

**IN THE COURT OF AASHISH GUPTA, DISTRICT JUDGE-01,  
NORTH-EAST DISTRICT, KARKARDOOMA COURTS, DELHI**

In the matter of

**RCA DJ No. 2/26  
CNR No. DLNE01-003459-2025**

Ali Ahmed  
S/o Mohd. Ahmed  
R/o H. No. 852/45, Second Floor,  
Street No. 09, Near Kuen Wali Masjid,  
Old Mustafabad, Delhi-110009 ..... Appellant

versus

Maqsood Ali  
S/o Mr. Maqbool Ahmad @ Abdul Rahin  
R/o H. No. 852/45,  
Street No. 09, Near Kuen Wali Masjid,  
Old Mustafabad, Delhi-110009 ..... Respondent

**Date of institution : 18.11.2025  
Reserved on : 01.04.2026  
Date of Decision : 28.04.2026**

**JUDGMENT**

1. Appellant is D-1 in CS no. 345/24 filed before Ld. Sr. Civil Judge (North-East), Delhi and has suffered a decree of possession u/O XII Rule 6 CPC dated 15.10.2025.
2. Being aggrieved of the said order, appellant is before this court challenging the validity of the same.

3. The subject matter of dispute between the parties is the 2nd floor of house bearing no. 852/45, Street No. 09, Near Kuen Wali Masjid, Old Mustafabad, Delhi-110094 (more specifically shown in red in the site plan attached with the plaint and hereinafter referred to as '**suit property**').
4. Plaintiff in the original suit is arrayed as respondent in this case. D-2/MCD in the original plaint is not made a party before this court.
5. For the sake of convenience, parties shall be referred to by the nomenclature used in the Ld. Trial Court.
6. Before the trial court, plaintiff had *inter alia* sought a decree of possession against D-1 alleging that initially the **ground floor** of the above described property was given on rent to D-1. At that time, as per plaintiff, a sum of Rs. 1.6 lac was given to him by D-1 as security.
7. Eventually, as per plaintiff, D-1 was given the suit property i.e. **second floor** on rent @ Rs.5,000/- per month. It is claimed that the security amount of Rs. 1.6 lac was offered by plaintiff/respondent to D-1/appellant, but, it was not received by D-1/appellant.
8. Thus, as per plaintiff, the second floor of the above described property was given on rent @ Rs.5,000/- per month and plaintiff also held Rs. 1.6 lac as security.

9. Plaintiff claims that despite termination of tenancy, D-1 failed to vacate and thus, he sued for possession etc.
10. D-1 resisted the suit by claiming that he was inducted as a tenant on the 1st floor of above described property and eventually he gave various sums to plaintiff amounting to Rs.7.65 lac and in lieu thereof plaintiff agreed to execute the sale documents qua 2nd floor of the property in question in favour of D-1. Thus, D-1 claims that he occupies the suit property as a lawful owner and therefore, the question of he paying any rent to plaintiff does not arise.
11. Before proceeding further, I may note that there is some controversy with respect to the floor in which D-1 was inducted as a tenant in the property in question by plaintiff. While plaintiff had set up a case that D-1 was inducted at ground floor; D-1 claims that he was inducted as tenant on 1st floor. During the course of arguments on this appeal, it transpired that as per site plan, the property is described to contain ground floor, upper ground floor, 1st floor and 2nd floor. Parties agreed before this court that initially tenancy between the parties was with respect to upper ground floor, which plaintiff described as *ground floor* and D-1 as *1st floor*.
12. Parties also agreed that now, the subject matter of dispute is the second floor of the property. While D-1 claims that he occupies the same as owner; plaintiff claims that D-1 is a mere tenant.

13. Now, the Ld. Trial Court, vide the impugned judgment and decree dated 15.10.2025 decreed the claim of possession in favour of plaintiff and against D-1 under Order XII Rule 6 CPC.
14. The said judgment is premised on the ground that landlord-tenant relationship between the parties is admitted; tenancy stood terminated; and the rate of rent was not below Rs. 3500/-. Thus, the Ld. Trial Court granted possession to plaintiff.
15. Counsel for D-1 argued that there was no clear, cogent or unambiguous admission of D-1 in his written statement or at any other place. It was argued that D-1 had specifically denied that he is not the tenant in the property and he occupies it as owner. This was premised on the ground that D-1 had given a sum of Rs. 7.65 lac to plaintiff/respondent and it was represented to D-1 that in lieu thereof, he would be made owner of the disputed floor. Counsel argued that despite the above, the Ld. Trial Court returned a wrong finding and thus, the judgment should be set aside.
16. On the other hand, Counsel for plaintiff supported the judgment as being just and well reasoned calling for no interference by this Court.
17. I have given thoughtful consideration to the rival arguments of the parties and have perused the record.
18. In my humble opinion, there is no infirmity in the relief granted by Ld. Trial Court which may call for any interference by this

