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

+ RC.REV. 359/2018 & CM APPL. 49793/2022  
MOHD YASEEN ..... Petitioner

Through: Mr Dalip Singh, Advocate

versus

GULZAR BEGUM ..... Respondent

Through: Ms. Zehra Khan, Advocate.  
(DHCLSC).

% Reserved on: 21<sup>st</sup> December, 2022  
Date of Decision: 4<sup>th</sup> January, 2023

**CORAM:**  
**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

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

**MANMEET PRITAM SINGH ARORA, J:**

**CM APPL. No. 49793/2022**

1. This is an application filed by the Respondent, landlady, seeking a direction to the non-applicant, tenant, to pay use and occupation charges at the prevailing market rent during the pendency of the present revision petition, including the arrears from the date of the passing of the eviction order dated 07.05.2018.
2. The subject matter of the revision petition is one shop admeasuring 8' 3" X 10' 2" situated on the ground floor bearing no. 875, Gali Kuppewali, Ballimaran, Delhi 110006 ('tenanted premises'). A decree of eviction has been passed by the Trial Court in favour of the applicant and against the tenant.

3. Learned counsel for the Respondent states that the tenancy stands terminated with passing of the decree of eviction and therefore, the Petitioner herein is liable to pay compensation for use and occupation of the premises at the same rate at which the landlady would have been able to let out the premises and earn the rent if the tenant would have vacated the tenanted premises. She relies upon the judgment of the Supreme Court in *Atma Ram Properties Pvt. Ltd. v. Federal Motors Pvt. Ltd., (2005) 1 SCC 705*. She states that with the application, the Respondent has placed on record a rent agreement dated 09.12.2019 and 13.10.2020 to demonstrate the prevalent market rate of shops located nearby and in the same area. She states that the market rent payable and prevalent for a similar shop, at a similar location is between Rs. 12,000/- to Rs. 15,000/- per month.

4. The Petitioner has filed his reply to the said application. In the reply, the Petitioner has not disputed the averments of the Respondent with respect to the prevalent rate of rent as noted above. The Petitioner in the reply has, however, opposed the prayer on the ground that he disputes the Respondent's claim of ownership of the tenanted premises.

5. The oral submissions of the learned counsel for the Petitioner were also to the same effect. He states that since the Petitioner is claiming to be the owner of the tenanted premises, no direction for payment of user charges can be passed during the pendency of the revision petition. Though, time for filing written submissions was sought by the Petitioner on 21.12.2022, no fresh submissions were filed on record.

6. This Court has heard the parties and perused the record. The Respondent, landlady, in the eviction petition had pleaded that the title of the subject shop devolved upon her in the following manner:

- i. Mohd. Rashid, the grandfather-in-law of the Respondent became the owner *vide* registered sale deed dated 26.04.1939, which is placed on record with the eviction petition.
  - ii. After his death, the property devolved on his son, Mohd. Sadiq.
  - iii. After the death of Mohd. Sadiq on 27.07.1991, the property devolved on Mohd. Farooq, the husband of the Respondent.
  - iv. After the death of Mohd. Farooq on 03.03.2001, the Respondent and her children became owner of this property. All the children executed a relinquishment deed dated 13.03.2015 in favour of the Respondent. In this manner, the Respondent became the absolute owner of the property.
  - v. The property stands mutated in the municipal records in the name of Respondent and she is paying house tax.
7. It was further averred in the eviction petition that the subject shop was let out to Mohd. Naseer, the grandfather of the Petitioner herein at the rate of Rs. 20/- per month and after the death of Mohd. Naseer in November, 2016, his son Jameel became the tenant and after the death of Jameel, the Petitioner herein became the tenant at the rate of Rs. 100/- per month.
8. The Petitioner herein has not disputed the statement of the Respondent that the subject shop was purchased by the Respondent's grandfather-in-law of the Petitioner *vide* registered sale deed dated 26.04.1939 and the fact house tax is being paid by the Respondent herein.
9. The Petitioner to rebut the title of the Respondent has set up two oral pleas, unsupported by any documents. *Firstly*, it is alleged that the grandfather of the Petitioner and father-in-law of the Respondent were cousins and the subject shop fell to the share of the Petitioner's grandfather

in an oral settlement. *Secondly*, in the alternative, it is alleged that the Petitioner has become the owner of the subject shop by adverse possession, since the Petitioner has been in continuous and peaceful possession of the subject shop for 25 years.

