



2026:DHC:7580



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 23rd July, 2026

Pronounced on: 07th September, 2026

Uploaded on: 07th September, 2026

CNR No. : DLHC010321222026

+ RSA 126/2026, CM APPL. 46845/2026

MOHD. MAHBOOB

S/o Late Sh. Allah Rakha

R/o House No.6859, First Floor, Gali No.18,

Ahata Kidara, Bara Hindu Rao, Delhi.

.....Appellant

Through: Mr. R.K. Saini, Advocate.

versus

1. **MST. ARSHI QURESHI**

Wife of Sh. Ateeq Ur Rehman

R/o H. No.6190, Third Floor, Nawab Road,

Basti Harphool Singh, Delhi.

2. **MST. IRAM**

Wife of Md. Ali

R/o H. No.6857, Gali No.18,

Ahata Kidara, Bara Hindu Rao, Delhi.

.....Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

1. The present **Regular Second Appeal** under Section 100 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) has been filed on behalf of the *Appellant/Defendant* against the *Judgment and Decree dated 08.07.2026*, whereby the learned District Judge, Delhi, in *RCA No.216/2025*, **upheld** the Judgment and Decree dated 03.11.2025 of the learned Civil Judge, Delhi, *decreeing* the suit of the Plaintiffs/Respondents



for possession and recovery of arrears of rent and damages/mesne profits @ Rs.1,000/- per month, against the Appellant/Defendant.

2. The Plaintiffs/Respondents, **Mst. Arshi Qureshi & Anr.**, filed a **Suit bearing CS No.236/2022 seeking possession, recovery of arrears of rent and damages/mesne profits, along with permanent and mandatory injunction.**

3. The **facts in brief**, are that **Mst. Sahar Bano @ Chaman**, w/o Md. Hanif, was the sole, exclusive and absolute owner of property bearing **Municipal No.6859, Gali No.18, Ahata Kidara, Bara Hindu Rao, Delhi (hereinafter the "suit property")** having been purchased from its erstwhile owner for valuable consideration, by virtue of a **registered Sale Deed dated 27.01.1992**. She expired on 26.08.2015 and was survived by the Plaintiffs as her legal heirs and they became the owners of the suit property to the extent of **½ share each**.

4. **Plaintiffs claimed** that at the time of purchase of suit property by **Mst. Sahar Bano @ Chaman**, the property was already in use, occupation and possession of **different tenants**, as was mentioned in the Sale Deed itself. **Sh. Allah Rakkha s/o Sh. Khuda Baksh** was mentioned as a tenant in respect of **First Floor/ bala khana**, comprising of one room, kitchen, bathroom and *dalan*, at **a monthly rent of Rs.20/- excluding all other charges**.

5. On purchase of the suit property by **Mst. Sahar Bano@ Chaman**, **Sh. Allah Rakkha** became her **tenant**, by operation of law. In fact, he also attorned in her favour and started making payment of monthly rent to her. After the demise of **Sh. Allah Rakkha**, his wife **Mst. Fatima, six sons and four daughters**, *inherited the tenancy rights* in respect of the suit property



and became the tenants of the plaintiff, by **operation of law**.

6. It is **claimed** that after the demise of Sh. Allah Rakkha, his Legal Heir *stopped making payment of monthly rent to Mst. Sahar Bano*, despite repeated requests and approaches. Consequently, she issued **a Legal Notice dated 14.02.2007** through her counsel, terminating the tenancy of the legal heirs of Sh. Allah Rakkha and called upon them to *hand over the vacant and peaceful possession of the suit property to her and also to clear the areas of rent*.

7. Upon service of Legal Notice, Defendant approached and informed the Plaintiff that except the Defendant Sh. Mohd. Mahboob, all other legal heirs *have left the premises and are not residing there*. Therefore, *Defendant requested the Plaintiff to accept him as the only tenant and to allow him to continue to reside in the tenanted premises*. The Defendant agreed to enhance the rent **w.e.f. 01.04.2007 @ Rs.3,000/- per month** and further agreed to enhance the rent by **10%** after every *three years*. The rent, last payable, was at the rate of **Rs.4,393/- per month, excluding all other charges**.

