



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

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*Reserved on: 14<sup>th</sup> January, 2026  
Pronounced on: 28<sup>th</sup> March 2026*

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**RSA 149/2022**

**Sh. RAJENDER KUMAR AGGARWAL**

S/o Late Sh. R.L. Aggarwal

Shop No. b-2/6,

(Private Shop No. 6 in Property No. B-2)

Ground Floor, Property No. B-2

Ganga Vihar, Gokalpuri, Main Road

Delhi-110097

.....Appellant

Through: Mr. G. S. Narula with Mr. Vijender  
Singh, Advocates.

versus

**BHIMSEN SHARMA**

S/o Late Sh. Girwar Singh

R/o B-89, Village Gokalpur

Delhi-110094

.....Respondent

Through: Mr. R.L. Sharma, Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

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

**NEENA BANSAL KRISHNA, J.**

1. The present Regular Second Appeal has been filed on behalf of the *Appellant/Defendant* to assail the *Judgment and Decree dated 09.09.2022*, passed by the learned Additional District Judge-01, Delhi, in RCA DJ No.35/2021, whereby the Judgment and Decree dated *24.11.2021*, of **Possession in favour of the Plaintiff/Respondent**, under Order XII Rule 6



of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) of the learned Senior Civil Judge, Delhi, **has been upheld.**

2. The Plaintiff/Respondent, Mr. Bhimsen Sharma, filed a *Suit bearing CS No.797/2019 for Possession, Arrears of Rent amounting to Rs.41,400/-, Mesne Profits and Permanent Injunction.*

3. **Briefly stated, the facts** were that the Plaintiff/Respondent was the owner/landlord of *Property bearing No. B-2, Ganga Vihar, Gokalpuri, Main Road, Delhi-110094* in which the Defendant, Mr. Rajender Kumar Aggarwal, **was inducted as a tenant** in respect of one shop bearing No. B-2/6 situated on the ground floor of the aforesaid property (*hereinafter referred to as the "suit property"*), at a monthly rent of Rs.1,800/-, excluding electricity and water charges.

4. It was further averred that the Plaintiff/Respondent, became the co-owner of the Suit Property after the demise of his father, Mr. Girwar Singh Pardhan, on 19.03.2014 and his mother on 03.02.2014 and the Relinquishment Deed dated 16.05.2018, which was executed by the other legal heirs i.e., Smt. Jai Shri Pathak, Smt. Maya Devi and Smt. Savita Sharma, the sisters of the Plaintiff.

5. The Plaintiff also has two brothers, namely, Sh. Mool Chand Sharma and Sh. Ramesh Chand Sharma, who subsequently, had a family partition in terms of MOU/Partition Agreement dated 04.01.2019, whereby the Suit Shop including Shop Nos. 3 and 5, came to the share of the Plaintiff/Respondent. The other Shop Nos. 2, 7 and 9 came to the share of Sh. Mool Chand Sharma and Shop No. 1, 4 & 8 have come in the share of Sh. Ramesh Chand Sharma, while Shop No. 10 was kept for the purpose of



entrance towards the back portion to be commonly used by all the three brothers.

6. The Plaintiff had earlier filed a Petition under Section 14(1)(e) of the Delhi Rent Control Act (*hereinafter referred to as "DRC Act"*) against the Appellant, wherein a report was called from the SDM, stating that the DRC Act was not applicable to the Suit Property located in Village Gokalpur. *Consequently, the Suit for Eviction was withdrawn with liberty to file afresh on 30.11.2019.*

7. The Plaintiff/Respondent further claimed that the Defendant/Appellant was a regular defaulter in payment of rent and had not paid the arrears of rent since 01.01.2018, despite repeated requests. A Legal Notice dated 07.11.2019 was served upon the Defendant/Appellant to seek the payment of arrears of rent and to vacate the premises on or before 01.12.2019, failing which he would be liable to pay damages @ Rs.10,000/- per month till the property is vacated. The Notice was returned with the remark "*shop closed*".

8. Accordingly, the Plaintiff filed the Suit seeking Recovery of Possession and Arrears of Rent amounting to Rs.41,400/-, w.e.f. 01.01.2018 till 30.11.2019 @ Rs.1,800/- per month, along with the interest @ 12% p.a., and Mesne Profits @Rs.10,000/- per month.

9. The **Defendant/Appellant, in his Written Statement** took the *preliminary objection* that he had been in possession of the tenanted premises since October 1986, at a rent of Rs.275/- per month, under Mr. Girwar Pradhan. After his demise on 19.03.2004, he had been paying the rent to his son, Mr. Ramesh Sharma, without default. It was further contended that the Plaintiff had no *locus* to file the present Suit and that the



tenancy/lease was continuing, with the rent being periodically enhanced by 10% per month, every three years.

