



2026:DHC:5097



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

% *Reserved on: 10th March, 2026*
Pronounced on: 05th June, 2026

+ **RFA 23/2021, CM APPL. 1808/2021, CM APPL. 1811/2021, CM APPL. 32472/2021 & CM APPL. 37915/2023**

1. **M/S. GALLUS CHATTELS PVT. LTD.**
having it's offices at Nulon House,
Ishwar Nagar, Tribhuvan Complex,
Delhi-Mathura Road, New Delhi-110065
Through Director Sh. K.K. Golyan
2. **M/S CROCUS CHATTELS PVT. LTD.**
having it's offices at Nulon House,
Ishwar Nagar Tribhuvan Complex,
Delhi-Mathura Road, New Delhi-110065
Through Director Sh. K.K. Golyan
3. **M/S COLORADO CHATTELS PVT. LTD.**
having it's offices at Nulon House,
Ishwar Nagar, Tribhuvan Complex,
Delhi-Mathura Road, New Delhi-110065
Through Director Sh. K.K. Golyan
4. **M/S NULON GLOBAL LTD.**
having it's offices at Nulon House,
Ishwar Nagar, Tribhuvan Complex,
Delhi-Mathura Road, New Delhi-110065
Through Director Sh. K. K. Golyan

.....Appellants

Through: Mr. C. P. Vig, Advocate.

versus

ISHWAR INDUSTRIES LTD.

An existing company



having its offices at Tribhuvan Complex,
Ishwar Nagar, Delhi-Mathura Road,
New Delhi-110065
Through Director Sh. Bharat Bhaskar
Caveator Counsel.

.....Respondent

Through: Ms. Ekta Mehta, Mr. Antarik
Chakrabarti, Ms. Zainab Khan,
Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

CM APPL. 1811/2021 (delay)

1. The present Application has been filed by the Appellant seeking condonation of delay of 262 days in re-filing the present Appeal.
2. For the reasons mentioned in the Application the same is allowed. The delay of 262 days in re-filing the present Appeal is condoned.
3. The present Application is disposed of in the aforesaid terms.

RFA 23/2021

4. **Regular First Appeal** under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed by the *Appellants/Defendants namely, M/s Gallus Chattels Pvt. Ltd., M/s Crocus Chattels Pvt. Ltd., M/s Colorado Chattels Pvt. Ltd. and M/s Nulon Chattels Pvt. Ltd.* against the Judgment and Decree dated **19.02.2020**, whereby, the Suit filed by the *Plaintiff/Respondent, Ishwar Industries* for possession and mesne profits, was decreed by the learned Additional District Judge.



5. The Plaintiff had filed a *Civil Suit bearing CS No. 9831/2016 (old No. 1317/2005)* for recovery of possession and mesne profits, against the Defendants.

6. The **brief facts** as narrated in the Plaint are, that the Plaintiff is a Company registered under the Companies Act, 1956. It was claimed to be the absolute owner of entire land and building, situated in Khasra Nos. 1723/1705, 1724/1705, 264, 262, 257/1, 258/1, 259 and 256, also known as Tribhuvan Complex, situated at Ishwar Nagar, 10th Mile Stone, Main Mathura Road, New Delhi.

7. The Plaintiff asserted that for the purpose of development and raising construction on the said land, the Plaintiff had entered into an Agreement dated **04.02.1986** with a builder M/s Growth Techno Projects Ltd. ('**GTPL**'). It was claimed that the Agreement was amended *vide* supplementary Agreements dated 31.08.1990 and 18.06.1993.

8. For the aforesaid purpose of construction, the entire land was divided into 8 blocks and Defendants No. 1 to 4 were allotted block No. 5. However, till such time the construction was not completed in block No. 5, Defendants No. 1 to 3 *were allowed temporary use of Block No. 4 admeasuring 2,500 sq. yards, (herein after referred to as the suit property)* on license through a Letter dated 17.03.1994, for a limited period of 09 months, i.e., up to 16.12.1994. Defendant No. 4 was claimed to be a trespasser therein. It was also agreed that Defendants No. 1 to 3, who occupied space in Block No. 4, would not be required to pay any charges for the said period. However, the Defendants despite expiry of the license



period, failed to vacate the property, even though various letters had been sent to them.

9. The Plaintiff asserted that Defendants No. 1 to 3 in breach of sanctioned plan and undertaking recorded in decree dated 19.07.1997 in Suit No. 73/1996 titled *Ishwar Industries Limited v. Crocus Chattles Pvt. Ltd. & Others*, got constructed basement and other unauthorized construction in Block No. 4 which belonged to them, whereafter, the Plaintiff wrote various Letters dated 20.01.1996, 25.01.1996, 06.02.1996, 08.08.1996 and 20.20.1997, and revoked the license of Defendant Nos. 1 to 3, for use of portion of Block No. 4.

