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

% ***Reserved on: 10th August, 2026***
Pronounced on: 28th September, 2026
Uploaded on: 28th September, 2026

\# **CNR No. DLHC011425032014**

\+ **RSA 243/2014, CM APPL. 15183/2014, 5821/2019 & 26826/2019**

SHRI B.B. PATEL
PARTNER
M/S NICHOLIAN INC.
48, JANPATH, SECOND FLOOR,
NEW DELHI-110001

.... Appellant

Through: Mr. B. S. Bagga, Advocate

versus

SMT. DAYA WATI (SINCE DECEASED) THROUGH

1. **SMT. MADHU GUPTA**
   W/O SHRI SURESH KUMAR GUPTA
2. **SHRI SURESH KUMAR GUPTA**
   S/O SHRI MURARI LAL

BOTH RESIDENT OF:
48, TOLSTOY LANE,
JANPATH, NEW DELHI

.....Respondent No. 3

Through: Mr. B. B. Gupta, Senior Advocate with Mr. Siddharth Aggarwal, Mr. Karan Jain and Mr. Amit Gupta, 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 Second Appeal under Section 100 of the Code of Civil Procedure, 1908 *(hereinafter referred to as the "CPC")* has been filed by the Appellant/Plaintiff to assail the Judgment dated 05.05.2014 passed by the learned Additional District Judge, Delhi ***in RCA No.29/2012,*** whereby the Order dated 09.07.2012 of the learned Civil Judge, *rejecting the Plaint under Order VII Rule 11 CPC*, ***has been affirmed.***

2. The Appellant/Plaintiff had filed a **Suit No.342/2004** ***for Declaration, Permanent Injunction and Specific Performance*** **of Agreement dated 01.03.1976** *to execute a perpetual lease deed* in respect of the entire Second Floor of property bearing No.48, Janpath, New Delhi-110001 *(hereinafter referred to as the "suit premises") and for Declaration of the Rent being* ***Rs.221/- per month***.

3. The ***facts in brief***, as stated in the amended Plaint, are that M/s Nicholian Bros. was initially the sole proprietorship concern of the Plaintiff, Sh. B.B. Patel which was subsequently converted into a *Partnership Firm* under the name and style of M/s Nicholian Inc., in which the Plaintiff is a Partner.

4. The Defendants are the co-owners of the property bearing No.48, Janpath, New Delhi, in equal shares, by virtue of a Will dated 22.11.1986 executed in their favour, by Late Shri Murari Lal.

5. The Plaintiff was inducted as a tenant in respect of the suit premises comprising of six rooms, one glazed *verandah,* two W.Cs., two bathrooms and the complete terrace, having access from the front staircase from Janpath and the circular staircase at the rear towards Tolstoy Lane, *vide* Agreement dated 01.03.1976, executed between Late Shri Murari Lal, and both the Defendants on the one part, and the Plaintiff on the other. Sh. Murari Lal has since expired.

6. The Agreement permitted the Plaintiff to use the suit premises *for residential as well as office purposes*. It further permitted his family members, employees and agents to reside therein and also provided that any concern, firm or company in which any member of his family had an interest, could use the suit premises, without such use being treated as subletting, subject to notice being given to the lessors. The Plaintiff continued thereafter, to reside in and carry on his business from the suit premises.

7. The Plaintiff stated the lease was initially for a period of 11 months commencing from 01.03.1976, at a monthly rent of Rs.221/-, inclusive of all rights, easements and appurtenances, payable in advance on or before the 10th day of each English calendar month. The electricity and water charges were payable separately, on the basis of the bills raised and the actual consumption recorded through separate meters provided and maintained by the Defendants. The Plaintiff was accordingly paying electricity charges, both for power and light as well as water charges, as per the bills. Any additional requirement of power or water, was to be arranged by the Plaintiff himself.

8. There were several meters installed on the ground floor and during the renovation and additions carried out by the Defendants on the ground floor, the Defendants asked the Plaintiff to pay a lump-sum amount per month towards electricity and water charges instead of paying them separately, as it had become difficult to assign any particular electricity meter to the Plaintiff. The rent continued to be Rs.221/- per month. The Plaintiff agreed to the suggestion in good faith and *the lump-sum amount was initially fixed at Rs.879/- per month with effect from 01.04.1991, which was subsequently enhanced to Rs.1,779/- per month with effect from 01.11.1996 and was paid along with the monthly rent of Rs.221/-.*

9. The Plaintiff was also permitted to make such changes, additions and alterations in the suit premises as may be necessary for its use, subject to obtaining the requisite approvals and sanction from the concerned authorities. He was further permitted to raise one or two rooms or other construction on the terrace, without payment of any additional lease money or rent.

10. **Clause 12** of the aforesaid Agreement provided that upon payment of the agreed lease money and observance of the covenants and conditions contained therein, the Plaintiff would peacefully hold, possess and enjoy the suit premises ***in perpetuity***, without any interruption or interference from the lessors or any person claiming through them.

11. The Defendants had also agreed, under Clause 16 of the Lease Deed, to execute a further lease deed, *including a perpetual lease deed*, for such period as may be opted by the Plaintiff.

12. It was averred that a sum of Rs.1,00,000/- was paid by the Plaintiff in consideration of the undertaking to execute a perpetual lease deed or a lease deed for such other period, as may be opted by him. The expenses towards obtaining the requisite permissions and execution of the lease deed, were to be borne by the Plaintiff *(lessee)*.

13. The Plaintiff continued to remain in actual physical possession of the suit premises since 01.03.1976 and used and enjoyed the same, in terms of the Agreement. The Defendants did not interfere with his peaceful use and enjoyment of the suit premises; *however, the Perpetual Lease Deed contemplated under the Agreement, was not executed.*

14. According to the Plaintiff, the rent continued to remain Rs.221/- per month, subject to statutory enhancement under the Delhi Rent Control Act, 1958.

15. The Plaintiff further asserted that the Defendants subsequently began demanding *a lump-sum amount towards electricity and water charges, which was initially fixed at Rs.1,100/- per month and was thereafter, increased to Rs.2,000/- per month, purportedly on account of increased costs of electricity and water, which included a 10% enhancement under the Delhi Rent Control Act, 1958*. **The Plaintiff accepted and began paying Rs.2,000/- per month.** It was claimed that this was a trick played upon him, the situation had been manipulated by the Defendants to their own advantage.

16. The Plaintiff maintained that the actual rent continued to be Rs.221/- per month. The Defendants had stopped supplying electricity and water, *but were nevertheless claiming Rs.2,200/- per month as rent*, without providing power or water. The Plaintiff, however, asserted that he was ready and willing to pay the statutory enhancement of 10% as per the provisions of the Delhi Rent Control Act, 1958, after every three years. *The Plaintiff further* *asserted that the Defendants avoided execution of the Perpetual Lease Deed despite repeated requests and reminders.*

17. The Plaintiff received a Legal Notice dated 23.02.2002 from the Defendants claiming that the rent of the suit premises was Rs.2,000/- per month, which stood enhanced to Rs.2,200/- per month w.e.f. 01.01.2001 under Section 6A of the Delhi Rent Control Act, 1958, and demanded arrears of rent of Rs.34,600/-. An objection was also raised to the use of the suit premises for office/commercial purposes.

18. A Reply dated 08.04.2002 was sent on behalf of the Plaintiff requesting the Defendants, *inter alia*, to execute the *Perpetual Lease Deed* within one month, restore the electricity and water supply, *refund the amount received in excess and accept rent at Rs.221/- per month,* together with the statutory enhancement permissible under the Delhi Rent Control Act, 1958.

19. Since no action was taken pursuant thereto, a further Notice dated 01.08.2002 was served upon the Defendants calling upon them to execute the *Perpetual Lease Deed*, in terms of the Agreement dated 01.03.1976.