Court. Though, I shall record a slightly different line of reasons, the outcome shall remain the same and thus, eventually, plaintiff shall be entitled to grant of possession of the suit property.

19. As per plaintiff's case, initially, D-1 was inducted as tenant in the property (at upper ground floor). At that time, some security money was paid by D-1. This fact is categorically admitted by the said defendant in his written statement at para-2 under the heading 'preliminary submissions'.

20. Even though, as per the said para, it is claimed that D-1 paid a sum of Rs. 1.7 lac as security (which is in contradiction to plaintiff's claim where the security made is stated to be Rs. 1.6 lac), but, the fact of the matter remains that D-1 admits that he entered the property in the **capacity of a tenant**. This essentially establishes on record that plaintiff and D-1 share a landlord-tenant relationship.

21. As far as the contention of D-1 that he eventually paid a sum of Rs. 7.65 lac to plaintiff for construction of the property or under the understanding that he shall be made owner of second floor of the property is concerned, suffice is to say that the same, even if presumed to be true, shall not change the nature of relationship *inter se* the plaintiff and D-1. It is settled position of law - once a tenant always a tenant. Once D-1 entered the property in the capacity of tenant, he shall continue to occupy the same as a tenant only and any subsequent oral agreement to sell shall not

change the legal status of the said defendant in the property. Thus, even if it is assumed, for the sake of argument that any sum to the tune of Rs. 7.65 lac was paid by D-1 to plaintiff and plaintiff represented to said defendant that a floor in the property shall be transferred to the said defendant, this agreement shall not mean that now D-1 has become the owner of any of the floors in the property or his possession of the upper ground floor or the second floor i.e. the floor in the question is not that of a tenant. Once, D-1 entered the property in the capacity of a tenant, he would occupy the property as tenant only.

22. I may note that as per plaintiff's case, initially D-1 entered the upper ground floor of the property as a tenant. This fact is admitted by D-1 in his written statement.

23. Eventually, as per plaintiff, D-1 moved to the second floor of the same property and that too in the capacity of a tenant. This fact is disputed by D-1 only on the ground that he moved to the second floor of the property with an understanding that eventually, the second second floor would be sold to him. But, as already noted, the capacity of D-1 under which he occupies the property cannot be changed. In law, even if his claim of an agreement to sell is treated on its face value, still, D-1 continued to be tenant of plaintiff. This would mean that when said defendant moved to the second floor of the property of plaintiff, he still occupied it as a tenant only.

24. Now, admittedly, D-1 was duly served with the summons of the original suit and thus, suffice is to say that once D-1 had notice of the original suit, at least since then the tenancy of the said defendant came to an end.

25. This shall mean that not only the factum of tenancy, its termination was duly established before the Ld. Trial Court.

26. Now, the only point which remains to be seen is whether the property is covered under the provisions of Delhi Rent Control Act 1958 (DRC Act) or not. Ld. Trial Court had come to a conclusion that there was an admission on the part of D-1 that the last agreed rent between the parties was Rs. 5000/- per month. This was premised on the ground that as per Trial Court, said defendant did not specifically deny the alleged rate of rent @ Rs. 5,000/- per month.

27. In my humble opinion, there was no categorical, cogent and unambiguous admission on the part of D-1 that the last agreed rent of the property was Rs. 5,000/- per month. As noted during the narration of facts, D-1 has specifically claimed that he need not pay any rent of the property as he continued to occupy it as an owner. But, as already noted, the capacity of D-1 in the property was that of a mere tenant and no further.

28. Now, as per the admitted position of the parties, plaintiff had taken some security amount from D-1 initially. Subsequently, the

rent is stated to have been fixed @ Rs. 5,000/- per month. This is disputed by D-1.