10. However, despite the aforesaid letters, Defendant Nos. 1 to 3 failed to vacate said portion in Block No. 4. They also did not remove unauthorized construction carried out by them, despite the Demolition Order dated **17.04.2003** of MCD. It was claimed that Defendants No. 1 to 3 continued in the unauthorized occupation of the portion of Block No. 4.

11. Defendants No. 1 to 3, thereafter, filed a ***Suit bearing No. 173/1997*** and ***Suit bearing No. 296/1996*** against the Plaintiff, for Perpetual Injunction against being disposed from the Block No. 4, by claiming to be in settled possession. The learned Civil Judge dismissed the Application for Temporary Injunction, while holding that as per the confirmation given by Defendants No. 1 to 3 in their Letter dated 24.05.1996, they had to vacate or make alternate arrangements, which itself established that Block No. 4 had been given to Defendants No. 1 to 3 for temporary use only.

12. ***The Plaintiff by the present Suit***, claimed possession of Block No. 4. It also claimed mesne profits/damages @ Rs.75/- per sq. foot, which was



prevailing market rent since 24.11.1996. The Plaintiff also sought interest at the rate of 18% per annum on the mesne profits from 13.09.2002, till the date of institution of Suit, which came to Rs.3,24,000/-. **Hence, the Plaintiff made a claim for Rs.9,24,000/- along with pendente lite and future interest @ 18% p.a.**

13. Plaintiff also sought permanent injunction for restraining the Defendants from creating third party rights and also from carrying out any additional alteration and construction in the block No. 4.

14. The Defendants, in their Written Statement, took the *preliminary objection* that the Suit had *not been valued properly for the purpose of jurisdiction and Court Fee*. It was claimed that the Plaintiff had no right, title and interest in Block No. 4, and thus, had no *locus standi* to file the present Suit. In fact, the Plaintiff had sold the portion of *Block No. 4 to M/s Tulip Buildwell Private Limited*. As per the sale document dated **21.03.2005**, the area of 2,500 sq. yards was shown to be in possession of Defendant Nos. 1 to 3. It was further claimed that the *Suit was bad for misjoinder and non-joinder of the necessary parties*.

15. On merits, it was denied that the Plaintiff was the owner of block No. 4 and that Defendants No. 1 to 3 had been allowed to occupy Block No. 4, temporarily. It was claimed that a large chunk of land admeasuring 7 bighas and 14 biswas covered in Khasra No. 1723/1705, 1724/1707, 262 and 264 of village Bahapur, Delhi, was owned by one Sh. Amar Nath, who died in October 1956, leaving behind four sons, a wife and daughter, who inherited the aforesaid property in question. At no point of time was the Plaintiff an owner of the said land and it never had any right to institute the



present Suit. The other Khasra numbers as mentioned, were not covered by the title documents existing in favor of Sh. Amar Nath and hence, were not owned by the legal heirs; the Plaintiff therefore, cannot claim to be the owner of the property in question.

16. It was further submitted that in terms of Property Development Agreement dated 04.02.1986, executed between Plaintiff and M/s GTPL, the entire project was to be developed by GTPL, on 50-50 basis. Block No.4, which is in possession of Defendants and other sister concerns and family members of the directors of the Defendants, fell into the share of GTPL who were competent to sell the said property. They, in fact, sold the property to the Defendants and its other sister concerns, including the family members, who are in possession of the same as owners and therefore, they cannot be dispossessed by the Plaintiff.

17. It was further submitted that even rights to raise construction on Block No. 4, was given to GTPL with the concurrence of the Plaintiff, to another sister concern of the Defendants, namely, M/s Astreoids Construction (P) Ltd. and an Agreement dated 19.10.1995 was executed. It clearly reflected that Plaintiff had no right, title or interest in any portion of Block No. 4 and the present Suit is absolutely misconceived.

18. It was further asserted that Block No. 4 admeasured 7,500 sq. feet, *which consisted of an office portion and store portion*, was in use and occupation of the Defendants. However, the store portion was demolished illegally by the Plaintiff, on 03.09.1997. At present, the land underneath the store potion and built-up office potion, is in legal possession of the Defendants and the Plaintiffs have no right in the subject property.



19. The Defendants further denied that any unauthorized construction had been carried out by the Defendants in Block No. 4, which was in breach of the sanctioned plan, as alleged by the Plaintiff.

