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

% ***Reserved on: 27th July,2026***
Pronounced on: 17th November, 2026
Uploaded on: 18th November, 2026

\# **CNR No. DLHC010157172026**

\+ **RFA 370/2026, CM APPL. 24829/2026, CM APPL. 24831/2026, CM APPL. 35201/2026**

1. M/S UNIVERSAL STEEL SUPPLY CO
Through its Proprietor Shri Umesh Kumar Garg,
Y-7, Loha Mandi, Naraina,
New Delhi-110028 .....Appellant No.1

2. SHRI UMESH KUMAR GARG
S/o Shri D.R. Garg,
R/o House No.3966, Sector-23,
Gurgaon-122017 .....Appellant No.2

3. SHRI YOGESH KUMAR GARG,
S/o Shri D.R. Garg,
R/o House No. 3966,
Sector-23, Gurgaon122017. ....Appellant No.3

Through: Mr. Arvind Kumar Gupta Senior Advocate with Mr. Abhiesumat Gupta, Mr. Rishi Bharadwaj, Mr. Ishan Parashar and Mr. Ashish Singh, Advocates.

versus

1. SHRI PAWAN KUMAR SARAF
S/o Late Shri Jeewan Ram Saraf ...Respondent No.1

2. SHRI SAILESH SARAF

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S/o Late Shri Satya Narain Saraf ....Respondent No.2

3. SHRI SACHET SARAF,
S/o Late Shri Pramod Kumar Saraf

All residents of : 23-A, B.D.Estate,
Timarpur, Delhi-110054. ....Respondent No.3

Through: Mr. Kapil Sankhla, Ms. Richa Sharma and Mr. Vipul Grover, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), read with Section 10 of the Delhi High Court Act, 1966, has been preferred by the Appellants/Defendants, **M/s Universal Steel Supply Co., Mr. Umesh Kumar Garg and Mr. Yogesh Kumar Garg**, against the Judgment and Decree dated 13.03.2026 passed by the learned District Judge, New Delhi, whereby the ***Suit of the Respondents/Plaintiffs for Recovery of Possession was decreed, under Order XII Rule 6 CPC.***

2. The Plaintiffs filed a Suit bearing ***CS(OS)No.1453/2010 for Possession and Mesne*** *Profits amounting to Rs.10,08,000/-, from the date of filing of the Suit as well as, Mesne Profits @Rs.50,000/- per month till the possession of the suit property, was handed over to the Plaintiffs.*

3. The **facts in brief**, as narrated in the Plaint, are that the Plaintiffs, Mr. Pawan Kumar Saraf, Mr. Sailesh Saraf and Mr. Sachet Saraf, were the co-

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owners and in possession of Plot No. Y-7 situated at Loha Mandi, Naraina, New Delhi (*hereinafter referred to as 'the suit property'*).

4. The **Defendant No. 1, M/s Universal Steel Supply Co**., was a partnership firm of which **Defendant Nos. 2 and 3, Mr. Umesh Kumar Garg and Mr. Yogesh Kumar Garg**, were the partners. The Plaintiffs stated that the Defendants were engaged in the iron and steel business. Defendant No. 1 was permitted to use the middle portion of Plot No. Y-7, Loha Mandi, Naraina, measuring 90 feet × 22 feet 6 inches (225 sq. yds.) (*hereinafter referred to as 'the suit property'*), to store and sell iron and steel goods, under a **Licence Agreement dated 05.05.1994**. The arrangement was renewed from time to time, with the last **Agreement being dated 01.04.2002**. The Plaintiffs further asserted that, under the Licence Arrangement, ***actual, physical and legal possession*** of the suit property remained with them and the other co-owners.

5. The Plaintiffs further stated that the arrangement required Defendant No. 1 to pay commission of ₹25 per metric tonne, on the sale proceeds. It was explained that Plot No. Y-7 had no construction apart from a small portion temporarily covered by a tin shed, and that the other portions, marked 'A' and 'C', were occupied by ***M/s H.V. Steels and M/s Sarawagi Sales***, respectively, as licensees. The commission of ₹25 per metric tonne, was to be calculated on the basis of the Defendants' quarterly sales, as disclosed in their Sales Tax Returns and was reflected in the Accounts as licence fee. According to the Plaintiffs, the Defendants failed to disclose their actual sales and render true accounts to avoid payment of the commission, which, they alleged, exceeded ₹84,000 per quarter.

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6. Upon expiry of the **Agreement dated 01.04.2002**, the Plaintiffs claimed that on 31.03.2004, they called upon the Defendants to remove their goods and material from the suit property. When the Defendants failed to comply, a **Notice dated 19.11.2005** was served, calling them to remove the goods and pay the commission due on sales, which allegedly exceeded ₹84,000 per quarter. The Defendants gave a false and frivolous Reply **dated 06.12.2005**, disputing the **Licence Agreement dated 01.04.2002**.

7. On 27.12.2005, the Plaintiffs referred their dispute to **Mr. Ram Singh Goyal, the sole Arbitrator**, by filing the Claim Petition. *They sought directions requiring the Defendants to provide their sales accounts and Sales Tax Returns, pay the commission due with interest, and remove their goods from the portion in dispute.*

8. The *Defendants in their Counter-statement and Reply, dated 01.04.2006,* to the Plaintiff's Claim Petition in the Arbitration proceedings, denied the licence arrangement and challenged the Arbitrator's appointment and jurisdiction. They contended that the Arbitration proceedings and the reliefs claimed, were not maintainable and were illegal. The Award dated **08.05.2006** was pronounced by the Sole Arbitrator, against which the Defendants then filed objections, registered as **CS No. 82/2006**, invoking **Sections 12, 13, 16 and 34 of the Arbitration and Conciliation Act, 1996.**

9. **The learned Additional District Judge, Tis Hazari Courts** *vide* **Judgment dated 02.02.2010**, allowed the objections and set aside the arbitral proceedings and the Award dated **08.05.2006**. At the parties' joint request, the matter was referred to the Mediation Cell. The parties appeared for mediation on **24.02.2010**, but did not reach a settlement.

