

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

+ RC SA No.34/2000 & CM 19587/2010

% Judgment Reserved On : 20th October, 2010
Judgment Delivered On: 25th November, 2010

Trilochan Singh Appellant
Through Mr.Ashutosh Lohia and Mr.Nikhil
Batri, Advocates

Versus

Daya Shankar & Ors. Respondents
Through Mr.Ravi Shankar Sharma,
Advocate for Respondent No.1
None for Respondent Nos. 2 to 8

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J

1. This second appeal under Section 39 of the Delhi Rent Control Act, 1958 is directed against the Additional Rent Control Tribunal's judgment dated 18.11.1999 which ordered eviction of the appellant. This appeal really did not survive after 12.7.2006 when, in CM (Main) 68/2000 filed by two sons of the deceased-tenant Sant Singh (namely Sukhbir Singh and Hardeep Singh), a learned Single Judge of this Court by a detailed judgment upheld this very (i.e., the impugned) judgment and eviction order of the ARCT. However, since this appeal by the third son of the deceased-tenant (namely Trilochan Singh) has remained pending thereafter, and has now been heard, I propose to examine the matter in its entirety.

2. On 25.2.1945, a residential plot of land measuring 97 sq.yards bearing Khasra No.1406/370 in Karol Bagh area was leased out by the Government to Shri Kishori Lal, son of Shri Mangal Sen. After certain

transfers, Bharat Singh became the owner. On this plot a residential house had been built. This property came to be known as House No.2809, Gali No.19, OR 2473, Gali No.9, Beadonpura, Block-M, Naiwala, Karol Bagh, New Delhi. The Government's lease of the land underneath was renewed on 17.8.1963 by the DDA, and taking into account the transfer of ownership in the meantime, was granted in favour of Bharat Singh. Upon Bharat Singh's death on 16.9.1975, his son Daya Shankar (Respondent No.1) became the owner.

3. The submission of the appellant in short is that the suit property was let out in 1952 for commercial purpose and in any case was put to commercial use and was not objected to, and therefore user became commercial. On Sant Singh's death, the tenancy rights were inherited by all his Class I legal heirs, each of whom became a protected tenant.

4. Respondent No.1 landlord's case is that the premises are part of a residential house built on a plot of land leased out by the Government only for residential purpose. Rent Note Ex. AW-2/4 also records the purpose of letting to be residential. A tenant by his own act and in breach of the terms of the rent note cannot convert the purpose to commercial, and that the tenant's widow Kailash Kaur availed the benefit of the 1976 amendment in law for 20 years till her death in 1993 on the basis that it was residential.

5. The background facts are that on 6.5.1952, Bharat Singh had let out a portion of this house comprising one room, bathroom and toilet to Sant Singh at a rent of Rs.22 per month vide Rent Note Ex.AW-2/4. 20 years later, by notice dated 7.7.1972 Ex.AW-1/1, Sant Singh's tenancy was terminated. The tenant Sant Singh died on 10.1.1973.

6. On 13.3.1973, landlord Bharat Singh filed a civil suit for possession [Suit 16/73, later Suit 712/74] against the legal heirs of Sant Singh. In this civil suit for possession, the heirs of tenant Sant Singh filed application dated 19.1.1976 stating that under the 1975 Ordinance (1976 amendment to the Act), the widow Kailash Kaur got a right to remain as a tenant and, therefore, the suit was no longer maintainable, and upon which, this suit, on 20.1.1976, was disposed of as having become infructuous.

7. On 1.11.1977, landlord Daya Shankar (who succeeded his father late Sh.Bharat Singh) filed a petition before Competent Authority (Slums) seeking permission to file an eviction petition. Vide judgment dated 8.12.1978 the Competent Authority (Shri G.C.Jain as his Lordship then was) returned a finding that the purpose of letting was residential and granted permission to sue for eviction.

8. On 18.4.1979, the first eviction petition 86/79 for bonafide requirement was filed under Section 14(1)(e) of the Act. This was dismissed on 22.1.1987 as the purpose was not proved to be residential.

9. In coming to that conclusion, no reference was made to the DDA's lease of the land underneath, however the Rent Note was referred but the same was brushed aside, each of which provided for only residential use.

