* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on: 30 th April, 2026*
Pronounced on: 31st July, 2026

\+ **RSA 134/2017 , CM APPL. 17781/2017 (stay)**
RSA 135/2017, CM APPL. 17784/2017 (stay)

1. **M/S SHAKUN & COMPANY**
(Services) Private Ltd.
112-113, Gagan Deep Building
12, Rajendra Place,
New Delhi 110008 .....Appellant No.1

2. **PRADEEP MEHRA**
Director
M/s Shakun & Company
(Services) Private Ltd.
F-109, Rajouri Garden,
New Delhi. ....Appellant No.2

Through: Appearance not given

versus

SH. ASHOK DUGGAL
S/o Sh. R.N. Duggal
R/o B-742, Ansal Designer Villa,
Sushant Lok-1,
Gurgaon .....Respondent

Through: Ms. Amrit Kaur Oberoi and Ms. Prashansa Srivastava, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid two Regular Second Appeals bearing RSA No. 134/2017 and RSA No. 135/2017, *are decided together as they emanate from the common Judgment and Decree dated 07.04.2017* wherein the learned District Judge in the First Appeal, ***has upheld the Judgment of the learned Civil Judge dated 09.10.2013 and 10.10.2013 respectively decreeing the Suit of the Plaintiff, for Recovery of Rent and Damages*.**

2. The Plaintiff/Respondent, Mr. Ashok Duggal had filed two Civil ***Suits bearing No. 506/2012*** *(originally Suit No. 13/2001)* for Recovery of Possession of ***Basement*** of House No. B-2, Gagandeep Building, Rajendra Place, New Delhi, and ***Suit No. 508/12/01*** (originally Suit No. 9/2001) for Recovery of Possession ***of Flat bearing*** No. 610, 6th Floor, Gagandeep Building, Rajendra Place, New Delhi *(hereinafter referred to as 'the Suit Properties')* and for *Recovery of Damages and Arrears of Rent.*

3. ***The Plaintiff, Sh. Ashok Duggal*** had stated in his Suits for Recovery of Possession that **Basement bearing** No. B-2, Gagandeep Building, Rajendra Place, New Delhi, **admeasuring 580 square feet** and the said Flat bearing No. 610, 6th Floor, admeasuring 370 square feet, were jointly owned by him i.e. *Sh. Ashok Duggal and Sh. Pradeep Mehra,* his brother-in-law, in equal share. Sh. Pradeep Mehra was a Director in the Defendant Company.

4. The Plaintiff and his ***brother-in-law, Sh. Pradeep Mehra (Defendant No. 2)*** leased out the Basement and the Flat shown in red in the Site Plan, to the **Defendant No. 1/M/s Shakun & Co. (Services) P. Ltd., w.e.f. 01.01.1985** *on a rent of Rs.10,400/- per month and Rs.9,400/- per month, respectively*. The Plaintiff and his brother-in-law, Sh. Pradeep Mehra were entitled to 50% of the rent i.e. Rs.5,200/- per month each for the Basement and Rs.4,700/- per month each, for the Flat. The Defendant Company continued to be a tenant in the suit premises and was in the arrears of rent @ Rs.5,200/- towards the Plaintiff for the Basement and @Rs.4,700/- for the Flat, for the period 01.04.1999 to 31.12.2000, *totalling to Rs.1,09,200/- for the Basement and Rs.98,700/- for the Flat, and the interest @18% p.a., was payable on the arrears of rent.*

5. The Plaintiff further explained that though the tenancy had been created for month to month, but the rent was being paid annually, as per the mutual understanding. *The Plaintiff terminated the tenancy of the Defendants vide Legal Notice dated 26.05.2000 and asked the Defendants, to vacate the Suit premises on or before 30.06.2000.*

6. The Plaintiff, Sh. Ashok Duggal further explained that there were disputes in the family between the Plaintiff and other Directors of the Defendant No. 1 Company, including the winding up Petition, which is pending in this Court. The Plaintiff further submitted that despite service of Notice dated 26.05.2000, the Defendants had failed to vacate the Suit Premises. The Plaintiff is entitled to the Mesne Profits/Damages @65/- per square feet from 01.07.2000 i.e. Rs.15,000/- per month for his 50% share of the Basement and Rs.12,000/- per month for his 50% share of the Flat.