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10. The Plaintiffs in the present Suit, claimed that the **Agreement dated 01.04.2002** expired on 31.03.2004, by efflux of time. The Legal Notice dated 19.11.2005 was duly served and therefore, the Suit was filed for directing the Defendants, to remove their goods from the suit property and for *Damages/Mesne Profits* in the sum of Rs.10,08,000/- till the date of filing and further *Mesne Profits* @Rs.50,000/- per month, till the decision of the suit.

11. The Defendants, **in their Written Statement**, raised *a preliminary objection* that the suit was not maintainable because no valid Notice under **Section 106 of the Transfer of Property Act,** had been issued. They asserted that the tenancy had not been determined, because the Notice had not been issued by all the co-owners.

12. According to the Defendants, the property in question had been allotted to *Mr. Satya Narain, Mr. Pawan Kumar Saraf, Mr. Pramod Kumar and Smt. Parvati Devi*, under a Perpetual Lease Deed dated 28.04.1982, executed by the Delhi Development Authority on behalf of the President of India. The **Notice dated 19.11.2005**, however, had been issued only by Smt. Parvati Devi Saraf and Mr. Pawan Kumar Saraf; neither Mr. Satya Narain nor Mr. Pramod Kumar had issued a Notice, which was contended to be defective.

13. The Defendants also contended that the Suit was barred by Section 50 of the Delhi Rent Control Act, 1958 since the monthly rent was ₹2,500, i.e. below ₹3,500. They claimed to have paid ₹25,000 to Smt. Parvati Devi for the period from 01.04.2004 to 31.01.2005 by cheque, which, according to them, she accepted and encashed. Relying on that payment, they asserted that the Plaintiffs were barred from denying the tenancy.

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14. Defendants claimed that they had been tenants on a month-to-month basis, since 1994. They contended that the Agreements relied upon by the Plaintiffs supported a landlord–tenant relationship, rather than a licence and that their tenancy was protected by the Delhi Rent Control Act; and that the Suit for Possession and Mesne Profits, was not maintainable.

15. The Defendants further claimed that they had remained in continuous physical possession of the suit property since 1994, with the Plaintiffs' permission and without interference. They asserted that they ran their iron and steel business independently from the premises, using their own employees and retaining control over the business.

16. They also contended that the other co-owners, Mr. Satya Narain and Mr. Pramod Kumar, had never alleged that the Defendants occupied the property, under a licence. The Defendants further stated that, Plaintiff Nos. 2 and 3, as successors-in-interest of the deceased co-owners, could not now dispute the Defendants' status as tenants, which the deceased co-owners had never challenged. Lastly, the Defendants objected that Smt. Parvati Devi, whom they claimed was a co-owner, had not been impleaded as a party to the Suit.

17. The Defendants also claimed that the Suit was barred by *res judicata*. They relied on the Arbitral Award dated 08.05.2006, which had upheld the validity of the Notice dated 19.11.2005, and the subsequent Judgment dated 02.02.2010, by which the learned ADJ set aside the Award, under Section 34 of the Arbitration and Conciliation Act, 1996. They claimed that Smt. Parvati Devi had not challenged the Judgment, which had therefore, attained finality and was binding on her and the other co-owners.

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Signing Date:18.11.2026
16:06:26

18. The Defendants further objected that the plaint should be rejected as Plaintiff No. 3 had not filed an affidavit in support of the plaint.

19. On **merits**, the Defendants reiterated that Smt. Parvati Devi was a co-owner of the suit property. The Defendants admitted that Defendant No. 1 was a partnership Firm and that Defendant Nos. 2 and 3 were its partners, and that the Firm dealt in the storage and sale of iron and steel. They denied, however, that they had taken the middle portion of the plot on licence or that the parties had entered into Licence Agreements dated 05.05.1994 and 01.04.2002. *Their case was that they had been inducted as month-to-month tenants in 1994 and had remained tenants since then*.

20. Furthermore, the Defendants denied agreeing to pay commission of ₹25 per metric tonne as licence fee or to provide quarterly sales figures based on their Sales Tax Returns and also denied that the commission exceeded ₹84,000 per quarter. It was maintained that the arrangement was a tenancy, not a temporary licence, and that there was no special relationship between the parties that would support the Plaintiffs' claim of a licence and that they had made this position clear in their Reply dated 06.12.2005, to the Plaintiffs' Legal Notice dated 19.11.2005.

21. They also disputed the accuracy of the Plaintiffs' site plan, and claimed that the Defendants had exclusive possession of the premises and that the Plaintiffs were not in possession of any part of the suit property. According to them, the premises included an Office measuring 6 feet × 17 feet, sheds at the front and rear, and the 225-square-yard area they claimed to occupy as tenants. They also claimed a right to use an area measuring 11 feet × 5 feet to open and close the shutter.

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16:06:26

22. The Defendants further claimed that they had regularly paid rent at ₹2,500 per month from 01.04.2004. They stated that ₹25,000 had been paid to Smt. Parvati Devi as rent, for the period from 01.04.2004 to 31.01.2005, and that a further ₹27,500 had been paid to the Plaintiffs as rent for the period from 01.02.2005 to 31.12.2005. Thus, the relationship was that of landlord and tenant, not licensor and licensee. It was denied that the plot/suit property had no construction and claimed that the Plaintiffs had only symbolic possession, while actual possession remained with the Defendants.

23. The Defendants alleged that the Plaintiffs had suppressed material facts and taken inconsistent positions, before different forums. They relied on **FIR No. 297/2005,** which Plaintiff No. 1 had caused to be registered at Police Station Naraina on 23.08.2005, against the Defendants and their brother, Mr. Mukesh Garg. The Defendants described the FIR as false and malicious, wherein it was alleged that they had threatened a relative of the Plaintiffs with the help of goons and prevented him from entering the premises. The FIR referred to an agreement to pay commission initially at ₹25 per metric tonne, increasing to ₹50 per metric tonne. The Defendants contended that the Plaint did not mention these allegations and took a contrary position. On that basis, they sought dismissal of the suit.

24. The Plaintiffs, **in their Replication**, reaffirmed the averments in the plaint and denied the contrary allegations made in the Written Statement.