10. While the eviction petition on grounds of bona fide requirement was pending, on 10.2.1981, another eviction petition was filed under Section 14(1) (b),(c),(d),(h) and (i) and was numbered EP 258/1986.

11. It is during the pendency of this eviction petition that on 13.4.1993, twenty years after her husband's death in 1973, the tenant's widow Kailash Kaur died. The three sons of the tenant-Sant Singh continued to contest this petition.

12. This eviction petition was dismissed by the ARC on 20.1.1997 primarily because in the previous eviction petition based on bona fide requirement, the user had not been proved to be residential, the ARC did not consider the DDA's lease of the land underneath, however the Rent Note was considered but the same was brushed aside Ex.AW-2/4 each of which provided for residential use only.

13. The ARC relied only on the observations in order dated 22.1.1987 in the first Eviction Petition and did not look at the earlier finding in the order dated 8.12.1978 which had found the purpose of letting to be residential.

14. Against the dismissal of the eviction petition on 20.1.1997, the landlord filed an appeal before the Rent Control Tribunal which was registered as RCA No 91/1997 while the cross objections filed by the tenant's son Sukhbir Singh was registered as RCA No.112/1997 and cross objections by the landlord was registered as RCA No 798/1997.

15. By judgment dated 18.11.1999, the Tribunal, relying on Rent Note dated 6.5.1952 Ex.AW-2/4 which clearly spelt out the purpose of letting as residential, found that the purpose of letting was residential and that termination notice dated 7.7.1972 Ex.AW-1/1 had been served. The tenancy of Sant Singh was terminated during his lifetime, and by virtue of succession as provided under Section 2(1) of the DRC Act, the tenancy devolved only upon his widow Kailash Kaur, who succeeded her husband as the sole tenant. It also held that the sons of Kailash Kaur were running the business and were in exclusive possession of the premises in her lifetime. The ARCT accepted the landlord's appeal and passed an order for eviction.

16. As noted above, against the ARCT's judgment and eviction order dated 18.11.1999, two sons of the tenant, namely Sukhbir Singh and Hardeep Singh (who are Respondents No.2 and 3 to this appeal) filed C.M.(Main) 68/2000; while the third son (Trilochan Singh) filed the present appeal. This C.M.(Main) was decided by a learned Single Judge of this Court (S.K. Kaul, J.) vide judgment dated 12.7.2006, which is reproduced below:

“8. The principal contention is in relation to the purpose of letting and this is also the aspect emphasized by the learned counsel for the petitioners. The tenancy was created in pursuance to a written Rent Deed dated 6.5.1952 (Exhibit P-3, also Ex.AW-2/4), which clearly spells out the purpose of letting as residential. It is in view of this that the Appellant Tribunal has been proved and is available on record, the provisions of Section 92 of the Evidence Act would come into play and oral testimony would not be admissible. In my considered view, this is a right approach adopted by the Tribunal.

11. The respondents also filed CM No.777/2002 to bring on record subsequent additional fact including an application filed by the petitioners and respondents 2 to 7 dated 19.1.1976 in the earlier suit filed in the year 1973 admitting

the purpose of letting as residential one. The suit was disposed of on the ground of compromise that since the letting purpose was accepted to be residential, the suit for possession has become infructuous. Even at the stage of grant of permission by the Competent Authority (Slum), the purpose was found to be residential. The order was sought to be impugned in the writ petition but to no avail. It has been, thus, stated that if at all the issue of purpose of letting is to be treated as *res judicata*, it became so at that stage and subsequently what the Additional Rent Controller held on 22.1.1987 cannot be relied upon. This was without prejudice to the contention of the learned counsel for the respondent No.1 that the finding arrived at by the Additional Rent Controller on 22.1.1987 was based on the evidence produced on record only in that case. The purpose of grant of perpetual lease dated 17.8.1963 is also stated to show that the user was residential which lease has been placed on record.