20. The Plaintiff asserted that *he remained ready and willing* to bear the expenses towards stamp duty, fees and other incidental charges for execution of the *Perpetual Lease Deed* and to perform his obligations under the Agreement.

21. Consequently*, the Suit was filed seeking the following prayers:*

(a) ***Specific Performance*** *directing the Defendants to execute a perpetual lease deed in respect of the Suit Premises;*

(b) ***Declaration that the rent payable was Rs.221/- per month***,

besides the statutory enhancement permissible under Section 6A of the Delhi Rent Control Act, 1958; and

(c) ***Permanent Injunction*** *for restraining the Defendants from claiming rent in excess thereof.*

22. The Defendants in their ***Written Statement***, *took the preliminary objectio*n that the Plaintiff, Shri B.B. Patel had been inducted as a tenant in his individual capacity as the sole proprietor of M/s Nicholian Bros. and no partnership Firm had ever been accepted as a tenant. The Plaintiff therefore, had no *locus standi* to institute the Suit, as a Partner of M/s Nicholian Inc.

23. It was further asserted that the relief of Specific Performance, *was barred by limitation.* The right, if any, to seek enforcement of the Agreement dated 01.03.1976 had accrued either during the subsistence of the lease or upon expiry of the initial period of 11 months in the year 1977. The Plaintiff, having not sought enforcement for more than 25 years, could not seek the relief by issuing Notices in the year 2002.

24. It was asserted that even the Suit for Permanent Injunction was misconceived and not maintainable in law. A Suit for Declaration of the nature of the relief claimed in the Suit, does not fall within Section 34 of the Specific Relief Act, 1963. The declaration which merely touches the pecuniary relationship of parties, cannot be granted. The alleged contract between the parties, does not come within the purview of Section 34 of the Specific Relief Act, 1963. The Suit for Declaration is, therefore, not maintainable.

25. Likewise, *the relief of Permanent Injunction*, is also barred under Section 38 of the Specific Relief Act, 1963. No Permanent Injunction can be granted in respect of the pecuniary relationship between the parties. The Plaintiff can only defend whenever the Defendants raised a claim against him, but no Permanent Injunction can be granted, as sought by the Plaintiff.

26. ***On merits,*** the Defendants admitted that Shri B.B. Patel had initially been inducted as a tenant at a monthly rent of Rs.221/-, but denied that he acquired any right of perpetual tenancy. The Agreement dated 01.03.1976 was stated to be inadmissible in evidence, for want of sufficient stamp duty and registration. On expiry of the initial period of 11 months, the Plaintiff continued as *a month-to-month tenant*, in the suit premises.

27. The Defendants denied that the amounts paid over and above Rs.221/-, represented electricity and water charges. It was claimed that though electricity and water were initially supplied through the connection of Late Shri Murari Lal, *the Plaintiff subsequently obtained separate connections in his own name.* The rent had been enhanced by mutual consent to Rs.1,100/- per month in 1991 and thereafter, to Rs.2,000/- per month in 1996, which was subsequently enhanced to Rs.2,200/- per month, under Section 6A of the Delhi Rent Control Act, 1958.

28. This is evident from the Letter dated 14.02.2002 written by the Plaintiff to Defendant No.2, wherein the Plaintiff himself had acknowledged the enhancement, and had specifically mentioned that the rent was increased from Rs.221/- to Rs.1,100/- and thereafter, to Rs.2,000/- in the second instance.

29. It was also in this Letter dated 14.02.2002 that in the previous Letter, the Plaintiff was using part of the premises for office purposes and the Defendants were responsible for managing it, with the authorities. This fact was discussed by the Defendants with Mr. Rahul Patel and was agreed and confirmed by both. The Plaintiff also enclosed a cheque dated 01.02.2002 for Rs.32,000/- towards the license fee for the period ending 31st January, 2002.

30. The Defendants denied having avoided execution of a *Perpetual Lease Deed.* It was contended that *Clause 16* could not be enforced after a lapse of more than 25 years, from the expiry of the original lease period. The Reply dated 08.04.2002 and subsequent Notice dated 01.08.2002, did not give rise to any fresh cause of action.

31. The Defendants sought dismissal of the Suit on the grounds that the relief of *Specific Performance* ***was barred by limitation***; the Declaration and Permanent Injunction were not maintainable; and *in the absence of a duly stamped and registered instrument, the tenancy was one from month to month.*

32. During the pendency of the Suit, the ***Defendants filed an Application under Order VII Rule 11 CPC*** seeking rejection of the Plaint on the ground that the relief of *Specific Performance was ex facie barred by limitation* and *the reliefs of Declaration and Permanent Injunction, were not maintainable in law.*

33. The Plaintiff opposed the Application, contending that the Suit was within limitation; that the question of limitation could be determined only after evidence was led, and that there could be no piecemeal rejection of the Plaint.

34. The **learned Civil Judge, *vide* Order dated 09.07.2012,** observed that Clause 16 of the Agreement dated 01.03.1976 provided for execution of another lease deed before or after expiry of the initial lease. Since the lease was for a period of 11 months, the Plaintiff ought to have sought enforcement of Clause 16 upon expiry thereof, in the year 1977. The Plaintiff, however, took no steps till the year 2002. The issuance of a Legal Notice in 2002, could not extend the period of limitation which had already expired. ***The relief of Specific Performance was, therefore, held to be barred by limitation.***

35. The relief of Declaration in respect of the rate of rent, was held to be not maintainable before the Civil Court, in view of the applicability of the Delhi Rent Control Act, 1958. **Consequently, the relief of Permanent Injunction was also held to be not maintainable.**

36. ***The Application under Order VII Rule 11 CPC was accordingly, allowed and the Plaint was rejected.***

37. Aggrieved by the rejection of the Plaint, the **Plaintiff preferred RCA No.29/2012 before the learned Additional District Judge.** It was contended that the question of limitation could not have been decided without evidence and that the Suit had been instituted within three years from the refusal of the Defendants, to execute the perpetual lease deed.

38. The **learned Additional District Judge, *vide* Judgment dated 05.05.2014,** observed that on a meaningful reading of the Plaint, **the relief of Specific Performance was barred by limitation.** The option under

Clause 16 was required to be exercised either during the subsistence of the lease or within a reasonable period after its expiry. The Plaintiff had sought enforcement after more than 25 years from the expiry of the initial lease period. Finding no infirmity in the Order dated 09.07.2012, **the learned First Appellate Court dismissed the Appeal.**

39. *Aggrieved thereby, **the present Regular Second Appeal has been preferred by the Appellant/Plaintiff.***

40. The ***grounds of challenge*** are that the two Courts erred in rejecting the Plaint under Order VII Rule 11 CPC. The Plaint disclosed a cause of action and was neither vexatious nor frivolous. For the purposes of deciding an Application under Order VII Rule 11 CPC, only the averments in the Plaint were required to be considered and the Written Statement was irrelevant. *The question of limitation could not have been decided at the threshold, without recording of evidence.*

41. That Clause 16 of the Agreement dated 01.03.1976 did not prescribe any period for enforcement and limitation under Article 54 of the Limitation Act, 1963 commenced only from the date of refusal. The cause of action arose on 08.04.2002, when the Respondents were called upon to execute the Perpetual Lease Deed and failed to do so. The Suit, filed within three years therefrom, was within limitation.

42. The learned Courts below further erred in not independently considering the reliefs of Declaration and Permanent Injunction regarding the rate of rent, and in rejecting the Plaint in its entirety. Several binding authorities were cited before the learned Courts below, but were not considered.