20. It was submitted that the alleged vacation in 180 days of the Suit property was to enable the developer to raise construction, but since there was no sign of raising construction, the question of vacation became meaningless.

21. It was further stated that Block No. 4 was like a barrack which was renovated by Defendants No. 1 to 3 by spending huge amounts, with the knowledge, permission and consent of the Plaintiff as well as the developers, so as to use it for the office purposes, which clearly demolishes the case of the Plaintiff, that Defendants were the licensee.

22. It was further denied that the Defendants No. 1 to 3 were in unlawful possession of the Suit Property. The Defendants also denied that various letters were ever issued to them by the Plaintiff, to vacate the property. It was further asserted that the Plaintiff was not entitled to any of the relief prayed in the Suit.

23. *It was prayed that the present Suit was liable to be dismissed.*

24. *The Plaintiff in the Replication*, reaffirmed the assertions as made in the plaint.

25. The *learned Additional District Judge, on the pleadings*, framed the following issues, on **18.08.2008**:

“1. Whether the plaintiff has no right, title or interest in the suit property? OPD (onus was changed as OPP subsequently)



2. *Whether the suit has not been signed, filed, verified and instituted by duly authorized person? OPD (onus was changed as OPP subsequently)*
3. *Whether the suit is bad for mis-joinder and nonjoinder of necessary parties? OPD*
4. *Whether the plaintiff is entitled for decree of possession as prayed for? OPP*
5. *Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP*
6. *Whether the plaintiff is entitled for decree of Rs.9,24,000 along with interest? If so at what rate. OPP*
7. *Whether the plaintiff is entitled for mesne profits? If so at what rate and for what period. OPP*
8. *Whether the plaintiff is entitled for interest on mesne profits? If so at what rate and for what period. OPP*

Additional Issue framed on 20.01.2009

"Whether the defendants were licensees under the plaintiff and their license has been revoked and if so, to what effect? OPP"

26. The Plaintiff company examined *Sh. Bharat Bhaskar* as **PW-1** who reiterated the assertions as made in the Plaint. The Plaintiff Company also examined **PW-2** *Sh. R. K. Saini*.
27. The Defendants examined 07 witnesses.
28. **DW-1** *G.P. Chobey*, who was the Authorized Representative of Defendant Nos 1 – 3 and Director of Defendant No. 4 deposed as per the averments made in the Written Statement. The Defendants examined **DW-2** *Sh. Naim Ahmad*, who was the Nazir in the Court of Ms. Neelofar Abida, learned ADJ, South East District.



29. The Defendants further examined **DW-3 Sh. Davender Kumar Gupta**, director of M/s Tulip Buildwell Pvt. Ltd. **DW-4 Sh. Sharif Ahmed**, who was the Nazir from the Court of Sh. Sanjiv Jain learned ADJ, South East District, was also examined by the Defendants.

30. The Defendants examined **DW-5 Sh. K. K. Golyan**, who was the director of the Defendants and reiterated the averments as made in the Written Statement. **DW-6 Sh. Ajay Kumar Sharma**, employee of Defendant No. 4 was also examined on behalf of the Defendants.

31. The Defendants lastly examined **DW-7 Sh. Krishan Kumar**, who was the Authorized Representative of M/s Picus Chatrtels Pvt. Ltd.

32. The *learned District Judge on appreciation of the evidence held* that from the averments of the Written Statement itself, it emerged that the Defendants had admitted that Block No. 4 had been given to them by the Plaintiff, on temporary basis. It was observed that the Court was to be guided by the principles of “*better title*”. Therefore, any transaction or contract between the Plaintiff and GTPL, would not affect the rights and liabilities between the Plaintiff and the Defendants, which had been decided on the basis of evidence. It was further held that the Suit was valued properly for the purpose of Court Fee and jurisdiction and was not bad for nonjoinder or misjoinder of parties.

33. It was duly proved that Defendants Nos.1 to 3 had been inducted as a licensee in Block No. 4 on account of ongoing construction in the Block allotted to them i.e. Block No. 5.