25. The **Issues on the pleadings were framed on 04.02.2011,** which are as under:-

> *(i) Whether the defendants are tenants in respect of the property in dispute as alleged in the written statement? OPD*

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Signing Date:18.11.2026
16:06:26

(ii) *Whether the suit is bad for non-joinder of Smt. Parvati Devi Saraf and Mr. Pawan Kumar Saraf as alleged in the written statement? OPD*

(iii) *Whether the suit is barred by res judicata as alleged in the preliminary objection No. 7 in the written statement? OPD*

(iv) *Whether construction existed on the property in dispute at the time it came to be occupied by the defendants? OPD*

(v) *Whether the plaintiffs are entitled to mesne profit and if so to what amount and at what rate? OPP*

(vi) *Relief.*

26. Plaintiff No. 1, Mr. Pawan Kumar Saraf, appeared as PW-1 and tendered his evidence by way of affidavit in support of the Plaintiffs' case. He relied upon the following documents:

Name / Description of Document	**Exhibit Number / Mark**
Initial Affidavit of PW-1	Ex. PW-1/A
Corrected Affidavit of PW-1	Ex. PW-1/CA
Site Plan	Ex. PW-1/1
Photocopy of Agreement dated 05.05.1994	Mark A
Agreement dated 15.05.1996	Ex. PW-1/2
Commission Certificate dated 23.04.1999	Ex. PW-1/3
Commission Certificate dated 13.04.2000	Ex. PW-1/4
Commission Certificate dated 11.04.2001	Ex. PW-1/5
Commission Certificate dated 01.04.2002	Ex. PW-1/6
Original Income Tax Assessment Form for Assessment Year 2002–2003	Ex. PW-1/7

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Signing Date:18.11.2026
16:06:26

Computation of Income for Assessment Year 2002–2003	Ex. PW-1/8
Certified Details of Commission from 1994 to 2003–2004	Ex. PW-1/9

27. Defendant No. 2, Mr. Umesh Kumar Garg, appeared as DW-1, tendered his evidence by affidavit **Ex. DW-1/A**, and was partly cross-examined.

28. The request for a decree under Order XII Rule 6 CPC was made orally by the Plaintiffs' counsel, while DW-1 was being partly cross-examined. Counsel for the Plaintiff also stated that the Plaintiffs were confining their claim to possession and were no longer pursuing *Mesne* profits.

29. In considering whether the Suit could be decided before the Defendants' evidence was completed, the learned District Judge referred to both Order XII Rule 6 and Order XV Rule 3 CPC and relied on *Master Ansh Kapoor v. K.B. Kapur*, *CS(OS) 3438/2014*, decided on 12.02.2021, in support of deciding a matter without completing a full trial where no further evidence was considered necessary.

30. The learned Trial Court considered the submission, but observed that the Defendants should be given Notice before the matter was decided, accordingly the matter was listed for arguments on 13.03.2026.

31. The learned District Judge *vide* impugned Judgment dated 13.03.2026 referred to the Agreements from 1994 till 2002, to conclude that they were License Agreements *inter se* the parties and the claim of the Defendants that they were tenants @Rs.2,500/- per month, was rejected.

32. The learned District Judge further held that the Suit was held to be not barred by *res judicata*, in terms of the Award of the Arbitrator or bad for

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Signing Date:18.11.2026
16:06:26

non-joinder of Smt. Parvati Devi Saraf, the co-owner of the property. The Plaintiffs' claim for *Mesne profits* had been abandoned during the trial, so no finding was made on that claim. **It was held that the Plaintiffs were entitled to decree for Possession and consequently, the Suit of the Plaintiffs for Possession, was allowed.**

33. ***Aggrieved by the Judgment and Decree dated 13.03.2026, the Defendants have preferred the present Regular First Appeal, RFA No. 370/2026***.

34. The **grounds of challenge** are that the Suit of the Plaintiffs, was not maintainable in view of the setting-aside of the Award of the Arbitrator, under Section 34 of the Arbitration and Conciliation Act, 1996. The Defendants/Appellants contend that, after the arbitral Award was set aside, the Plaintiffs' only remedy was to initiate fresh arbitration proceedings and seek the appointment of an arbitrator by this Court. They further submitted that the objection concerning arbitration, is a legal objection that may be raised at any stage, relying on *R. Kandasamy (since dead) & Ors. v. T.R.K. Sarawathy & Ors*., (2025) 3 SCC 513, and *McDermott International Inc. v. Burn Standard Co. Ltd*., (2006) 11 SCC 181.

35. The Defendants/Appellants further contended that the Agreement dated 01.04.2002 had been executed by Smt. Parvati Devi Saraf and that she alone could have instituted the Suit. She had initiated the arbitration proceedings during her lifetime, but had not been impleaded as a Plaintiff, in the Suit which was subsequently instituted, in 2010. She was claimed to have executed a Power of Attorney in favour of Plaintiff No. 1, Mr. Pawan Kumar Saraf. Even assuming that he had acted under that authority, he could not have instituted the Suit in his own name without joining Smt. Parvati

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Signing Date:18.11.2026
16:06:26

Devi Saraf, the principal, as a party. Moreover, the Power of Attorney had neither been placed on record nor proved and that the impugned judgment was therefore, bad in law.

36. The Issue about non-joinder of necessary party had been framed and evidence was required to be completed for adjudication of this Issue. Also, the applicability of the bar under Section 50 of the Delhi Rent Control Act, had not been considered.

37. The learned District Judge had decided the Suit, while the Defendants' evidence was still underway and before they had been given an opportunity to complete it. The Order XII Rule 6 CPC could have been invoked only if there had been clear and unambiguous admissions, whereas they had made no admission that they occupied the premises, as licensees. They challenged the findings on the issues, on the ground that they had not been allowed to lead evidence.

38. The Written Statement and documents, read as a whole, supported their case that they had actual physical possession and that the relationship between the parties was that of landlord and tenant. The learned District Judge had failed to consider their denial of the alleged Commission Arrangement and their plea that they were tenants.