43. It was further submitted that the Defendants had themselves been observing the terms and conditions of the Lease Agreement and had never interfered with the peaceful possession and enjoyment of the suit premises by the Plaintiff. The Defendants had also asked the Plaintiff to pay the L&DO conversion charges and a sum of Rs.10,00,000/- was paid by the Plaintiff towards the said charges. The Defendants had admitted in their cross-examination that the conversion charges of Rs.10,00,000/-, had been paid by the Plaintiff to L&DO.

44. It was further contended that the Application under Order VII Rule 11 CPC, having been filed during the pendency of the Suit, was disposed of in the year 2012, i.e. after 8 years of the institution of the Suit, and the Clauses of the Agreement had not been correctly appreciated or harmoniously construed.

45. It is, therefore, submitted that the impugned Order dated 09.07.2012 passed by the learned Civil Judge, as well as the Order dated 05.05.2014 passed by the learned Additional District Judge, be set aside.

46. The **learned Counsel for the Appellant,** has addressed the arguments essentially on the same lines as the grounds of Appeal. It is contended that the Agreement dated 01.03.1976 is an admitted document, and on a harmonious reading of the Agreement, the intention of the parties to create a lease in perpetuity are clear. *Clause 12* contemplated enjoyment in perpetuity; *Clause 8* permitted use for any purpose, whether residential or commercial; family members and associates of the Plaintiff were permitted to occupy the suit premises; and *Clause 19* conferred a right to sublet.

47. Furthermore, a sum of **Rs.10,00,000/-** had been paid by the Plaintiff to L&DO as conversion charges, on the request of the Defendants, which conduct reflected that the Defendants themselves treated the Plaintiff as a tenant in perpetuity.

48. It was further contended that no Perpetual Lease Deed could have been executed in view of the *Urban Land (Ceiling and Regulation) Act, 1976*. The said Act was repealed only in the year 1999, and it was only thereafter, that the Perpetual Lease Deed could have been formally executed.

49. It was further contended that the relief of Declaration of the rate of rent, is not available under the Delhi Rent Control Act, 1958 and the bar of *Section 50* thereof, is not attracted. It is only a Civil Suit which is maintainable for declaration of the rate of rent. The Orders of the learned Civil Judge and the learned Additional District Judge are, therefore, erroneous and liable to be set aside.

50. It was further asserted that the Plaintiff had always been ready and willing to abide by his part of the Agreement. Furthermore, the Defendants for the first time refused to execute the Perpetual Lease Deed in 2002 and the Suit had been filed on 08.11.2004, which is well within the period of limitation from the date of denial of the Defendants. Prior to this, there was no denial; rather the conduct of the Defendants reflected that he accepted the Plaintiff as a tenant in perpetuity.

51. To determine who was in breach of the Agreement, was the matter of trial, for which the parties should have been directed to lead the evidence. Furthermore, the issue of limitation, is a mixed question of fact and law, which could not have been considered under Order VII Rule 11 CPC.

52. In support of his submissions, learned Counsel for the Appellant placed reliance on *Panchanan Dhara and Others v. Monmatha Nath Maity and Another*, (2006) 5 SCC 340, to contend that where no date is fixed for performance of the Agreement, the second limb of Article 54 of the Limitation Act, 1963 would apply and limitation would commence when the Plaintiff had notice of refusal by the Defendant to perform the contract.

53. Reliance was also placed on *Urvashiben and Another v. Krishnakant Manuprasad Trivedi*, (2019) 13 SCC 372, to contend that where the bar of limitation is not apparent from the averments in the Plaint itself and its determination requires consideration of disputed facts, the Plaint cannot be rejected at the threshold under Order VII Rule 11 CPC.

54. Reference was further made to *S. Shalu Constructions v. Ashok Kaura and Others*, CS(OS) 813/2023, wherein, while considering an Application under Order VII Rule 11 CPC in a Suit for Specific Performance, this Court observed that where the Agreement contains reciprocal obligations and the date of performance depends upon fulfilment thereof, limitation may involve a mixed question of law and fact and the Plaint ought not ordinarily to be rejected unless the bar of limitation is clearly demonstrated.

55. Reliance was also placed on *Prem Grover v. Balwant Singh*, 2005 SCC OnLine Del 1107, to contend that where performance of the transaction was dependent upon the vendor first obtaining the requisite statutory permission, the purchaser could not be faulted for non-completion of the transaction before such permission was obtained.

56. ***Per contra*, the learned Counsel for the Respondents** submitted that the Agreement dated 01.03.1976, being unregistered, could not create a lease exceeding one year, in view of Section 107 of the Transfer of Property Act, 1882. Even accepting the repeal of the Urban Land (Ceiling and Regulation) Act, 1976 in the year 1999 as the starting point, the Suit was filed only in 2004 i.e. five years beyond the three-year period under Article 54 of the Limitation Act, 1963.

57. Reliance was also placed on Section 50 of the Delhi Rent Control Act, 1958, which bars the jurisdiction of the Civil Court in respect of fixation of standard rent, eviction of a tenant, or any other matter, which the Rent Controller is empowered under the Act to decide. It was, therefore, contended that the relief sought by the Plaintiff concerning determination of the rate of rent, fell within the exclusive domain of the Rent Controller and could not be adjudicated by the Civil Court.

58. It was further submitted that the Agreement dated 01.03.1976 was an unregistered deed and the renewal of the Lease Deed or the execution of a Perpetual Lease Deed was not a collateral purpose for which the document could be referred to.

59. It was contended that in order to maintain a Suit for Specific Performance, *readiness and willingness are essential ingredients* which must be specifically averred in the Plaint. However, no such averments were contained in the Plaint. Section 16 of the Specific Relief Act, 1963 bars the relief of Specific Performance in the absence of averments of readiness and willingness, except where the Plaintiff has been obstructed by the Defendant.

60. It was pointed out that an Eviction Petition had been filed on behalf of the landlord under Sections 14(1)(a) and 14(1)(j) of the Delhi Rent Control Act, 1958, ***wherein the rate of rent was admitted as Rs.221/- per month.*** The Eviction Petition was allowed, but in Appeal, the Eviction Order was set aside.

61. Learned counsel for the Respondents, has vehemently contended that the rent is to be determined by the Rent Controller under the DRC Act for which, reliance is placed on *Karnani Properties Limited vs. Augustine and Others*, (1956) 2 SCC 508.

62. It was further asserted that a lease, even for less than one year in writing, requires to be registered as per Section 107 of the Transfer of Property Act, 1882 and Section 49 of the Registration Act, 1908. Reliance was placed on *Banwarilal Sharma v. Ram Swaroop,* 1974 RLW 125; *Asea Brown Boveri Ltd. v. Chiranjiv Lal Sharma,* MANU/DE/1152/1998, wherein it was held that a renewal clause in an unregistered Lease Deed, not being for collateral purpose, is inadmissible in evidence under Section 49 of the Registration Act; *Singer India Ltd. v. Amita Gupta,* MANU/DE/0042/2000; and *Hardesh Ores (P) Ltd. v. Hede & Co.*, MANU/SC/7671/2007, wherein it was held that even renewal of a Lease Deed requires registration.

63. It was contended that *the Suit was patently barred by limitation.* The Agreement for execution of a Perpetual Lease Deed could have been exercised only within a reasonable period. Reliance was placed on *Manjunath Anandappa v. Tammanasa and Others*, (2003) 10 SCC 390, wherein it was observed that the Plaintiff has to approach the Court within a reasonable time when seeking a discretionary relief.

64. Similarly, reliance was placed on *DDA v. Ram Prakash*, (2011) 4 SCC 180, wherein it was held that a reasonable period, where no limitation is statutorily prescribed, does not permit filing of a suit after a delay of 25 years. Reference was also made to *State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.,* MANU/SC/8017/2007, wherein it was held that even where no specific period is prescribed under the statute, revisional jurisdiction should ordinarily be exercised within three years.