8. Plaintiff claimed that Defendant was *a habitual and chronic defaulter* in making payment of rent and he has neither paid nor tended rent **w.e.f. 01.06.2019 at the rate of Rs.4,393/- per month**, resulting in accumulation of areas of rent in the sum of **Rs.1,36,121/-**, which has not been paid to the Plaintiff. Furthermore, Plaintiff further claimed that she is entitled to *interest @ 18% per annum on the areas of rent*.

9. Plaintiff further asserted that **substantial damage and alterations** in the tenanted premises have been carried out illegally and unauthorizedly, without the written consent and permission of the Plaintiffs. Resultantly, **cracks have appeared on the Ground Floor portion**, which have resulted



into weakening of the entire structure. Plaintiff approached the Defendant to desist from making such additions and alterations, but Defendant failed to listen to the Plaintiff.

10. ***Complaints dated 25.11.2021, 27.11.2021 and 28.11.2021*** were made to Police and ***Complaints dated 26.11.2021 and 28.11.2021*** were made to NDMC. The Plaintiff asserted that in order to carry out necessary repairs on the Ground Floor, they would have to spend at least ***Rs.3,00,000/-***, which the Defendants are liable to reimburse.

11. Plaintiffs issued ***Legal Notice dated 07.12.2021*** terminating the tenancy and demanding the user and occupation charges ***@ Rs.7,000/- per month***, which is the prevailing rate of rent in the locality. The Plaintiffs, thus filed the ***Suit for Possession, Arrears of Rent, Mesne Profit and Damages***.

12. Defendant, in the ***Written Statement***, asserted that Plaintiff is guilty of *suppressing the material facts and the Suit is based on falsehood*. It was *denied* that there existed a relationship of landlord-tenant between the parties. It was specifically averred that *Defendant has become the owner of the suit property, as nobody claimed the ownership of the suit premises*.

13. ***On merits***, it was denied that Defendants are in unlawful and illegal possession of the suit property. It was denied that *Plaintiffs are the legal heirs of Mst. Sahar Bano or are the owners of the suit property*. It was also claimed that *no Sale Deed* has been shown to the Defendants in favour of Mst. Sahar Bano. It is also denied that Ms. Sahar Bano was the owner of the suit property.



14. It is further denied that she died on 26.08.2015 or that the Plaintiff have acquired the ownership in the suit property.

15. It is admitted that *Sh. Khuda Baksh was a tenant* in the suit premises and Receipts were duly issued by the landlord of the suit property. It is however, *denied that there existed relationship of landlord-tenant between the parties* or that they ever atoned *Sh. Allah Rakkah, as her tenant*.

16. It was admitted that *Sh. Allah Rakkah was survived by his wife, eight sons and four daughters*, but it was **denied** that the legal heirs stopped making payment of rent. It was denied that the *Legal Notice dated 14.02.2007* was ever served upon the Defendants or that the alleged tenancy was ever terminated.

17. It was also **denied** that Defendant entered into any oral Settlement with Mst. Sahar Bano to enhance the rent to Rs.3,000/- per month or to its increase by 10% after every three years. It was also denied that the rent became Rs.4,393/-, at the time of filing the Suit. It was reiterated that the Defendants have never atoned to the Plaintiffs.

18. It is further asserted that ***no rent was ever paid to the Plaintiffs w.e.f. 01.06.2019 at the rate of Rs.4,393/-***. In fact, there ***was no amount due from the Defendant*** and the claim for Rs.1,36,121/-, is not tenable. It was thus, submitted that the Suit was liable to be dismissed.

19. Plaintiffs, in the **Replication**, reaffirmed the assertions made in the Plaint and denied the allegations made in the Written Statement.

