence, whether documentary, oral, or circumstantial, to demonstrate that the rent of Rs. 18,000/- per month was the actual rent. Only once the Plaintiff had satisfactorily discharged this initial burden would the onus shift to Defendant No. 1 to substantiate his assertion of a significantly lower rent of Rs. 2,000/- per month. This approach ensures that the Court evaluates each party's claim fairly, placing the responsibility of proof upon the party asserting the fact, and it aligns with the settled civil law principle that the party making an allegation must substantiate it.



35. The learned Trial Court meticulously examined all the evidence submitted by the parties. This included the demand notices dated 25.03.2009 and 23.04.2009, the subsequent notice of 17.02.2012 issued to Defendant No. 2, and the two alleged rent receipts dated 23.03.2009 and 23.04.2009, along with their service receipts. The learned Trial Court, after careful scrutiny, expressed reservations regarding the authenticity and probative value of these documents and accordingly declined to rely on them as conclusive proof of rent.

36. To further support his claim, the Plaintiff produced and relied upon a legal notice dated 14.03.2017 addressed to Defendant No. 2. This notice was duly replied to by Defendant No. 1 on 30.03.2017, wherein he questioned the Plaintiff's authority to receive rent and requested supporting documentation verifying that authority. Defendant No. 1 also stated that "*you have wrongly mentioned the rate of rent per month*". In response, the Plaintiff furnished a detailed letter dated 22.06.2017 along with the requested documents to both Defendants.

37. Significantly, the Plaintiff's letter dated 22.06.2017 remained unanswered by Defendant No. 1. It is also relevant to note that all communications were sent to the suit property's address, *namely*, Agarwal Store, M-1/3, M Block, Inner Circle, Connaught Place, New Delhi, the same address referenced in Defendant No. 1's reply dated 30.03.2017.

38. The learned Trial Court correctly observed that Defendant No. 1's failure to respond to the Plaintiff's letter of 22.06.2017, in which the rent of Rs. 18,000/- was explicitly re-asserted, was of critical evidentiary significance. The learned Trial Court rejected Defendant No. 1's unsubstantiated claims that subsequent oral



discussions had occurred, noting the complete absence of evidence supporting such assertions.

39. Reliance was placed by the learned Trial Court, and in our considered opinion, rightly so, on the principle established in ***Kalu Ram*** (*supra*), which provides that failure to respond to a duly served legal notice can give rise to an adverse inference. Accordingly, the learned Trial Court concluded that Defendant No. 1's reply dated 30.03.2017, which did not categorically dispute the rent rate, amounted to an admission of the Plaintiff's claim, and the continued non-response to the Plaintiff's letter of 22.06.2017 further reinforced the probative value of the Plaintiff's assertion regarding the rent of Rs. 18,000/- per month. Placing reliance on ***Kalu Ram*** (*supra*), a Coordinate Bench of this Court in ***Metropolis Travels & Resorts (I) (P) Ltd. v. Sumit Kalra***⁷ made relevant observations, which read as under:

“13. There is another aspect of the matter which negates the argument of the respondent and that is that the appellant served a legal notice on the respondent vide Ex. PW-1/3. No reply to the same was given by the respondent. But inspite of the same no adverse inference was drawn against the respondent. This Court in the case of ***Kalu Ram v. Sita Ram, 1980 RLR (Note) 44*** observed that service of notice having been admitted without reservation and that having not been replied in that eventually adverse inference should be drawn because he kept quiet over the notice and did not send any reply. Observations of ***Kalu Ram's case (Supra)*** apply on all force to the facts of this case. In the case in hand also despite receipt of notice respondent did not care to reply nor refuted the averments of demand of the amount on the basis of the invoices/bills in question. But the learned Trial Court failed to draw inference against the respondent.”

(emphasis supplied)

40. Even *de hors* the other documentary and oral evidence presented by the Plaintiff, the record demonstrates that the Plaintiff

⁷ 2002 SCC OnLine Del 521



successfully discharged the initial onus of proving the rent claim of Rs. 18,000/- per month. This shifted the onus to Defendant No. 1 to substantiate his claim that the rent was only Rs. 2,000/- per month and not Rs. 18,000/-. Upon thorough scrutiny of the record, no documentary evidence was presented by Defendant No. 1 to rebut the Plaintiff's claim. The Defendant relied solely on repeated oral assertions of various nature and bald statements, which the Court rightly found unconvincing.

41. Even assuming, *arguendo*, that Defendant No. 1's statement in his reply dated 30.03.2017 that "*you have wrongly mentioned the rate of rent per month*", is taken at face value, it does not establish that the rent was Rs. 2,000/- per month as opposed to Rs. 18,000/-.

42. It is an undisputed fact that no formal written agreement existed between the parties concerning the rent of the suit property. Considering this, the learned Trial Court, in our considered opinion, rightly relied upon the surrounding circumstances and available evidence, including the commercial character and prime location of the premises at Connaught Place and on the basis of these aspects, concluded that a rent of Rs. 18,000/- per month was reasonable, credible and reflective of the market value, and rightly rejected Defendant No. 1's claim of a lower rent.

DECISION:

43. In light of the foregoing discussion and analysis, we are of the view that the present Appeal is devoid of any merit. The Impugned Judgment and Decree dated 31.10.2022, particularly in relation to Issue No. 9 as raised in this Appeal, rendered by the learned Trial Court, is well-reasoned, based on cogent evidence and applicable law,



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and therefore, requires no interference and merits affirmation. Consequently, the present Appeal is dismissed.

44. The present Appeal, along with pending application(s), if any, stand disposed of in the above terms.

45. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
OCTOBER 29, 2025/sm/kr