65. Likewise, reliance was placed on *Caltex (India) Ltd. v. Bhagwan Devi Marodia,* MANU/SC/0263/1968, wherein it was observed that an application for extension of a lease must be made within the prescribed time and equity will not relieve the tenant from the consequences of his own neglect.

Submissions heard and record perused.

66. The Appellant proposed several substantial questions of law for consideration, however *vide* Order dated 06.01.2016, the following substantial questions of law were framed:

> *"(i) Whether the suit filed by the plaintiff/appellant was barred by limitation?*
> *(ii) Whether the Trial Court was justified in rejecting the plaint under Order VII Rule 11 on the ground that the suit was barred by limitation?*
> *(iii) Whether the rejection of the plaint on the ground of bar under Section 50 of the Delhi Rent Control Act in relation to*

prayers (a) and (b) made in the plaint, was proper?"

I. *<u>Whether the suit filed by the plaintiff/appellant was barred by limitation and the Suit was rightly rejected ?</u>*

67. In order to appreciate the basic contention as to whether the Suit is barred by limitation, it would be pertinent to understand the case of the Plaintiff and to ascertain the date on which the cause of action arose for implementation of Clause 16 of the Lease Deed dated 01.03.1976.

68. The controversy essentially revolves around Clause 16 of the Agreement dated 01.03.1976, under which the Plaintiff claims a right to seek execution of a Perpetual Lease Deed.

69. Before examining whether the relief of Specific Performance is barred by limitation, reference be made to the observations made in the case of <u>*Mayawanti v. Kaushalya Devi*,</u> (1990) 3 SCC 1, wherein the Supreme Court held that ***the jurisdiction to order Specific Performance is based on the existence of a valid and enforceable contract***. The Court observed:

> *"The specific performance of a contract is the actual execution of the contract according to its stipulations and terms, and the courts direct the party in default to do the very thing which he contracted to do. The stipulations and terms of the contract have, **therefore, to be certain and the parties must have been consensus ad idem... If the stipulations and terms are uncertain, and the parties are not ad idem, there can be no specific performance, for there was no contract at all.**"*

70. Thus, the Supreme Court held that Specific Performance presupposes a valid and enforceable contract, with certain terms. The Court will not make a contract for the parties. If the terms are uncertain, there can be no Specific Performance, because there is no enforceable contract to perform.

71. ***It is thus, necessary to first consider the nature of the right created under Clause 16,*** particularly when read with Clause 12 of the Agreement.

(i) Nature of the Right Contemplated under Clause 16:

72. The Plaintiff has sought the Specific Performance of Clause 16 of the Lease Deed dated 01.03.1976 which provided for the execution of the Perpetual lease deed, which is sought to be executed by way of this present Suit for Specific Performance. To understand the import of **Clause 16** of the Agreement dated 01.03.1976, it is reproduced as under:

> *"**16.** That it is agreed by the lessor **that he would execute another lease deed, may be a perpetual lease deed or any other lease deed for the period at the option of the lessee after or before the expiry of the period of lease of this lease deed.** For writing the lease deed of the type mentioned in this para, permission is required to be taken from competent authority under the Vacant Land Ceiling Act, 1976. The lessors hereby agree to apply for obtaining such permission and all expenses in that respect such as Advocate fee, stamps, clerkage shall be paid by the lessee. The lessors shall sign and execute all such documents which are necessary for obtaining the permission from the authorities concerned."*

73. Clause 16 does not itself state the terms for executing a perpetual term. It obligates the lessors to execute a further instrument. The Plaintiff is seeking to specifically perform, not a completed contract, ***but a covenant to enter into a future arrangement.***

74. Where parties agree that they will in future enter into a contract on terms yet to be settled between them, *there is no concluded contract in the present; there is only* "***an agreement to agree".*** Such an arrangement is not capable of Specific Performance, because the Court cannot decree performance of a contract, whose essential terms are yet to be determined by the parties.

75. In the case of *Hitkarini Sabha, Jabalpur v. The Corporation of the City of Jabalpur & Others*, (1972) 3 SCC 325, the question arose in relation to a Lease providing for renewal of tenancy *"on such terms and conditions as may be agreed to between the parties"*. The Clause was held to be uncertain and vague and not to constitute a valid contract for renewal of the Lease. Normally, in a covenant for renewal, there is an express agreement that the Lease would be continued on the same terms and conditions, subject to a reservation that the rent may be enhanced under certain circumstances. However, where the terms and conditions are left to an Agreement between the parties, such Agreement may not take place at all. Therefore, in terms of Section 29 of the Indian Contract Act, such a contract cannot be enforced.

76. A reference was made in the aforesaid judgement to the case of *Ramaswami v. Rajagopala*, ILR 11 Mad 200, wherein a Lease, under which the tenant agreed to pay whatever rent the landlord may fix, was held to be void for uncertainty.

77. In the case of *Ramjoo Mahomed v. Haridas Mullick and Others*, AIR 1925 Calcutta 1087, while considering the incidents of a Lease Agreement, it was explained that where a document creates, in *praesenti*, a right of lease *(tenancy)* in the Property and defines its terms, it would constitute a valid Lease Agreement. Otherwise, the alleged Agreement would amount ***merely to a contract to enter into a Contract***, as to the terms of which latter Contract the parties had not already agreed.

78. It was further observed that if the Lease contained the words ***"all terms will be settled on the Agreement",*** *it would indicate that the matter was still at the stage of negotiation and that the parties had not agreed as to what the terms of the Lease should be.* It was also noted that if there were correspondences or other letters exchanged *inter se* the parties from which the terms of such an Agreement could be inferred, the Court may conclude that there existed a Lease Agreement.

79. Similarly, in the case of *H.V. Rajan v. C.N. Gopal & Others*, AIR 1961 Mys 29, while interpreting a Clause providing that, after expiry of the period of five years fixed under the Lease, the Lessee shall have an option of five years, *but subject to such terms and conditions as may be mutually agreed upon,* it was observed that the true meaning of this Clause was that the Lessor and the Lessee may choose to renew the Lease, if they were agreeable on the terms. In other words, ***"it was merely an Agreement to negotiate for a fresh Lease".***

80. The similar Clause was considered by the Apex Court, in the case of *Shanti Prasad Devi v. Shankar Mahto*, (2005) 5 SCC 543. The facts involved was that there was a registered Lease Deed dated 17.07.1962 for a period of fifteen years, for running a petrol pump. The rent at the agreed rate, was payable monthly. The Clause (7) and (9)of the lease deed gave the lessee an option of renewal for a further period. Clause (7) contained two conditions: ***first****, that the option for renewal had to be exercised before* *expiry of the lease; and* ***second****,* ***that the terms and conditions of renewal for the further period were to be decided either by mutual consent of the parties*** *or, in the absence of mutual consent*, through the intervention of the local Mukhia or Panchas of the village.

81. The Supreme Court held that the said renewal clauses were *"**uncertain and incapable of specific performance**."* The Mukhia and Panchas were not named in the Agreement and the method of choosing either of the two forums, was not specified. The Supreme Court observed:

> *"The **clauses of renewal requiring fixation of terms and conditions for renewed period of lease mutually** or in the alternative through village Mukhia and Panchas are uncertain and incapable of specific performance... The renewal clauses of the agreement were vague and incapable of specific performance."*

82. The said decision is instructive. Even where a renewal clause provided a mechanism for determination of future terms, *namely, mutual consent or third-party mediation*, the Court held it to be vague and incapable of Specific Performance because the essential terms of the renewed lease had not been crystallised.

