

(2025) 11 DEL CK 1933
In the Delhi High Court
Case No : RC.REV. No.120 Of 2019

Mohd Yahya & Ors

APPELLANT

Vs

Farat Ara & Ors

RESPONDENT

Date of Decision : 17-11-2025

Acts Referred:

Code of Civil Procedure 1908 — Section 114, Order 47 Rule 1
Delhi Rent Control Act, 1958 — Section 14, 14(1)(e), 25B, 25B(8)
Contract Act, 1872 — Section 23, 28
Evidence Act, 1872 — Section 116

Citation : (2025) 11 DEL CK 1933

Hon'ble Judges : Anup Jairam Bhambhani J.

Bench : Single Bench

Advocate : Trilok Nath Saxena, Dr. Shiv Kumar Tiwari, Zeeshan Ahmed

Final Decision : Dismissed

Judgement

Anup Jairam Bhambhani J

REVIEW PET. 466/2025

1. By way of the present review petition filed under section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure 1908 (?CPC?), the petitioners seek review of order dated 05.08.2025 passed by this court in RC. REV. 120/2019.

2. Vide order dated 05.08.2025, this court had disposed-of the revision petition, upholding impugned order dated 28.08.2018 passed by the learned CCJ-cum-ARC, Pilot Court, Central District, Tis Hazari Courts, Delhi in eviction petition bearing E. No.11/2018, with the following observations:

"15. In the opinion of this court, the learned Rent Controller has, with full deliberation and application of mind, decided all 03 issues, namely, the existence of landlord-tenant relationship between the parties, the bona-fide requirement of the respondents, as well as the non-availability of suitable, alternate accommodation, in accordance with law.

16. Other things apart, it is also noticed that the petitioners have been in occupation of the subject premises, which is a shop in one of the busiest wholesale markets of the city, since the 1940s; and the last paid rent was Rs. 2178/- per month.

17. With the petitioners having occupied the tenanted premises for about 85 years, the respondents had to litigate before the learned Rent Controller, which culminated in the passing of the impugned order on 28.08.2018; and thereafter the present revision petition has been pending since 2019, i.e., for the last about 6 years.

18. On a conspectus of the foregoing facts and circumstances, this court is unable to discern anything remiss in impugned order dated 28.08.2018; which order has been passed in accordance with law and calls for no interference in the revisional jurisdiction of this court under section 25-B (8) of the DRC Act.

19. The petition is accordingly dismissed.

20. Pending applications, if any, also stand disposed-of.

21. Needless to add that the respondents shall be entitled to obtain eviction of the petitioners in execution proceedings, that are stated to have been filed, in accordance with law."

3. Mr. Trilok Nath Saxena learned counsel for the petitioners submits, that this court has not dealt with the findings of the learned Rent Controller on the touchstone of the decision of the Supreme Court in *Lachoo Mal vs. Radhey Shyam* (1971) 1 SCC 619, arguing, that by way of a compromise arrived-at between the parties in an earlier eviction petition bearing No. E-190/2008 before the learned Rent Controller, Delhi, *vidé* compromise application dated 28.08.2008, signed by the predecessors-in-interest of the respondents, they had agreed that they will not file any petition under section 14(1)(e) of the Delhi Rent Control Act, 1958 (?DRC Act?) against the petitioners. The compromise application contained the compromise terms and was exhibited in those proceedings. This compromise, it is submitted, unequivocally amounts to waiver by the landlords of the rights conferred upon them by the DRC Act. The petitioners submit, that the learned Rent Controller as well as this court, have erred in omitting to appreciate the binding nature of the compromise. It is argued that *vidé* the said compromise dated 28.08.2008, in consideration of raising the rent from Rs.38/- per month to Rs.1800/- per month, the then landlords, who were the predecessors of the eviction petitioners, had agreed not to file any petition on the ground of section 14(1)(e) of the DRC Act against the tenants viz., Mohd. Yahya, Mohd. Ishaque and Mohd. Akhtar; and had thereby given-up one of the several privileges given to a landlord under the DRC Act. It is further submitted, that thereafter, the landlords enjoyed the fruits of the compromise; and just before the filing of the present petition the rate of rent was Rs.2178/-per month.

4. Emphasising the objective of section 14 of the DRC Act vis-à-vis eviction of tenants, viz. to protect tenants from eviction, the review petitioners assert, that once, by contractual arrangement, the landlords have waived their entitlements under section 14, such waiver is valid, lawful, and enforceable, consonant with the principles of contract and public policy.

5. It is argued, that the essential question that was to be resolved was whether a landlord can give-up or waive, by agreement or contractual arrangement, the benefits conferred under the DRC Act; and whether the consideration or object of such agreement would be lawful within the meaning of section 23 of the Indian Contract Act, 1872.

6. It is submitted on behalf of the petitioners, that the aim and objective of the DRC Act is inter-alia to control the eviction of tenants; and therefore, there is no restriction on a landlord to agree to a position in contravention of the provisions of DRC Act, though the converse is not permissible, since the language of section 14 gives protection to a tenant against eviction, which is why sub-section (1) starts with a non-obstante clause and refers only to tenants.

7. Counsel for the petitioners submits, that the order under review has failed to consider the implications of this waiver, and the statutory context, thus warranting reconsideration.