10. It was further asserted that the *Suit was not maintainable under Section 50 of DRC Act*, since the rent in respect of the Suit shop was Rs.900/- per month and only Rent Controller had the jurisdiction to adjudicate the dispute. It was also urged that the Plaintiff *did not disclose any cause of action and that the Suit was liable to be rejected under Order VII Rule 11 CPC*.

11. **On merits**, it was admitted that the Defendant was inducted as a tenant by Late Sh. Girwar Pradhan, father of the Plaintiff in the year 1986 at a monthly rent of Rs.275/- per month. The Defendant stated that he had been paying rent regularly to Late Mr. Girwar Pradhan. It was also admitted that the present rate of rent was Rs.900/- per month, which he had been paying to Mr. Ramesh Sharma. The Defendant averred that the rent for the months of January and February, 2019 had been duly tendered and accepted by Mr. Ramesh Sharma and since there were cordial relations between the parties and no receipt, was ever issued.

12. It was further stated that by virtue of *Notification dated 21.02.2019, Village Gokalpur had been urbanized* and it had ceased to be a Village under section 507 clause (a) of The Delhi Municipal Corporation Act and hence, this court had no jurisdiction to entertain the present suit. *It was, therefore, submitted that the Suit of the Plaintiff, was liable to be dismissed*.

13. *The Plaintiff sought a decree on admission under Order XII Rule 6 CPC*. Consequently, the arguments were addressed by the Plaintiff/Respondent, but the Defendant/Appellant failed to address arguments despite innumerable opportunities.



14. The **learned Civil Judge**, after considering the rival contentions of the parties, concluded that there was admittedly a relationship of landlord and tenant between the parties. It was further held that the bar under Section 50 of DRC Act was not applicable, as the provisions of the Act had not been extended to the Suit Property by any Notification. The Appellant's challenge to the co-ownership of the Plaintiff, to the Relinquishment Deed dated 16.05.2018 and the MOU/Partition Deed dated 04.01.2019, was noted to have never been raised in the Written Statement. **Consequently, the Suit for Possession in respect of the Suit premises was decreed.**

15. Aggrieved thereby, the *Appellant/Defendant preferred RCA DJ No. 35/2021, filed before the learned Additional District Judge*, which was dismissed *vide* Judgment dated 09.09.2022, and the decree for Possession was upheld.

16. Aggrieved by the said Judgment, **the present Regular Second Appeal has been preferred, by the Defendant/Appellant.**

17. The **grounds of Appeal** are that no Application under Order XII Rule 6 CPC was filed by the Plaintiff, despite which the decree has been passed on the basis of admissions. It was contended that there was no admission of the landlord-tenant relationship between the Appellant and the Plaintiff.

18. Furthermore, the learned Trial Court as well as the Appellate Court, erroneously observed *that the Defendant/Appellant had not placed on record any rent receipt to show payment of rent to Mr. Ramesh Sharma, whereas it was the case of the Appellant that no rent receipt was being issued.*

19. The ownership of the Respondent was also not proved, and the Relinquishment Deed and the MOU, were yet to be proved in evidence as well. The specific denial of the landlord-tenant relationship by the Appellant



was not considered by the Courts, and it was erroneously observed that the relationship stood admitted and established on record, despite there being no document on record to support such a finding.

20. It had further not been considered that the Electricity Bill in respect of the tenanted premises was installed in the name of Mr. Mool Chand Sharma and not the Respondent, and that there was no basis to assume that he was the owner-landlord in respect of the Suit premises.

21. The Notification of urbanisation was on record, and it has been erroneously observed that it was concealed by the Appellant. Moreover, because of COVID-19 Pandemic and the resultant lockdown, the hearings were being conducted on video-conferencing, and therefore, the Appellant defaulted in appearance in some hearings. It is stated that the past conduct of the Appellant has not been taken into consideration. He has been diligently following up the progress of the instant Suit and it was only on account of Pandemic, that he defaulted in his appearance.

22. It was asserted that it has not been taken into consideration that the Appellant has been in possession of the tenanted shop since the year 1986 and has been sustaining his family from the earnings thereof. The impugned *ex-parte* Order dated 24.11.2021 was passed in undue haste, without affording proper opportunity of hearing to the Appellant.

23. It was *lastly urged* that the Legal Notice dated 07.11.2019 had admittedly not been served upon the Appellant, having been returned with the remark '*shop closed*'. Thus, there was no service of the said Notice.

24. It was pointed out that, on the basis of the Legal Notice dated 07.11.2019, Eviction Petition RC ARC No. 44/2019 had been filed by the Respondent, which was subsequently withdrawn on 30.11.2019. No separate



Legal Notice thereafter, was ever issued to the Appellant. The Legal Notice relied upon by the Respondent/Plaintiff was, therefore, prior to the filing of the Eviction Petition under the DRC Act.