20. **Issues of the pleading**, were framed on 01.12.2023 as under:

“1. *Whether the defendant is the tenant of plaintiffs in the suit property at monthly rent of Rs. 4,393/-? OPP*

2. *Whether the defendant has defaulted in payment of rent of*



Rs. 1,36,121/-? OPP

3. Whether the defendant has illegally refused to handover the possession of suit property to plaintiffs? OPP

4. Whether the plaintiffs have suppressed material facts from the court? OPD

5. Whether the present suit is barred u/s 50 of The Delhi Rent Control Act, 1958? OPD

6. Whether the defendant is illegally threatening to create 3rd party interest in the suit property? OPP

7. Whether the plaintiffs are entitled to the relief of possession of suit property? OPP

8. Whether the plaintiffs are entitled to the relief of recovery of arrears of rent of Rs. 1,36,121/- alongwith interest? OPP

9. Whether the plaintiffs are entitled to the relief of mense profits? If yes, at what rate and for what period? OPP

10. Whether the plaintiffs are entitled to the relief of permanent injunction as sought? OPP

11. Whether the plaintiffs are entitled to the relief of mandatory injunction as sought? OPP

12. Relief and Cost.”

21. Plaintiffs, in support of their case, examined **PW-1 Mst. Arshi Qureshi, Plaintiff No.1**, who tendered her evidence by way of Affidavit Ex.PW-1/A. She also proved the documents i.e. Sale Deed dated 27.01.1992, Death Certificate of Mst. Sahara Bano, Legal Notice dated 07.12.2021, Postal Receipt, Reply to Legal Notice and Site Plain, as Ex.PW-1/1 to PW-1/7.

22. **Defendant Md. Mahboob**, in support of the defence as taken in the



Written Statement, **examined himself as DW-1** and tendered his evidence by way of Affidavit Ex.DW-1/A.

23. He examined **DW-2 Md. Ata**, who tendered the evidence in support of the defence taken by the defendant.

24. The learned Civil Judge, ***on consideration of the evidence***, held that the Defendant had *denied his status in the suit property as that of a tenant*, but had claimed that he had become an owner after the demise of Sh. Allah Rakkha, as none came to claim ownership and the Defendant has acquired ownership in the suit property. ***He denied having ever atoned to the Plaintiffs or Mst. Sahar Bano as a tenant.***

25. In view of the evidence, it was held that *Defendant was an unauthorised occupant in the suit property*, having repudiated the ownership of the Plaintiffs. ***It was thus, held that the bar of Section 50 of The Delhi Rent Control Act, 1958 and Section 19 Slum Areas (Improvement and Clearance) Act, 1956 were not applicable.***

26. It was further held that after the service of Legal Notice, Defendant *became unauthorised occupant of the suit property* and failed to vacate the suit property. **Consequently, the Suit of the Plaintiff for Possession was decreed.**

27. Furthermore, Plaintiffs were also granted arrears of rent at the rate of ***Rs.20/- per month w.e.f. 01.06.2019 till 31.12.2021*** along with interest at the rate of 9% per annum. Further, *mesne profits* were granted at the rate of Rs.1,000/- per month w.e.f. 01.01.2022 till the vacant and peaceful possession was handed over to the Plaintiffs.

28. **The Suit of the Plaintiffs was accordingly decreed vide Judgment dated 03.11.2025.**



29. Aggrieved by the said Judgement of learned Civil Judge dated 03.11.2025, Defendant Md. Mehboob filed the ***First Appeal bearing No. RCA DJ 216/2025.***

30. Learned District Judge **concurred** with the Judgement of learned Civil Judge and ***dismissed the First Appeal vide impugned Judgment dated 08.07.2026.***

31. Aggrieved by the said Judgements of learned Civil Judge and learned District Judge, **Appellant / Defendant has filed present Regular Second Appeal.**

32. **The grounds of challenge** are that both the Courts have ***overlooked*** the assertions made by the Appellant / Defendant in his Written Statement, the reply to Legal Notice and the evidence Affidavit, that his ancestors had been inducted as tenants in the suit property at the rate of Rs.20/- per month and that the rent was regularly paid by them against the Receipts.