10. The plea of oral settlement cannot be countenanced in light of the registered title document i.e., sale deed dated 26.04.1939, standing in favour of the predecessor of the Respondent. The Supreme Court in ***Abid-Ul-Islam v. Inder Sain Dua, (2022) 6 SCC 30***, has held that for availing a leave to defend under Section 25B(5) of the Delhi Rent Control Act, 1958, a mere assertion *per se* would not suffice and therefore, not give rise to a triable issue. Further, the Petitioner despite being aware of the claim of ownership made by the Respondent by issuing a legal notice dated 16.12.2017 and filing the eviction petition, has not filed any legal proceedings for seeking a declaration of his alleged ownership. Therefore, *prima facie*, the Petitioner's challenge to the title of the Respondent does not have any merit.

11. With respect to the alternative plea of the Petitioner that he has become an owner of the subject shop by adverse possession, the said plea is not maintainable in law being mutually destructive with his plea of challenging the ownership rights of the Respondent. [***Bharat Bhushan Jain v UOI, (2014) SCC Online Del 3577***], Thus, *prima facie*, the plea of adverse possession is also not maintainable. Further, the plea of adverse possession is unsubstantiated from the record.

12. The Supreme Court in its recent pronouncement ***Martin and Harris Private Limited and Another v. Rajendra Mehta and Others, (2022) 8 SCC 527***, reviewed all the judgments including ***Atma Ram Properties*** (supra) and reiterated that after the passing of the decree of eviction, the tenancy

terminates and from the said date the landlord is entitled for mesne profits or compensation for his/her deprivation of the use of the tenanted premises. The Court held that it is equitable and reasonable for the High Court to direct the tenant to pay compensation while seeking a stay of the decree of eviction.

13. The Respondent, landlord, has pleaded financial hardship and the hardship of her dependent handicapped son for who's *bona fide* need she requires the tenanted premises. In the facts and circumstances of this case, considering the material on record evidencing the rate of prevalent rent at Rs 12,000/- to Rs. 15,000/-, which is not disputed by the Petitioner, and considering the fact that the subject shop is being used by the Petitioner for commercial purposes, the current monthly user of the subject shop is fixed at Rs. 12,000/- per month to be paid in advance on 10<sup>th</sup> day of every month. To illustrate, for the month of January, 2023, the Petitioner shall pay the monthly user charges on or before 10<sup>th</sup> January, 2023, for February, 2023, the monthly user charges shall be paid on or before 10<sup>th</sup> February, 2023 and so on.

14. With respect to arrears, the eviction order was passed on 07.05.2018 and therefore, the tenancy as per the provisions of Delhi Rent Control Act, 1958, stood terminated on the said date. The Petitioner is therefore, liable to pay arrears from 07.05.2018 to 31.12.2022. The Respondent has placed on record Rent Agreements dated 09.12.2019 and 13.10.2020 to substantiate the plea that the prevalent rate of rent is between Rs. 12,000/- to Rs. 15,000/-.

15. Accordingly, the user charges for the period 07.05.2018 to 31.12.2020 is fixed at Rs. 11,000/- per month. The user charges for the month of May,

2018, will be proportionate and shall be payable for 08.05.2018 to 31.05.2018.

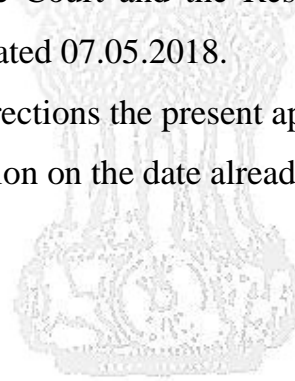
16. The user charges for the period 01.01.2021 to 31.12.2022 is fixed at Rs. 12,000/- per month.

17. The arrears of user charges for the period 07.05.2018 to 31.12.2022 shall be payable by the Petitioner in three equal monthly installments payable on 31.01.2023, 28.02.2023 and 31.03.2023.

18. It is made clear that if the Petitioner makes any default in making payment of the current monthly charges or the arrears as determined above, the interim order dated 31.07.2018 will stand automatically vacated without any further orders from the Court and the Respondent may take steps to execute the eviction order dated 07.05.2018.

19. With the aforesaid directions the present application stands allowed.

20. List the revision petition on the date already fixed i.e. 09.03.2023.



**MANMEET PRITAM SINGH ARORA, J**

**JANUARY 4, 2023/msh/aa**