# Atma Ram Properties (P) Ltd. Vs M/s Escorts Ltd. <BR> Atma Ram Builders (P) Ltd. Vs M/s Embassy Restaurant

**Court:** Delhi High Court

**Date of Decision:** March 16, 2012

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€" Order 39 Rule 4, Order 39 Rule 7, Order 7 Rule 11, Order 7 Rule 11, 151
Constitution of India, 1950 â€" Article 14, 19(1), 21
Criminal Procedure Code, 1973 (CrPC) â€" Section 164, 480, 482
Delhi Rent Control Act, 1958 â€" Section 14, 14(1), 2, 26, 26(3)
Penal Code, 1860 (IPC) â€" Section 193, 228
Transfer of Property Act, 1882 â€" Section 106

**Citation:** (2012) 8 AD 395 : (2012) 188 DLT 126 : (2012) 129 DRJ 229

**Hon'ble Judges:** Manmohan Singh, J

**Bench:** Single Bench

**Advocate:** Sandeep Sethi with Mr. Amit Sethi, for the Appellant; Deepika V. Marwaha in I.A. No. 14067/2007 in CS (OS) No. 1422/2006, Mr. Anip Sachthey, with Mr. Mohit Paul and Ms. Shagun Matta, in I.A. No. 7775/2008 in CS (OS) No. 1971/2006, for the Respondent

**Final Decision:** Allowed

## Judgement

Manmohan Singh, J.
By this, order I shall dispose of the two applications under Order VII, Rule 11 read with Section 151 CPC for

rejection of plaint, filed by the respective defendants in the abovementioned suits. As the same question of law is involved in both the cases,

therefore, a common order is being passed.

I.A. No.14067/2007 in CS(OS) No.1422/2006

The brief facts of the matter as stated in CS (OS) No.1422/2006 are that the plaintiff has filed this suit for recovery of Rs.20,00,000/- as arrears

of rent for the period from 01.05.2006 to 30.06.2006 in respect of the suit property, also for recovery of rent for the period from 01.07.2006 till

the final adjudication of the case @ Rs.10,00,000/- per month and for a decree for Rs.30,000/- as interest for the period from 01.05.2006 to

30.06.2006.

2. The plaintiff is the owner of the building named Atma Ram Mansion (formerly known as Scindia House), Connaught Circus, New Delhi and it

had given the suit property admeasuring about 6,000 square feet to the defendant on lease with effect from 01.01.1962 at a monthly rent of

Rs.820/- and even today the monthly rent of the said property payable by the defendant to the plaintiff is approximately Rs.1,060/- only, which is

very less compared to the present market rate. The plaintiff states that the prevailing market rate of rent for property similar to the suit property, is

estimated at Rs.10,00,000/- per month including property tax but excluding other charges.

I.A. No.7775/2008 in CS(OS) No.1971/2006

3. In the second suit filed by the same very plaintiff for recovery Rs.47,00,000/- as arrears of rent for the period from 01.06.2006 to 30.09.2006

in respect of the suit property further, for recovery of rent @ Rs.10,00,000/- per month for the period from 01.10.2006 till the final adjudication of

the suit and for a decree for Rs.7,20,000/- as interest for the period from 01.07.2006 to 30.09.2006 against M/s. Embassy Restaurant.

4. It is averred in the plaint that plaintiff is the owner of the building situated at Plot No.3 in ""D"" Block, Connaught Place, New Delhi. Since 1947,

the defendant herein has been the tenant of the premises bearing No.11-D, Connaught Place, New Delhi on the ground floor and mezzanine floor

and even today the defendant is paying rent @ Rs.312.69 per month. The other grievances raised by the plaintiff are common in both the matters

as far as prevailing market rate of rent for property is concerned.