83. Similarly, in *Naveen Chand v. Nagarjuna Travels & Hotels Ltd.*, (2002) 6 SCC 331, the Supreme Court was dealing with a registered lease deed for a period of 25 years which stated that the lessee had *"the right of renewal as hereinafter set out."* However, neither the period, rent, nor conditions of the renewed term were set out anywhere in the document. The Supreme Court held that the right of renewal was *"shrouded in uncertainty and vagueness"* and observed that it was *"difficult to accept that the parties* *had intended that the lessees can unilaterally exercise the right of renewal, without the terms and conditions of renewal being settled between the parties."*

84. The said observations apply with full force to Clause 16 of the Agreement dated 01.03.1976. The Plaintiff seeks to unilaterally exercise the option under Clause 16 after more than 25 years, without the rent, period or other essential terms of the contemplated future lease having been determined or even discussed between the parties.

85. In *Kovuru Kalappa Devara v. Kumar Krishna Mitter*, AIR 1945 Mad 10, a Division Bench of the Madras High Court was dealing with a document in which the respondent undertook to pay a certain sum *"after deductions as would be agreed upon."* The Court held the covenant void for uncertainty under Section 29 of the Indian Contract Act, 1872, observing that where an essential term is left to be *"agreed upon"* between the parties in the future, the meaning of the Agreement is not certain or capable of being made certain. *Section 29 contemplates that the meaning shall be clear on the face of the document*. The Court cannot be called upon to decide between conflicting claims as to the meaning of a covenant, whose essential terms remain to be settled by future agreement.

86. In *Khivraj Chordia v. Esso Standard Eastern Inc.,* AIR 1975 Mad 374, the Division Bench of the Madras High Court, following *Kovuru Kalappa Devara* (supra), drew a distinction between a ***renewal covenant where the contract itself supplies an objective yardstick*** *by which future terms can be ascertained, and* ***one where the terms are simply left for later agreement between the parties without any such standard.***

87. Where the contract provides a yardstick, the covenant may be enforceable as the terms are *"capable of being made certain,"* within the meaning of Section 29. Where, however, no such yardstick exists and the essential terms are left entirely at large for future agreement, the covenant amounts to no more than "***an agreement to agree***", which is unenforceable. In the former case, the covenant may be enforceable; in the latter, it is not.

88. An option of such a character, uncertain in its content and incapable of being decreed without the Court itself making the bargain for the parties, is, by its very nature, *not capable of Specific Performance*.

89. The Appellant has placed reliance upon Clause 12 and the continued possession of the Plaintiff, after expiry of the initial lease. ***However this does not alter the aforesaid conclusion.*** Though Clause 12 contemplated peaceful enjoyment of the suit premises *"in perpetuity,"* Clause 16 expressly envisaged execution of *"another lease deed,"* which could include a perpetual lease deed. *The two clauses have to be read harmoniously.* Had the Agreement dated 01.03.1976 itself created a perpetual lease, the stipulation in Clause 16 requiring execution of a further lease deed, would be rendered otiose.

90. This construction is also consistent with Section 107 of the Transfer of Property Act, 1882, under which a lease exceeding one year, can be created only by a registered instrument. The perpetual lease contemplated by Clause 16 could, therefore, come into existence only upon execution and registration of the requisite instrument, which admittedly never took place.

91. In *State of U.P. v. Lalji Tandon,* (2004) 1 SCC 1, the Supreme Court distinguished an extension of a lease, from its renewal. It observed:

> *"There is a difference between* ***an extension of lease*** *in accordance with the covenant in that regard contained in the principal lease and* ***renewal of lease****, again in accordance with the covenant for renewal contained in the original lease. In the case of extension it is not necessary to have a fresh deed of lease executed, as the extension of lease for the term agreed upon shall be a necessary consequence of the clause for extension****. However, option for renewal has to be exercised consistently with the terms of the covenant for renewal and, if exercised, a fresh deed of lease shall have to be executed between the parties****. Failing the execution of a fresh deed of lease, another lease for a fixed term shall not come into existence though the principal lease in spite of the expiry of the term thereof may continue by holding over for year by year or month by month, as the case may be."*

92. While an extension may operate under the existing instrument, exercise of an option for renewal contemplates execution of a fresh lease deed. In the absence thereof, another lease for a fixed term does not come into existence, though the tenancy may continue by holding over.

93. The said principle was reiterated in *Bharat Petroleum Corporation Ltd. v. Rama Chandrashekhar Vaidya,* (2014) 1 SCC 657, wherein it was held that where a contractual renewal required execution and registration of a fresh lease deed, continued possession in the absence of such an instrument did not constitute the renewed fixed-term lease and the occupation continued as a month-to-month tenancy.

94. Similarly, in *Hardesh Ores (P) Ltd. v. Hede & Co.,* (2007) 5 SCC 614, the Supreme Court observed that the ***exercise of an option for renewal***

does not, by itself, result in automatic renewal, where the covenant contemplates execution of a further document evidencing such renewal.

95. In *Singer India Ltd. v. Amita Gupta,* MANU/DE/0042/2000, this Court held that a renewed or further lease for more than one year, requires a registered instrument and that continued occupation does not itself create the renewed term. Similarly, in *Asea Brown Boveri Ltd. v. Chiranjiv Lal Sharma*, MANU/DE/1152/1998, this Court held that a renewal clause in an unregistered lease is a substantive covenant, not a collateral purpose, and that a renewed long-term tenancy, cannot be established through an unregistered instrument.

96. Thus, mere continued possession of the Plaintiff after expiry of the initial 11-month term cannot, be construed as either creating the perpetual lease contemplated under Clause 16 or ***keeping the contractual option for its execution, alive indefinitely.***

97. Clause 16, in the present case, provides no formula, benchmark or mechanism for determination of the rent, period or other essential terms of the contemplated future lease. The nature of the lease - whether perpetual or for a fixed term - the period, if for a fixed term, and the rent payable thereunder, are all left to be determined in the future. *The clause, therefore, falls squarely within the category of a covenant whose essential terms **remain to be "agreed upon" and which, in the absence of any objective yardstick, is in the nature of an agreement to agree.*** Clause 16, in the present case, does not even provide a mechanism for determination of the future terms. It is, therefore, a *fortiori* incapable of Specific Performance.

98. Having concluded that there existed no valid Agreement for execution of a Perpetual Lease Deed and that there was only an Agreement *inter se* the parties, i.e., that they had merely agreed to execute a perpetual Lease Deed in future, it cannot be said that there existed any Agreement, which was capable of Specific Performance.

99. Once, there existed no Agreement for which Specific Performance could be granted, the question of computing limitation for enforcement of such an Agreement, would not arise.

(ii) Whether the Suit for Specific Performance was barred by limitation and whether the option under Clause 16 remained exercisable indefinitely after expiry of the initial lease :

100. Having considered the nature of the right asserted under Clause 16 and the effect of the Plaintiff's continued possession after expiry of the initial lease, what remains to be considered is *whether, even assuming Clause 16 to be enforceable, whether the option contained therein could remain available for exercise after a lapse of more than 25 years from the expiry of the initial lease, or* was barred by limitation and could be rejected at the threshold, under Order VII Rule 11 CPC.

101. The question which arises is the period within which, after expiry of the initial lease, *an option to seek execution of a further lease deed could be exercised, where no outer time limit has been prescribed.*

102. This question was considered in the case of *Caltex (India) Ltd. v. Bhagwan Devi Marodia,* AIR 1969 SC 405, the Supreme Court held that stipulations as to time governing the exercise of an option for renewal of a lease are ordinarily of the essence of the covenant and that such an option must be exercised strictly within the time prescribed, failing which the right to renewal lapses***. It was further observed that where no time is prescribed, the option may be exercised within a reasonable time before expiry of the term.***

103. The said decision establishes that a renewal option is a contractual privilege, the exercise of which is governed by the terms of the covenant. *Equity does not relieve the lessee from the consequences of his own neglect.*

104. In *Manjunath Anandappa v. Tammanasa*, (2003) 10 SCC 390, the Supreme Court held that even where time is not of the essence of the contract, a plaintiff seeking the discretionary relief of Specific Performance must approach the Court *within a reasonable time*. Prolonged inaction and a subsequent demand, do not entitle the plaintiff to equitable relief.