7. Hence, *the Plaintiff, Sh. Ashok Duggal filed the* ***Suits for Recovery of Possession,*** *Arrears of Rent of Rs.1,09,200/- for the Basement and Rs.98,700/- for the Flat and also for Damages w.e.f. 01.07.2000*.

8. ***The Defendant No. 1/ M/s Shakun & Co. (Services) P. Ltd***., filed the ***Written Statement*** in both the Suits wherein it took the preliminary objections that the Plaint did not disclose any cause of action against the Defendants and was liable to be rejected under Order VII Rule 11 CPC. It was explained that in the year 1975-1976, Sh. Pradeep Mehra, one of the main promoters of the Defendant Company, started the business of printing, re-printing, publication, distribution and circulation of books, notifications, circulars, press notes and policy notes etc., under his sole Proprietorship firm "Shakun & Company".

9. Subsequently, in order to organise and formalize the business, Sh. Pradeep Mehra along with his sister, Mrs. Alka Duggal (since deceased) wife of the Plaintiff, got the Private Limited Company incorporated under the name and style of "*Shakun and Company (Services) Private Limited"* i.e the Defendant No. 1. Since its incorporation in 1980, the Defendant Company has been carrying on the business under its name over last 20 years. The Defendant Company has achieved enviable goodwill and success in its business because of the high value-oriented service.

10. ***On 16.02.1983, Mrs. Alka Duggal*** *resigned from the Directorship of the Defendant No. 1 Company*. Subsequently, on the same day and on 01.09.1992, the *Plaintiff and his daughter* respectively, were inducted as Non-Shareholding Directors, in the Defendant No. 1 Company.

11. Initially, after induction of the Plaintiff, the business went on smoothly, but after the demise of Mrs. Alka Duggal on 30.04.1999, the Plaintiff started behaving abnormally and in a manner detrimental to the interest of the Defendant Company. He, for the reasons best known to him, started inducing and luring the employees of the Defendant Company, to rebel against the management. With the intervention of other family members and relatives, the Plaintiff agreed not to indulge in such activities, which were detrimental to the interest of the Defendant Company.

12. The Plaintiff being the Director of the Defendant Company, had access to every trade related privileged information of the Defendant Company. He covertly started misusing it for his personal interest and benefit. All the data-base, list of clients/subscribers of the Defendant Company, were being accessed and used for the personal gains by the Plaintiff. The illegal and dishonest acts of the Plaintiff, which came to the knowledge of the Defendants in the first week of February, 2000, when the Defendants received one brochure of M/s Shakun Exim Corporation from one of its subscribers, informing the Defendants of existence of a Firm purported to be engaged in the same business as that of the Defendant. *The Brochure contained the name of the Plaintiff and his daughter, as its issuer*.

13. The Plaintiff and his daughter, had launched the said Firm with the same business objectives, while continuing as a Director of the Defendant No. 1 Company. Moreover, some of the employees of the Defendants, also suddenly stopped reporting for duty as they were lured and snatched by the Firm of the Plaintiff.

14. The Defendants also discovered that the Accounts, which were being handled by the Plaintiff, at the time of renewal of subscription in the month of December, 1999, had only requested for renewal of subscription from the subscribers of the Defendants, *for three months*; and in the month of February, 2000, he requested for renewal of subscription for financial year 2000-2001 under the name of his Firm. The Defendants immediately circulated a *Caution Notice* to all the subscribers, making them aware of the confusion being created by the Firm of the Plaintiff.