34. It was **thus, held** that the *Plaintiff was entitled to a decree of Possession and Injunction*. The learned Additional District Judge awarded



mesne profits at the rate of Rs.75/- per sq. foot, in respect of suit property in Block No. 4, w.e.f. 23.11.1996 till the date of delivery of possession, along with the interest @ 12% per annum. Further, in case the possession was not handed over by the Defendants within 30 days, the interest applicable was @ 15% per annum. *The Suit of the Plaintiff was accordingly, decreed.*

35. *Aggrieved by the aforesaid Judgment and Decree dated 19.02.2020, the Defendants have preferred the present First Regular Appeal, under Section 96 read with Order XLI Rule 1 of the CPC.*

36. The **grounds of challenge** are that the learned District Judge has failed to appreciate that the Plaintiff had claimed ownership on the basis of the Release Deed dated 03.07.1962 **Ex. PW1/3**, executed and registered by legal heirs of late Sh. Amar Nath, in favour of the Plaintiff. The said Release Deed could not be read in evidence. Moreover, it did not confer any right or title on the Plaintiff. Besides Sh. Amar Nath had died in October 1956 and legal heirs of late Amar Nath were not competent to execute the aforesaid Release Deed in favor of the Plaintiff, who was a third party and cannot be termed as a legal heir of Amar Nath.

37. The learned District Judge failed to appreciate that immovable properties cannot be transferred and sold in this manner as has been claimed by the Plaintiff, in terms of the Registration Act 1897. It has further not been appreciated that the Release Deed dated 03.07.1962 **Ex. PW1/3**, had been executed much after the demise of Sh. Amar Nath, in 1956. He was survived by his sons, daughter and wife while the Release Deed was executed and registered by one Bajj Nath Bhaskar, as self and attorney of few legal heirs



of Amar Nath on the basis of Power of Attorney dated **10.09.1957**. *Therefore, it is not clear as to who were the legal heirs alive on 03.07.1962, when the aforesaid Release Deed was executed.*

38. The Plaintiff had been claiming ownership on entire land comprising of eight Khasra, but only four Khasra have been mentioned in the Release Deed dated 03.07.1962. It was further contended that **PW-1 Sh. Bharat Bhaskar** had admitted in his cross-examination, that late Amar Nath was not the owner of the other Khasra numbers and hence, it is not certain as to how Sh. Amar Nath became the owner of other Khasras and how other Khasra numbers have devolved on the Plaintiff.

39. The aforesaid aspects were totally or completely ignored by the learned Additional District Judge, which *is sufficient to hold that Plaintiff had no right, title or interest in the Block No. 4 and had no right to claim ownership or possession thereof.*

40. It was further contended that it has not been appreciated that the Appellants are not licensees under the Plaintiff and their license was not revoked at any point of time. In fact, the Plaintiffs had admitted execution of the Property Development Agreement dated 04.02.1986 between Plaintiff and GTPL, but the same has not been filed on record to show that GTPL was to raise construction on Block No. 4 on its own cost and 50% built up area belonged to the developer, while remaining 50% belonged to the Plaintiff.

41. The learned Additional District judge further failed to appreciate that the Letter dated 17.03.1994 was signed by the developer as vendor and by the Plaintiff as confirming party, which shows that there was indeed an



Agreement of sale and purchase and **there was no question of grant of license to Defendants Nos.1 to 3.**

42. The Plaintiff has admitted that no charges were payable by the Defendants, which *further reflects that it was a pure sale transaction and no sort of license was ever given.*

43. It was further contended that the Agreement dated 04.02.1986, contained an *Arbitration clause* and since the disputes could not be resolved between the Plaintiff and GTPL, matter was referred to arbitration wherein an Award dated 17.07.2007 was passed. In the said Award, the Plaintiff was found at fault and was held liable to pay more than Rs.3,00,00,000/-, to GTPL.

44. PW-1 also admitted in his evidence that they had agreed to sell Block No. 4 to Tulip Buildwell Private Limited, as per Agreement to Sell dated 21.03.2005, but this fact was neither mentioned in the plaint nor was the same filed on record, to show the terms and conditions of the said Agreement to Sell. PW-1 further admitted in his cross-examination that at present, Block No. 4 was in possession of the Defendants and that Plaintiff had sold remaining part of Block No. 4, to buyers.

45. It was further contended that the *mesne profits* and damages have been wrongly awarded. The *mesne profits at the rate of Rs.75/- per sq. feet is absolutely excessive, since there is no proof to that effect.*

46. It is also not appreciated that the Block No. 4 as on 17.03.1994, was a bare barrack and was in a dilapidated condition. The Defendants had carried out extensive renovations at their own cost, to the knowledge of the Plaintiff and the rate of mesne profits so awarded to the Plaintiff, is much



higher than what on fact and under law, the Plaintiff could have been granted.

