



2026:DHC:2561



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

%

***Reserved On: 13th January 2026
Pronounced On: 27th March 2026***

+

RFA 401/2024

RAJAT VERMA

S/o SH. Ganesh Kumar Verma,
R/o 154, Ras Vihar Apartment,
Patparganj, IP Extension,
Delhi – 110092

Email: rajat.verma89@gmail.com

Mob: 8884400980

.....Appellant

Through: Ms. Neha Jain, Ms. Avni Soni,
Mr. Sanchit Saini, Ms. Aditi
Choudhary and Ms. Sakshi Jain,
Advocates

Versus

H.P SUMAN

S/o Sh. Bhagwati Prasad,
R/o: Flat No. 214-C Pocket-1,
Mayur Vihar, Phase-1,
Delhi-110091
Mob no.: 8810231092

.....Respondent

Through: Mr. Sudhir Kumar Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Appeal has been filed by the Appellant herein, under Section 96 of the Code of Civil Procedure (*hereinafter referred to as 'CPC'*), 1908 r/w Order XLI CPC for *setting aside the Judgment and Decree dated 04.04.2024* whereby the Suit of the Plaintiff/Respondent has been **decreed for recovery of possession**, by Ld. Principal District & Sessions Judge, Delhi.
2. **C.S. No. 661/2023 titled as *H.P. Suman vs. Sh. Rajat Verma***, was filed by the Plaintiff/Respondent for recovery of *possession, permanent injunction, recovery of arrears of rent, damages/ mesne profit and society maintenance charges*.
3. The Plaintiff/Respondent stated that he was the absolute owner of a residential flat bearing No. 2-A on the ground floor, situated in Kohinoor Co-operative Group Housing Society Ltd., built on Plot No. 31, known as Bharat Apartment, I.P. Extension, Patparganj, Delhi - 110092, measuring about 91 sq. mt. (*hereinafter referred to as the 'Suit Property'*). He with his family, currently resides at the address i.e. Flat No. 214-C Pocket 1, Mayur Vihar, Phase 1, Delhi-110091.
4. The Plaintiff claimed that on 01.01.2022, the Suit Property was let out to the Defendant/Appellant for residential purposes, *vide* a registered Lease Deed dated 13.12.2021, for a period of 24 months commencing from 01.01.2022 to 31.12.2023, at a monthly rent of Rs. 22,000/-. A security



amount of Rs. 20,500/- was also paid by the Defendant, to the Plaintiff.

5. Under the Lease terms, rent was payable monthly in advance on or before the 5th day of each calendar month, and time was stated to be the essence of the contract.

6. The Plaintiff alleged that the Defendant stopped paying rent from 01.06.2023 and the Suit premises were locked for 6-7 months, as he started residing at the address given in the Memo of parties, without communicating any reason. Despite repeated requests, the Defendant neither paid rent nor permitted inspection of the premises or hand over the possession.

7. The Plaintiff alleges that despite repeated requests, the Defendant failed to vacate the premises and also threatened the Plaintiff and his family on 26.11.2023, with dire consequences and to implicate the Plaintiff's family in some false cases and also to create third-party interest in the property.

8. The Plaintiff issued Legal Notice dated 02.08.2023, terminating the tenancy and demanded arrears of rent. The Defendant then paid only one month's rent and rent from 01.07.2023 onwards remained unpaid.

9. According to the Plaintiff, upon expiry of 30 days from service of the Legal Notice, the lease stood terminated and the Defendant became an unauthorized occupant. The Defendant is liable to vacate the property, and the Plaintiff is liable to get Rs.2000/- per day along with maintenance charges of Society, till restoration of possession of the Suit Property.

10. The Plaintiff, thus, sought possession of the Suit Property; Recovery of arrears of rent amounting to Rs.1,32,000/- for the period 01.07.2023 to 31.12.2023; Damages /mesne profits @Rs.2,000 per day from 01.01.2024



till delivery of possession; Recovery of Society Maintenance Charges with penalty; and Permanent injunction restraining creation of third-party interest or parting with possession of the Suit Property.

11. The Defendant/Appellant in his **Written Statement**, took the *preliminary objection* that the Suit did not disclose any cause of action and is liable to be dismissed at the threshold. Further, the Plaintiff has not only concealed most material and germane facts, to concoct a frivolous cause of action that does not exist; in fact, has perjured himself by making averments on oath that are false, even to the knowledge of the Plaintiff himself.

