

IN THE COURT OF SH. HEM SINGH, DISTRICT JUDGE-01,
(EAST), KARKARDOOMA COURTS, DELHI

CS No. 605/2023

CNR No. DLET01-013017-2023

In the matter of:

Zeenat Kausar,
W/o Late Ziauddin
R/o B-4/141, Yamuna Vihar,
Bhajanpura, Delhi-110053

.....Plaintiff

VS.

1. Mohd. Shakir

S/o Mohd Ishaq
(Mob-9654445504)
R/o 781-B, Jheel Khuranja
Delhi 110031

Also at- Shop No.-R 175/10
Laxmi Nagar
Near Jain Mandir
Ramesh Park Delhi-11009

2. Razi Ahamed

S/o Sh. Ali Hassan
(Mob-9891160013)
R/o J-10 Gali No. 12
Third Floor (J-Extension)
Ramesh Park, Near Abdulla Masjid,
Laxmi Nagar, Delhi-110092.

Also at- J-3/47, Second Floor,
Murti Wali Gali,
J-Extension, Laxmi Nagar, Shakarpur,
Baramad Shakarpur, Delhi-110092

.....Defendants

Date of Institution of the suit : 17.11.2023
Date of filing of application u/O XII Rule 6 of CPC : 20.08.2024
Application reserved for order on : 20.05.2025
Date of disposal of application : 18.08.2025

ORDER ON APPLICATION UNDER ORDER XII RULE 6
READ WITH SECTION 151 OF CPC

(1) Vide this order, I shall dispose of an application u/O XII Rule 6 r/w section 151, The Code of Civil Procedure, 1908 (hereinafter referred as 'CPC') filed by the plaintiff.

(2) The plaintiff filed the present suit for possession, recovery of arrears rent, pendent lite rent and future rent along-with permanent injunction against the defendant no. 1 and 2 in respect of property bearing no. J-10, Gali No-12, Third Floor, (J-Extension), Ramesh Park, near Abdulla Masjid, Laxmi Nagar, Delhi-110092 (hereinafter called the suit property).

(3) **Brief facts of the case:**

a) The plaintiff is a lawful absolute and registered owner of the aforesaid suit property. In August, 2018, the defendant no. 1 approached the plaintiff to take on rent the suit property. On mutual agreement, the said property was given to the defendant no. 1 on monthly rent of Rs.12,000/- excluding electricity and maintenance charges and a rent agreement was executed between both the parties. Initially, the suit property was rented out to the defendant

no. 1 for 11 months, however, later on the said period was extended up to 20.07.2021 for the same rental amount and conditions agreed vide rent agreement dated 20.08.2020.

b) It is stated in the plaint that the defendant no. 1 had made payment of agreed rent up to January 2021, after which the defendant no. 1 stopped making rent payments to the plaintiff. On inquiry, defendant no. 1 requested some time for making the payment of the outstanding rent in installments to which the plaintiff agreed. This was followed by issuance of cheque by the defendant no. 1 for payment of dues but the cheque got bounced on its presentation. Thereafter the defendant no. 1 did not make the payment of outstanding rent and consequently on 02.03.2022 the plaintiff had sent a legal notice for eviction to the defendant no. 1.

c) It is further stated that the plaintiff's son, who had returned back from abroad and learnt about the prevailing situation, along-with plaintiff visited the suit property, however, after reaching to the suit property they came to know that another unauthorized individual (the defendant no. 2) was living there as a tenant without any knowledge of the plaintiff. When confronted, the defendant no. 1 disclosed the fact that he rented out the plaintiff's property to defendant no. 2 because of his poor financial condition which arose due to COVID-19 situation. This was followed by a warning by the plaintiff to both the defendants to pay out the outstanding rent dues and vacate the said rented property within given period to which defendant no. 1 agreed. After this, defendant no. 1 again issued a cheque for payment of rent dues which again

got bounced. The defendant no. 1 and defendant no. 2 kept making excuses and delaying the matter and ultimately refused to make rent payments and to vacate the suit property.

d) Seeing no other way, the plaintiff has filed the present suit for decree of possession, a decree of recovery of arrears of rent amounting to Rs. 3,96,000/- (rupees three lakh ninety six thousand only) towards illegal occupation of the suit property, pendent lite rent and future rent along-with permanent injunction.