47. Mr. M. P. Golyan, director of the Defendants was claimed to be in possession of the Block No. 4. However, he has not been made a party to the present Suit. Even the family members of the directors who are the purchasers, have not been made a party. *Hence, the Suit filed by the Plaintiff was bad for misjoinder and nonjoinder the Suit Property.*

48. It is claimed that PW-1 had admitted that the present market value of Block No. 4, was Rs.6.5 crores, while the value of the same at the time of filing of the Suit was Rs.2.5 crores, which shows that the Suit has not been valued correctly and the Court had no pecuniary jurisdiction to entertain the Suit. *It is therefore, prayed that the impugned judgment is bad in law and in fact, it is liable to set aside.*

49. The **Defendants** in support of their Appeal, had filed the **Written Submissions**, which were essentially on the same grounds as taken in the grounds of the present Appeal.

50. The **Plaintiff** in its **Written Submissions** had stated that the learned Trial Court had rightly observed that the Defendants were not able to establish any right, title or interest in the Suit Property. The sister concerns of the Defendants were not a necessary party to the Suit Property. The mesne profits at the rate of Rs.75/- per sq. foot has been rightly granted, since the testimony of PW1 on this aspect remained completely un rebutted.

51. Even from the testimony of PW-1, the rent comes to more that Rs.75/- per sq. foot, while only Rs.75/- per sq. foot has been granted. There was no evidence led to the contrary by the Defendants. In the end, it is



submitted that the Defendants had filed various Suits in 1996-97 for Injunction against the Plaintiff, which all got dismissed.

52. *It is submitted that the Suit has been rightly decreed and **there is no merit in the present Appeal.***

Submissions heard and record perused.

53. The case of the Plaintiff is that it had given the Suit Premises admeasuring 2500 square feet in Block No.4 to Defendant Nos.1 to 3, on licence basis for a period of 09 months *vide* letter dated 17.03.1994. However, they failed to vacate the same and hence, the present Suit for Possession of the suit property, was filed.

54. The Defendants has challenged the findings of the learned Additional District Judge, on the preliminary ground and had claimed that the **Suit had not been signed, filed and verified by a duly authorised person.** The verification attached to the Plaint, was signed by one Sh. Bharat Bhaskar, who had stated that the contents of Paragraph No.1 of the Plaint were true with his knowledge, while contents of Paragraph Nos.2 to 14 were true as per the information and belief, and based on record.

55. It was claimed that this verification was not as per Order VI Rule 15 of the CPC and the Suit had not been instituted as per Order IV Rule 1 of CPC. *The defect in verification was not cured and therefore, on this factual and legal ground, the Suit of the Plaintiff was liable to be dismissed.*

56. The learned Additional District Judge had duly considered this objection and observed that even if there is any technical defect in the verification clause, the substantive rights of the parties cannot be defeated on this ground.



57. It is pertinent to observe that the Plaint had been verified by Sh. Bharat Bhaskar. *The* perusal of the Plaint shows that not only was it verified by Sh. Bharat Bhaskar, Director of the Plaintiff Company, on the basis of his knowledge, ***but also on the basis of records***, and was also duly supported with the Affidavit. Therefore, it could not have been said that the verification has been done on a hearsay, as had been asserted by the Defendants.

58. The learned Additional District Judge rightly held that the Suit was supported by a verification signed by Sh. Bharat Bhaskar. ***Therefore, it cannot be said that the Plaint was not duly verified by Sh. Bharat Bhaskar, Director of the Plaintiff Company.***

59. Another objection taken was that the ***Suit was bad for mis-joinder and non-joinder of the necessary parties***. It was claimed that Mr. M. P. Golyan, Chairman and Director of the Defendant Company and other family members have not been impleaded in this case. However, it has been rightly observed by the learned Additional District Judge that Mr. M. P. Golyan was the Director of the Companies and once Defendant Nos.1 to 3 had been impleaded, there was no need / requirement under law, to also implead the Directors of the Companies. Insofar, as the family members are concerned, from the Letter dated 17.03.1994 **Ex.PW-1/5**, it is evident that the possession had been handed over only to Defendant Nos.1 to 3. If the family members or sisters concerned are in possession, it is only through Defendant Nos.1 to 3, who are bound by the Judgement in this case.

60. The third party i.e. M/s GTPL was only a Developer with whom the Plaintiff had entered into the Development Agreement and was therefore, neither a necessary nor a proper party to the Suit. ***The learned Additional***



District Judge has rightly rejected this objection taken on behalf of the Defendants.

61. Likewise, *the objection in regard to jurisdiction, Court Fee and valuation* was duly considered and it was held that the Suit had been appropriately valued for the purpose of Court Fee and jurisdiction.

62. The Defendants have not been able to point out any discrepancy in the above said findings and therefore, these legal ground of Appeal, are also not tenable.