105. In *Shikha Misra v. S. Krishnamurthy,* 2014 SCC OnLine Del 1565, this Court was dealing with a suit for Specific Performance filed after a delay of approximately 20 years, in a case where no date for performance had been fixed. This Court held that the plaintiff could not wait endlessly and that *prolonged non-performance may itself put the plaintiff on notice that performance will not be forthcoming*. The Suit was held to be barred by limitation.

106. In *DDA v. Ram Prakash,* (2011) 4 SCC 180, the Supreme Court considered a demand raised by the DDA after nearly twenty-five years of inaction. While observing that what constitutes a reasonable time would depend upon the facts and circumstances of each case, the Court held that, *even in the absence of a prescribed period of limitation*, it would be inequitable to permit such a demand to be raised after twenty-five years. Though rendered in the context of exercise of statutory power, the decision reinforces the principle that absence of an express outer limit does not, by itself, permit a right or power to remain dormant indefinitely.

107. The aforesaid decisions establish that an option for renewal is a contractual privilege, which cannot be kept alive indefinitely by the lessee through prolonged inaction.

108. In the present case, Clause 16 expressly contemplated execution of another lease deed ***either before or after the expiry of the initial lease***. This clause, when reasonably interpreted, provided that the plaintiff could have sought the finalization of terms of perpetual Lease Deed, either before or after the expiry. The initial lease expired in February, 1977 and no further lease deed for renewal was thereafter, executed. The Plaintiff, however, chose to exercise neither option and simply continued in the premises, *as a month-to-month tenant*.

109. The option for perpetual Lease Deed *could have been exercised in reasonable time,* after the date of expiry, but no endeavour was made by the plaintiff till the first formal demand for execution of the Perpetual Lease Deed was made, *vide* the Reply-cum-Notice dated 08.04.2002, *i.e. more than 25 years after the expiry of the initial lease.*

110. An option attached to a lease of merely 11 months, ***cannot be kept dormant for twenty-five years and thereafter, treated as enforceable.*** A period exceeding 25 years, **cannot constitute reasonable time** for exercise of an option connected with an 11-month lease. Such *prolonged non-*

performance may itself put the plaintiff on notice that performance will not be forthcoming, as observed in the case of *Shikha Misra* (supra).

111. It is significant to note that if it is held that the cause of action for execution of the Perpetual Lease Deed arose only when the Plaintiff, *vide* his Reply dated 08.04.2002, sought execution of the Perpetual Lease Deed, i.e. after about 25 years, it would lead to an absurdity since the Perpetual Lease Deed now sought to be executed, could not possibly be on terms commensurate with those existing in the year 1977.

112. From this itself, it is evident that there existed no settled terms on which the parties had agreed for execution of the Perpetual Lease Deed; rather, it was merely an Agreement to execute a Perpetual Lease Deed in future, which option was never exercised. Once the Plaintiff, at best, could have sought execution of the Perpetual Lease Deed within three years from February, 1977, upon expiry of the Lease Deed, which he chose not to do, **the learned Trial Court as well as the learned ADJ rightly held that the Suit of the Plaintiff was patently barred by limitation.**

113. The Appellant, however, has sought to contend that the cause of action arose only on 08.04.2002, when the formal demand for execution of the Perpetual Lease Deed was made and the Defendants failed to comply.

114. It was contended that where no date is fixed for performance, the second limb of Article 54 of the Schedule to the Limitation Act, applies and limitation commences only when the Plaintiff has notice that performance has been refused. It was further contended that the date of such refusal ordinarily raises a mixed question of law and fact, which cannot be determined at the stage of consideration under Order VII Rule 11 CPC. The reliance has been placed by the Appellant upon *Panchanan Dhara v. Monmatha Nath Maity,* (2006) 5 SCC 340 and *Urvashiben v. Krishnakant Manuprasad Trivedi,* (2019) 13 SCC 372.

115. Article 54 of the Schedule to the limitation Act, 1963 reads as under:

Description of suit	***Period of limitation***	***Time from which period begins to run***
54. For specific performance of a contract.	***Three years.***	*The date fixed for the performance, or,* ***if no such date is fixed, when the plaintiff has notice that performance is refused.***

116. While this contention may appear to have some merit on first glance, however in view of the discussion above, it is not tenable for the simple reason that the cause of action cannot be claimed to have arisen merely from the date of service of the Legal Notice seeking Specific Performance of Clause 16. The cause of action had arisen in the year 1977 and the right, if any, ought to have been exercised *within a reasonable time* and, at best, within three years thereafter, when the Plaintiff could have sought execution of the Perpetual Lease Deed.

117. When there existed no concluded Agreement for execution of a Perpetual Lease Deed, the contention that limitation commenced only from the date on which the Legal Notice was sent, is incorrect and cannot be accepted.

118. The Court is required to ascertain the real nature of the cause of action as disclosed by the Plaint as a whole***, and not merely accept the date assigned to it by the Plaintiff.*** A formal demand issued in the year 2002 could not confer a fresh period of limitation upon a contractual option, which had long ceased to remain enforceable. To hold otherwise, would permit the commencement of limitation to be indefinitely postponed at the unilateral choice of the Plaintiff, merely by postponing the issuance of a formal Notice.

119. The learned Counsel for the Appellant also contended ***that Clause 16 contemplated obtaining permission under the Urban Land (Ceiling and Regulation) Act, 1976,*** and that since the said Act remained in force until 1999, both parties were awaiting the requisite regulatory clearance.

120. *The said contention is without merit.* Though Clause 16 itself refers to the requirement of permission under the said Act, the Plaint does not aver that the Defendants ever applied for such permission; that any Application was pending, or that the Plaintiff was legally precluded from calling upon the Defendants to take the steps, as contemplated under Clause 16 during the subsistence of the enactment. The Agreement contemplated of taking permission under this Urban Land Sealing Act; the interpretation that because of this Act, the process for execution of perpetual Lease Deed, could not be initiated, is completely fallacious as the Appellant was required to seek permission and not wait for its Repeal, which was not in contemplation, in the year 1977.

121. Even otherwise, the argument founded upon repeal of the enactment does not advance the case of the Appellant. On the Appellant's own premise that the alleged impediment to enforcement ceased upon repeal in the year 1999. The Suit came to be instituted only on 16.11.2004, i.e. more than five years, thereafter. The subsequent issuance of a formal demand in the year

2002 could not, by itself, furnish a fresh period for enforcement of a right which, even according to this alternative formulation, had become capable of enforcement years earlier.

122. The contention that limitation involved mixed questions of fact and law requiring a trial, is also not sustainable. The Agreement dated 01.03.1976, the terms of Clauses 12 and 16, the initial period of 11 months, the absence of execution of any subsequent lease deed for more than twenty-five years, the formal demand dated 08.04.2002 and the institution of the Suit on 16.11.2004, all emanate from the Plaint and the documents relied upon by the Plaintiff himself. *No evidence was, therefore, required.*

123. In *Hardesh Ores (P) Ltd. v. Hede & Co.*, (2007) 5 SCC 614, the Supreme Court observed that a Plaint can be rejected on the ground of limitation where the Suit appears, from the statements contained in the Plaint itself, to be barred by law. For this purpose, the averments made in the Plaint are required to be read as a whole and taken to be correct.