5. It is stated by the plaintiff that the Delhi Rent Control Act, 1958 (hereinafter referred to as the ""Act"") was enacted to protect the tenants from

being charged excessive amount of rent, considering the fact that a large number of refugees had come to Delhi after the partition of the country in

the year 1947, thus, to protect those refugees from being evicted from their rented accommodation/property and for these reasons Sections 4, 6,

and 9 were included in the said Act. But, now the situation has changed and there has been an enormous increase in the value of properties

resulting in abuse of this law by the tenants. The Act is meant for the benefit of the weaker section of the society and the defendant in the present

case is not eligible for the protection of the said Act. The plaintiff is relying upon the judgment passed by the Division Bench of this court in the case

titled as Raghunandan Saran Ashok Saran (HUF) Vs. Union of India and Others, whereby Sections 4, 6 and 9 of the Act were held to be

unconstitutional and ultra vires of Article 14, 19(1)(g) and 21 of the Constitution of India. Therefore, in view of striking down of Sections 4, 6 and

9 of the Act, the defendant is liable to pay a sum of Rs.10,00,000/- per month to the plaintiff.

6. In suit No.1422/2006, the plaintiff served a demand notice dated 30.03.2006 upon the defendant asking it to pay to the plaintiff a sum of

Rs.10,00,000/- with effect from 01.05.2006 as the monthly rent because the other tenants in the same vicinity are paying that amount of rent for

similar property. However, the defendant neither replied to the said notice of the plaintiff, nor paid the enhanced rent. It is stated by the plaintiff that

it has a legitimate right to be compensated and reimbursed the effect of inflation, as is being done in the cases of employees by enhancing their

H.R.A. etc. Further, as Section 4, 6 and 9 of the Act have been struck down, there is no statutory bar in recovering the rent at the prevailing

market rate. As the demand made in the notice was not met by the defendant(s) thus, the present two suits have been filed before this court.

7. It is stated by the defendant that the present suit of the plaintiff is barred u/s 50 of the Act, as it involves a question as to what is the amount of

rents payable by the defendant, which lies in the exclusive jurisdiction of the Rent Controller. Further, it is stated by the defendant that the plaintiff is

entitled to only 10% increase in the rent and that also only after every three years and any claim over and above that is illegal and contrary to law.

8. Further, the defendant is well protected under the provisions of the Act, as the rent of the suit property is much below Rs.3500/- per month.

Further, it is stated by the defendant that the case of the plaintiff is based upon the judgment in the case of Raghunandan Saran Ashok Saran

(HUF) (supra), but, the defendant has come to know that the said judgment now is stayed. Therefore, in the present case, the plaint is liable to be

rejected as the suit is bad or premature cause of action.

9. In application being I.A. No.7775/2008, it is stated on behalf of the defendant that the suit of the plaintiff is solely on the ground that the

provisions of Sections 4, 6 & 9 of the Act, pertaining to Standard Rent have been struck down and declared unconstitutional by this court and

upheld by the Supreme Court and that there is no statutory bar in recovering the rent at current market rate. It is stated in the application that

Section 6A which deals with the revision of rent is still maintained on the statute. Section 6A reads as under:

6A. Revision of rent:- Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of

this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent, every three years.

10. It is stated by the defendant that the suit is liable to be rejected under the provisions of Order VII Rule 11 of CPC. The suit is also barred by

the principles of res judicata as the plaintiff has failed to bring to the notice of this Court, the number of proceedings that have taken place and are

still continuing in respect of the suit property, since, the plaintiff became the owner of the same in the year 1986.

11. It is further stated by the defendant, the plaintiff in Suit No.1971/2006 had filed a petition in the year 1989 u/s 14(1)(a) of the Act, being

eviction case No.373/89 against the present defendant on the ground that the defendant herein had not paid the arrears of rent @ Rs.593.33 paisa

w.e.f. 01.02.1989 inspite of service of notice dated 1605.1989 and it was also stated that the defendant had been a tenant since 1937, therefore,

the Act as amended in 1988 allows the plaintiff herein, to have the standard rent in accordance with Section 6, 6A read with second schedule of

the Act on the basic rent. The plaintiff in the said petition also claimed that the defendant agreed to the standard rent payable @ Rs.593.33 paisa.

However, the defendant stated that the rent was payable @ Rs.312.69 paisa.

12. The said eviction petition was dismissed by the Additional Rent Controller, Delhi by judgment dated 31.07.1998, as, it did not satisfy the

ingredients of Section 14(1) (a) of the . The Additional Rent Controller also recorded that it was an admitted fact there is no rent agreement to

show that the rent of the tenanted premises was @ Rs.312.69 paisa per month. The said judgment dated 31.07.1998 of the Additional Rent

Controller was never challenged by the plaintiff herein, and thus, the same is binding upon the parties. Thereafter, the plaintiff refused to accept the

rent from the defendant @ Rs.312.69 paisa per month and to deposit the same, the defendant had to file applications for deposit of rent however,

the plaintiff kept refusing to accept the rent from the defendant.