63. The **first challenge on merits**, raised by the Defendants is *that there is no Sale Deed in favour of the Plaintiff and there is no document to support that they are the owners of the entire land in question.*

64. In this context, it would be pertinent to refer to the testimony of PW-1 Sh. Bharat Bhaskar, Director in-charge of Plaintiff Company, who has explained in his cross-examination that *Sh. Amarnath Bhaskar* was the owner of the suit property, prior to 03.07.1962. He further explained that Khasra Nos.1723/1705, 1724/1705, 262 and 264 were owned by Sh. Amarnath Bhaskar, while other Khasra Nos.257/1, 258/1, 259 and 256 were owned by the Plaintiff, *Ishwar Industries Ltd*, which was incorporated in the year 1943.

65. He further explained that after demise of Sh. Amarnath Bhaskar in the year 1956, he was survived by his wife, four sons and one daughter. Consequently, his Property was mutated in the name of his four sons. However, by way of abundant caution, the Release Deed dated 08.06.1962 **Ex.PW-1/3**, had been executed by all the Legal Heirs of Late Sh. Amarnath



Bhaskar, in favour of the Plaintiff Company. Thereafter, the Plaintiff the ownership rights were being enjoyed by the Plaintiff.

66. Though much cross-examination of PW-1 had been effected in regard to the Khasra Numbers, on which the Suit Property was located, but there was no cogent evidence to the contrary, led by the Defendants. The evidence of PW-1 along with the Release Deed dated 08.06.1962 **Ex.PW-1/3**, established the proprietary rights of the Plaintiff, in the suit property.

67. It is explained on behalf of the Plaintiff that the entire piece of land was divided into 08 blocks, on which the construction had to be carried out by GTPL. Block No.5 was admittedly handed over to the Defendants and they are admittedly in its possession.

68. However, since dispute arose between the Plaintiff and GTPL, the Developer, the construction could not be commenced in Block No.5 and the Defendant Nos.1 to 3 were given 2500 square feet i.e. the suit property in Block No. 4, on a temporary basis. This is fully established by Letter dated 17.03.1994 written by Sh. Bharat Bhaskar, Director, Owner and Confirming Party to Crocus Chatties Pvt. Ltd. / Defendant No.2, which was counter-signed by GTPL, though its Authorized Representative, Sh. Acharya Arun Dev.

69. Thereafter, *vide* Letter dated 20.01.1996 **Ex.PW-1/6**, the Plaintiff informed M/s Gallus Chattels Pvt. Ltd./Defendant No.1 that temporary accommodation was provided to them in Block No.4. However, it was required to be developed, as per sanctioned plan by the developer M/s Growth Techno Projects Ltd (GTPL). Therefore, a request was made to



vacate Block No.4 forthwith by removing the partition wall, fixture and fitting and hand over the said shed to the Plaintiff.

70. This was followed by a Letter dated 25.01.1996 **Ex.PW-1/7**, wherein again, in continuation of Letter dated 20.01.1996 **Ex.PW-1/6**, it was reiterated that peaceful vacant possession of Block No.4, be handed over and that Plaintiff is entitled to damages and compensation for the use and occupation thereof, at the prevailing rate of Rs.30/- per square feet, in respect of 2500 sq. Feet, that comes to Rs.75,000/- per month.

71. Another Letter dated 06.02.1996 **Ex.PW-1/8** was written by Plaintiff to M/s Gallus Chattels Pvt. Ltd. / Defendant No.1, reiterating and requesting them to handover the vacant possession immediately.

72. Thereafter, *vide* Letter dated 24.05.1996 **Ex.PW-1/11**, Plaintiff agreed to give 180 days to the Defendants, for making an arrangement for alternative accommodation.

73. When nothing moved, again Letter dated 08.08.1996 **Ex.PW-1/9** was issued to the Defendants, informing that the contractor has commenced the work, but the counsel of the Defendants had threatened him to stop the work. It was intimated that legal and criminal action would be initiated by the Plaintiff.

74. This aforesaid correspondence continued and again a Letter dated 20.02.1997 **Ex.PW-1/10** was written by Plaintiff to the Defendants, stating that the time for making arrangements for alternative accommodation has expired on 23.11.1996 and despite repeated requests, Suit Property has not been vacated and damages @ Rs.75/- per sq. foot, were claimed with additional Notice of vacating the Suit Property within Fifteen days.



75. Plaintiff thus, issued a Legal Notice dated 01.09.2005 **Ex.PW-1/13**, narrating the entire backdrop, as stated above, and also made a reference to Suit Nos.173/1997 and 297/1997, filed by the Defendants, in the Court of learned Civil Judge, Delhi, which got dismissed on 27.07.1997. Hence, it was requested that the temporary permission granted to Defendant Nos.1 to 3 stands vacated and Defendant No.4 was a trespasser, having no right or title in the suit premises and all were requested to vacate the Suit Property and also that in default, the Plaintiff would be entitled to *mesne* profits at the rate of Rs.75/- per square foot.