29. Even if the factum of Rs. 5,000/- is taken to be disputed, still, the property in question cannot be stated to be covered by DRC Act. This is because, as per the averments of D-1 himself, the second floor of the property (i.e. the suit property) was purportedly constructed after first week of September 2021.

30. Before proceeding further, I would like to take note of averments of D-1 contained in para 2 and para 3 of his written statement under the heading 'preliminary submissions' which reads as under:-

*"2. That in addition to that on 16-08-2016, the Plaintiff has inducted the Defendant No.1 as tenant in respect of the first floor of the above said property after receipt of a security amount of Rs.1,70,000/- (Rupees One Lac Seventy Thousand only) in the presence of witnesses, after that in the first week of September 2021, the Defendant No.1 has also paid a sum of Rs.5,00,000/- (Rupees Five Lac only) to the Plaintiff as per his demands on different occasion in the presence of witnesses and further wife of the Defendant No.1 has paid a sum of Rs.95,000/- to the Plaintiff as per his request on different occasion in the presence of witnesses which comes to a total sum of Rs. 7.65 Lac (Rupees Seven Lac Sixty Five Thousand only) for construction of the above said property of the Plaintiff and the Plaintiff assured the Defendant No.1 that the Plaintiff would make additional construction of the Second and Third Floors in the above said Property. Further agreed to give the possession of the second floor of the said property to the Defendant No.1 along with its sale documents in favour of the Defendant No.1 on the basis of the above said security amount after constructions of the Second and Third floors in the said property.*

*3. That furthermore, the Plaintiff handed over the possession of the Second Floor in the said property i.e. Second Floor the in the H.No. 852/45, Street No. 09, Near Kuen Wali Masjid, Old Mustafabad, Delhi-110009 to the Defendant No.1 on the basis of above mentioned security amount of Rs. 7.65 Lac (Rupees Seven Lac Sixty Five Thousand only) and also promised to execute the sale documents in favour of the Defendant No.1 by the Plaintiff after completion of construction of the Second and Third Floors in the above said property by the Plaintiff."*

(emphasis supplied)

31. A bare perusal of the above shows that as per D-1's own case, the purported handing over of second floor of the property took place on or after September 2021. As per the above facts pleaded by D-1, he was represented in first week of September 2021 that plaintiff shall construct the second floor of the property and after its construction, D-1 shall be given the said second floor. Now if the said fact is correct, the construction of the second floor must have occurred after first week of September 2021 and only thereafter, D-1 must have moved to the said second floor.

32. But, under Section 3 (d) of the DRC Act, the provisions of the said Act do not apply to any premises constructed on or after the commencement of Delhi Rent Control (Amendment Act, 1988) for a period of 10 years from the date of completion of such construction. In other words, in a freshly constructed property, after the commencement of the aforesaid amendment, the rigors of Delhi Rent Control Act, 1958 does not apply for a period of 10 years. Thus, any newly constructed property, when such

construction is made after the aforesaid amendment, is saved from rigors of Delhi Control Act, 1958 for a period of 10 years after such construction.

33. In the present case, admittedly, the floor in dispute is the second floor of the property and as per D-1's own case, it was constructed on or after September 2021. Thus, the period of 10 years shall lapse only in September 2031. Presuming that D-1 came in possession of the disputed floor in September 2021 itself, the said possession is before the elapse of period of 10 years from the date of such construction. Therefore, as per the admitted case of D-1, the provisions of Delhi Rent Control Act, including Section 50, shall not be applicable in this case.

34. Thus, in my humble opinion, the relief of possession was clearly made out to the plaintiff on the basis of admissions made by D-1 in his written statement. Though, I do not agree with the line of reasoning with respect to the rate of rent assessed as admitted by the Ld. Trial Court, there is no reason to remand the matter for fresh adjudication. This is because, for the reasons recorded above, there was a clear, cogent and categorical admission of D-1 on record (though missed by the Ld. Trial Court). If the matter could have been remanded, it would only lead to prolonging the litigation.

35. Thus, in my humble opinion, the appeal is liable to fail. It is ordered accordingly.

36.The impugned judgment and decree is upheld.

37.Let a decree-sheet be prepared.

38.Let copy of the judgment passed in appeal along with decree-sheet be sent to the Ld. Trial Court.

**Announced in the  
open Court on 28.04.2026**

**Aashish Gupta  
District Judge-01, North-East District,  
Karkardooma Courts, Delhi**