12. It was claimed that the tenancy stood determined after mutual verbal Agreement on 10th August 2023 wherein Plaintiff accepted Defendant's dispossession since June, 2022 due to matrimonial discord with wife Ms. Kirti Verma, who padlocked premises and held sole key to the premises. The Plaintiff had assured the Defendant that tenancy stood determined by mutual consent upon final rent payment for June 2023, which was remitted in October 2023. Plaintiff undertook that he would pursue remedies against trespasser wife. However, subsequently the Plaintiff/ Respondent filed Suit against the Defendant in December, 2023.

13. The Plaintiff had concealed his own prior Legal Notice dated 14.09.2022 acknowledging Defendant's non-residence since 04.06.2022 due to dispute with the wife, and Reply thereto dated 01.10.2022, along with draft corrections in Plaintiff's handwriting, but is now attempting to disown the same and array only Defendant, despite wife being a necessary party, who in exclusive possession since 04.06.2022.

14. **On merits**, it was claimed that Defendant is neither in possession of



the Suit Property nor liable for arrears, mesne profits or maintenance, as tenancy stood determined on 10.08.2023, by mutual consent. Defendant paid timely rent till May 2023 in good faith despite dispossession. He issued Notice to wife on 05.04.2023 for handing over the possession, and filed Application on 22.12.2023 before the Family Court, for appointment of Local Commissioner, amid pending Divorce.

15. It was denied that he was in illegal possession of the tenanted premises. It is asserted that according to the Plaintiff as well, the property was lying closed since several months with Defendant residing elsewhere; the Defendant has not accessed the tenanted premises since 04.06.2022, as his wife had the exclusive possession and the key to the said premise.

16. There is only one key for the leased premises, which can be corroborated from the Complaint in Crime Against Women (CAW) given by the wife, to the police officials on 05.06.2022; Reply dated 30.09.2022, Defendant's Complaint dated 07.08.2022 by which the Defendant informed the police officials about his wife/ estranged spouse having the access to the Suit Premises and for removing her belongings.

17. The Suit was filed by the Plaintiff despite *mutual tenancy termination* on 10 August 2023, between him and the Plaintiff. There is no explanation why the Plaintiff after issuing Notice dated 14.09.2022 and acknowledgement of dispossession and acceptance of Final settlement in August 2023, has now resiled and concealed facts including non-joinder of wife as necessary party, leading to unenforceable decree.

18. The Defendant thus denied the assertions made in the Plaint and claimed that the Suit was liable to be dismissed with exemplary costs and



that the Plaintiff be directed to pay the cost of Rs. 2,51,000/- incurred by the Defendant towards cost of the present litigation.

19. ***During the pendency of the Suit***, the Defendant filed an Application under Order I Rule 10 CPC seeking impleadment of his wife, Ms. Kirti Verma, as a Defendant in the Suit. It was contended that the Plaintiff was aware that it was his wife who was in possession of the Suit property. If a decree for possession was passed against him, such decree would not be executable, because he was no longer in possession of the property. Thus, he prayed that Ms. Kirti Verma be impleaded as a Defendant, in the present Suit.

20. The Plaintiff opposed the Application, on the ground that even if the Defendant's wife was in possession of the Suit property, such possession was only through the Defendant, and therefore, she was not a necessary party to the proceedings.

21. The Court considered the submissions of both parties and also the statement recorded under Order X Rule 2 CPC on 13.02.2024, wherein the Defendant admitted that that he had been residing in the tenanted premises with his wife until 04.06.2022 and thereafter, he was not residing there. However, he further stated that he did not know whether his wife was living in the premises after 04.06.2022 and that, according to his knowledge, *his wife was residing with her parents*.

22. The D&SJ held that in the given factual scenario, even if a family member is residing in the premises, the liability to pay rent continues to remain with the tenant. The wife of the Defendant was not a necessary party to the Suit. Consequently, the Application filed by the Defendant under



Order I Rule 10 CPC, was dismissed.

23. The ***Plaintiff filed an Application under Order XII Rule 6 of the Code of Civil Procedure, 1908, seeking a decree on the basis of admissions*** made by the Defendant. The Plaintiff contended that in the Written Statement the Defendant had admitted the relationship of landlord and tenant and therefore, the Suit was liable to be decreed on the basis of such admission.