13. The issue that needs to be decided by the court is as under:

Whether the suit for recovery filed by the plaintiff claiming rent at the alleged market rate of rent, against defendant who is a protected tenant under

the Delhi Rent Control Act, 1958 paying the agreed rent, is barred by Section 50 of the said act read with Section 6-A, 7, 8, 14 of the Delhi Rent

Control Act, 1958?

14. After completion of the pleadings, when the matter came up for hearing, when Mr. Sandeep Sethi, Senior advocate appearing on behalf of the

plaintiff and Ms. Deepika V. Marwaha appearing on behalf of the defendants in suit No.1422/2006 and Mr. Anip Sachthey with Mr. Mohit Paul

and Ms. Shagun Matta in Suit No.1976/2006 have made their submissions on the applications.

15. Ms. Deepika V. Marwaha, Adv. appearing on behalf of the applicant/ defendant has made her submissions which can be outlined in the

following terms:

a) It is admitted fact that the defendant was inducted as a tenant in the suit premises by the predecessor in interest of the plaintiff company, through

a registered lease deed in 1973 which was w.e.f 1.04.1971 to 31.3.1976 at the rate of Rs.820-/ per month. Admittedly, the rate of rent being paid

by the defendant/ tenant as of today is Rs. 1060-/ per month that includes Rs. 280 boarding charges, Rs. 10 per month water charges and

remaining Rs. 770-/ as a rent. The same has been deposited earlier in the eviction petition preferred by the plaintiffs and also in an application u/s

27 of the Act. In view of the same, as per the learned counsel for the defendant, the status of the defendant is as that of the one who is protected

under the provisions of Act.

b) Learned counsel for the defendant has argued that the in view of clear applicability of the provisions of the Act, the plaintiff cannot maintain the

present suit to recover the arrears of the rent at the market rate as the suit relating to the same would be covered by the express bar envisaged u/s

50 of the Act.

Learned counsel for the defendant has read Section 50 of the Act in order to submit that the matter relating to fixation of the standard rent or for

that matter increase in rent as Section 6A falls within the exclusive domain of the Rent Controller. Consequently, the provision of Section 50, when

it says any other matter which the Controller is empowered to decide covers the aspect of the increase in rent. Accordingly, in view of the express

ouster contained u/s 50 of the Act, the plaint is liable to be rejected under Order VII Rule 11 (d) of the CPC.

c) Learned counsel for the defendant has argued that the procedure for enhancement of the rent is provided u/s 6A of the Act and the

consequence is also provided u/s 14(1) (a) of the Act which is to file an eviction petition before the Rent Controller. Thus, the jurisdiction of this

court for the purposes of recovery of increased rent whatsoever is barred, as, it is within the exclusive jurisdiction of the rent controller. All this is

further made clear by way of Section 50 of the Act.

Learned counsel also read Section 9 of CPC to argue that the courts cannot entertain the suits which are expressly barred and in the present case

too, the suit of the present nature is barred by Section 50 of the Act and as such the plaint is liable to be rejected.

Furthermore, it is argued by the learned counsel for the defendant the suit for determination of mesne profit is also not maintainable as the

defendant is statutorily protected tenant under the Act. Thus, it cannot be said that the defendants are in illegal possession of the property and this

plaintiff has done indirectly by not approaching the appropriate forum prescribed under the law.