39. The Appellants contended that, according to the Plaintiffs, the licence Agreement had expired by efflux of time on 31.03.2004 and a Notice dated 19.11.2005 had thereafter, had been served on the Defendants. The Plaintiffs however, had not approached the Court with promptitude and that the Suit for possession and mesne profits was not maintainable, for which reliance is placed on *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*, (2012) 5 SCC 370.

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Signing Date:18.11.2026
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40. Both the Appellants and the Respondents filed Written Submissions, which largely reiterated the grounds set out in their respective pleadings. **Submissions heard and the record perused**.

41. The Plaintiffs/Respondents had pleaded that the Defendants/Appellants were permitted to occupy the premises under successive Licence Agreements, beginning with the Agreement dated 05.05.1994 and ending with the Agreement dated 01.04.2002.

42. The Defendants/Appellants had categorically in their Written Statement, admitted being in possession of the suit property w.e.f. 05.05.1994, but maintained that they had been inducted as month-to-month tenants.

I. Whether the Plaintiffs have a Locus Standi, to File the Suit:

43. The Appellants had taken a preliminary objection that the Plaintiffs, Mr. Pawan Kumar Saraf, Mr. Sailesh Saraf and Mr. Sachet Saraf, who had filed the Suit, had no *locus standi* to file the present Suit.

44. The Plaintiffs had relied upon the Agreement of 1994, which was entered with the Defendants, by Mr. Pawan Saraf and the last Agreement dated 01.04.2002 which was executed by Smt. Parvati Devi, to assert that though the last Agreement was signed by Smt. Parvati Devi, but she was not the plaintiff who filed the Suit.

45. This contention is not tenable as the Defendants themselves have explained in their Written Statement that the Perpetual Lease Deed dated 28.04.1982 was executed by the DDA in favour of Mr. Satya Narain, Mr.

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Signing Date:18.11.2026
16:06:26

Pawan Kumar, Mr. Pramod Kumar and Smt. Parvati Devi. Therefore, as per the own admissions of the Defendants, the Plaintiffs were the owners of the property. Even if it is accepted that the Last Agreement of 01.04.2002 was executed by Smt. Parvati Devi, it cannot be overlooked that the Plaintiffs as per the admissions of the Defendant itself, are the owners of the suit property.

46. Insofar as the Plaintiffs' entitlement to institute the Suit is concerned, reference may also be made to *Ambica Prasad v. Mohd. Alam*, (2015) 13 SCC 13, wherein the Supreme Court held that the established owner's right to seek eviction was not defeated merely because his brother had acted as the landlord, collected rent and executed a subsequent tenancy Agreement. The fact that the Agreement had been executed by another person did not, by itself, exclude the rights of the person whose ownership stood established.

47. More specifically, in *India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla (Dead) through LRs*, (2004) 3 SCC 178, the Supreme Court held that **one co-owner could institute eviction proceedings in his own right and on behalf of the other co-owners**. Their consent was presumed unless it was shown that they opposed the eviction and that the proceedings had been instituted despite their disagreement. Thus, the mere fact that the last Agreement had been executed by another co-owner did not, by itself, deprive a co-owner of the right to seek possession.

48. The Defendants acknowledged in their Written Statement that Mr. Pawan Kumar Saraf was a co-lessee of the suit property, under the Perpetual Lease Deed. The mere fact that the last Agreement had been executed by

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Signing Date:18.11.2026
16:06:26

Smt. Parvati Devi, did not deprive him of the *locus standi* to institute the Suit for Possession. The Appellants' objection on this ground is, therefore, without merit.

49. The Suit filed by the plaintiffs, who are the owners, is maintainable.

II. Whether the Suit is Barred under Delhi Rent Control Act:

50. It is pertinent to first consider the Defendants' objection that the Suit was barred under the Delhi Rent Control Act. For this purpose, it is first necessary to examine whether the property let to the Defendants constituted "*premises",* within the meaning of Section 2(i) of the DRC Act.

51. The Defendants admittedly occupied the suit property, measuring 90 feet × 22 feet 6 inches (225 sq. yds.), forming part of Plot No. Y-7, Loha Mandi, Naraina. The Plaintiffs claimed that it was a plot of land, except for a small portion temporarily covered by a tin shed.

52. The Defendants, on the other hand, asserted in their Written Statement that the property included an office in the front portion and sheds at the front and rear. Pertinently, in paragraph 1 of their reply on merits in the Written Statement, the Defendants themselves stated as under:

> *"the suit property consists of an office measuring 6 ft X 17 ft and a shed at the front and rear portion constructed on the plot. Besides having 225 Sq. Yds. under their tenancy,* ***the Defendants have constructed on the same an office space in the front side along with the shed etc."***

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Signing Date:18.11.2026
16:06:26

53. The Plaintiffs thus, described the property as a plot of land having a temporary tin shed, and the Defendants themselves admitted that they had constructed an office and sheds on the plot. The suit property was thus, a plot of land with temporary structures. *The question which arises is whether a plot of land with temporary structures would qualify as "premises", under Section 2(i) of the DRC Act.*

54. It is thus, relevant to produce Section 2(i) of the Delhi Rent Control Act, 1958, which reads as follows:

> *"'premises' **means any building or part of a building which is, or is intended to be, let separately for use as a residence or for commercial use or for any other purpose**, and includes—*
> *(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;*
> *(ii) any furniture supplied by the landlord for use in such building or part of the building;*
> *but does not include a room in a hotel or lodging house;"*

55. The *"premises"* has thus, been defined to include a building or part of a building let for residential, commercial or any other purpose.

56. Whether a plot of land with temporary structure would come within the definition of "premises", was considered by the Supreme Court in the case of *Prabha Manufacturing Industrial Co-operative Society v. Banwari Lal*, AIR 1989 SC 1101, wherein it was held that the property let out was a plot of land and that the shed constructed by the tenant, did not alter the nature of the subject matter of the letting. The landlord was, therefore, entitled to seek possession through a Civil Suit.

57. In *Surinder Kumar Jhamb v. Om Parkash Shokeen*, 82 (1999) DLT 569 (DB), it was held that where the property let was only land with a

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Signing Date:18.11.2026
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temporary structure, it could not be termed a building so as to fall within the definition of "premises" under Section 2(i) of the DRC Act.