24. The ***Defendant filed a Reply***, opposing the Application. It was contended that there was no clear, specific, and unequivocal admission on the part of the Defendant and therefore, no Judgment on Admission, could be passed.

25. The **Ld. D&SJ** referred to the undisputed facts and also the statement of the Defendant recorded under Order X Rule 2 CPC on 13.02.2024, wherein the Defendant admitted that he is a tenant of the Plaintiff at the rent as Rs.22,000/- per month. He also admitted that he was residing in the Suit property along with his wife, and that he has not paid rent since July, 2023. The Court thus, observed that the premises had been taken on rent by the Defendant for residence with his family, and therefore, possession would legally remain with the tenant, even if the wife continued to reside in the premises. The Court further noted that the Defendant had not initiated any proceedings against his wife for vacating the premises or for paying rent directly to the landlord, on the ground that he himself was not residing there. The Court also referred to the report of the Local Commissioner, which recorded that the father of the Defendant's wife had last been seen opening the flat in June 2023, and that thereafter, no one had



visited the premises.

26. The ***Ld. D&SJ thus, concluded*** that the premises continued to remain in possession of the Defendant either by himself or through his wife. Accordingly, **the Application for Judgment on Admission was allowed and the Suit of the Plaintiff/ Respondent was decreed, directing the Defendant to hand over vacant possession of the Suit property, within one month.** The Court also passed a Decree for recovery of arrears of rent for the period 01.07.2023 to 31.12.2023 at the rate of ₹22,000 per month. With respect to the Plaintiff's claim for damages/ *mesne* profits the Court awarded damages/ *mesne* profits at the rate of ₹25,000 per month from 01.01.2024, until delivery of possession.

27. **Aggrieved, the Appellant/ Defendant has filed the present Appeal.** The ***grounds of challenge*** are that the impugned Judgment dated 04.04.2024 under Order XII Rule 6 of the Code of Civil Procedure, 1908 is erroneous, perverse and contrary to the settled principles governing Judgment on admissions. The consistent case of the Appellant in the Written Statement, the Application under Order I Rule 10 CPC, and the statement recorded under Order X Rule 2 CPC, was that he had not been in possession of the Suit premises since 04.06.2022 and that the premises had been padlocked and was under the exclusive control of his estranged spouse, Ms. Kirti Verma.

28. It was further contended that the Lease Deed dated 13.12.2021 stood determined by Mutual Verbal Agreement between the parties around 10 August 2023 and that rent up to June 2023 had already been paid and accepted by the Respondent.



29. The Appellant's consistent plea was that Ms. Kirti Verma was in exclusive possession of the Suit premises since June 2022. Even the observations recorded by the Learned Trial Court while recording the Appellant's statement under Order X Rule 2 CPC as well as the report of the Local Commissioner, indicated that the Appellant was not in possession of the Suit premises.

30. The impugned Judgment has thus, been passed by misreading the pleadings, ignoring material evidence on record and by erroneously equating residence with possession.

31. In view of the above, the defence raised by the Appellant raised substantial and triable issues relating to possession, subsistence of tenancy, and liability to pay rent or mesne profits, which could not have been adjudicated without trial.

32. Therefore, the impugned Judgment dated 04.04.2024, is liable to be set aside.

Submissions heard and record perused.

33. The primary question that arises for consideration in the present Appeal is whether the Learned Trial Court was justified in passing a decree on the basis of admissions under Order XII Rule 6 of the Code of Civil Procedure, 1908.

34. It is not in dispute that the Respondent/Plaintiff is the landlord of the Suit premises 110092, from whom the Appellant had taken the premises on rent registered Lease Deed dated 13.12.2021, for a period of 24 months commencing from 01.01.2022 to 31.12.2023, at a monthly rent of @Rs.



22,000/- per month and @Rs. 2000 per month charges of the Society. He further admitted that rent had been paid till June, 2023. Thus, the essential ingredients for passing decree under Order XII Rule 6 CPC, namely the existence of the landlord-tenant relationship and the admitted rate of rent, stood clearly established.

35. The *only defence* set up by the Appellant was that he had a mutual oral settlement with the Landlord and vacated the suit Property in June 2022 and also paid the rent till June 2023. However, it was his estranged wife who had locked the suit premises and it was she who was in exclusive possession, who had the sole key of the tenanted premise, for which he cannot be held responsible.