12. A perusal of the order dated 22.1.1987 shows that the Rent Deed was produced even in the said proceedings but oral testimony was relied upon to come to the conclusion that even though the Rent Agreement states the purpose of letting was residential, the counterfoils of the rent receipts show the purpose as commercial purposes. It was, thus, observed that though the oral testimony contrary to the written document may not be acceptable the parties can change the purpose of letting. However, in so far as the notices for misuse are concerned, one of the notices was not tendered in evidence or proved.

13. In my considered view, there is weight in the submission of the learned counsel for the respondent No.1 that the issue of purpose of letting cannot be said to be foreclosed by the judgment dated 22.1.1987 of the Additional Rent Controller. There are undisputed findings by the Competent Authority (Slum) as affirmed by the High Court in respect of the purpose of letting being residential. This was prior to the order dated 22.1.1987. Further, there were separate petition proceedings under different grounds of eviction. The fact that the respondents failed to succeed on grounds of bona fide requirement and gave the same up cannot imply that the finding arrived therein in respect of the purpose of letting would be final and binding or that it was not open to the Additional Rent Controller or the Tribunal in the separate eviction petition to come to a different conclusion based on the evidence before it. In my considered view, the Tribunal has rightly come to the conclusion that when there is a written contract where the purpose of letting is set out as residential coupled with the factum of the rent receipts the purpose of letting is residential. Oral testimony to show that the tenant was using the premises for commercial purposes cannot imply the consent of the landlord. The landlord was

protesting and merely because a tenant uses it for a contrary purpose cannot be a ground to presume such consent.

14. The tenant enjoyed the benefit during his life time and his wife also enjoyed the benefit after the demise of the original tenant. The remaining legal representatives of the deceased tenant, who are financially independent in their own right cannot continue to enjoy the tenancy on the ground that they have inherited the same when the purpose of letting is residential.

15. In view of the aforesaid, I do not find any patent error or erroneous exercise of jurisdiction by the Appellant Tribunal calling for any interference by this Court.

16. In the end, it may be observed that though the arguments were concluded yesterday that this Court was in the course of dictating the judgment dismissing the petition, learned counsel for the petitioner sought time to obtain instructions whether the petitioner was willing to vacate the premises subject to grant of some time. In view thereof, formal order of dismissal of the petition was deferred till today. Learned counsel for the petitioner today states that the petitioners are not willing to vacate the property and would opt to agitate the issue further by recourse to legal remedy as may be available to the petitioners.

17. Dismissed.”

17. After this, Review Petition 398/06 was also filed to contend that the CM (Main) was not maintainable and therefore the judgment upholding the eviction order passed by the Rent Control Tribunal should be recalled. This review petition was dismissed on 17.11.2006 by a reasoned order.

18. This judgment of the learned Single Judge of this Court, which affirmed the ARCT's judgment, concluded the matter and yet this appeal against the same judgment remained pending and stay order against dispossession in this appeal has continued to operate.

19. The appellant contends that the judgment of this Court dated 12.7.2006 reproduced above is per incuriam. I am therefore examining the matter more or less independent of this Court's judgment dated 12.7.2006 in C.M.(Main) 68/2000. It is also necessary to go further and do justice in this case. Because this case is an example of the motivating factor which causes frivolous litigation and causes overflowing dockets and long delays, I also consider it proper to go

deeper and examine the matter so as to provide a precedent for the courts below to follow.

20. The only question, once again, is of the purpose of the 1952 letting, because termination by notice dated notice 7.7.1972 Ex.AW-1/1 is hardly disputed, and in any case, has been consistently found as a question of fact to have been served. However, before I deal with the contentions regarding the purpose of letting, I may clarify the relationships.

21. The tenant Sant Singh who took the premises on rent in 1952 vide rent note Ex.AW-2/4 and upon whom notice of termination Ex.AW-1/1 had been served, died on 10.1.1973. He left behind widow Kailash Kaur (who died 20 years later on 13.4.1993), three sons Tirlochan Singh, Sukhbir Singh and Hardeep Singh, and five daughters namely Harbans Kaur, Surinder Kaur, Nagjit Kaur, Narender Kaur and Amarjit Kaur. The position in law and the rights have to be considered in that context.