76. *PW-1 Sh. Bharat Bhaskar* has not only proved this entire correspondence, but has also explained the entire chronicle of events. There is essentially no material cross-examination, on any of these aspects.

77. In fact, *Mr. G. P. Chaubey, DW-1*, Authorised Representative of the Defendants, has admitted that the possession of Block No.4 was given to the Defendants and sisters concerned, as per Letter dated 17.03.1994 **Ex.PW-1/5**, which clearly indicated that the suit property was being handed over on temporary basis. The admission of the Defendants also confirmed that they were handed over possession of suit property in Block No. 4, on temporary basis.

78. *DW-1, Mr. G. P. Chaubey* further admitted that 17 Units had been sold to the Defendants and their sisters concerns and family members, which were to be constructed by GTPL. In terms of Property Development Agreement dated 04.02.1986 between Plaintiff and GTPL, the entire project was to be developed on a 50-50 basis and Blocks Nos.1 to 8, were carved out for this purpose. GTPL was to raise the construction, however, when the



construction could not be raised for long time, GTPL and Plaintiff gave possession of suit property in Block No.4 to Defendants and the family members, in terms of Letter dated 17.03.1994 **Ex.PW-1/5**.

79. This fact was also admitted by **DW-5 Mr. K. K. Golyan**, who was one of the Directors of the Defendants, who also reaffirmed that 17 Units had been sold to the Defendants, but construction could not be raised for a long time and thus, the Plaintiff gave possession of suit property in Block No.4 to the Defendants, their sister concerns and family members, as per Letter dated 17.03.1994 **Ex.PW-1/5**.

80. DW-1, **Mr. G. P. Chaubey** has further admitted that GTPL had given the construction rights on Block No.4, to its sister concerned M/s Asteroids Construction Pvt. Ltd. *vide* Agreement dated 19.10.1995, but disputes arose between the Plaintiff and GTPL and no construction could be raised, but the possession of the suit property in Block No.4, remained with the Defendants, its sister concerned and family members.

81. DW-1 further explained that entire Block No.4 was over an area of 7500 sq. feet, which consisted of an office portion and store portion. It was admittedly, 2,500 sq. feet, i.e. the suit property, which were in the use and occupation of the Defendants. However, store portion was illegally demolished on 03.03.1997, while the offices remained in the lawful possession of the Defendants. It was further deposed that Block No.4 was like a barrack, which got renovated by Defendant Nos.1 to 3 to a large extent, by spending huge amount to the knowledge of Plaintiff and GTPL, which continued to use the same for its Offices.



82. While DW-1, *Mr. G. P. Chaubey* claimed that their possession was in the capacity of owners, but it is evident from the Letter dated 17.03.1994 **Ex.PW-1/5** that they came into possession on temporary basis. They would have acquired ownership in the Units to be constructed in Block No.4, only after they were constructed and had no proprietary / ownership rights in the suit property, in which they had been inducted as licensees. *Their claim of being in the possession of the Suit Property as owners, is completely belied by their own admissions in the Written Statement as well as in the evidence.*

83. **DW-6** *Mr. Ajay Kumar Sharma*, Employee of M/s Nulon India Ltd. / Defendant No.4, also in his cross-examination admitted that the possession of the Suit Property located in Block No.4 had been given on the basis of Letter dated 17.03.1994 **Ex.PW-1/5**. A suggestion was given to him that Unit Nos.164 and 165, which they had agreed to purchase from the Plaintiff, never got constructed and therefore, there was no question of the Defendants claiming any ownership rights in Block No. 4.

84. It is therefore, established that the Defendants got inducted in the suit premises vide a Letter dated 17.03.1994 **Ex.PW-1/5** as the licences for a temporary period of nine months, though thereafter, they have continued to be in possession. It has also been suggested by the Plaintiff that the Suits for Permanent Injunction filed by the Defendants, against dispossession by the Plaintiff, were dismissed in 2012.

85. Much confusion has sought to be created by the Defendants, *in regard to the identity of the suit property.* It has emerged in the evidence of DW-5 Sh.--- and DW-6, *Mr. Ajay Kumar Sharma* that the total area of Block No.4 is 7500 sq. feet, out of which only 2500 sq. feet had been given to the



Defendants and admittedly, they are only in possession of this portion of Block No.4 and remaining portion had always been in possession of the Plaintiff. A suggestion was given that part of Block No.4 was sold to Ms. Ravindra Kaur and other portion to M/s Tulip Buildwell Private Limited, though the transactions could not go through. However, whether the Plaintiff sold the remaining portion or whether the sale transactions got materialised, both are absolutely irrelevant, in so far as the controversy between the Plaintiff and Defendants is concerned.