15. The Defendants also served a Legal Notice dated 11.02.2000 and 29.02.2000, amongst others to the Plaintiff, calling upon him to refrain from doing any business same or similar to that of the Defendants, under the name and style of "Shakun" for whose usage, the Defendants had an absolute prior right.

16. Despite such Notices, Plaintiff did not refrain himself from such activities. The Defendants thus, *filed Suit No. 749/2000 for Permanent Injunction for restraining the Plaintiff from Passing Off and Rendition of Accounts of Profits etc. in this Court, which is pending adjudication.*

17. Furthermore, in view of the anti-Company activities of the Plaintiff, an Extra-ordinary General Meeting of the Defendants, was held on 10.04.2000 and ***the Resolution for removal of the Plaintiff and his daughter as Directors of the Defendants, was carried out unanimously.*** Accordingly, Form No.32 for removal of the Plaintiff and his daughter, was duly filed with Registrar of Companies, on 11.04.2000.

18. It was claimed that the Plaintiff and his daughter, not only took away three cars and cell phone of the Company that had been given to them for personal use, but also failed to return the various articles of the Company including the three cars and the mobile phone of total value Rs.4,06,837.04, which were in their possession.

19. The Defendants admitted that *the suit properties were owned by the Plaintiff and Sh. Pradeep Mehra, Defendant No.2 and had been given on perpetual lease to the Defendant Company in January, 1985.* It was further admitted that at present, the monthly rent was Rs.10,400/- for the Basement and Rs.9,400/- for the Flat. It was also admitted that as per the Agreement, the rental was to be divided equally between the Plaintiff and Sh. Pradeep Mehra.

20. The Defendants submitted that since induction of the Plaintiff as Director of the Defendant Company, the 50% of monthly rent was credited equally in the Account of Sh. Pradeep Mehra and the Plaintiff respectively, maintained by the Defendants Company, and the amount so credited in their Account, was being withdrawn by them respectively. It was stated that the same practice of payment of rent was being followed by the Defendant No. 1 Company.

21. The Defendants claimed that in view of illegal and unauthorised possession of the articles and non-refund of the money despite repeated requests, *the share of the Plaintiff towards the rental of the suit premises, was not being disbursed to him and was being adjusted towards the value of the articles.* After debiting the book value of the articles in his account, the Defendants credited the Plaintiff's share of the rent till March, 31, 2001. However, the Plaintiff ***still owes and is liable to pay Rs.67,424.26 to the Defendant Company.***

22. The Defendant No.1 further claimed that it has a right to raise its counter-claim for recovery of the articles or the value thereof. The Defendants submitted that pursuant to the satisfaction of the aforesaid outstanding amount, the Defendant shall recommence paying the rent to the Plaintiff.

23. The Defendants further asserted that the *Suit is bad for non-joinder of Sh. Pradeep Mehra, who is admittedly the co-owner of the suit property*. It is further submitted that the Plaintiff is not entitled to any individual or unilateral action in regard to the lease, without the consent of Sh. Pradeep Mehra. Without determination of the rights of the Plaintiff and Sh. Pradeep Mehra in the suit property, the Suit for Possession is not maintainable.

24. It was further asserted that the Suit was pre-mature and not maintainable. Even otherwise, the Basement is a single room with single entrance and the Flat is a single room along with attached toilet with single entrance and both are incapable of being vacated partially or more particularly, 50% of the area.

25. Furthermore, an Application under Section 443 of the Companies Act, 1956 and Order XXXIX Rules 1 and 2 CPC, has been filed by the Plaintiff claiming arrears of rent aside from various other reliefs, which is pending adjudication. In view of the said litigation, *the present Suit should be stayed under Section 10 as the subject matter of this Suit and the Company Suit, are the same.*

26. ***On merits,*** a similar defence was taken by the Defendants and it was submitted that the Suit was liable to be dismissed.

27. Defendant No.2 Pradeep Mehra was impleaded on 01.12.2006, in view of the objection taken by Defendant No. 1 in the Written Statement regarding non-joinder of a necessary party, namely Shri Pradeep Mehra, who was admittedly a co-owner of the suit property.