36. This defence, however, is not tenable. The tenancy was admittedly created between the Respondent and the Appellant. Clause 14 and 18 of the said Lease Deed stated that either of the parties, Lessor or the Lessee shall have the option to terminate the lease by giving one month notice and if the Lessee is the defaulter, he shall be bound to handover the vacant and peaceful possession. The wife admittedly came to live in the premises as a family member of the Appellant. She therefore, cannot be held as having any independent locus to claim tenancy, there being no privity of contract with the Respondent.

37. The doctrine of privity of contract has been explained by the Supreme Court in M.C. Chacko vs. State Bank of Travancore(1969) 2 SCC 343 wherein it was held that a person who is not a party to the contract cannot enforce it nor can contractual liability be shifted upon such third party. Therefore, the Respondent, being the landlord, is entitled to enforce the



obligations arising from the tenancy against the Appellant alone, who is the contracting tenant.

38. Even otherwise, when a tenant takes premises on rent for residence along with his family members, the possession of the premises by any member of his family continues to remain juridical possession of the tenant himself. The Appellant/ Lessee cannot evade liability merely by asserting that he personally is not residing in the premises.

39. Having observed that the wife, Smt. Kirti Verma of the Defendant had come to reside in the Property as a family member, the question arises about her right to continues in the tenanted premises even when the husband claims surrender of tenancy and the protection, if any, to which she is entitled.

40. The first aspect which emerges is that the right of a wife to residence, which has been recognized under Section 17 of Protection of Women from Domestic Violence Act, 2005 (*for short 'D.V. Act'*), specifically provides that she has a right of residence in shared household *or she is entitled to rent in lieu thereof*.

41. Section 17 of D.V. Act, have been enacted in order to ensure the protection of an estranged wife, from being thrown on the road with no shelter or protection above her head. However, it is a known fact that in many a cases, these ameliorative provisions enacted for protection of a woman, are being misused and abused to the chagrin of the third parties.

42. In the present case, the Appellant himself had given a statement on 13.02.2024 that he was not residing in the Suit Property since 04.06.2022, but his wife was living. A Local Commissioner was appointed to ascertain



the possession in the Suit Property, wherein it was found that she had put a lock on her Suit Property as was ascertained from the neighbours, Deepak Monga and his wife, Dr. Anuradha Monga and Mr. Varun Nagpal, the neighbours. The entry to the Apartment was checked and it was found that it was lastly opened by the father of Smt. Kirti Verma, wife of Mr. Rajat Verma Defendant/Appellant, on 4th and 5th June, 2023.

43. It is, therefore, evident that the wife was no longer occupying in the premises. The submission of the Appellant himself, who states that he had left the premises on 04.06.2022 and that it was his wife, who was living. Also, it has been ascertained that the wife has merely put her locks and has shifted to the premises of her father. In these circumstances, the wife, Smt. Kirti Verma is neither living in the property nor is she in need of the residential protection in respect of the tenanted premises. In fact, it is gross abuse of the process of law where she has merely put the lock to the premises, which is blatantly in order to defeat the rights of the landlord.

44. While the Law recognizes the protection to an estranged wife of residence, but it is not an absolute right and her claim is essentially limited to the husband.

45. The learned Trial Court was fully justified in allowing the Application under Order 12 Rule 6 CPC, considering that there was no defence whatsoever disclosed in the entire Written Statement since the Appellant himself had admitted that pursuant to a mutual Agreement dated 10.08.2023, the tenancy stood determined and that he had left the premises and has not been in possession of the Property since 04.06.2022.

46. The wife is also not physically residing in the Suit Premises. If at all,



2026:DHC:2561



she is at liberty to seek her rights against the husband. It is interesting to note while the Appellant had throughout stated that he was not in possession and has already vacated the premises and that it is the wife who is in possession, he pertinently, filed this Appeal to challenge the Order, which is based on the admissions made by him in his Written Statement as well as his statement under Order X Rule 2 CPC. It is quite evident that this Appeal is nothing but a proxy litigation and has no merits.

47. The Appeal is hereby, dismissed and is accordingly disposed of along with pending Applications.

NEENA BANSAL KRISHNA, J

MARCH 27, 2026/N