Learned counsel also argued that the present suit is not maintainable, as the matter relating to payment of rent (although not arrears of rent) is

pending before the Rent Controller, likewise, the matter relating to eviction of the defendant is also pending before the Rent Controller. The plaintiff

by filing the present suit for recovery of so called arrears, which is a unilateral increase in rent as per market value yet to be determined, cannot

maintain the same before this court in the present form. The same, if done, and proceeded with by this court, would lead to direct interference with

the domain of the rent controller, when the Rent Controller is seized with the matter.

d) Learned counsel for the defendant has relied upon the following judgments in order to support her submissions:

Ã¯Â¿Â½ Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF),

Ã¯Â¿Â½ Variety (Agents) Pvt. Ltd. Vs. Brig. Jagdev Singh (Retd.) & Anr., 1998 V AD (Del) 449 wherein it was held by this court that after

enhancement of rent by 10 %, if the rent crosses the limit of Rs. 3500/-, the tenancy goes out of the purview of Delhi Rent control Act. This has

been cited to argue that in the present case, nothing of such sort has happened as the defendant"s rent is still within the limit of Rs. 3500/-.

Ã¯Â¿Â½ Model Press Pvt. Ltd. Vs. Mohd. Saied, wherein the Division Bench of this court observed that with respect to the agreed rent, wherever the

same is less than Rs.3,500/- per month and the tenant willingly paid the same, the question of fixation of standard rent does not arise. In such

scenario, the issue of Sections 4, 6 and 9 becomes irrelevant. The only issue which can be urged by the landlord is that the agreed rent was limited

to the duration of the lease and after the same was over, the landlord would be entitled to increase the rent.

Ã¯Â¿Â½ State Vs. Maqsood Ahmed @ Ashraf Abbu Mujahid, wherein this court again has held that the suit for recovery of money, recovery of

possession and increased rent is barred u/s 50 of the Act. It was also held that if the tenant is not willing or agreeable to increase in rent in

accordance with the provisions of the Act, the landlord has recourse only to Section 6A.

Ã¯Â¿Â½ Kamlesh Bagga v. Mahinder Kaur passed in CM(M) 948/2004 wherein it was held that a unilateral notice increasing rent beyond 10 % is not

permissible u/s 6A of Delhi Rent Control Act and cannot be acted upon to take the case out of the purview of the Delhi Rent Control Act.

e) Learned counsel for the defendant has also sought to distinguish the judgments passed in Pearey Lal Workshop P. Ltd. Vs. Raghunandan Saran

Ashok Saran, and also the judgment passed by the apex court in the case of Mohammad Ahmad and Another Vs. Atma Ram Chauhan and

Others, , by urging that the observations made therein are confined to the facts and the circumstances of the cases concerned and the same are

clearly distinguishable from the given facts in the present case.

By making aforementioned submissions and placing reliance on the case laws enlisted above, it has been urged that this court should reject the

plaint by exercising the powers under Order VII Rule 11 (d), as the suit in the present form is clearly barred by Section 50 of the Act.

16. Per contra Mr. Sandeep Sethi, Senior counsel appearing on behalf of the plaintiff while resisting the application has made following submissions

in reply:

a) Learned counsel for the plaintiff has argued that there is no bar for claiming arrears of the rent in the suit, as per the market value in view of the

judgment passed by the Division Bench of this Court in the case of Raghunandan Saran Ashok Saran (supra) wherein the provisions of the Act

namely Section 4, 6 and 9 are struck down and declared unconstitutional. Consequently, as per the plaintiff''s counsel, the plaintiff can well within

its right to seek the arrears of the rent at the market value as the legal embargoes existing under the law are now not existing by virtue of the

judgment passed in Raghunandan (supra).

b) Learned counsel for the plaintiff has argued that for the purposes of considering the rejection of the plaint under Order VII Rule 11 CPC, the

averments made in the plaint has to be assumed to be correct and if, the present suit is seen on reading of the averments made in the plaint, by no

stretch of imagination, it can be said that the suit is barred by any law. As per the plaintiff''s counsel, the defence of the defendant that the suit is

barred by law and the same cannot be looked into at this stage for the purposes of measuring the suit under Order VII Rule 11 of CPC.

c) Learned counsel for the plaintiff has argued that in Raghunandan(supra) while striking down the provisions of the Act, this court also observed in

para 9 of the judgment about Section 6A wherein it is stated that the same is not in consonance with the on going increase in the rates of the

property and also leads to disparity between the cost of living and the value of Rupee. Thus, the said observations of Division Bench clearly aid the

case of the plaintiff and entitle it, under the law to seek a rent on the basis of market value.

d) Learned counsel has argued that Section 6A of the Act prescribes the increase by 10% every three years. The said provision provides for the

discretion by circumscribing the wordings with the expression ""may"" and there is no upper limit beyond which the rent cannot be increased. In that

situation, it is also not proper on the part of the defendant to misconstrue the provisions u/s 6A to contend that the said provision puts a capping

and thus there is a legal bar for maintaining the suit.