22. The appellant before me is Trilochan Singh who is one son of the deceased tenant (Sant Singh) while the tenant's two other sons (namely Sukhbir Singh and Hardeep Singh) who filed CM (Main) 68/2000 are Respondents 2 and 3, and the tenant's five daughters are Respondents Nos.4 to 8. The landlord (Bharat Singh's son Daya Shankar) is Respondent No.1.

23. The view of the Tribunal that the purpose of letting was residential cannot be faulted for several reasons. The Rent Note dated 6.5.1952 Ex.AW-2/4 under which the premises was taken on rent provides only for residential use. Once the terms of tenancy have been reduced into writing the purpose of tenancy has to be determined by reading the relevant clauses of the deed. Vide Precision Steel & Engg. Works v. Prem Deva Niranjana Deva Tayal, AIR 2003 SC 650.

24. The DDA's lease dated 17.8.1963 (in renewal of the earlier 1945 lease by the Government) as the paramount lessor for the land under the house provides in para 4(c) as under:

“4(c) The lessee shall not use the said land and buildings that may be erected thereon during the said term for any other purpose than for the purpose of a residential house, without the consent in writing of the Lessor; provided that the lease shall become void if the land is used for any purpose other than that for which the lease is granted not being a purpose subsequently approved by the Lessor.”

25. Therefore, what the landlord got from the paramount lessor was only a right for residential use and not a commercial use. In the face of these two documents, it is impossible for anyone to contend or to hold that the purpose of the letting was not residential. A right of commercial user, even if given to the tenant, would be invalid. No one can transfer a better title than he himself has. Vide *Nepal Krishna Roy v. Baidya Nath Poddar*, 1995 Supp (1) SCC 279.

26. The letting was of 1952. We have to see the purpose for which it was granted on that date and not how it came to be used subsequently. Even if the rent note was absent, it is difficult to believe that in 1952, a part of a residential house where the lease of the land below permits only residential user, would be given out for commercial purposes contrary to the terms of the paramount lessor's lease and thus run the risk of losing his property. Moreover, in 1952, commercial letting in a residential area of Delhi was not in vogue.

27. Any contention of oral consent or oral agreement, even where permissible, has to be appreciated in the light of the prevailing circumstances keeping in view human probabilities and the explanation offered for the absence of a written document.

28. The Appellant (and Respondent 2 and 3) claim that they have been running the business of Silver jewellery and Silverware in the premises for the last many years. The question, however, is not of what they came to do subsequently but what was the purpose of the initial letting.

29. By his own illegal misuse, contrary to the lease of the land and contrary to the rent note, the tenant cannot convert the purpose of letting from residential to commercial.

30. In the 1973 civil suit for possession (Suit 16/73, later Suit 712/74), the heirs of tenant Sant Singh filed application dated 19.1.1976 stating that under the 1975 Ordinance (the 1976 amendment to the Act), the widow Kailash Kaur got a right to remain as a tenant and, therefore, the suit was no longer maintainable. This could be only if the purpose of letting was residential and not if it were commercial. Based on this, the civil suit for possession was disposed of as having become infructuous. Having availed that benefit for 20 years and more, the legal heirs cannot turn round now and say that the purpose was commercial.

31. The Competent Authority (Slums) while granting permission on 8.12.1978 to sue for eviction also returned a finding that the purpose of letting was residential.

32. For these reasons, the contentions of letting for commercial purpose, subsequent oral consent and res judicata based on observations in the 1987 order in the first eviction petition based on bona fide requirement cannot be accepted.

33. As noted earlier, the judgment of the Tribunal dated 18.11.1999 directing eviction has already been upheld by this Court in CM (Main) 68/2000 by a reasoned judgment dated 12.7.2006 (S.K. Kaul, J.). The argument that this judgment is per incuriam cannot be accepted. A review petition on this very ground has already been rejected on 17.11.2006 by the learned Judge by a speaking Order. No further appeal was filed.

