



2025:DHC:7317-DB



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

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*Judgment reserved on: 11.08.2025*

*Judgment pronounced on: 26.08.2025*

+ RFA(COMM) 347/2025

CHARANJIT SINGH MAKKAR .....Appellant

Through: Mr. Sandeep Sharma, Sr. Adv  
with Mr. Sanjeet Singh, Mr.  
Sarthak Mannan and Ms.  
Kavya Dauk, Advs.

versus

PHALVINDER ARORA .....Respondent

Through: Mr. Rudra Pratap, Mr. Ankit  
Kashyap, Mr. Rohit Chaudhary,  
Mr. Nitin Rathor and Ms.  
Kanika Kashyap, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

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

## **J U D G M E N T**

### **ANIL KSHETARPAL, J.**

1. Through this Appeal filed under Section 13 of the Commercial Courts Act, 2015 and Section 96 and Order XLI of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'], the Appellant herein/Tenant [Defendant before the learned District Judge] assails the correctness of the judgment dated 12.03.2025 passed by the learned District Judge (Commercial-08), Central District, Tis Hazari Courts, Delhi [hereinafter referred to as 'District Judge'] in CS(COMM) 93/2024 captioned *Phalvinder Arora vs. Charanjit Singh Makkar*



wherein the suit was decreed in favour of the Plaintiff/Respondent herein for grant of decree of possession, recovery of Rs. 2,52,000/- as arrears of rent, recovery of *mesne* profits at the rate of Rs.15,000/- per month and for consequential relief of permanent injunction.

**FACTUAL MATRIX:**

2. The brief facts relevant to the adjudication of the present Appeal are narrated in the following paragraphs.

3. The Respondent [Plaintiff before the learned District Judge] purchased the property admeasuring 17.36 square yards, being Shop at E-278, Ground Floor, Nag Mandir Marg, Shastri Nagar, Delhi-110052 [hereinafter referred to as ‘subject property’], from its previous owner, namely Shri Shiv Shankar Gupta, *vide* a Sale Deed dated 14.10.2019 [hereinafter referred to as ‘Sale Deed’], which was registered on 19.10.2019.

4. It is recited in the Sale Deed that the suit property is in possession of the tenant, i.e., Appellant herein/Defendant. After purchasing the property, the Respondent/Plaintiff sent a Notice to the Appellant/Defendant on 10.12.2019 informing him about the purchase.

5. The Appellant/Defendant sent a reply to the aforesaid Notice on 21.12.2019 (Ex. PW-1/4) claiming that he is a tenant under the previous owner, Shri Shiv Shankar Gupta, who has never attorned the tenancy in favour of the Respondent/Plaintiff and therefore, is being harassed for no reason.



6. On 02.01.2022, the Respondent/Plaintiff sent another Notice to the Appellant/Defendant terminating the tenancy and commanding the Appellant/Defendant to hand over the possession of the subject property. The Appellant/Defendant failed to take steps, which compelled the Respondent/Plaintiff to file the suit on 16.01.2024.

7. The Appellant/Defendant contested the suit on the ground that there is no landlord-tenant relationship between the parties, and the present suit is an abuse of the process of law, as there is a litigation pending between the Appellant/Defendant and Shri Shiv Shankar Gupta. It was also claimed that the rate of rent was less than Rs.3,500/-. Hence, the suit is barred under Section 50 of the Delhi Rent Control Act, 1958 [hereinafter referred to as 'DRC Act'].

8. After completion of pleadings, ten issues were framed, and the parties were called upon to lead evidence. The Respondent/Plaintiff, in support of his evidence, examined the following witnesses:

- i. Shri Phalvinder Arora (Appellant himself) as PW-1
- ii. Shri Shiv Shankar Gupta (previous owner) as PW-2
- iii. Shri Gulshan Kumar Narang as PW-3
- iv. Shri Surender Kumar Arora as PW-4

9. The Respondent/Plaintiff also produced various documents, including a site plan, a Sale Deed dated 14.10.2019, Notice dated 10.12.2019, Reply to the Notice dated 21.12.2019, second Notice dated 02.01.2022, Mutation Order and pre-mediation failure report.



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The Appellant/Defendant entered the witness box as a sole witness and produced certain documents.

10. The learned District Judge held that the suit is not barred by Section 50 of the DRC Act. The Defendant/Appellant was held liable to vacate the subject property and to pay *mesne* profits at the rate of Rs.15,000/- per month from 16.01.2024 till the date of handing over the possession of the suit property. The Appellant was further restricted from creating any third-party interest or parting with possession of the suit property. Aggrieved by the Impugned Order, the Appellant/Defendant has filed the present Appeal.

### **SUBMISSIONS OF THE PARTIES**

11. Learned counsel for the Appellant has advanced the following submissions:

11.1 The suit was valued for less than Rs.3 lakhs and therefore, it did not fall within the jurisdiction under the Commercial Courts Act, 2015 [hereinafter referred to as 'CCA']. There is no '*commercial dispute*' under the CCA.