33. Both the Courts have erroneously relied upon the averment made in the Written Statement that for *last 60 years nobody* came to collect the rent and that Defendant / Appellant never paid rent to the Plaintiffs/Respondents and thus, he became the owner in the suit property.

34. The Courts have created a new case, despite the admission of the Defendant of his ancestors being the tenant in the suit property. ***There is no law in Delhi that once the tenant denies the ownership / title of the landlord, an Eviction Order would follow against him.***

35. It has not been appreciated that it is well-settled that ***‘once a tenant, is always a tenant’***, the Appellant had admitted ***categorically about his ancestors being a tenant and he has inherited the tenancy as per law of inheritance.*** Therefore, it has been wrongly held that the Suit of Plaintiffs



was not barred by Section 50 of Delhi Rent Control Act and Section 19 Slum Areas (Improvement and Clearance) Act.

36. It is further submitted that Issue Nos.7, 6 and 10 were clubbed and decided together. Likewise, Issue Nos.1, 2 and 8 were decided together.

Order XX Rule 5 of CPC provides that each Issue must be decided separately and such clubbing of multiple Issues was a ***jurisdictional error***.

37. Furthermore, damages at the rate of Rs.1,000/- per month have been given, without there being any evidence. Appellant has filed an Application under **Order XLI Rule 27 of CPC** before the First Appellant Court to bring on record the rent receipts issued in the name of Sh. Allah Rakkha Appellant's father, but it has been rejected by observing that the Application was an endeavour to fill the lacuna. It is asserted that it is wrong and the Application under **Order XLI Rule 27 of CPC** should have been allowed.

38. The proposed questions of law as under:

“i. In a case where the rate of rent was Rs.20/-per month as admitted by the plaintiff in the plaint and also by defendant admitted the rate of rent @ Rs.25/- per month and further the same was paid against receipts. In the facts and circumstances and admission of both the parties was the suit not barred by Section 50 of Delhi Rent Control Act, particularly, in view of Section 3 of Delhi Rent Control Act which put a clog that the petitioners were the tenant at the rate of rent below Rs.3500/ in that case the provisions of DRC will apply.

ii. That the premises in question was admittedly situated in old Delhi, Ahata Kidara, Delhi-6 which is declared as Slum area by the Central Government. The question is, was the suit not barred by Section 19 of Slum Areas (Improvement & Clearance) Act, 1956, as no eviction



petition could be filed against the tenant without permission of Competent Authority, Slum.

iii. The Id. Trial Court decided issue No.3,6, 7 & 10 together and also issue No.1, 2 and 5 together which were not inter-related and were based on different subject. The question arises was the judgment was not vitiated as the Id. Courts below violated the provisions of Order 20 Rule 5 CPC despite specific ground raised before First Appellate Court by the appellant.

iv. The courts below have decreed the suit on simple denial of title of landlord while there is no such law in Delhi. The question arises, could the civil court pass the decree of of possession on simple denial of title landlord, specifically when there was clear cut admission of the tenant that the father was a tenant @ Rs.25/- per month and paid rent against receipts.

v. Will the person whose ancestors were admittedly tenant @ of Rs.25/- per month, will loose protection of Rent Control Act on denial of title of landlord while there is admission on behalf of tenant that his ancestors were tenant.”

39. It is therefore, submitted that the impugned Judgements and Decrees dated 08.07.2026 and 03.11.2025 be set aside.

Submissions heard and record perused.

40. Plaintiffs / Respondent had set up a case that their predecessor in interest, Mst. Sahar Bano @ Chaman, wife of Md. Hanif, had purchased the suit property with a registered Sale Deed dated 27.01.1992 and the Plaintiffs acquired ownership on her demise, being her Legal Heirs. The testimony of the Plaintiffs coupled with the registered Sale Deed, established that the Plaintiffs were the owner of the suit property.