124. In view of the foregoing discussion, the Suit for Specific Performance was, on the averments contained in the Plaint itself, ***barred by Limitation.*** The option contained in Clause 16 of the Agreement dated 01.03.1976, being in the nature of an agreement to execute a future lease deed whose essential terms remained to be crystallised, was not one which could be treated as surviving indefinitely.

125. Even otherwise, the option had lapsed by reason of its non-exercise for an unreasonable and inordinate period, exceeding twenty-five years. Article 54 of the Limitation Act, 1963 could not revive a contractual option which had become barred by time, much prior to the giving of the Notice.

126. The learned Trial Court was, therefore, justified in rejecting the Plaint under Order VII Rule 11 CPC.

127. ***Substantial questions (i) and (ii) are accordingly answered, against the Appellant.***

II. *Whether the rejection of the Plaint on the ground of Section 50 of the Delhi Rent Control Act, 1958 was proper:*

128. The relief sought in *prayer (b)* is for a Declaration that the rent payable in respect of the Suit Premises is Rs.221/- per month, subject only to the statutory enhancement permissible under Section 6A of the Delhi Rent Control Act, 1958.

129. A suit for Declaration is governed by Section 34 of the Specific Relief Act, 1963, which provides:

> ***"34. Discretion of court as to declaration of status or right.—***
> *"Any person entitled to **any legal character**, or to **any right as to any property,** may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*
> *Provided ....*
> *Explanation...."*

130. A declaration under Section 34 must, therefore, relate to one of two matters: (i) the plaintiff's ***"legal character,"*** or (ii) a ***"right as to any property."*** The question is whether a declaration regarding the rate of rent payable by a tenant, falls within either category.

131. The expression ***"legal character"*** refers to a person's legally recognised **position or status,** the attributes which the law attaches to him in his individual and personal capacity. The status of being a tenant, a landlord, an heir, a trustee, or a member of a Hindu Undivided Family are examples of legal character. The critical distinction is between the status itself and the particular rights, obligations or incidents which flow from that status.

132. In *Sri Mahalinga Thambiran Swamigal v. His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal,* (1974) 1 SCC 150, the Supreme Court recognised that legal character is the same thing as status and held that a distinction must be drawn between a person's status and the incidents flowing from it. The Court observed:

> ***"Status is something apart from and beyond its incidents. The status of a child is not his duties or disabilities in relation to his parents, but the legally recognised fact of being a child."***

133. The Court distinguished the status itself from the particular rights, capacities or disabilities which flow from that status, *observing that the status of a child consists in the legally recognised position of being a child, whereas particular rights and disabilities arising from that relationship are incidents of the status.*

134. In the present case, the Plaintiff's status as a tenant, is not in dispute. Both the parties admit the existence of the landlord-tenant relationship. The dispute pertains only to the quantum of rent payable, which is an incident of that admitted status and not the legal character itself. ***The declaratory relief***

sought, therefore, does not fall within the first category contemplated under Section 34.

135. The second category is the ***"right as to any property."*** The expression refers to a **person's title or interest** in a specific property, such as ownership, possession, leasehold interest, easement, or any other legally recognised interest in property. The rate at which rent is payable under a tenancy is not itself a right to or in the property. *It is the quantum of a financial obligation arising from the tenancy.* The connection of a monetary liability with immovable property does not, by itself, transform the liability into a *"right as to property"* within Section 34.

136. What the Plaintiff seeks is not a declaration of his ***"right as to any property."***, but a declaration that the quantum of rent payable by him is Rs.221/- per month. ***The quantum of rent is a monetary obligation arising as an incident of the admitted tenancy.*** A dispute about how much rent is payable, does not put the tenant's status or his legal right in the property in question.

137. The scope of such a declaratory relief under Section 34, has been the subject of judicial consideration in several decisions. In *Tian Sahu v. Mulchand Sahu,* AIR 1922 Pat 432, the Plaintiff had claimed a declaration that he would be entitled to contribution from the Defendant if and when the occasion arose. *The Patna High Court held that such a suit was not maintainable, as only a pecuniary relief was in question.*

138. A similar view was taken in *Sripat Rao v. Shankar Rao*, AIR 1930 Bom 331. Following both these decisions, in *Nathuram v. Mula*, AIR 1937 Lah 25, the Lahore High Court held:

"A suit for a declaration that the defendant would be liable to contribute to the plaintiff all moneys which the plaintiff as the defendant's surety would be liable to pay ***does not come under Section 42 as it affects only the pecuniary relationship between the parties to the contract****."*

139. In <u>*Firm Gopal Das Parmanand v. Mul Raj*</u>, AIR 1937 Lah 389, a declaration that a certain sum deposited by the Plaintiff with the Defendant as margin money was accountable by the Defendant to the Plaintiff was refused, on the ground that it could not be granted under Section 42 of the Specific Relief Act, 1877, as it affected only the pecuniary relationship between the parties to the contract.

140. In <u>*Mahabir Jute Mills v. Firm Kedar Nath Ram Bharose*</u>, AIR 1960 All 254, the Allahabad High Court, while dealing with Section 42 of the Specific Relief Act, 1877, (*which is in pari materia with Section 34 of the Specific Relief Act, 1963*), framed the question as under:

"Before a suit can be filed under the section, therefore, it must relate to the plaintiff's legal character or to his right to any property. The question is whether a declaration that the plaintiff has not incurred any pecuniary liability or that the defendant has incurred any such liability in favour of the plaintiff can be considered to be a declaration about 'legal character or a right to property.'"

141. After reviewing the aforesaid authorities, the Allahabad High Court concluded:

"The principle which emerges from these decisions is that Section 42 of the Specific Relief Act ***does not contemplate declaration about the pecuniary liability of persons as the***

***same cannot be considered to be declarations about their legal character or any right to property*."**

142. The aforesaid principles were applied by this Court in the case of *M/s Kular Construction Ltd. v. Gurnam Singh*, 2019 SCC OnLine Del 6976. In that case, three brothers had entered into a family settlement dated 25.05.2000 concerning various properties, including a hotel project at Ludhiana. Under the settlement, the Defendant, one of the brothers, was recognised as the owner of commercial space on the 3rd and 4th floors of the hotel building.

143. The Plaintiff company, which managed the hotel project, *raised bills for maintenance charges against the Defendant.* When the Defendant failed to pay the maintenance charges, the Plaintiff, instead of filing a suit for recovery, filed a suit for Declaration that the Defendant had no right, title or interest in the commercial space if the maintenance charges were not paid, or in the alternative, that the Plaintiff was entitled to adjust the unpaid charges and take back the commercial space.

144. This Court held that the Suit, though framed as one for Declaration, was in substance, *a suit for recovery of maintenance charges.* The Court accepted the proposition that a declaration cannot be filed for enforcing pecuniary liability. Applying the principles laid down in *Mahabir Jute Mills* (supra) and *Anil Kumar Handa* (supra), ***this Court held that a pecuniary liability cannot be fastened by seeking a declaration under Section 34.***

145. It is therefore, evident that no declaration in regard to a monetary liability, even if in respect of immovable property does not, by itself, transform the liability into a *"right as to property"*, within the meaning of Section 34.