34. Here, I would also rely on the observations of the Hon'ble Supreme Court in *P. Jesaya v. Sub-Collector, (2004) 13 SCC 431*. The case had been heard by a court below without bringing on record the legal representatives of a dead party, and thereafter when an argument on these lines was put forward. These observations are reproduced below:

“... It is clear that the attempt was to see whether a favourable order could be obtained. It is clear that the intention was that if the order went against them, then thereafter this would be made a ground for having that order

set aside. This is in effect an attempt to take not just the other side but also the court for a ride. These sort of tactics must not be permitted to prevail. “

35. To me, it seems the three brothers made a strategy by which two sons would file one petition and the third son would file this appeal in the High Court, and that if this Court upset the Tribunal’s judgment, it would be okay, and if not, then they would seek to argue afresh and say that the earlier High Court judgment was without jurisdiction. After the judgment in C.M.(Main) was delivered, four more years have gone by.

36. Even otherwise, when I examine the facts of the case independent of the judgment dated 12.7.2006, as I have done, I am satisfied that the grant of a tenancy in 1952 was for residential purpose for part of a house built on a plot where the Government’s lease for land permitted only residential user.

37. About the service of notice of termination on the deceased tenant Sant Singh, i.e. notice dated 7.7.1972 being Ex.AW-1/1, there is consistent finding all through. The position in law is also clear that the tenant’s widow Kailash Kaur inherited the tenancy to the exclusion of other heirs, and when she died in 1993, all rights were extinguished. No infirmity is to be found in the impugned judgment of the ARCT dated 18.11.1999. Accordingly, the order for eviction is upheld, and this second appeal is liable to be dismissed.

38. The manner in which this litigation has proceeded for over three decades makes it necessary that I make a few further observations and pass orders in this case. In a somewhat similar situation in *Padmawati v. Harijan Sewak Sangh*, 154 (2008) DLT 411, a learned single judge of this Court observed as follows:

“ 6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so

as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

7. ... The petitioners are, therefore, liable to pay costs which is equivalent to the average market rent of 292 months to the Respondent No.1 and which comes to Rs.14,60,000 apart from litigation expenses and Counsel's fee through out which is assessed at Rs.50,000/-. The petition is hereby dismissed with costs of Rs.15,10,000/- to be recovered from the petitioners jointly and severally. If any amount has been paid towards user charges, the same shall be adjustable.

9. Before parting with this case, I consider it necessary to pen down that one of the reasons for overflowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong-doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong-doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong-doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.”

I fully agree with these observations of the learned single Judge. The case before me is one more instance of the many pending in our courts.

39. To help redeem the situation, and also set an example for litigants and prevent them from abusing the process and taking advantage of

laws' delays to benefit themselves and deprive another of the usufruct of his property, I propose to examine the matter further and pass orders.

40. A lease can be for a fixed period or it can be one from month-to-month vide MEC India Pvt. Ltd. v. Lt. Col. Inder Maira, 80 (1999) DLT 679 and Aggarwal and Modi Enterprises (Cinema Project) Pvt. Ltd. v. New Delhi Municipal Council, 123 (2005) DLT 154. In the former case (a fixed term lease) it determines by efflux of time and in the later case (a month-to-month tenancy) it determines by a termination notice under Section 106 of TP Act.

41. Under Section 108(q) of the Transfer of property Act, 1882, unless there be contract to the contrary, on determination of the lease, it is a statutory obligation of the erstwhile lessee to put the lessor in possession of the property and the corresponding statutory right of the lessor to be put back in possession. Vide Raptakos Brett & Co. Ltd. v. Ganesh Property, AIR 1998 SC 3085.

42. Of course where there is rent control protection, no such obligation arises upon efflux of time or upon service of a notice for termination and the lessee is entitled to continue as a tenant, until an order for eviction is passed by the Rent Controller. In other words, it is only on an order for eviction being passed that the tenancy would stand terminated and with effect from the date of the order he shall become an unauthorized occupant. Vide Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd., (2005) 1 SCC 705.

43. There can however be situations where the rent control protection ceases by operation of law. For instance, by reason of permissible statutory increase in rent, the premises can cease to be covered by rent control protection; or as in this case on the death of the widow who had succeeded to the exclusion of others. There may be an abandonment by the tenant, for rent control laws usually protect the tenant so long as he may himself use the premises but not his transferee inducted into possession of the premises, in breach of the contract or the law, which act is often done with the object of illegitimate profiteering or rack renting. Vide Parvinder Singh v. Renu Gautam, AIR 2004 SC 2299. A

statutory tenant by parting with possession forfeits the protection of the Act.