58. In *Kamla Devi v. Laxmi Devi*, (2000) 5 SCC 646, the Supreme Court explained that the relevant consideration was whether land alone or land together with a structure, had been let. A structure erected by the tenant did not, by itself, alter the subject matter of the letting. Similar reasoning was adopted by the Delhi High Court in *Ajit Singh v. Ram Saroopi Devi, 55 (1994) DLT 759.*

59. In the present case, the Plaintiffs' case was that the property had been given for the storage and sale of iron and steel and *comprised a plot of land with only a small portion temporarily covered by a tin shed.* The office relied upon by the Defendants was, according to their own pleading, constructed by them. The relevant consideration was, therefore, the nature of the property originally let, rather than the structures subsequently raised by the Defendants.

60. Therefore, the entire arguments of the Appellants that there was no admission in respect of the crucial facts, is incorrect and there is a clear admission of the Defendants of being inducted in the suit premises, which are not covered by the DRC Act. Since the subject matter of the letting was only a plot of land with a temporary shed, it would not fall within the definition of "*premises"* under Section 2(i) of the DRC Act, and the bar under Section 50 would not be attracted.

61. Consequently, it is a Civil Suit which is maintainable for Recovery of Possession, irrespective of whether the premises having been given on lease or license.

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Signing Date:18.11.2026
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III. <u>Whether the Suit Premises were Given on Lease or License:</u>

62. Though it has been held that the relevance of the premises being let out on License or lease, has become irrelevant because the premises have been held to be not covered under Delhi Rent control Act, but still the **principal contention** of the Appellants that they had been inducted into the suit property as tenants, not as licensees, may still be considered.

63. The Defendants asserted that the Agreements entered into by the Defendants, can by no stretch of imagination, be termed or equated to the Agreement of License. To comprehend the contentions of the Defendants/Appellants, it would be pertinent to refer to the Agreement dated 05.05.1994, which is the First Agreement entered into, between the parties. The relevant Clauses of the said Agreement are as under:-

> *AND WHEREAS the party of the Second Part is desirous of entering into Iron & Steel trade and has approached the party of the First Part Mr. Pawan Saraf* ***to look after and supervise their business*** *to which the party of the First Part Mr. Pawan Saraf has given his consented his services on the following terms and conditions.*
>
> … … …
>
> *<u>NOW THIS DEED WITNESSTH AS UNDER</u>:-*
>
> *1. The* ***second party shall employ its own man to conduct the sale of product dealt in by it. Under the supervision of the First party*** *from the premises No. Y-7, Loha Mandi, Naraina, New Delhi-110028. The salaries of the employees etc. engaged in the sale of the products of the Second Party by the First Party shall be paid out of the sale proceeds of the products of the Second Party.*
>
> *2. The Second Party shall alone be liable for issuing of bills, Invoices etc. filing the Sales Tax and Income Tax returns and shall alone by responsible for all the 1iabilities and obligations*

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Signing Date:18.11.2026
16:06:26

arising out of or incidental to the conduct of the sales of the products dealt in by it from the above said premises. The First Party shall under no circumstances, be liable in respect of the foresaid matters.

3. The Second Party ***does not and shall not claim any interest whatsoever, in any portion of the whole of the said premises of which the actual, physical and legal possession is and shall remain with the First Party****. The Second Party shall without any previous notice from the First Party be bound to remove its goods from the said premises and when require by the First Party.*

*4. The Second Party shall have no objection whatsoever****, if the First Party it self deals in or supervises the sales etc. of the any other party at the above said premises.***

5. The Second Party shall be entitled to pay the First Party a ***net commission of at the rate of Rs.20/- (Rupees Twenty Only) per metric ton.*** *On sales proceeds affected by it at the said premises quarterly. The quarterly sales shall be computed in accordance with the Sales Tax Returns to be filled by the Second Party in connection with the above premises.* ***However, the First Party shall be entitled to check and sign periodically through its proprietor or any other authorised person, the bills and invoices showing the sales conducted by the Second Party****.*

6. That the commission payable to the First Party by the Second Party shall be calculated only on the sales conducted from the above said premises and on no other sales conducted by the Second Party from its other sales offices.

7. The Second Party alone shall be responsible for maintenance or proper books of accounts and other books to be shown to the Govt. Authorities and no liability, whatsoever, in this, connection shall be borne by the First Party.

64. The parties thereafter, entered into successive Agreements dated 15.05.1996, 01.04.1998 and 01.04.2001; the last Agreement was executed on 01.04.2002. These Agreements contained provisions, similar to those set out above.

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65. ***The issue, therefore, was whether the successive Agreements, read as a whole and in light of the rights and obligations they created, established a relationship of landlord–tenant or a licensor–licensee.***

66. The distinction between a lease and a licence was considered by the Supreme Court in *Associated Hotels of India Ltd. v. R.N. Kapoor*, AIR 1959 SC 1262. The dispute concerned two cloakrooms in the Imperial Hotel that had been occupied by a hairdresser, under an Agreement framed in language appropriate to a licence. K. Subba Rao, J. considered the Agreement *inter se* the parties and ***observed that, although the document used phraseology appropriate to a licence, it was the substance of the Agreement, and not its form, that mattered; otherwise, clever drafting could camouflage the real intention of the parties.***

67. Reference in this judgement was made in *Errington v. Errington, [1952] 1 All E.R. 149*, wherein Lord Denning stated:

> "*The result of all these cases is that, although a person who is let into exclusive possession is prima facie, to be considered as a tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy.*"
>
> …. … …
>
> *"The question in all these cases is one of the intention: Did the circumstances and the conduct of the parties show that all that was intended was that the occupier should have a personal privilege with no interest in the land?"*
>
> *The proposition of law was thus stated to be well established* ***(i) To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form; (2) the real test is the intention of the parties - whether they intended to create a lease or a license and (3) if the document creates an interest in the property, it is a lease; but if it only***