8. Mr. Saxena further argues, that this court has also failed to appreciate the flaw in the findings of the learned Rent Controller on the aspect arising from partition deed dated 14.05.2016, by which the subject premises, which is a Waqf property, was partitioned amongst the clan of 02 sons for all purposes, which is not permissible under law, since it changes the character of Waqf property. It is submitted, that once a property acquires Waqf status, it retains that character permanently and cannot be partitioned, so as not to alter its Waqf character. In support of this submission, the review petitioners have relied upon the ruling of the Supreme Court in *Chhedi Lal Misra vs. Civil Judge, Lucknow* (2007) 4 SCC 632, which enunciates the principle of continuity and permanence of Waqf property.

9. The petitioners further contend that the learned Rent Controller had also failed to properly adjudicate the bona-fidé requirement of the landlords in light of availability of several vacant shops, which were in the exclusive possession of one faction of the Waqf family group. They urge, that this omission also deserves rectification, by granting to the petitioners leave-to-defend the eviction petition.

10. Based on the foregoing, the review petitioners urge this court to invoke its review jurisdiction under section 114 read with Order XLVII Rule 1 of the CPC; and to review and reconsider its final order dated 05.08.2025.

11. After considering the contentions raised in the present review petition, and giving due regard to the submissions made, this court is of the view that the contentions are already answered by the learned Rent Controller as well as this

court in the following way:

11.1. The first contention raised by the review petitioners is that since by way of a compromise application dated 28.08.2008 filed in eviction petition No. E-190/2008, the predecessors-in-interest of the respondents (eviction petitioners) had agreed that "neither he or his brother shri Maqbool Ahmed or any heirs of late Sh. Abdul Mughni shall hereafter file any petition on the ground u/s 14(1)(e) read with section 25-B of Delhi Rent Control Act against the present tenants", the respondents could not have filed the eviction petition at all.

11.2. It is further the contention of the review petitioners that by way of said compromise, the predecessors-in-interest of the respondents had created a tenancy in favor of Mr. Yahya and his 02 sons, and this was done in consideration of the rent being increased from Rs. 38/- per month to Rs. 1800/- per month.

11.3. In the opinion of this court, the aforesaid contentions are misconceived and untenable, for the reason that such compromise cannot bar the respondents from filing an eviction petition under section 14(1)(e) of the DRC Act. It is settled law that a contract barring a legal remedy is void under section 28 read with section 23 of the Indian Contract Act, 1872, regardless of any consideration that may have been received for such contract 'A.V.M. Sales Corpn. vs. Anuradha Chemicals (P) Ltd., (2012) 2 SCC 315, para 17'. Besides, in any case, the predecessors-in-interest of the respondents could not have conceded that neither he, nor the other landlord, nor any of the dependent family members would ever have any bona-fidé requirements, since a bona-fidé requirement can arise at any subsequent time in the future. The review petitioners' argument that the contractual arrangement between the petitioners and the predecessors-in-interest of the respondents, amounts to a waiver of the statutory right of the respondents to file the eviction petition, is therefore considered only to be rejected.

11.4. The second contention raised by the review petitioners is that the predecessors-in-interest could not have entered into a partition deed dated 14.05.2016 leading to partitioning Waqf property, since that would change the character of a Waqf property which is impermissible in law. In the opinion of this court, this contention is also without merit.

11.5. This is so, since as has been correctly observed by the learned Rent Controller, an eviction petitioner does not have to prove 'title' to a property to seek eviction. All that an eviction petitioner needs to prove, is that he has a right to the property that is superior to that of a tenant. In the present case, the learned Rent Controller has dealt with this submission, to observe, firstly that under partition deed dated 14.05.2016, the parties had appointed the predecessors-in-interest of the respondents as the Muttawalis (managers) of the subject premises and had transferred to them the right to look after, let-out, receive rent and to eject tenants from the Waqf property that had fallen to their share. None of the rights conferred upon the Muttawalis amounted to partitioning

of Waqf property; and therefore, the question of change in the character of the Waqf property by reason of change in title, did not arise in the eviction proceedings.

11.6. Moreover, the learned Rent Controller has also correctly noticed the fact that the review petitioners had paid rent for the subject premises to the father of the respondents, thereby acknowledging him as their landlord; and the review petitioners were therefore estopped from challenging the landlordship of the predecessors-in-interest, and consequently of the respondents, in view of the bar contained in section 116 of the Indian Evidence Act, 1872.

11.7. The learned Rent Controller has also duly considered and correctly evaluated the bona-fidé requirement of the respondents in relation to the subject premises; and has also dealt-with the allegation in the leave-to-defend application that other vacant shops were available to the respondents, as were referred to in that application. The learned Rent Controller has correctly opined that no other suitable, alternate premises was available to the respondents.

12. In view thereof, this court finds no error apparent on the face of the record; nor any other point that merits consideration in the present review petition.

13. The review petition is accordingly dismissed.

14. However, in view of the petitioners' conduct of having filed the present review petition despite all the points raised having been duly dealt-with by the learned Rent Controller; and despite the fact that the petitioners have occupied the subject premises for more than 85 years, the present petition is dismissed with costs of Rs. 50,000/- payable by the petitioners to Friendicoes SECA, No.271 & 273, Defence Colony Flyover Market, Jungpura, New Delhi, within 04 weeks.

15. The petitioners are directed to place on record proof of payment of costs within 01 week thereafter.

16. The Registry is directed to bring to the notice of this court, any non-compliance in relation to payment of costs.