(4) The defendant no. 1 filed his Written statement in which he stated that he was a tenant in the property bearing No. J-10, Gali No-12, Third Floor, (J-Extension), Ramesh Park, near Abdulla Masjid, Laxmi Nagar, Delhi-110092. He submitted that the present suit filed by the plaintiff is not maintainable and liable to be dismissed u/O VII Rule 11 CPC as the contents mentioned in the plaint are false, frivolous and wrong. The cheques which were drawn by the defendant no. 1 were only given as security without filling any particulars to the plaintiff and there is no rent due on him at the present time. On merits, the defendant no. 1 specifically denied the facts as mentioned in the plaint stating that he had already surrendered the suit property to the plaintiff in the month of Feb, 2021 and made a final payment of Rs. 72,000/-. The son of the plaintiff i.e, Mr. Anwar made criminal conspiracy to extort money from defendant no. 1. Defendant no. 1 also submitted that he does not know the defendant no. 2. Hence, the present plaint be dismissed with heavy costs on the plaintiff.

(5) The defendant no. 2 also filed his Written Statement and stated that the present plaint is not maintainable, vague, false and frivolous. He stated that defendant no. 1 posed himself as the owner of the aforesaid suit property and agreed to rent out the property to him. This was followed by a security agreement between the defendant no.1 and no. 2 and deposition of security amounting to Rs. 8,50,000/- in respect of the rented out property. The said agreement came to an end on 26.10.2019 and the defendant no. 2 expressed his willingness to vacate the property and asked the defendant no. 1 to return the security amount. The defendant no. 1 kept making excuses and told about his worsened financial conditions and further promised to pay the security amount after a certain period. Defendant no. 2 stated that the defendant no. 1 gave a cheque of Rs. 6,50,000/- and promised to pay the balance amount in cash. But thereafter he stopped picking up his phone calls. Defendant no. 2 further stated that it is a conspiracy between the defendant no. 1 and the plaintiff to grab his security deposit and prayed this Hon'ble Court for dismissal of the present suit.

(6) The plaintiff moved the instant application u/O XII Rule 6 r/w section 151 CPC on 11.09.2024, stating that the both the defendants filed their Written Statement and none of them have disputed the ownership of the plaintiff over the suit property; she further submitted that the defendant no. 2 is still in illegal possession of the suit property and not paying the rent and showed no willingness to vacate the property; both the defendants were served with a legal notice on 15.09.2023 however despite service of said legal notice, the defendants neither vacated the suit property

nor paid the outstanding rental/occupation charges to the plaintiff. A prayer is made to pass a decree of possession in favor of the plaintiff and against the defendants and directions be issued to both the defendants vacate the suit property and pay out the outstanding rent dues.

(7) The defendant no. 1 filed reply to application u/O XII Rule 6 r/w section 151 CPC in which he stated that he had handed over the suit property to the son of the plaintiff in February 2021 and the defendant no.2 is in the possession of suit property presently. He further stated that he had cleared all his dues and there lies no liability on him; he doesn't have knowledge of tenant-owner relation between plaintiff and defendant no. 2. Hence, a prayer is made to dismiss the present suit.

(8) No reply to application u/O XII Rule 6 r/w section 151 CPC has been filed by the defendant no. 2

(9) Arguments were heard on the aforesaid application u/O XII Rule 6 r/w section 151 CPC on behalf of the parties.

(10) It is submitted by Ld. Counsel for the plaintiff that the defendants have not disputed the ownership of the plaintiff over the suit property. It is argued that in his written statement the defendant no. 1 has admitted that he was occupying the suit property as tenant of the plaintiff, however further submitted that he already vacated the suit property. It is argued that the defendant no. 2 who is currently occupying the suit property was inducted by the defendant

no. 1 as a tenant in the suit property, therefore defendant no. 2 who is claiming tenanted rights in the suit property has no legal right to remain in the suit property. Further the said tenancy has already been terminated by the plaintiff by sending legal notice dated 15.09.2023, therefore in view of unambiguous categorical admissions, the Plaintiff is entitled for the decree of possession of the suit property under order XII Rule 6 CPC.

