

**IN THE COURT OF SH. DINESH KUMAR,
ADDL. DISTRICT JUDGE-02, SOUTH DISTRICT,
SAKET COURTS COMPLEX, NEW DELHI**

Presiding Judge: Sh. Dinesh Kumar

In the matter of

Suit No.214/2021

Filing No. 2184/2021

CNR No. DLST01-003616-2021

Mrs. Meera Jain

W/o. Late Mr. Vinod Jain

A-1/268, Safdarjung Enclave

New Delhi-110029

.....Plaintiff

Versus

Mr. Rahul

S/o. Mr. Anil Gupta

A-1/66, Second Floor, Safdarjung Enclave

New Delhi-110029

.....Defendant

Date of Institution : 01.04.2021

Date of reserving the Order : 05.07.2022

Date of pronouncement : 22.07.2022

**APPLICATION ON BEHALF OF THE PLAINTIFF UNDER
ORDER XVA READ WITH ORDER XXXIX R. 10 CPC.**

ORDER

1. Vide this order I shall dispose of an application under Order XVA read with Order XXXIX Rule 10, the Code of Civil Procedure (hereinafter referred to as 'CPC') filed by the plaintiff. Before discussing about the application it would be relevant to discuss the facts of the case. The plaintiff has claimed in her plaint as under:

1.1. The plaintiff is the absolute owner and landlady of the property bearing no. A-1/66, Second Floor, Safdarjung Enclave, New Delhi in terms of Memorandum of Family Settlement dated 12.03.2008. Mrs. Anita Gupta and Mrs. Sunita Jain, the sisters of the plaintiff, are the owners of the first floor and ground floor, respectively. They all three are joint owners as regards the driveway, roof/terrace, servant quarters and any other common area / space of the said property.

1.2. In terms of the aforesaid Memorandum of Family Settlement dated 12.03.2008, it was agreed that the mother of the plaintiff, Late Mrs. Sundari Devi Garg, shall have the right to exclusively use the rental income of the second floor of the

suit property during her lifetime as long as the second floor was rented / lease out.

1.3. Disputes had arisen between the plaintiff and her both sisters with respect to construction on the terrace of the second floor of the said property. The plaintiff alongwith Mrs. Sunita Jain were constrained to file a Civil Suit bearing no. 1953 of 2013 before the Hon'ble High Court of Delhi at New Delhi for partition in respect of the third floor and terrace besides other reliefs.

1.4. Mrs. Anita Gupta, mother of the defendant, had filed a WS alleging therein that the entire second floor of the said property had been let out to the defendant with the consent of Mrs. Sundari Devi Garg and the rent was regularly received by Mrs. Sundari Devi Garg.

1.5. Thus, The defendant occupied the property bearing no. A-1/66, Second Floor, Safdarjung Enclave New Delhi on a monthly rent of Rs. 50,000/-. The defendant had only paid rent for the month of November, 2013 and thereafter, failed to pay any rent to the plaintiff or to Mrs. Sundari Devi Garg.

1.6. Smt. Sundari Devi Garg has expired on 03.12.2020. During the lifetime of Late Smt. Sundari Devi Gupta as well as after her demise, the plaintiff, on several occasions, called upon the defendant to provide the proof of payment of

rent/occupation charges, arrears of rent / occupation charges and other charges towards electricity and water etc. but Mrs. Anita Gupta, his mother, had failed to furnish the same.

1.7. The Plaintiff served upon the defendant a legal demand notice dated 09.02.2021, terminating the tenancy of the defendant. Despite receipt of legal notice, he has failed to hand over the peaceful, vacant and physical possession of the demised premises to the plaintiff after termination of his tenancy. Rather, the defendant sent a false, vague and evasive reply dated 24.02.2021. The defendant has failed to hand over the vacant, peaceful possession of the demised premises to the plaintiff, despite termination of tenancy. Hence, the present suit has been filed seeking various reliefs including the recovery of possession, arrears of rent, main profits, etc.

2. The defendant has appeared and filed WS. The defendant has taken various objections in his WS. The relevant objections taken by the defendant, necessary for disposal of the present application, are as follows:-

2.1. The defendant has taken the property on rent under oral agreement with Smt. Anita Gupta, GPA holder of the plaintiff, and also with the consent of Smt. Sundari Devi Garg and with due knowledge and consent of the plaintiff w.e.f 01.04.2013 on a monthly rental of Rs.2,000/-. He started making regular

payment to Smt. Sundari Devi against receipt. In terms of the agreement, all the rentals were paid to Smt. Sundari Devi.