Learned counsel for the plaintiff has also argued that the language of Section 6A cannot be controlled as the same leaves a room for discretion by

using the expression ""may"" rather than ""shall"". As per the plaintiff, this is also clear that when the wordings of the Section are not qualified by the

expression ""only 10%"" or ""not exceeding 10%"". Therefore, this court should not construe the discretionary section so narrowly as done by the

courts earlier.

e) Learned counsel for the plaintiff submitted that the court should also consider the ground realities in the matter. The defendant herein is an old

tenant in the commercial hub of Delhi, Connaught Place whose tenancy is admittedly governed by the terms of lease dated 30.3.1973 executed

between the defendant and the erstwhile owner. The tenant is a renowned company. On one hand, it is trying to read the said lease deed for the

purposes of projecting that there is an agreed rent but, on other hand is not adhering to the terms and conditions of the said lease interalia including

clause 7 of the same whereby, the liability to pay fresh tax, if levied by authority, is payable by the tenant. It is submitted that pursuant to enactment

of 2009 Bye Laws, the house tax is now payable at the rate of Unit Area Base System and as such, the same house tax comes to Rs. 12,04,128

per annum which is Rs.1,00,374 per month and thus, the plaintiff under the compelling circumstances is demanding the enhanced rent in

consonance with the increase in taxes which under the law are recoverable from the tenant.

f) Learned counsel for the plaintiff has argued that the plaintiff has made the averments in the plaint regarding the inflation which is on-going and

also that there is no legal bar. The said averments are to be tested in the trial and thus the same becomes a mixed question of fact and law. On a

plain reading, the plaint cannot be said to be barred by the law.

g) Learned counsel has argued that there is difference between maintaining the suit in law and likelihood of success in the same. The plaintiff has

argued that the cause of action of the plaintiff under the law may be weak and the plaintiff may or may not succeed in the suit but, that does not

disentitle the plaintiff in maintaining suit before this court. Thus, this court should consider not to reject the plaint as the question of legal bar is not

purely a legal question but a mixed question of fact and law.

h) It has been argued on behalf of the plaintiffs that the reliance on the judgment of Model Press (supra) by the defendant is misplaced as the same

was rendered on the different facts and circumstances. As per the plaintiff, its case is covered by the judgment in the case of Pearey Lal Workshop

P. Ltd. (supra) and also the other judgments in Saleem Bhai & Ors. Vs. State of Maharashtra & Ors. 1 (2003) SLT 5.

17. The learned counsel for the plaintiff argued that vide order dated 22.04.2009 passed by the Supreme Court of India in CA No.6183/2002 the

judgment of Division Bench of this court in the case of Raghunandan Saran Ashok Saran (HUF) (supra) has attained finality. Further, it is well

settled that for rejection of plaint under Order VII Rule 11 CPC, the defense put forth by the defendant cannot be seen and only the averments

made by the plaintiff in the plaint are relevant to be looked into by the court for adjudicating upon the maintainability of the suit. It is also settled

proposition of law that the averments made in the plaint, as a whole have to be seen and if, the cause of action is clear and not barred by any law,

then, the plaint cannot be rejected, if such facts of law have been averred in the plaint. The learned counsel for the plaintiff has further stated that

the judgment of Division Bench of this court in the case of Raghunandan Saran Ashok Saran (HUF) (supra) has blown over the lid against the

enhancement of rent provided u/s 6-A of the Act.

18. Further, it is sated that by judgment dated 13.05.2011 in the case titled as Mohd. Ahmad & Anr.(supra), the Supreme Court has formulated

guidelines and norms to minimize the landlord tenant litigations at all levels. The relevant portion of the said judgment reads as under:

If the rent is too low (in comparison to market rent), having been fixed almost 20 to 25 years back then the present market rate should be worked

out either on the basis of valuation report or reliable estimates of building rentals in the surrounding areas let out on rent recently.