146. The question whether a declaration regarding the rate of rent falls within Section 34, arose directly in *State of M.P. v. Khan Bahadur H.H.D.H. Bhiwandiwala & Co.*, AIR 1971 MP 65. In that case, the Plaintiff had been granted a distillery contract by the erstwhile Bhopal State and was permitted to occupy the distillery building for manufacture of country liquor on payment of rent. The rent, initially Rs.250/- per month, had been enhanced over time to Rs.392.62 per month. When the State of Madhya Pradesh granted a fresh distillery contract, the licence stipulated that the Plaintiff would be liable to pay such rent as was fixed by the Public Works Department. *The Department fixed provisional rent at Rs.2,071.81 per month and demanded the difference between the provisional rent and the existing rent.*

147. The Plaintiff instituted a suit seeking a Declaration that it was a tenant of the distillery building at a rent of Rs.392.62 per month. **The Madhya Pradesh High Court set out the requisites for a declaratory suit, as under:**

> *"In order to obtain relief of this kind, the plaintiff must establish that (i) the plaintiff is at the time of the suit entitled to any legal character or any right to any property; (ii) the defendant has denied or is interested in denying the character or the title of the plaintiff; (iii) the declaration asked for is a declaration that the plaintiff is entitled to a legal character or to a right to property, and (iv) the plaintiff is not in a position to claim a further relief than a bare declaration of his title.* ***Even if all these conditions are***

fulfilled, the Court has still a discretion to grant or not to grant a declaratory relief depending on the circumstances of each case."

148. Applying these principles, the Court held:

"There can be ***no cause of action for a declaration in respect of pecuniary liability, arising from contract or otherwise, for, Section 42 of the Specific Relief Act is limited to status and rights in property.*** *The plaintiff was neither a lessee nor a licencee on the date of suit. The declaration which the plaintiff wants is not as to any 'legal character' nor is it as to 'any right to any property.' The prayer that it be declared that the plaintiff was not entitled to pay anything more than Rs. 392.62 per month by way of rent for occupation of the distillery building is in the nature of a Brutum Fulmen and no Court would sit solemnly to make such a declaration in the exercise of its judicial discretion."*

149. In the case of *Khan Bahadur H.H.D.H. Bhiwandiwala & Co.,* (supra), it was categorically held that a declaration fixing the amount payable by way of rent concerns pecuniary liability and does not fall within the scope of ***"legal character" or "right as to any property"***. *The rate of rent, remains the quantum of a monetary obligation. It does not become a question of legal character or title merely because the dispute arises between a landlord and a tenant or in relation to immovable property.*

150. In the present case, the Plaintiff's status as a tenant is admitted and not in dispute. What is sought is a declaration that the quantum of rent payable is Rs.221/- per month. That is a declaration regarding a pecuniary obligation - *what amount is payable as rent.* It is neither a declaration of ***"legal character"*** nor of ***"any right as to any property"*** within the meaning of Section 34.

151. The relief seeking a declaration as to the rate of rent, does not fall within the scope of Section 34, as it relates neither to the Plaintiff's legal character nor to any right as to property. It concerns a pecuniary obligation arising from the admitted tenancy. ***The declaration sought in prayer (b) is, therefore, not maintainable.***

152. While Section 6 of the DRC Act, defines the standard rent and Section 6A deems with revision of rent but there is no provision whatsoever in the Delhi Rent Control Act, which enables a person to seek a declaration in respect of the character, status or the rate of rent.

153. Therefore, while it may not be correct to say that such a Suit is barred under Section 50 of the DRC, but the conclusion remains the same as *per se*, the Suit for declaration in respect of the rate of rent, is not maintainable. Once, it is held that the declaration as sought by the Plaintiff itself, does not come within the definition of a declaratory Suit, the question of the applicability of the Section 50 of the Delhi Rent Control Act, 1958, becomes ***otiose.***

154. Therefore, though, for the different reasons, it is held that the Suit for declaration, has been rightly rejected under Order VII Rule 11 CPC by the two Courts.

155. **Even otherwise, on merits**, the Plaintiff while seeking a Declaration that the rate of rent was Rs. 221/- p.m., has himself stated in Paragraph 22 of his Plaint, as under:-

That the rent of the premises was Rs. 221/- per month which was exclusive of electricity and water charges. ***The*** *electricity was earlier supplied through the meter of the defendants. As the defendants had carried out renovations and additions at the ground floor of the premised, the electricity meters got mixed up and it was not possible to provide separate meter to the plaintiff as told to him by the defendants. They started claiming lump sum amount for the consumption of electricity and water. That was Rs.1100/- first and then increased as the cost of water and electricity increased, this included 10% increase as per DRC Act.* ***The plaintiff accepted the version of the defendants in good faith and started paying Rs. 2000/- per month.*** *The defendants had obviously played a trick on the plaintiff as they manipulated the situation to suit their convenience. The rate of rent in fact was/is Rs.221/- per month. Now, the defendant stopped supplying the electricity and water* ***and are charging Rs. 2200/- as only monthly rent without supplying power and water****. The plaintiff however, is ready to pay the statutory increase of 10% as per the provisions of DRC Act after, a period of every three years as per law".*

156. It is evident from the averments made in the Plaint that the Plaintiff himself admitted paying Rs.2,000/- per month.

157. In this context, it is also pertinent to refer to the Reply dated 08.04.2002 sent by the Plaintiff in response to the Legal Notice dated 23.02.2002.

158. It is the very document relied upon by the Plaintiff as constituting the cause of action for the Suit. While in the body of the Reply, the Plaintiff denied that the agreed rent was Rs.2,000/- per month, a cheque for Rs.6,400/- dated 08.04.2002 was enclosed with the said Reply, described as *"covering rent upto 30.4.2002 @ of Rs.2,000 for Feb 2002 and @ 2,200 w.e.f. Mar 2002."* The relevant part of the reply, reads as under:

> Encl- Cheque for Rs 6400/dt 8.4.2002- drawn on Union Bank of India,Overseas Branch covering Rent upto 30.4.2002 @ of Rs 2000 for Feb 2002 and @ 2200 wef Mar 2002.Without prejudice to the contentions in the above reply /Notice.

159. The Plaintiff thus, calculated and tendered the cheque at the very rate, he purported to deny.

160. The Appellant had vehemently contended that the rent was always Rs. 221/- and subsequent forcible inclusion of electricity and water charges, cannot be added to the admitted rate of rent and thus, the correct rate of rent needed to be settled by way of Declaration.

161. In the case of *Residence Ltd. vs. Surendra Mohan Banerjee*, AIR 1951 Calcutta 126, it was held that the rent payable would include such additional conveniences and facilities as may be provided by the landlord. *It was held that the term 'rent' is comprehensive enough to include not only the rent in the narrower sense of the term as ordinarily understood but also payment in respect of the additional conveniences and amenities.*

162. This judgement was referred to in the case *Karnani Properties Ltd. v. Augustine*, AIR 1957 SC 309, wherein the Supreme Court held that the expression *"rent"* is comprehensive and includes all payments agreed by the tenant to be paid to the landlord for the use and occupation of the premises, including payments towards amenities and services connected therewith. The term is not confined to the bare amount described as rent in the lease.

163. Therefore, even accepting the Plaintiff's contention that the amounts paid over and above Rs.221/- included electricity and water charges, the total amount admittedly payable was Rs.2,000/- per month, as stated by the Plaintiff in his own Plaint. The rate of rent being admitted by the Plaintiff himself, no declaration that the rate of rent was Rs.221/- per month is tenable, even on the averments contained in the Plaint.

164. The relief of Permanent Injunction sought in prayer (c), being consequential to the Declaration sought in prayer (b), is equally not maintainable.

Conclusion:

165. In view of the foregoing discussion, it is held that the Suit of the Plaintiff has been rightly rejected under OVII Rule 11 CPC.

166. There is no infirmity in the Order dated 09.07.2012 of the learned Civil Judge, which has been upheld in the Judgment dated 05.05.2014, by the learned Additional District Judge.

167. There is no merit in this Regular Second Appeal, which is hereby, dismissed.

168. Pending Application(s), if any, are also disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 28, 2026
N/RS