28. Counter-Claim bearing No. 09/2001 was filed by the Defendant **Company** wherein the Defendants asserted that the Plaintiff, who was the Ex-Director of the Defendant Company, had indulged in various illegal acts against the Company including passing of his business under the name and style of M/s Shakun Exim Corporation for which *Suit No. 749/2000, had already been filed.* It was claimed that on account of the illegal and unauthorised activities of the Plaintiff and retention of the Property of the Company, the prayer was made that the *Mandatory Injunction be granted* *against the* ***Plaintiff, Sh. Ashok Duggal for directing him to return the assets, properties of the Defendants.***

29. ***The same Counter-Claim bearing No. 09/2001 was filed by the Defendant in both the Suits,*** *which was* **dismissed** *vide* Order dated 17.01.2005. This Court gave one opportunity to the Defendant but it failed to take steps and the Order dated 17.01.2005, was affirmed by this Court.

30. *Vide* Order dated 20.03.2004, the learned Civil Judge allowed the ***Application under Order 39 Rules 10 CPC*** filed by the Plaintiff in the Basement Suit and directed the Defendants, *to pay rent/occupation charges @Rs.5,200/- per month from 01.01.2001 to 29.02.2004,* and to continue to pay the rent on the monthly basis.

31. From the pleadings, the ***Issues were framed vide Order dated 17.08.2001, which were finally amended and framed on 20.08.2009 in the Basement Suit as under:-***

i. Whether the defendant has vacated the suit premises as alleged by the defendant on 30.06.2004 and handed over the possession to plaintiff? OPD

ii. Whether the plaintiff is entitled to recover the arrears of rent/damages in light of issue No. 1? OPP

iii. Whether the plaintiff is entitled to the arrears of the rent of Rs.1,09,200/- along with interest with respect to the suit property for the period 01.04.1999 to 31.12.2000 from the defendant? If so, then at what rate? OPP

iv. Whether the plaintiff is entitled to damages for use and occupation of the suit property w.e.f. 01.07.2000 from the defendant? OPP *v. Whether the present suit is not maintainable in view of the preliminary objections taken in the written statement?*

vi. Relief.

32. In the Flat Suit, similar Issues were framed on 20.08.2009, the only difference being *that the arrears of rent claimed were Rs.98,700/- @ Rs.4,700/- per month for the same period i.e. 01.04.1999 to 31.12.2000.*

33. The Plaintiff examined himself as PW-1 and tendered his evidence by way of affidavit Ex. PW-1/A. He relied upon the Property Agreement in respect of the Suit Property as Ex. PW-1/1 (OSR), the Site Plan as Ex. PW-1/2, the Legal Notice dated 26.05.2000 terminating the tenancy as Ex. PW-1/3 and the A.D. Card evidencing its service as Ex. PW-1/4. PW-1 was extensively cross-examined on 07.04.2011 and 13.05.2011, whereafter the Plaintiff's Evidence was closed on 13.05.2011

34. The Defendants examined Shri Pradeep Mehra, Managing Director of Defendant No.1 and Defendant No.2, as DW-1, who tendered his evidence by way of affidavit Ex. DW-1/A. He relied upon the certified extract of the Board Resolution dated 22.04.2000 as Ex. DW-1/1; the brochure of M/s Shakun Exim Corporation as Ex. DW-1/2; the legal notices dated 11.02.2000 and 29.02.2000 as Ex. DW-1/3 and Ex. DW-1/4 respectively; the notice dated 12.06.2004 along with the UPC receipt as Ex. DW-1/5 (Colly.); the order dated 26.10.2004 passed by the High Court as Ex. DW-1/6; the order dated 06.12.2005 passed by the High Court as Ex. DW-1/7; the order dated 13.04.2006 passed by the Supreme Court as Ex. DW-1/8; the order dated 30.03.2007 passed by the High Court as Ex. DW-1/9; the letter dated 30.07.2004 addressed to the Estate Manager as Ex. DW-1/10; the certificate dated 20.09.2011 issued by the Estate Manager as Ex. DW-1/11;

and the Credit Circulation issued by BSES Rajdhani as Ex. DW-1/12. DW-1 was duly cross-examined.