44. When as per contract, or in law, the entitlement to occupy a premises comes to an end, it is for the tenant including those claiming under him, to himself vacate the premises and hand them over to the landlord. It is not that every lease which expires by efflux of time; or a month to month tenancy that is determined by a notice to quit; or where protection of rent control ceases to be available on some ground, the case has to become litigation before our courts.

45. In present case, on the tenant's death on 10.1.1973, by operation of law (as amended retrospectively in 1975) his widow Kailash Kaur became the sole tenant in exclusion to other heirs. On the widow's death extinguishment of right under Section 2(l) took places by operation of law and did not have to wait for the Rent Controller's order of eviction on any one of the grounds specified in Section 14 proviso to the Rent Act. When she died on 13.4.1993, all rights extinguished. The court of the Controller was empowered to pass the order of eviction on that basis alone. Vide Vijay Kumar Khambate v. Vinay Kumar Aggarwal, 2006 (90) DRJ 565.

46. Since the litigation has been dragged after 1993, and after 1999 for 11 years before this Court, therefore, it is not only the period after the stay in this appeal, it is also the period after the death of Kailash Kaur when all rights extinguished and despite that, matter was still being contested and possession of the premises withheld, that has to be considered.

47. Till 1993, the law gave widow Kailash Kaur protection. With the widow not living there, but the sons carrying on business in the premises as they claim, it can be argued that she had lost the right to protection and payment of Rs.22 per month. Because long time has elapsed, I, would not go behind 1993. After 1993, it was the duty of the legal heirs to hand over possession to the landlord and when they did not, but continued to raise disputes and prolong the litigation and derive the benefits of using the shop, they became liable to pay mesne profits.

48. Every party is expected to comply with the law and the contract that he has entered into and his failure to do so and his causing unnecessary litigation should mean a penalty and not a benefit for him. Our courts are overloaded because it is widely believed that to force the other party to start litigation will in the end be beneficial for the wrongdoer.

49. To tackle court delays, the motivation for raising disputes and delaying litigation must be removed. A party who makes a claim or raises a dispute before a Court must know that whenever the case is decided, and if it is decided against him, not only all benefits that he may have received in the meantime will have to be paid back, but all losses of the other party will also have to be compensated. Unless all losses and deprivations of the successful party have been fully compensated for, the Court fails in its task of doing justice. If courts pass orders directing payment of realistic costs and compensation that sufficiently make up for the losses of the other, the motivation behind raising of disputes will be removed and the courts will be freed of a lot of frivolous litigation.

50. Keeping in view this state of affairs and the prevalent general impression, it will be a useful approach if the court, when deciding a matter, considers what all orders ought to be passed so as to do complete justice and ensure that the party which has lost, does not get away without having to compensate the other for the deprivation it caused to it by raising the dispute.

51. Where a lessee whose lease has been determined, or a tenant who is no longer entitled to protection of rent control laws, fails in his obligation to deliver possession to the landlord, he and all those who are occupying the premises with him and if the tenant be dead or gone the legal heirs or others who are in possession incur the liability of mesne profits towards the landlord. Such liability arises by reason of their failure of comply with the law and deliver possession to the owner.

52. A person, cannot say that I am occupying but I am not liable for mesne profits. Each person would be liable. If a person who is impleaded as a respondent to the eviction petition or an appeal and is

not interested really in the subject matter of the appeal, and may not even be in possession, on receiving notice from the court, does not file an affidavit in the court stating that he is not concerned with the premises, he runs the risk of the court, when finally deciding the matter, also making him liable for any mesne profits.

53. In my view, the liability to pay mesne profits fell jointly and severally on all the legal heirs of the tenant Sant Singh and this commenced on 13.4.1993 when widow Kailash Kaur died. However, on the facts of this litigation, I make the Appellant (Trilochan Singh) liable for the entire period while Respondents 2 and 3 (namely Sukhbir Singh and Hardeep Singh) I will make liable only for the period 12.7.2006 onwards so as not to be in conflict with the judgment passed in CM (Main) 68/2000. They had also filed affidavits in this appeal on 16.7.2007 and 17.7.2007.