41. Plaintiffs had further stated that it was stated in the registered Sale



Deed itself that Sh. Allah Rakkha was a tenant at the rate of Rs.20/- per month. Since the Defendant, the successor of Sh. Allah Rakkha, who was occupying the premises as a tenant, failed to pay the rent, his tenancy was terminated *vide* Legal Notice dated 14.02.2007 and thus, possession has been claimed.

42. The Defendant, in his **Written Statement**, had admitted that **Sh. Khuda Baksh** was a **tenant under the erstwhile owners of the suit property**, but denied that either Sh. Allah Rakkha or the Defendant had ever attorned to **Mst. Sahar Bano as the landlord**. In his Reply to the Legal Notice dated 07.12.2021, he had also acknowledged the earlier tenancy of **Sh. Allah Rakkha**, while disputing the title and landlordship of Mst. Sahar Bano and, thereafter, of the Plaintiffs. His specific plea, however, was that since none had come to collect the rent or claim ownership for the last about 60 years, he had been occupying the suit property **in the capacity of an owner**.

43. Here Defendant / Appellant had clearly repudiated the ownership of Mst. Sahar Bano or her successors in interest, i.e. the Plaintiffs. Rather, specific defence taken by the Defendant / Appellant was that since none came to collect the rent, he has acquired ownership in the suit property.

44. **Section 111(g) of the Transfer of Property Act, 1882**, provides for forfeiture of the Lease Agreement. For better understanding, it is reproduced as under:

“By forfeiture; that is to say,

(1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or

(2) in case the lessee renounces his character as such



by setting up a title in a third person or by claiming title in himself; or

(3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease.”

45. In Mohammad Amir Ahmad Khan vs. Municipal Board of Sitapur and Ors., MANU/SC/0326/1964, while making a reference to the case of Maharaja of Jeypore vs. Rukmini Pattamahadevi, MANU/PR/0154/1919, AIR 1919 PC 1, the Apex Court observed that it was clear law that permanent tenancies are within the rule and *are liable to forfeiture, if there is a disclaimer of tenancy or denial of the landlord's title*. This disclaimer of repudiation of landlord's title, *must be clear and unequivocal and made to the knowledge of the landlord*. It was further observed that where there is a disclaimer of tenancy and repudiation of landlord's title, *it would amount to forfeiture of relationship of landlord and tenant*.

46. In Kundan Mal vs. Gurudutta, MANU/SC/0280/1989, JT 1989 (1) SC 147, it was held that the principle of forfeiture on disclaimer is founded on the rule *that a man cannot approbate and reprobate at the same time*. Since the consequence of applying the rule is very serious, the denial has to be clear and in unequivocal terms.

47. Similar observations were made by the Supreme Court in Majati Subbarao vs. P.V.K. Krishna Rao (Deceased) by Lrs. AIR 1989 SC 2187, wherein the principle of forfeiture, as defined in the decision of the Apex Court in Kundan Mal vs. Gurudutta, JT 1989 (1) SC 147, were fully endorsed. ***It was further noted that where there is a provision under the***



Rent Act for eviction on the ground of repudiation of the title, then the remedy with the landlord is only to approach under the Rent Act, as was the case in Rajasthan Rent Law.

48. In the case of Guru Amarjit Singh vs. Rattan Chand and Ors., MANU/SC/0065/1994, AIR 1994 SC 227, the *doctrine of forfeiture* was explained to be founded upon the existence of a lease under jural relationship between a lessor and a lessee, as contemplated under *Section 105 TPA*. It is implicit that if the lease is in operation, the lessor has been given a right to determine the lease for committing breach of a covenant or for disclaimer by the lessee on the happening of any of the events specified therein. **The tenant, by repudiation of the relationship of landlord-tenant, exposes himself to the risk of forfeiting his lease and giving a right to the lessor to determine the lease.** *The repudiation, however, must be clear and unequivocal and anterior to the issuance of the notice determining the lease. Where there was an unequivocal admission of the earlier relationship of landlord-tenant, but denial in the subsequent litigation, the tenant forfeits its right to lease.*