Ld. Counsel for the defendant no. 1 argued that the defendant no. 1 has already vacated the suit property and defendant no. 2 was inducted as a tenant in the suit property by the son of the plaintiff, therefore there is no cause of action ever arose against the defendant no. 1. On other hand Ld. Counsel for the defendant no. 2 argued that he was inducted in the suit property as a tenant by the defendant no. 1 and he had made a payment of security amount of Rs.8,50,000/- to the defendant no. 1. It is argued that defendant no. 2 is still occupying the suit property as the defendant no. 1 has yet not returned the said amount of Rs. 8,50,000/- to the defendant no. 2.

(11) Record perused. Considered.

(12) The law with regard to judgment on admission under order XII Rule 6 CPC in respect of recovery of possession of tenanted property by landlord from tenant is no more res integra in view of law laid down by Hon'ble Supreme Court of India as well as various Hon'ble High Courts.

(13) The Hon'ble Supreme Court of India in a case titled as **Payal Vision Ltd. Vs. Radhika Choudhary** (2012) 11 Supreme Court Cases 405 has held that:-

“7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff's landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC.”

(14) Hon'ble High Court of Delhi in a case titled as **Atma Ram Properties Pvt. Ltd. Vs. Pal Properties Pvt. Ltd. & Ors.** 2002 (62) DRJ 623 held that in order to succeed in the suit for possession, the plaintiff has to prove the following ingredients:-

- a) That there is relationship of landlord and tenant between the parties.
- b) Tenancy in respect of the premises has come to an end either by efflux of time or by a valid notice sent by the plaintiff's to the defendant under Section 106 of the Transfer of Property Act and duly served on the defendant.
- c) The rent of the premises in question is more than Rs.3,500/- per month and therefore, there is no protection of the provisions of Delhi Rent Control Act available to the tenant.

(15) In present case the defendant no. 1 has categorically

admitted that he had occupying the suit property as a tenant under the tenancy of plaintiff. It is the case of the defendant no. 1 that he already vacated the suit property in the month of February, 2021. The defendant no. 2 also not disputed the ownership of the plaintiff over the suit property. It is the case of the defendant no. 2 that he was inducted as a tenant in the suit property by the defendant no. 1 upon payment of security amount of Rs. 8,50,000/- Be that as it may the status of the defendant no. 2 in the suit property is of tenant and any dispute in respect of security amount between the defendant no. 1 and 2 would not create any right in favour of the defendant no. 2 to remain in possession of the suit property.

(16) A Division Bench of Hon'ble High Court of Delhi in *"Amit Kumar Vs. Anoop Kumar" FAO (OS) 589/2015 & CM No.24212/2015*, decided on 23.11.2015 held that the court while considering the applicability of Order XII Rule 6 of CPC has to consider whether the so called defence raised by the defendant is plausible or is completely sham. It was observed in the matter that merely because the defendant denies the claim of the plaintiff, it would not ipso facto imply that there is a defence raised by the defendants that requires framing of issues and relegate the parties to trial. It was held that merely because defendant raises some dispute, it cannot be said that there is no unequivocal admission.

(17) In present case the defendant no. 2 has not raised any claim against the plaintiff. The security amount of Rs.8,50,000/- is stated to be given by him to defendant no. 1 therefore defendant no. 2 has failed to raised any defence which would make him entitle to remain in the suit property even during the pendency of the suit.

(18) It is not the case of the defendant no. 2 that he is entitled for protection under Delhi Rent Control Act or under any other special law. The tenancy/unauthorized occupation of the defendants in the suit property has already been terminated by the Plaintiff by sending legal notice dated 15.09.2023.

(19) In view of the above said discussion and law laid down by Hon'ble Supreme Court as well as Hon'ble High Court of Delhi and the admissions made by the defendants in their written statements, it is held that plaintiff is entitled recovery of possession of the suit property i.e. J-10, Gali no.12, Third Floor (J-Extension), Ramesh Park, near Abdullah Masjid, Laxmi Nagar, Delhi-110092. Accordingly, the suit of the plaintiff is decreed to the extent thereby directing the defendants to handover the vacant peaceful possession of the suit property to the plaintiff immediately.

Decree-sheet shall be drawn in accordance with this order passed today.

**Announced in the open
Court on 18.08.2025**

**(Hem Singh)
District Judge-01
(East)/KKD/Delhi**