25. On the aforesaid grounds, it was submitted that the impugned Judgment of the learned Trial Court, as well as that of the learned Appellate Court, be set aside.

**Submissions heard and the record perused.**

26. The first technical objection taken on behalf of the Appellant, is that the Impugned Order for Possession has been passed under Order XII Rule 6 CPC, even though no formal Application under the said provision was filed by the Plaintiff/Respondent. However, this technical objection has no basis.

***Order XII Rule 6 CPC does not mandate that an Order, on the basis of admissions, can be passed only upon the filing of a formal Application.***

The provision empowers the Court to pass a decree in cases where there are clear and unambiguous admissions in the pleadings. In such circumstances, the absence of a formal application is inconsequential. *This technical objection raised on behalf of the Appellant, therefore, has no merits.*

27. On merits, the Plaintiff/Respondent had explained that the Defendant/Appellant had been inducted as a tenant in the Suit Shop by his father, Late Mr. Girwar Pradhan, since 1986. It has further been explained that upon the demise of Mr. Girwar Pradhan on 19.03.2014, the property devolved upon his legal heirs. The three daughters had relinquished their respective shares in the Property in favour of the three brothers, namely the Plaintiff i.e. Mr. Bhimsen Sharma, Mr. Ramesh Sharma and Mr. Mool Chand Sharma. Thereafter, the three brothers entered into a MOU/Family Partition dated 04.01.2019, whereby the Suit Shop fell in the share of the



Plaintiff/Respondent. These documents have been relied upon by the Plaintiff to establish his right in the Suit Property.

28. The Appellant has also admitted that he was inducted as a tenant by Sh. Girwar Pradhan, father of the respondent. He denied that the Respondent was a Landlord, simply on the ground that after the demise of Mr. Girwar Pradhan, rent was being paid to the other son, namely, Mr. Ramesh Chand. However, this assertion does not detract from the position that the Plaintiff/Respondent is also one of the sons and, therefore, a co-owner of the property.

29. The Plaintiff has, in the first instance, relied upon the MOU/Partition Settlement dated 04.01.2019 to assert that the suit shop has fallen to his share. Even otherwise, and independent of the said MOU/Partition Settlement, the Plaintiff/Respondent would continue to be a co-owner of the suit property. It is well settled that a co-owner is competent to maintain a Suit for Possession, Recovery of Rent against a tenant without impleading the other co-owners as parties. If any Decree is passed in the Suit in favour of the Plaintiff, it does not disentitle or prejudice the rights of the other co-owners, who *inter se* have an absolute right to agitate in respect of their respective rights in appropriate proceedings.

30. Therefore, in the present case, the Defendant, having been inducted as a tenant under Late Mr. Girwar Pradhan, continued as a tenant under his legal heirs, including the Plaintiff/Respondent, upon devolution of the Suit property. The contention of the Appellant that the Respondent did not become the exclusive owner/landlord of the suit property or that the tenancy continued exclusively under Mr. Ramesh Kumar, therefore, has no merit.



31. The next objection taken on behalf of the Appellant, was that the Village, Gokalpur, had been urbanised *vide* a Notification and, therefore, the bar under Section 50 of DRC Act was attracted. However, it is evident from the record that an *Eviction Petition under Section 14(1)(e) of the DRC Act* had earlier been filed, wherein a Report of the SDM was submitted, wherein it was stated that the provisions of the DRC Act had not been extended to the suit property by virtue of any Notification. Consequently, the Eviction Petition was withdrawn on 30.11.2019. *In the absence of any Notification extending the provisions of the DRC Act to Village Gokalpur, the bar under Section 50 of the DRC Act is not attracted.*

32. The third contention raised by the Appellant was *that there was no service of Legal Notice*, because the Plaintiff himself had stated in the Plaint that it was returned with the endorsement that the shop was closed.

33. It is pertinent to note that the Suit was filed on 16.12.2021. In the case of *Nopany Investment (P) Ltd, vs. Santokh Singh* HUF (2008) 2 SCC 728, it has been held that the hyper technicalities, cannot defeat the right of the landlord/tenant and *the filing of a Suit itself is a sufficient notice to the tenant about the intention of the Plaintiff*, to seek his eviction and arrears of rent. This hyper technical objection raised by the Appellant in this regard is, therefore, also not tenable.

34. There is no substantial question of law for consideration which has been raised in the present Regular Second Appeal. The challenge raised by the Appellant essentially pertains to findings of fact, which is beyond the scope of a Regular Second Appeal.



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35. There is no merit in the present Regular Second Appeal, which is hereby dismissed and disposed of accordingly. Pending Applications, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**MARCH 28, 2026  
RS**