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Signing Date:18.11.2026
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> ***permits another to make use of the property, of which the legal possession continues with the owner, it is a license; and (4) if under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease.*** *Judged by the said tests, it is not possible to hold that the document is one of licence. Certainly it does not confer only a bare personal privilege on the respondent to make use of the rooms. It puts him in exclusive possession of them, untrammelled by the control and free from the directions of the appellants. The covenants are those that are usually found or expected to be included in a lease deed. The right of the respondent to transfer his interest under the document, although with the consent of the appellants, is destructive of any theory of licence."*

68. It was observed in Associated Hotels *(supra)* that *there was a marked distinction between a lease and a licence*. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of the right to enjoy the property for a specified time in consideration of a price paid or promised. Under Section 108 of the Act, the lessee is entitled to be put in possession of the property. ***A lease therefore, transfers an interest in land, known as the leasehold interest. During the term of the lease, the lessor parts with the right to enjoy the property, and the lessee acquires that right to the exclusion of the lessor.***

69. Section 52 of the Indian Easements Act, defines a licence as under:

> *"Where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."*

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70. K. Subba Rao, J. explained that if a ***document gave a person only the right to use property in a particular way or on specified terms, while possession and control remained with the owner, the arrangement would amount to a licence.*** Legal possession would remain with the owner, and the licensee would be permitted to use the premises for a particular purpose. The licence would not create an estate or interest in the property. The Apex Court observed that the distinction between a lease and a licence was clear, although the dividing line could sometimes become thin or blurred. *It was further noted that exclusive possession had once been treated as conclusive proof of a lease, but that the later approach treated it as prima facie evidence of tenancy, subject to circumstances showing that the parties did not intend to create one*.

71. *The principles to elaborate the test to determine lease or licence in a particular case*, was defined by the Supreme Court in the case of *Delta International Ltd vs Shyam Sunder Ganeriwalla And Anr AIR 1999 SUPREME COURT 2607* as under:-

> *"(1) To find out whether the document creates a lease or a license the real test is to find out "the intention of the parties"; keeping in mind that in cases where exclusive possession is given, the line between a lease and a license is very thin.'*
>
> *(2)* ***The intention of the parties is to be gathered from the document itself. Mainly, the intention is to be gathered from the meaning and the words used in the document except where it is alleged and proved that the document is a camouflage****. If the terms of the document evidencing the agreement between the parties are not clear, the surrounding circumstances and the conduct of the parties have also to be*

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borne in mind for ascertaining the relationship between the parties.

(3) In the absence of a written document and when somebody is in exclusive possession with no special evidence how he got in the intention is to be gathered from the other evidence which may be available on record, and in such cases exclusive possession of the property would be the most relevant circumstances to arrive at the conclusion that the intention of the parties was to create a lease.

(4) ***If the dispute arises between the very parties to the written instrument, the intention is to be gathered from the document read as a whole.*** *But in cases where the landlord alleges that the tenant has sublet the premises and where the tenant in support of his own defense sets up the plea of a mere licensee and relies upon a deed entered into, inter se, between himself and the alleged licensee, the landlord who is not a party to the deed is not bound by what emanates from the construction of the deed;* ***the tenant and the sub-tenant may jointly set up the plea of a license against the landlord which is a camouflage; in such cases, the mask is to be removed or the veil is to be lifted and the true intention behind a facade of a self-serving conveniently drafted instrument is to be gathered from all the relevant circumstances.*** *Same would be the position where the owner of the premises and the person in need of the premises executes a deed labelling it as a license deed to avoid the operation of rent legislation.*

(5) Prima facie, in the absence of a sufficient title or interest to carve out or to create a similar tenancy by the sitting tenant in favor of a third person, the person in possession to whom the possession is handed over cannot claim that the sub-tenancy was created in his favor; because a person having no right cannot confer any title of tenancy or sub-tenancy. A tenant protected under statutory provisions with regard to occupation of the premises having no right to sub-let or transfer the

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Signing Date:18.11.2026
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premises, cannot confer any better title. But, this question is not required to be finally determined in this matter.

(6) Further lease or license is a matter of contract between the parties. Section 107 of the Transfer of Property Act, 1882 inter alia provides that leases of immovable property may be made either by a registered instrument or by an oral agreement accompanied by delivery of possession; if it is a registered instrument, it shall be executed by both the lessee and the Lesser. This contract between the parties is to be interpreted or construed on the well-laid principles for construction of contractual terms, viz., ***for the purpose of construction of contracts, the intention of the parties is the meaning of the words they have used and there can be no intention independent of that meaning; when the terms of the contract are vague or having double intendment, one which is lawful should be preferred; and the construction may be put on the instrument perfectly consistent with his doing only what he had a right to do."***

72. The application of these principles to the present case, requires consideration of the parties' pleadings, to ascertain the admitted facts and the aspects in dispute. The Defendants admitted that they had been in possession of the suit premises since 1994, but claimed that they occupied it as tenants. Though the Agreements are not denied, it was claimed that they were not the License Agreement. The Defendants contended that the documents relied upon by the Plaintiffs, did not create a licence; instead evidenced a lease. They asserted that *"to the contrary, the Defendants had entered into a Lease Agreement and by no stretch of imagination, various documents which have been filed by the Plaintiffs,* ***can be termed or equated to be Agreement of License****."*

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73. The Plaintiffs, on the other hand, relied on a series of Agreements, the last of which was dated 01.04.2002 which according to its terms, expired on 31.03.2004. It was specifically provided in these Agreements that the Defendant who was desirous of entering into the iron and steel trade had approached Pawan Kumar Saraf to look after and supervise the business to which Mr. Pawan Kumar had consented to render his services on the following terms.

74. It was further stipulated that the Defendant shall not claim any interest, whatsoever, in any portion or whole of the Suit premises of which the actual, physical and legal possession would remain with the Plaintiff. It further stipulated that Defendant shall not have any objection, whatsoever, if the Plaintiff itself deals or supervises the sales etc. of any other party from the Suit premises. Moreover, it was agreed that the Plaintiff would be entitled to the commission @ Rs.20/- per metric ton. Moreover, the Plaintiff would be entitled to check and sign periodically through its Proprietor of any other person the Bills and the Invoices showing the sales conducted by the Defendants.