54. There is yet another ground for the liability. This appeal was admitted on 8.1.2000 when the stay order was granted and the benefit of the stay order has been enjoyed by the Appellant. In Amar Singh Trilochan Singh v. Jasoti, 105 (2003) DLT 499, this Court was considering a question regarding mesne profits and after noticing the delays of pendency and some decisions in paras 15, 16 and 17, held (para 19) as under:

“Since it will be difficult for this Court to assess the amount, I leave it open to the landlord to make an application to the Controller for an inquiry into and determination of the mesne profits for the period the stay of this Court remained in operation and further till possession is delivered. Credit of interim payments shall be allowed. Such application may be made within three months from today, and for that limited purpose the original proceedings shall continue. On filing of such application, Controller shall decide the same in accordance with law.”

55. The observations of the Supreme Court in South Eastern Coalfields Ltd. v. State of M.P., AIR 2003 SC 4482 (para 24) are reproduced below:

“24. ... In law, the term ‘restitution’ is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits

derived from a wrong done to another; (iii) compensation or reparation for the loss caused to another. ... The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution would far from meeting the ends of justice, would rather defeat the same. ... ”

56. For the period during which the stay was in operation at the instance of the Appellant, and the Respondent No.1 was being deprived of the fruits of the order passed by the Tribunal, there must be an order that fully compensates Respondent No.1 for all deprivations and losses.

57. Therefore, while dismissing the appeal, I direct that inquiry be made to determine the mesne profits for the period 13.4.1993 (when Kailash Kaur died) till the delivery of possession along with interest from the date of accrual till payment @ 9% per annum against the appellant Trilochan Singh. For this purpose, the trial court record shall be sent back to the Controller, who will conduct an inquiry and pass orders quantifying the amount in terms of this judgment after giving credit for the amounts already paid. The amount so determined will be executable as a decree for recovery of money. Except for that, the appeal is dismissed.

58. In so far as costs are concerned, the order of costs has to be realistic. The recent pronouncements are emphasising on award of costs at a figure that equals actual expenditure of the successful party on litigation. Vide Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust, 166 (2010) DLT 528, where Rs.45 lakhs were awarded and Nagarjuna Construction Company Ltd. v. Delhi Jal Board, 157 (2009) DLT 568, where Rs.17.5 lakhs were awarded. In the present case, which has remained pending for nearly 11 years, though I would have preferred to award more, I award Rs. 1 lakh as costs, of which Rs. 50,000/- shall go to the appellant and Rs 50,000/- shall go to the Delhi Legal Services Authority.

59. After this judgment had been reserved, the appellant moved C.M. 19587/2010 with a prayer that he may be given two years' time to vacate on such terms as the Court deems proper. I would grant eight

months' time till 31.7.2011 subject to an affidavit being filed by the appellant and also by Respondents 2 and 3, who have been supporting him, within two weeks from today, undertaking to this Court that they will hand over possession to the landlord on or before 31.7.2011, and the appellant shall also pay the costs as herein awarded along with a sum of Rs.10,000 per month as an interim amount from today onwards on or before the 7th day of each month, and subject to inquiry by the Controller on the mesne profits. In case respondents 2 and 3 file an affidavit that they have nothing to do with the premises and will not enter the same their future liability will cease, and the undertaking by the appellant will suffice, otherwise the Controller will determine their liability for mesne profits as well, but only for the period 12.7.2006 onwards. With these observations, CM 19587/2010 stands disposed of.

60. Copy of the undertaking filed in this court along with the filing number will also be filed before the Rent Controller. If no undertaking is filed, the stay order shall stand vacated and the Rent Controller will be free to proceed with the execution as also the inquiry into mesne profits. The enquiry for mesne profits would not obstruct the process of recovery of possession.

61. The stay of dispossession will continue for two weeks to enable filing of the undertaking. The record of the trial court along with a copy of this judgment be sent back to the court of the Rent Controller who shall proceed as aforesaid, and before whom the Appellant and Respondent No.1 to 3 shall appear on 06.12.2010.

MOOL CHAND GARG, J

November 25, 2010
dc/anb/ag