35. The learned Civil Judge *vide* Judgment dated 09.10.2013 in the Basement Suit and 10.10.2013 in the Flat Suit, on appreciation of evidence concluded that the possession of the suit premises was not received by the Plaintiff, which continued to be in possession of the Defendants. ***It was held that the Plaintiff is entitled to the possession of the suit premises.*** It was further held that the **Plaintiff was entitled to the arrears of rent *as monthly damages* amounting to Rs.1,09,200/- for the Basement (from 01.04.1999 to 31.12.2000) and Rs.98,700/- for the Flat (from 01.04.1999 to 31.12.2000) and the same was granted along with the interest @10% p.a.**

36. The Suit of the Plaintiff was thus decreed for Possession, Arrears of Rent of Rs.1,09,200/- for the Basement and Rs.98,700/- for the Flat along with simple interest @10% p.a. for the period from 01.04.1999 to 31.12.2000 and the damages @ Rs.5,200/- per month for the Basement and @ Rs.4,700/- per month for the Flat along with the interest @10% p.a., from 01.01.2001 till the delivery of the possession, vide Judgment dated 09.10.2013 and 10.10.2013 respectively.

37. *Aggrieved by the said Judgment, the Defendant Company, as well as, Sh. Pradeep Mehra, had preferred* **First Regular Appeal bearing RCA No. 60761/2016.**

38. The ***learned District Judge reappreciated*** the evidence and concluded that the learned Civil Judge had rightly appreciated the evidence and rightly decreed the Suit of the Plaintiff, Sh. Ashok Duggal. ***No merit was found in the Appeal, which was dismissed.***

39. Aggrieved by the dismissal of the First Regular Appeal, the ***present Second Appeals*** *have been preferred by the Defendants/Appellants.*

40. The Appellants stated that the following substantial questions of law, arise in the present Second Appeals, which are as under:-

i. *Whether the Suit for Mesne Profits and an enquiry under Order XX Rule 12 CPC is maintainable when no relief of possession is sought by the Plaintiff?*

ii. *Whether the surrender of the possession to one co-owner can be deemed to be a valid surrender?*

41. The ***grounds of challenge*** are that the two Courts were not justified in holding that vacation of tenanted premises, can be done only through delivery of key and lock to the Respondent/landlord. It was not being appreciated that admittedly, there was no written Lease Agreement between the Appellant Company and the Respondent, mentioning how the vacation of the suit premises, was to be effected. Therefore, it was not mandatory for the tenant to deliver the possession by way of hand over the lock and key. The vacation and consequent handing over of the tenanted premises, can be deemed while effecting a notice of vacation thereof on the part of the tenant, which aspect has been overlooked by the two Courts.

42. Moreover, the Appellant No. 1 *vide* its Notice dated 12.06.2004, had intimated that it is vacating the tenanted premises on 30.06.2004 and handed over the lock and key of the premises to the Respondent and the Appellant No. 2, Sh. Pradeep Mehra, both being the co-owners of the suit premises. The Respondent, however, did not turn up to take possession or the lock and key thereof, and thus, the possession was handed over to Sh. Pradeep Mehra, the co-owner.

43. The Appellate Court erroneously arrived at a conclusion that handing over of the Possession to the Defendant No. 2 being a co-owner, remained in the realm of oral assertions and overlooked that there was no basis to differentiate in this regard as the Defendant No. 2 was the co-owner of the suit property.