49. In Sheikh Miadhar vs. Rajani Kanta Roy, MANU/WB/0481/1909, 5 Ind. Cas. 708, more light was thrown on this aspect, wherein it was held that where in a suit for rent the Defendant denies the Plaintiff's title and claims to hold under a third party, ***the Defendant can be, in a Suit for ejectment by the landlord, debarred from pleading his tenancy and claiming protection of possession on that ground.*** It was further observed that this principle was embodied in *Section 111(g) TPA*, wherein one of the grounds for forfeiture, was to set up a title in the third person or in himself.

50. In the present case, while Defendant / Appellant ***had admitted the***



tenancy of his father Sh. Allah Rakkha in the suit property under the erstwhile owner Mst. Sahar Bano, but he has ***categorically denied*** that his predecessor had ever atoned to Mst. Sahar Bano, when she purchased the suit property *vide* registered Sale Deed dated 27.01.1992 and claimed that **since none came to collect the rent, he had been living the suit property in the capacity of an owner.**

51. There are categorical assertions of the Defendant / Appellant, both in his Written Statement as well as in his Reply to Legal Notice, ***that he has been in occupation of the suit property as an owner.*** Having so asserted categorically, ***it is clear that he has repudiated his tenancy and had asserted ownership.*** Therefore, lease stood forfeited in terms of **Section 111(g) of Transfer of Property Act.**

52. Learned Civil ***Judge has rightly observed*** that once he had repudiated his tenancy, he cannot reprobate to revert to the tenancy of his fore-fathers. The principle, ***‘once a tenant, always a tenant’*** is applicable only in those cases, where ***there is an ambiguity about the tenancy.***

53. However, Defendant has made ***clear and unequivocal assertions of being in occupation of the suit property as owner,*** he cannot turn back to seek protection under *Delhi Rent Control Act and Slum Areas (Improvement and Clearance) Act.*

54. Herein, *learned Civil Judge has held that Defendant* having repudiated his status of tenant, became unauthorised occupant liable for eviction from the suit property under Civil Law.

55. A hyper technical objection has been taken that there was clubbing of Issues for deciding them and this was incorrect, in terms of Order XX Rule 5 of CPC. ***However, those Issues, which were taken up together, were inter-***



connected and thus, clubbing of those Issues for decision cannot be terms to have caused any prejudice to the Appellant or was bad in law.

56. The challenge to the dismissal of the Application under **Order XLI Rule 27 CPC** is also without merit. The Appellant sought to place on record old **Rent Receipts issued in the name of his father, Sh. Allah Rakkha**, to establish the earlier tenancy. **However, this fact is not in dispute** as the registered **Sale Deed dated 27.01.1992** itself records Sh. Allah Rakkha as a tenant at the monthly rent of Rs.20/-, and the Defendant had also acknowledged the same in his Written Statement as well as in the Reply to the Legal Notice.

57. The real controversy concerns the effect of the Appellant's subsequent **clear and unequivocal assertion that he was occupying the suit property as an owner**, which has already been held to constitute a repudiation of the tenancy. The Rent Receipts sought to be produced have no bearing on this subsequent conduct whereby he repudiated the tenancy and claimed ownership. Thus, even if taken on record, they would not assist the Appellant in any manner. The learned District Judge, therefore, rightly dismissed the Application under **Order XLI Rule 27 C**.

58. The last contention raised by the Appellant is that mesne profits @ Rs.1,000/- per month have been awarded without any basis. **However, learned Civil Judge as well as learned District Judge have rightly appreciated the evidence of the parties** and also the surrounding circumstances to grant mesne profits @ Rs.1,000/- per month.

59. In view of the aforesaid discussion, **it is evident that all grounds raised in the Appeal, are essentially challenge on facts and do not raise any substantial question of law.**



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60. There is **no merit** in present Regular Second Appeal, which is hereby, **dismissed**.

61. Pending Applications are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 07, 2026/R