2.2. On 01.11.2013 a formal rent deed was executed between the defendant and Smt. Anita Gupta, SPA of the plaintiff. The GPA issued by the plaintiff was subsequently revoked by registered revocation deed dated 17.01.2014. However, lawful and bonafied actions undertaken by the attorney prior to the said date were ratified by the plaintiff.

2.3. Vide letter dated 11.05.2020 the beneficiary Smt. Sundari Devi had requested the defendant to pay an advance rent of Rs.5,00,000/- to be adjusted against future rentals w.e.f 01.06.2020. The defendant issued the cheque of the said amount in favor of the plaintiff which was duly acknowledged by the beneficiary vide a receipt.

2.4. Smt. Sundari Devi has expired on 03.12.2020 leaving behind her registered Will vide which she has bequeathed her own property exclusively to her daughter Smt. Anita Gupta.

2.5. After death of Smt. Sundari Devi, the right for receiving payment of the rent substituted in favor of the plaintiff. However, the defendant has already paid the advance rental of Rs.5,00,000/- therefore he is not required to make payment of any rent till April 2034.

2.6. The present suit is not maintainable being barred by Section 50 of the Rent Control Act. Hence, it is prayed that the suit may be dismissed.

3. The plaintiff has moved the present application under Order XVA read with Order XXXIX Rule 10 CPC framed for directions to the defendant to deposit the arrears of rent and mesne profits. It has been stated that the tenancy of the defendant stood terminated vide notice dated 09.02.2021. The defendant is an unauthorized occupation of the premises. He is in arrears of rent since 01.12.2013. However, as per the law of limitation the plaintiff is restricting his claim for arrears of rent for the last two years and 11 months from the date of filing of the suit. It is paid that the defendant may be directed to pay the arrears of Rs.18,00,000/- towards arrears of rent mesne profits at the rate Rs.50,000/- per month being terminated rent of the premises. It is further prayed that the defendant may be directed to continue to pay Rs.50,000/- per month w.e.f. 25.02.2011 till the date of handing over of the possession. It is also prayed that in case of failure of the defendant to pay the said amount within the time directed by the court, his defence may be stricken off as per law.

4. The defendant had filed reply to the application. He has opposed the application. It has been stated that the present application is not maintainable. The admitted rent of the premises was Rs.2,000/- per month which was enhanced to Rs.2,420/- per

month in terms of the rent deed. Therefore, present suit is not maintainable as barred under the Delhi Rent Control Act. The other allegations made by the applicant/plaintiff in the application has also been denied.

5. Ld. counsel for the applicant/plaintiff would argue that the defendant has admitted the rate of rent to be Rs.50,000/- per month. It has been argued that the defendant had transferred Rs.50,000/- in the account of the plaintiff in November 2013. Further, the plaintiff had issued a legal notice to the defendant claiming the rent of the premises to be Rs.50,000/- per month. The defendant did not deny the said rate of the rent in his reply to the legal notice. Therefore, it stands proved that the rate of the rent of the suit premises was Rs 50,000/- per month. It is further argued that the plaintiff had already revoked the GPA in favor of Mrs. Anita Gupta and therefore she did not have any right to give the property on rent to the defendant. Therefore, the defendant had not taken the property on rent from an authorised person and therefore, the claim of the defendant that the present suit is barred under the Delhi Rent Control Act is misconceived.

6. Ld. counsel for the defendant, on the other hand, would argue, that the present application is not maintainable. The defendant has no where admitted the rate of the rent to be Rs.50,000/-. The defendant had deposited Rs.50,000/- in the account of the plaintiff as

advance rental for the period of November 2013 to November 2015. The defendant was making payment of the rent regularly through cheques which was credited in the joint saving bank account of the plaintiff along with her mother Smt. Sundari Devi Garg. The plaintiff has deliberately not filed her bank statements would those saving accounts in which the rent was deposited regularly. There are receipts issued by Smt. Sundari Devi Garg who was the beneficiary as per the claim of the plaintiff herself.

7. It is further argued that the defendant had duly replied to the legal notice sent by the plaintiff and denied the claim of the plaintiff. Further, there is a registered deed of revocation of the GPA dated 17.01.2014 whereby the plaintiff had revoked her GPA dated 17.03.2008 executed in favor of Smt. Anita Gupta. In the said revocation deed it was clearly mentioned by the plaintiff that nothing contained therein shall render invalid or ineffective any acts deeds or things lawfully and bonafide done or cause to be done by the said attorney in respect of her share and by virtue of the power given to her before the revocation thereof. The plaintiff was well aware about the execution of the rent deed on her behalf by her attorney in favor of the defendant and the said stands ratified at the time of executing the revocation deed. Therefore, the defendant is a bonafide tenant covered under DRC Act.