44. It is submitted that the learned Appellate Court noted that even if it was accepted as gospel truth that the possession was handed over to one co-owner of the suit property, who happens to be the Director of the tenant Company, then merely because of the uncordial terms between the parties, it cannot be said that the possession handed over to Sh. Pradeep Mehra, shall not be deemed to be a surrender of possession to both the co-owners. The Company is an independent and a distinct legal entity.

45. The testimony of DW-1 on behalf of the Defendant Company, that they have already vacated the premises and handed over the possession to the Defendant No. 2, has not been appreciated in the correct perspective as the Appellant Company was fully justified to hand over the possession to one co-owner.

46. Furthermore, in lieu of the specific stand of Appellant No. 1 Company that they have already vacated the Suit premises, an additional issue was framed in this regard, which further fortifies the categorical admission by the Respondent in his cross-examination.

47. The Plaintiff has placed reliance on *P.C. Agarwala vs. Payment of Wages Inspector, M.P*., (2005) 8 SCC 104; *Electronics Corpn. of India Ltd. vs. Secy. Revenue Deptt., Govt. of A.P*., (1999) 4 SCC 458; *Heavy Engg. Mazdoor Union vs. State of Bihar*, (1969) 1 SCC 765; *Tata Engineering and Locomotive Co. Ltd. vs. State of Bihar*, AIR 1965 SC 40 and *Bacha F.*

Guzdar vs. CIT, (1955) 1 SCR 876; Mukesh Hans vs. Uma Bhasin, 2010 SCC Online Del 2776; V.K.Uppal vs. M/s Akshay International Pvt. Ltd., 2010 SCC Online Del 538; Sangeeta Jewels vs. Ajay Kumar Jain, 2008 SCC Online Del 181, Steel Authority of India vs. Century Tubes, 2005 SCC Online Del 164 and Rama Association (P) Ltd. vs. Delhi Development Authority, 1991 SCC Online Del 467.

48. It is further submitted that the two Courts have completely ignored the fact that the suit property was an unpartitioned property owned by the Plaintiff, as well as, the Defendant No. 2, Sh. Pradeep Mehra and because the Respondent failed to come forth to take the possession, it was validly handed over to Sh. Pradeep Mehra.

49. The Company being an independent legal entity, could not have been held obligated to hand over the possession to the Plaintiff, for which reliance is placed on N. Padmamma vs. S. Ramakrishna Reddy, (2015) 1 SCC 417; Jai Singh vs. Gurmej Singh, (2009) 15 SCC 747; Md. Mohammad All vs. Jagadish Kalita, (2004) 1 SCC 271; Vidya Devi vs. Prem Prakash, (1995) 4 SCC 496 and Raj Rani vs. Kailash Chand, (1977) 3 SCC 468 and Ram Gopal Bhagwan Das vs. Parmeshri Das, AIR 1924 Lah 474.

50. It is further contended that once Notice for vacating the tenanted premises was served, it was the responsibility of the landlord/owner to take possession of the tenanted premises when it was vacated by the tenant. Despite due service of Notice dated 12.06.2004 to the Respondent and the Appellant, who are the co-owners of the Property, the suit premises were vacated and possession handed over to the Appellant No. 2.

51. Furthermore, the Appellant Company in order to corroborate the vacating of the premises on 30.06.2004, had obtained the Certificate from

Estate Manager of Gagan Deep Flat Owners Association on 20.09.2011. He also applied and received credit circulation for meter installed in the suit premises. *An Application for bringing these documents on record, was filed but the same was dismissed vide Order dated 22.02.2012.*

52. The Company thereafter, was left with no option but to vacate the premises on 30.06.2004, for which it moved an Application seeking permission to summon Business Manager, BSES Rajdhani or any with the records relating to the Letter dated 02.08.2004 along with the Receipt dated 03.08.2004 for Suit. It was, therefore, wrongly observed by the Court that there was a delay of 8 years in summoning the records, which became relevant only after 27.08.2008. The Application for examination of these officials of BSES, has been wrongly dismissed, by the learned Trial Court. It is, therefore, submitted that the impugned Judgment is liable to be set-aside.