75. Not only this, the Plaintiff along with the Plaint had placed on record the Annual Commission Receipts reflecting the payment of commission from 1994-95 which varied from Rs.11000/- to Rs.22,000/- in 2003-04.

76. It is admitted by the Defendant that the Claim Petition before the Arbitrator was preferred by the Petitioner, wherein *he had filed his Reply*, wherein he had admitted that it was agreed that the rent would be paid by way of annual commission, in order to avoid the consequences arising out of Municipal/DDA by-laws and the relationship of the parties was mutually regulated through the Agreement meant for showing the payment of rent as

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Signing Date:18.11.2026
16:06:26

commission, but in fact, it was rent only. The relevant portion of Ex.P9 is as under :

> *"Since the very beginning, the parties had agreed to the effect that their relationship shall be that of the landlord and tenant but in order to avoid the consequences arising out of the Muncipal/DDA bya-law, the nature of relationship of the parties was being mutually regulated through the, agreements meant for showing the payments of rent as under the head, "commission" but in fact was rent only. In fact the commission amount was mutually agreed to be the rent amount. But after perishment of said alleged agreement dt. 31-3-2004, due to system of showing the payment of rent as commission created difficulties in book-keeping of the parties arose as pointed out by accountant and therefore parties decided to have the correct system of payment of rent from commission head to the fixed rent of Rs 2,500/- per month. In this way after 31-03-2004 (expiry of agreement) the parties had agreed that henceforth the fixed rent of Rs. 2500/- were to be paid by the respondents to the claimants and accordingly with effect from 01-04-2004 the respondents have been paying the rent of the premises in question at the fixed rate of Rs. 2500/- per month. The rent for the period of 01-04-2004 to 31-01- 31-01-2005 amounting to Rs: 25,000/- was paid by the respondents vide cheque bearing No. 067107 dated 14-01-2005 issued in favour of Smt. Parvati Devi Sarraf."*

77. The Defendant while was silent in the Written Statement about the mode of payment, but had specifically admitted in his Counter Statement filed in the Arbitration proceedings that the monthly charges were being paid as a commission @ Rs.25 per metric ton. From these specific Clauses and the mode of payment of the annual charges, it can easily be inferred that the intention of the parties was not to create any tenancy, but only a license

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Signing Date:18.11.2026
16:06:26

permitting the Defendant to use the property for the purpose of storage and sales of iron and steel.

78. The question which arises is whether the admissions made by the Defendants in their Counter-Statement filed in the Arbitration proceedings, can be read against them in the present Suit, more so when the Arbitral Award dated 08.05.2006 has since been set aside. Order XII Rule 6 CPC empowers the Court to pass a judgment where *"admissions of fact have been made either in the pleading or otherwise, whether orally or in writing"*.

79. The scope of the expression *"or otherwise"* was explained by the Supreme Court in *Rajiv Ghosh v. Satya Naryan Jaiswal*, 2025 INSC 467, as under:

> *"35. The words "or otherwise" are wide enough to include all cases of admissions made in the pleadings or de hors the pleadings. Under Rule 6, as originally enacted, it was held that the words "or otherwise" without the words "in writing" used in Rule 1 showed that a judgment could be given upon oral or verbal admission also. [See: Beeny, re, (1894) 1 Ch D 499] The Amendment Act of 1976, however, made the position clear stating that such admissions may be "in the pleading or otherwise" and "whether orally or in writing". Thus, after the amendment in Rule 6, the admissions are not confined to Rule 1 or Rule 4 of Order 6, but are of general application. Such admissions may be express or implied (constructive); may be in writing or oral;*

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16:06:26

or may be before the institution of the suit, after the suit is brought or during the pendency of proceedings."

80. The Counter-Statement dated 01.04.2006 was filed by the Defendants themselves, in proceedings between the same parties and in respect of the same suit property, much before the institution of the present Suit, in 2010. The admissions contained therein are thus, admissions made *"before the institution of the Suit"*, which may be read against the Defendants under Order XII Rule 6 CPC. The setting aside of the Award on the ground concerning the appointment of the Arbitrator, does not efface these admissions. What was set aside was the adjudication by the Arbitrator, not the statements of fact made by the Defendants in their own pleading. Nor is the admission diluted by the Defendants' assertion that the commission was *"in fact rent"*.

81. The averments in the Counter-Reply, admitted are that the relationship between the parties *"since the very beginning"* was regulated through the Agreements and that the payments were made under the head *"commission"*. Whether these payments were rent is only the Defendants' characterisation of the arrangement, which is for the Court to determine on the terms of the Agreements, as discussed above.

82. Pertinently, in their Written Statement, the Defendants denied having agreed to pay commission @Rs.25 per metric tonne or to furnish quarterly sales figures on the basis of their Sales Tax Returns. This denial stands belied by their own Counter-Statement. In *Rajiv Ghosh* (supra), the Supreme Court declined to accept the defendant's plea that the West Bengal Premises Tenancy Act, 1997 was not applicable to him, observing that if the Act did

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Signing Date:18.11.2026
16:06:26

not apply, there was no good reason for him to have filed an Application under Sections 7(1) and 7(2) of that Act. Similarly, the Defendants having themselves admitted the Commission arrangement in the arbitration proceedings, cannot be permitted to deny it in the present Suit.

83. From the terms of the Agreement coupled with the conduct of the parties, it is evident that it was a license which was created in favour of the Respondent for which the charges had been fixed on commission basis; it cannot be said that there was a tenancy created in favour of the Respondent.

84. It is also pertinent to refer to the Site Plan, the correctness of which has not been denied by the Defendants, wherein it is shown that the entire property in question is one plot of land and the suit premises is the middle portion which has been demarcated by pillars, while the portion of the property on left and the right side, have been given to third parties on commission basis.

85. Also, the site plan reflects that the shutter giving access to the suit property which is in the middle of the plot, also extends to the adjoining part of the plot which has been given on commission basis to the third party. This further corroborates that the Defendant was inducted as a licensee in the subject suit premises. It all shows that the intention of the parties was to create a license and not the Lease, on the comprehensive reading of the document.