8. It is further argued that the rent deed was also signed by the mother of the plaintiff i.e. the beneficiary of the rent as per the plaintiff herself. The said act of the sole beneficiary cannot be challenged by the plaintiff in the present suit as she was the sole beneficiary and thus competent to execute the rent deed in favor of anyone including the defendant on such terms as may be suitable to her.

9. Ld. Counsel for the defendant has relied upon the judgment passed by Hon'ble High Court of Delhi in Embassy Restaurant Vs. Atma Ram Builders (Pvt. Ltd) 2018 SSC online, Delhi 6629 and Raghbir Rai Vs. Premlata and Anr. 2014 SCC online, Delhi 3045.

10. I have heard the submissions and carefully perused the material on record.

11. Order XVA, CPC, as applicable to Delhi, provides for striking of defence in suit by the lessor. The order provides that in any suit by owner/lessor for eviction of an unauthorized occupant/lessee or for recovery of rent etc., the defendant shall deposit such amount as the court may direct on account of arrears up to the date of the order within such time as the Court may fix, and thereafter, continue to deposit in each succeeding month the rent claimed in the suit as the Court may direct. In the event of any default in making the deposit of the amount the court may strike off the defence of the defendant.

12. Order XXXIX Rule 10 CPC provides power of a court to issue directions to a party to deposit money or some other thing capable of delivery, in a suit where subject matter is money or some other things capable of delivery and any party thereto admits that he holds such money or other things as a trusty for another party.

13. In the present case, the plaintiff has claimed herself as owner/landlady of the suit property. She has claimed that the property has been let out to the defendant at a monthly rent of Rs.50,000/- However, the defendant has claimed that the rent of the suit property is not Rs.50,000/- but only Rs.2,420/- per month.

14. I have gone through the entire record. I have not found even a single document on record to show even prima facie that the rent of the suit property is admitted to be Rs.50,000/- per month.

15. I have considered the submissions of the parties. The first argument of the plaintiff is that the defendant had transferred Rs50,000/- in her bank account on 01.11.2013. I have seen the statement of account. One transfer of Rs.50,000/- from Rahul Gupta is shown in the bank account of the plaintiff. The defendant had also admitted the said transfer of the amount. However, the claim of the defendant is that he had made payment of advance rental for 25 months. The statement account itself does not show that the said amount of Rs.50,000/- was deposited as a monthly rent. It is a matter of trial to decide whether the amount of Rs.50,000/- was deposited as

rent of one month or advance rent as claimed by the respective parties. However, at this stage, it cannot be said on the basis of the said documents that the admitted rent was Rs.50,000/- per month.

16. The second argument of Ld. Counsel for the plaintiff is that the defendant had not denied the rate of rent in his reply to the legal notice sent by the plaintiff. I have gone through the copy of legal notice sent by the plaintiff and the reply sent by the defendant. The reply is required to be read in whole to see whether the defendant had admitted the claim of the plaintiff or not. After going through the documents I am of the considered opinion it cannot be prima facie said that the defendant had admitted the rate of rent claimed by the plaintiff in the notice. Again, it is a matter of trial which requires evidence to reach at a conclusion whether the defendant had admitted the rent as claimed by the plaintiff or not.

17. The third ground of argument by Ld. Counsel for the defendant is that the GPA holder did not have power to let out the property to the defendant as she had already revoked the said GPA and therefore the plaintiff is not bound by any agreement between the defendant and the GPA of the plaintiff. I have considered the said argument. The defendant has brought on record a copy of the rent deed and the registered revocation deed of the GPA. The rent deed is shown to be executed prior to the date of the revocation deed. It is also prima facie shown that at the time of execution of the revocation

deed the executor had ratified all the acts of the GPA done prior to the said date. In these circumstances, there are no merits in the arguments of the Ld. Counsel for the plaintiff at this stage.

18. In the light of the discussion hereinabove I hold that it is not shown to the court by the plaintiff prima facie that admitted rate of the rent was Rs.50,000/- per month. He has admitted the rent to be Rs.2,420/- per month. However, if the court asks the defendant to deposit the said amount in Court, the suit itself becomes barred under the Delhi Rent Control Act. Once, the maintainability of the suit on the basis of jurisdiction of the subject matter comes under dispute, it would not be just to ask the defendant to deposit the rent as admitted by him. Therefore, I am of the considered opinion that no directions at this stage can be given under Order XVA read with Order XXXIX Rule 10 CPC to the defendant to deposit the rent in the Court. The application is therefore not maintainable at this stage. It is dismissed and disposed of accordingly.

Pronounced in the open Court on this 18th Day of July 2022.

**(DINESH KUMAR)
ADDL. DISTRICT JUDGE-02, SOUTH, SAKET
COURTS, NEW DELHI.**