53. ***Written Submissions were filed by the Appellant*** essentially claiming the same grounds, as have been stated in the Appeal.

54. ***Written Submissions*** have been filed on behalf of the Respondents.

Submissions heard and record perused.

55. The **Substantial Question of Law** framed on 02.04.2026, are as under:

(i) *Whether the Suit for Mesne Profits and an enquiry under Order XX Rule 12 CPC is maintainable when no relief of possession is sought by the Plaintiff?*

(ii) *Whether the surrender of the possession to one co-owner can be deemed to be a valid surrender?*

56. It is ***an admitted case of the parties*** that Ashok Duggal and his brother-in-law Pradeep Mehra (*brother of the wife of Ashok Duggal*) were the joint owners of the suit property, which had been let out to M/s Shakun & Company, the Defendant on a monthly rent of **Rs.10,400/- per month for the Basement and** Rs.9,400/- per month, **for the Flat**. It was an arrangement between Ashok Duggal and Pradeep Mehra that they would share the rent equally and the amount of **Rs.5,200/- for the Basement and** Rs.4,700/- **for the Flat** for being credited in the account of the two owners every month.

57. Another significant aspect is that Ashok Duggal and Pradeep Mehra the owners of the property, also were the Directors of M/s Shakun and Company, to whom the property had been let out.

58. It has been proved that the Company held an extraordinary General Meeting on 10.04.2000 and by a Board Resolution, ***Ashok Duggal and his daughter were removed from the post of Directors of the Company.*** This was also corroborated by Form 32 that was submitted with the Registrar of Companies on 11.04.2000. Thus, *since 11.04.2000 Ashok Duggal was not a Director of M/s Shakun & Company.*

59. However, this aspect is insignificant as this case does not pertain to the inter-se disputes between the Directors of a Company, but is a simpliciter dispute between the owners and the tenant, *wherein there is no confusion and whether Ashok Duggal continued to be a Director or not,* the fact remained that ***Shakun & Company which is a legal entity, was a tenant of Ashok Duggal and Pradeep Mehra.***

60. The only aspect which has been challenged is that *according to the tenant Company, they had issued the Notice dated 12.06.2004 to Ashok*

Duggal as well as to Pradeep Mehra, both being the co-owners of the Suit property, informing them that they are vacating the property on 30.06.2004 and the lock and key of the premises shall be handed over to them. However, according to the Appellant, Ashok Duggal did not turn up for taking the possession and thus***, it was handed over to Pradeep Mehra.*** Since the Company has validly vacated the suit premises on 30.06.2004, it is no longer liable in any manner in regard to the handing over of the Possession to Ashok Duggal.

61. The question which arises is ***whether the handing over of the Possession to Pradeep Mehra one of the co-owners, is sufficient to conclude that the Company had validly vacated the premises on 30.06.2004.***

62. Ashok Duggal had denied being served with the Notice dated 12.06.2004. The onus was on the tenant Company to prove that the Notice was duly served upon Ashok Duggal. The tenant Company had claimed that the Notice was served through UPC receipt Ex.DW1/5. The learned District Judge in the impugned Judgment considered in detail whether the Notice was duly served. It was noted that there was ***firstly,*** no explanation as to why the Notice was not sent through the registered post, but only through UPC.

63. The Supreme Court in the case of *State of Maharashtra vs. Rashid B. Mulani* (2006) 1 SCC 407 has observed that a Certificate of posting obtained by a sender is not comparable to a receipt for sending a communication by a registered post. When a letter is sent by registered post, a receipt with serial number is issued and a record is maintained by the post office. However, when merely a certificate of posting is sought, no record is maintained in the post office either about the receipt of the letter or the certificate issued. In the absence of such a record, a certificate of posting is very little assistance, where the dispatch of such communication is disputed or denied.