11.2 There was no landlord-tenant relationship between the parties as the Appellant never attorned the tenancy in favour of the Respondent/Plaintiff.

11.3. The Appellant was paying rent at the rate of Rs.2,143/- per month to the previous owner and therefore, he is entitled to the protection under the DRC Act.



11.4 The issues have not been dealt with individually, and for the purpose of discussion, issue nos.1 to 5 and issue nos.6 to 8 have been clubbed together.

12. *Per contra*, learned counsel for the Respondent, while drawing the attention of the Court to the issues framed by the learned District Court, has submitted that:

12.1 The onus of proving the issues was upon the Appellant/Defendant.

12.2 While referring to the deposition of the Appellant/Defendant, learned counsel has submitted that he lost the credibility to rely upon his evidence because he has been changing his stand from time to time.

12.3 The Respondent/Plaintiff has proved that the properties located near the suit property are fetching rent at the rate of Rs.30,000/- or more per month, which has been proved by examining PW-3 and PW-4.

### **ANALYSIS**

13. This Court has analysed the arguments of the learned counsel for the parties and, with their able assistance, perused the paperbook along with the Trial Court Record ('TCR').

14. With reference to the first argument, the expression '*commercial dispute*' has been defined in Section 2(1)(c) of the CCA, which is extracted as under:

*"2. Definitions.—(1) In this Act, unless the context otherwise*



requires,—

(c) “commercial dispute” means a dispute arising out of—

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

(ii) export or import of merchandise or services;

(iii) issues relating to admiralty and maritime law;

(iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;

(v) carriage of goods;

(vi) construction and infrastructure contracts, including tenders;

(vii) agreements relating to immovable property used exclusively in trade or commerce;

(viii) franchising agreements;

(ix) distribution and licensing agreements;

(x) management and consultancy agreements;

(xi) joint venture agreements;

(xii) shareholders agreements;

(xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;

(xiv) mercantile agency and mercantile usage;

(xv) partnership agreements;

(xvi) technology development agreements;

(xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;

(xviii) agreements for sale of goods or provision of services;

(xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;

(xx) insurance and re-insurance;

(xxi) contracts of agency relating to any of the above; and

(xxii) such other commercial disputes as may be notified by the Central Government.

*Explanation.*—A commercial dispute shall not cease to be a commercial dispute merely because—



*(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;*

*(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;”*

15. A bare reading of Section 2(vii) of the CCA indicates that if a dispute arises out of the agreements relating to immovable property used exclusively in trade or commerce, it will fall within the scope of a commercial dispute.

16. Tenancy is a result of a bilateral contract between the parties. It is the case of the Appellant/Defendant that he entered into the subject premises as a tenant in the year 1994. The contract creating the tenancy was entered into by Appellant with his landlord, who was the previous owner of the subject property. Hence, the dispute in the present case arises from an agreement relating to immovable property. The immovable property is undisputedly attached to the commercial property, being a shop in Nag Mandir Marg, Shastri Nagar, Delhi. Hence, the argument of learned counsel has no merit.

17. Similarly, the argument of learned counsel for the Appellant with regard to attornment lacks substance.

18. Undisputedly, Shri Shiv Shankar Gupta was the previous owner of the subject property, and Appellant was the tenant under him. The previous owner sold the subject property in favour of the Respondent under a registered sale deed, and the Respondent became the owner on the strength of the said sale deed. The Appellant, thus, cannot



challenge the title of the Respondent as the owner of the subject property.

19. The Appellant became a tenant under the Respondent by operation of law under Section 109 of the Transfer of Property Act, 1882 [hereinafter referred to as ‘T.P. Act’]. The attornment by the tenant/Appellant was not necessary for the transfer of the property leased out to him.

20. Section 109 of the T.P. Act reads as follows:

*“109. Rights of lessor’s transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:*

*Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.*

*The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.”*

21. A perusal of Section 109 of the T.P. Act makes it evident that where title or any interest in immovable property is transferred, the successor-in-interest would be entitled to the rights and subject to the liabilities of the predecessor unless the contract says otherwise. The section allows a statutory attornment, which *ipso facto* transfers ‘all rights of’ the lessor/transferor to the transferee and creates a new



relationship between the transferee and the tenant. A letter of attornment is not required to complete the title of the transferee under the mandate of Section 109. The title of the transferee becomes effective upon the execution of the sale deed itself or by any other lawful mode of transfer and is not dependent on or postponed until attornment by the tenant.