86. Moreover, DW-1 has admitted in the cross-examination that while they are in possession of 2500 sq. feet, the remaining portion of Block No.4 has been separated with a boundary wall and a separate gate. It thus, emerges that neither there is any dispute about the identity of the Suit Property, which is 2500 sq. feet, nor there is any challenge to the Plaintiff having Proprietary Rights. The Defendants admittedly, came into possession of the Suit Premises through the Plaintiff *and having taken the possession from them, they are estopped in challenging the ownership of the Plaintiff.*

87. At the cost of repetition, it may be stated that the Defendants themselves have asserted that they had purchased 17 Units from the Plaintiff and that possession of Block No.5 had been given to them, by the Plaintiff. However, because the Block 5 was required for construction, the defendants were given the suit property on temporary basis, for nine months to facilitate the construction of Block 5, which admittedly is in their possession, in view of the overwhelming evidence and admissions of the Defendants. The ownership and proprietary rights of the Plaintiff in Block No. 4, is established and also that the Defendants were inducted in the Suit Premises,



only on temporary basis, though thereafter, they have failed to vacate the suit premises.

88. The Learned Additional District Judge has therefore, rightly held that the Defendants, are liable to hand over the physical and vacant possession of the Suit Property admeasuring 2500 sq. feet in Block No.4, as shown in Site Plan **Ex.PW-1/4**. *Therefore, the Decree of Possession has been rightly passed in favour of the Plaintiff.*

89. The second major challenge is in regard to the *mesne profits and user occupation charges*. The Plaintiff in its Letter dated 25.01.1996 **Ex.PW-1/6** has claimed user occupation charges at the rate of Rs.30/- per sq. feet, claiming it to be the prevailing rate. Thereafter, in Letter dated 20.02.1997 **Ex.PW-1/10**, it was asserted that the prevailing rate, was Rs.75/- per sq. ft.

90. In order to prove the prevailing rate of rent, the Plaintiff had given suggestions to DW-1 Sh. G. P. Chaubey that the prevailing market rate was Rs.75/- per sq. foot. The questions were also put to DW-1, in regard to the Property in Block No.5, which had been rented out by the Defendants to M/s Herbalife International India Pvt. Ltd. DW-1 stated that area on rent was about 6500 sq feet, but claimed that rent was charged on lump sum basis.

91. It was admitted that M/s Herbalife International India Pvt. Ltd. was a tenant in the year 2005. DW-1 again stated that he was not aware, if in the year 2005, rental was Rs.3,50,000/- per month. It was admitted that the tenancy of M/s Herbalife International India Pvt. Ltd. was renewed three times from 2005 and at the time of every renewal, the rent was enhanced. It



was denied that the rental was being paid by M/s Herbalife International India Pvt. Ltd. at the rate of Rs.7,50,000/- per month.

92. From these admissions made by DW-1, it emerges that the user occupation charges at the rate of Rs.75/- per square foot, have been reasonably awarded by learned Additional District Judge, in the light of the testimony of DW-1. However, the user occupation charges have been granted w.e.f. 23.11.1996, while, the Suit has been filed on 19.09.2005 and therefore, the user occupation charges could have been claimed only for the three years prior to the institution of Suit, i.e., since August, 2002.

93. ***Therefore, the user occupation charges are hereby, modified and are granted w.e.f. 01.09.2002 instead of 23.11.1996.***

94. The interest @ 12% per annum on the amount prior to filing of the Suit till the date of Decree, i.e. 19.02.2020 and in case, the possession was not handed over to the Plaintiff @ 15% per annum till the date of handing over of the possession, is fully justified, in the facts and circumstances of this case. The punitive cost of Rs.3,00,000/- has also been rightly imposed by the learned Additional District Judge.

Conclusion:

95. In light of the aforesaid discussion, impugned Judgment dated 19.02.2020 for possession is upheld, while it is **partly modified**, to the extent of awarding damages at the rate of Rs.75/- per square foot for the suit property admeasuring 2500 square feet, ***to be payable from 01.09.2002 instead of 23.11.1996.***

96. Accordingly, the judgement and Decree is **partly allowed** and the impugned Judgment dated 19.02.2020 stands modified.



2026:DHC:5097



97. The pending Application(s), is any, are **disposed of accordingly.**

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 05, 2026/R/N