64. Therefore, though the Defendant had claimed to have served two Notices, but in the light of they being disputed by the Plaintiff, mere service by UPC, had not been deemed to be valid service on the Plaintiff, Ashok Duggal, to accept the vacant possession of the suit premises. The two Courts have rightly held that there was no situation for the Plaintiff to have gone to the suit premises on 30.06.2004 to accept the possession of the suit property.

65. *The second question which arises is whether handing over of the possession to Pradeep Mehra, the co-owner, can be considered as valid surrender of the tenanted premises.*

66. The *first* most conspicuous fact which stares at the face of the record is that *Pradeep Mehra was the Director of M/s Shakun & Company, the tenant*. The *second fact* which is glaringly evident from the record, is Ashok Duggal and Pradeep Mehra had developed differences in running the Company. *Thirdly,* it is the case of the Defendants themselves that Mr. Ashok Duggal who was also a Director of the Company, was removed *vide* Resolution dated 10.04.2000.

67. In such a situation it is evident that the alleged handing over of the possession to Pradeep Mehra was essentially as a Director of Defendant Company. Pradeep Mehra admitted in his deposition that the premises are lying locked and the keys of the premises are in his possession. It is difficult to accept that there was a valid surrender of the tenancy to Pradeep Mehra

68. There was nothing which prevented Pradeep Mehra from handing over the joint key of the premises or to do any such act which would have manifested that the tenancy was surrendered to both the co-owners and that both were having an access to the tenanted premises. While it may not be necessary for the tenant to hand over the Suit property to both the co-owners, but in the peculiar facts and circumstances of this case, it cannot be said that there was any valid delivery of the tenanted premises to Pradeep Mehra, who also happened to be the Director of M/s Shakun & Company which was the tenant. Rather, it is evident that the alleged surrender of possession of tenanted premises was stage managed by ostensibly giving the keys to Pradeep Mehra, the Director of the tenant Company and then to claim a valid surrender.

69. The learned District Judge rightly observed that even during the pendency of the proceedings, despite the specific plea of Plaintiff that he was still ready to take the possession of the tenanted premises and despite framing of an Issue in this respect, no efforts were made on behalf of the Defendants to hand over the possession of the suit property to the Plaintiff.

70. Though the Defendant No.1 had claimed that they had served due Notice, but it has already been observed that there was no valid service of the Notice of handing over of the possession. Moreover, the Defendant Company handed over the keys to itself through its Director Pradeep Mehra. Considering the acrimony and that the Plaintiff having ceased to be the Director as his Directorship having been terminated vide the Resolution of the Company dated 10.04.2000, it cannot be said that there was any valid surrender of the property to the Plaintiff.

71. **Learned ADJ has further rightly** noted that while the Defendant Company claimed that they had handed over the possession to Defendant No.2 Pradeep Mehra being the co-owner, *but there was no basis or document from where the status of Defendant No.2 as a co-owner or a Director of the Company could be differentiated.*

72. Considering the non-cordial terms between the parties, the surrender of possession by the tenant to one co-owner who also happened to be the Director of the Company, has rightly **not been held *to be a valid surrender of tenancy*** and the Defendant Company has been rightly held to be in un-authorized occupation of the suit premises, for which the Plaintiff was entitled to user and occupation charges.

73. The learned ADJ has rightly upheld the Judgment of the learned Civil Judge dated 09.10.2013 and 10.10.2013 ***decreeing the suit for possession*** and directing the Defendant Company to give arrears of rent of **Rs.1,09,200/- for the Basement and** Rs.98,700/- **for the Flat** along with Simple Interest @ 10% per annum to the Plaintiff Ashok Duggal for the period from 01.04.1999 to 31.12.2000. Also, the Damages @ Rs.5,200/- per month for the Basement and Rs.4,700/- per month **for the Flat** along with interest @ 10% per annum from 01.01.2001 till the delivery of possession has also been rightly granted.

74. The Suit has been ***rightly decreed in favour of the Plaintiff.***

75. There is no merit in the present Appeals, which are hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 31, 2026
RS/VA