22. In *Gopi @ Govardhannath, Dead By Lrs. & Ors. vs. Ballabh Vyas*<sup>1</sup>, the Supreme Court, contemplated the aspect of attornment by the tenant under Section 109 of the T.P. Act and held as follows:

*“27. In the light of the finding on the issue whether the respondents in R.C.No.262 of 2008 were mala fide denying the title of the petitioner therein over the petition schedule property, Section 109 of the Transfer of Property Act would assume relevance in regard to the right of the petitioner in R.C.No.262 of 2008 to seek eviction of the respondents therein, from the petition schedule property. Admittedly, the predecessor-in-interest of the appellants viz., late Shri Balraj, was the tenant in respect of the petition schedule property under its original owner Smt. Phool Kumari. A bare perusal of Section 109 of the Transfer of Property Act would reveal that if a landlord transfers the property leased out or any part of it, the transferee, in the absence of any contract to the contrary, shall possess all the rights of the landlord. Hence, the impact of Ext.P3, in the absence of any contract to the contrary, is that the respondent herein has stepped into the shoes of Smt. Phool Kumari. In terms of Section 109 of the Transfer of Property Act it is clear that attornment by the lessee is not necessary for the transfer of the property leased out to him. Thus, the inevitable consequence of transfer of a leased-out property by the landlord in accordance with law to a third party, in the absence of a contract to the contrary, is that the third party concerned would not only become its owner having title but also would step into the shoes of the vendor as the landlord in relation to the lease holder at the relevant point of time. In such circumstances, the findings of the courts below that there exists jural relationship of landlord and tenant between the respondent and the appellants can only be held as the correct and lawful conclusion in the light of the evidence on record based on the legal position.”*

(Emphasis supplied)

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<sup>1</sup> (2022) 19 SCC 204



23. Moreover, the Respondent herein, immediately upon purchasing the suit property, had sent a Notice dated 10.12.2019 to the Appellant, which was duly replied to by the Appellant on 21.12.2019. The reply of the Appellant is an acknowledgement of the ownership by the Appellant/tenant. Hence, it is inappropriate for the Appellant to claim that there is no landlord-tenant relationship between the parties.

24. The Respondent has stepped into the shoes of the previous owner and was only required to inform about the fact that he had purchased the subject property to the tenant/Appellant herein. The Respondent has done his due diligence by informing the Appellant/Defendant about the same *vide* Notice dated 10.12.2019. Hence, there is no substance in the stand of the Appellant/Defendant.

25. With regard to the rate of rent, the Respondent/Plaintiff, before filing the suit, sent a Notice to the Appellant/tenant on 10.12.2019, to which the Appellant replied on 21.12.2019, claiming that the subject property was taken on rent in the year 1994 at the rate of Rs.1,000/- per month with 10% increase on completion of every three years and at present, the rate of rent is Rs.2,143/- per month.

26. On calculation of the rent with a 10% increase every three years, in the year 2019, the rent would be Rs.2,594/- per month and not Rs.2,143/- per month. Moreover, when the Appellant/Defendant appeared during cross-examination, he stated that he used to pay rent at the rate between Rs.2,100/- to Rs.2,200/- per month.

27. On further questioning, the Appellant/Defendant stated, '*I do not remember the date, month and year when the rent was lastly paid*



to Shiv Shankar'. The Appellant/Defendant admitted that he is filing his Income Tax Return ('ITR'); however, the same was not produced by him. The Appellant/Defendant has withheld a material piece of evidence. The Appellant/Defendant has also neither produced the statement of accounts nor bank transactions to prove the payment of rent. It was further stated that the rent was increased at the rate of Rs.100/- per year. If the statement of the Appellant/Defendant is accepted, the rent in the year 2019 should be nearly Rs.3,500/- per month. Thus, the stand taken by the Appellant/Defendant has changed with the passage of time and he has been taking different stands at different points in time. Hence, the Appellant/Defendant is not a reliable witness.

28. Undoubtedly, the initial onus was upon the Respondent/Plaintiff to prove that the rate of rent was more than Rs.3,500/-, which he has discharged sufficiently. The Respondent, apart from appearing himself as PW-1, has examined the previous owner/ former landlord of the Appellant, as PW-2, PW-3 and PW-4, has also been examined to prove that the rate of rent in the area was not less than Rs.30,000/- per month. Thereafter, the onus shifted upon the Appellant, who miserably failed to prove that the rate of rent was less than Rs.3,500/- per month.

29. The Appellant has vehemently pressed that the rent of the suit property was less than Rs.3,500/- per month and therefore he is entitled to protection under the DRC Act; however, the Appellant/Defendant miserably failed to prove the same.



30. The last submission of the learned counsel for the Appellant carries some merit. The learned District Judge has proceeded to answer issue nos.1 to 5 together and similarly, discussion with respect to issue nos.6 to 8 have been clubbed whereas issue no.9 has been separately decided; however, that is a curable defect and does not affect the merits of the case.

31. It be noted here that the learned District Judge has culled out the issue nos.5 to 9 based on various prayers made by the Respondent/Plaintiff. Whereas, as per Order XIV of the CPC, distinct issues are required to be framed when a material proposition of fact or law is affirmed by one party and denied by the other. Each material proposition affirmed by one party and denied by the other shall form the subject matter of a distinct issue. Hence, the practice of culling out the issues based on the major prayers is not appropriate and should be discouraged.

32. Learned counsel for the parties have not made any other submissions.

### **CONCLUSION**

33. Hence, finding no merit, the Appeal, along with pending application(s), if any, is dismissed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**AUGUST 26, 2025/jn/er**