86. The ancillary objection was taken that the rate of rent was Rs.2,500/- p.m., instead of the earlier mode of payment. The Appellants have nowhere denied or challenged the contents of the Agreements relied upon by the Plaintiffs, but have asserted that after the expiry of the license in 2004, it had approached the Plaintiffs, to enter into an oral Agreement of tenancy on

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Signing Date:18.11.2026
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payment of the rent of Rs.2,500/- per month. There is not a whisper in the Written Statement as to how and when the parties entered into an Agreement, whereby the rate of rent was affixed.

87. In order to buttress this contention, it was asserted that the rent @Rs.2,500/- per month amounting to Rs.25,000/- for the period 01.04.2004 to 31.01.2005, was paid through cheque to Smt. Parvati Devi, which was encashed by her. Merely tendering an amount to Smt. Parvati Devi, would not constitute a creation of tenancy especially when the relationship is traced from 1994, which was by virtue of the Agreements and after the expiry of the Agreement in 2004 did not enter into any fresh Agreement.

88. Pertinently, the Defendant had tendered an additional amount of Rs.27,500/- by cheque by the same was not encashed and the amount was returned by the Plaintiff.

89. In view of the aforesaid, since it was a license created in respect of a plot of land with the temporary shed, it cannot be said that the bar of Delhi Rent Control Act is attracted in the present case.

IV. Whether the license/lease of the Plaintiffs, was Validly Terminated:

90. The other significant consideration was that the license/lease of the Plaintiffs, was admittedly terminated *vide* Legal Notice dated 19.11.2005 to which, the Reply dated 06.12.2005 was admittedly given by the Defendants. The license/lease of the Defendants, having been terminated validly, the Plaintiffs/Respondents were entitled to recovery of possession of the suit property, which has been rightly decreed under Order XII Rule 6 CPC by the learned District Judge.

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V. <u>Whether the Suit is barred by Res-judicata, in View of the Arbitration Proceedings:</u>

91. Another objection raised by the Appellants was that the Plaintiffs had initiated arbitration proceedings, in which an Award dated 08.05.2006 had been passed by the learned Arbitrator. Although the Award had been set aside by the learned ADJ *vide* Order dated 02.02.2010, the Appellants contended that the findings recorded in those proceedings, had attained finality, having remained unchallenged by the Plaintiffs, and barred the institution of the present Suit.

92. The plaintiffs had undeniably, filed for arbitration, in terms of their Agreements, in which an Award dated **08.05.2006**, was passed in favour of the Plaintiffs. However, the objections under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the Defendants, was allowed by the learned ADJ, and the Award was set aside on grounds concerning the independence of the appointment of the Arbitrator, under Section 12 of the Act. Thereafter, the parties had sought permission to appear before the Mediation Centre, which was granted. *It was further directed that, if the parties were unable to settle their disputes amicably, they would be at liberty to take steps for the appointment of a new Arbitrator.*

93. The Plaintiffs, instead of commencing fresh arbitration proceedings, instituted the present Suit for Recovery of Possession. The Defendants/Appellants did not seek a reference to arbitration, under Section 8 of the Arbitration and Conciliation Act. In the absence of a timely request

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for such a reference, the existence of the Arbitration Agreement did not, by itself, bar the Civil Suit. The liberty granted to seek the appointment of a new Arbitrator likewise did not, by itself, exclude the civil remedy.

94. Moreover, the Arbitral Award had been set aside on grounds concerning the independence of the Arbitrator. Its findings could not, therefore, be treated as subsisting findings, binding upon the parties in the present Suit. The finality of the Order setting aside the Award, did not revive the findings contained in that Award. Nor did the setting aside of the Award amounted to an adjudication on the merits of the Plaintiffs' claim for possession. Consequently, the plea that the present Suit was barred by *res judicata*, is without merit.

VI. Whether Order XII Rule 6 CPC was Rightly Invoked at the Stage When the Evidence of Defendant was being Recorded:

95. Lastly, the Appellants objected that the Suit was at the stage of cross-examination of DW-1, when Order XII Rule 6 CPC was invoked for passing the decree for possession. It was contended that there were several disputed facts which required evidence and that it was inappropriate to pass a decree on admissions, when almost the entire evidence had been recorded over a period of more than fifteen years, since the institution of the Suit in 2010.

96. This contention is without merit as the stage of the proceedings did not, by itself, preclude the passing of a decree under Order XII Rule 6 CPC. *The relevant consideration was whether the material facts necessary for granting the relief stood clearly and unequivocally admitted.*

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97. In this regard, the learned District Judge relied upon *Charanjit Lal Mehra v. Kamal Saroj Mahajan*, AIR 2005 SC 2765, wherein reference was made to *Uttam Singh Duggal & Co. Ltd. v. United Bank of India & Ors.*, (2000) 7 SCC 120. The object of Order XII Rule 6 CPC was explained as enabling a party to obtain a speedy judgment, at least to the extent of the relief to which the admissions of the opposite party, established an entitlement. Consequently, where the requisite admissions were available, the mere fact that evidence had commenced and recorded over ten years, did not require the Suit to proceed through the remainder of the trial.

98. In *Mechelec Engineers & Manufacturers v. Basic Equipment Corporation*, (1976) 4 SCC 687, the Supreme Court explained, in the context of Order XXXVII CPC, that Leave to Defend could be refused where the defence was illusory, sham or practically moonshine.

99. This principle could be referred to by analogy; where there are clear and unequivocal admissions establishing the entitlement to the relief claimed, a decree under Order XII Rule 6 CPC could well be passed, as recording evidence in regard to admitted facts, is an exercise in futility.

Conclusion:

100. The aforesaid discussion establishes that the Defendants occupied the suit plot under the Plaintiffs, whether as lessees or licensees, that their right to continue in possession was validly terminated by the Legal Notice, and that the Suit was not barred under Section 50 of the DRC Act. **Consequently, the Plaintiffs were entitled to a decree for possession.**

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101. In view of the aforesaid discussion, it is held that the Suit for Possession, has been **rightly** decreed by the learned District Judge under Order XII Rule 6 CPC.

102. There is **no merit** in the present Appeal, which is hereby, **dismissed**. The pending Applications are also disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

NOVEMBER 17, 2026/RS

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