In view of the said guidelines, the application under Order XXXIX Rule 4 CPC by the defendant does not survive. Now the market rate is to be

ascertained and for that purpose, evidence is required to be led. A bare perusal of the judgment would show that in such cases where the rent

fixed between the parties is too low as compared to the market rent, then the tenant is liable to pay market rent which can be calculated on the

basis of estimates of rents of surrounding areas.

19. As per the plaintiff, the relief claimed in the present suit is squarely covered by the guidelines to be applied as per the directions of the Supreme

Court in the case of Mohd. Ahmad & Anr. (supra), as in the present case also there is no agreed rent between the parties and the last agreed rent

cannot be considered to be the binding agreed rent, as the plaintiff has exercised its right on the basis of the judgment in the case of Raghunandan

Saran Ashok Saran (HUF) (supra).

20. As regards the non-applicability of Order VII Rule 11 of CPC, the plaintiff has relied upon the judgment of the Supreme Court, in the case

titled as Popat And Kotecha Property Vs State Bank of India Staff Association VI (2005) SLT 529, wherein it was held that there cannot be any

compartmentalization, dissection, segregation and inversion of any of the various paragraphs of the plaint. In the case of Popat & Kotecha

Property (Supra), the court also relied upon the judgment in the case titled as M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property, , wherein

the Supreme Court held that the averments made in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII

of CPC was applicable.

21. In rejoinder, the learned counsel for the defendant has argued that the guidelines in the case of Raghunandan Saran Ashok Saran (HUF)

(supra) are with respect to increase the rent by 10% or comparable to the market rate etc. in such situation where the tenant gets a stay order

against the eviction decree from an Appellate Court. The said observations are observations and the law provides that unless and until there is a

specific ground for eviction u/s 14 of the Act, a protected tenant cannot be evicted.

22. It is stated by the learned counsel for the defendant that the facts as well as the guidelines given by the court in the case of Raghunandan Saran

Ashok Saran (HUF) (supra) are not applicable to the present case, as the facts of the present case are different. There is no eviction decree

against the defendant and neither the defendant is seeking any stay order against its eviction. The rate of rent is already agreed between the parties,

and thus, the present suit is barred by Section 50 of the Act.

23. In view of the submissions advanced and case laws cited, the plaintiff contended that the application seeking rejection of plaint may be

dismissed.

24. I have gone through the application and reply filed by the defendant. I have also given careful consideration to the submissions made at the bar

and have also read and understood the contents of the plaint. It would be wise exercise if I discuss the law on the subject and then test the present

suit on that basis to find as to whether the present suit can be said to be barred by law.

25. The Act is a beneficial piece of legislation which was enacted with the primal motive of protecting the tenants from that of unnecessary evictions

by way of legislative measures. With the said aim the Act was enacted so that there should be a situation where the rent or increase in rent can be

controlled by way of legislation and a fair bargain should exist between the landlord and the tenant, so that the harassment may be avoided and

consequently tenant may be protected from unnecessary pressures of the landlord calling upon the increase in rent at the higher rate. This legislation

was enacted when the law makers were conscious about the prevalent position existing at that time in Delhi, wherein, lots of commercial premises

were let out on the rent at the lower rates and there were constant endeavors of the landlords to evict the tenants from those premises or else

demands were there for escalation of the rents suitable to them.

26. In this backdrop, the Act was enacted and remained a governing law in relation to the premises which falls within the scope of applicability of

the Act. There were several debates and efforts to revise or amend the present law relating to Rent Control. But till date, the said amendments

have not seen the light of the day. Therefore, the Act still holds the field and is a governing law for the tenanted premises which come under

purview of Section 3 of the Act.

27. The relevant provisions of the Act which falls for consideration in the present case are reproduced hereinafter:

Section 2 provides for definitions which read as under:

(e) ""Landlord"" means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account

or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so

receive the rent to be entitled to receive the rent, if the premises were let to a tenant;

(f) ""Lawful increase"" means an increase in rent permitted under the provisions of this Act;

(j) ""prescribed"" means prescribed by rules made under this Act;

(k) ""standard rent"", in relation to any premises, means the standard rent referred to in section 6 or where the standard rent has been increased u/s

7, such increased rent;

28. Section 3 provides that the act does not apply to certain premises, which includes:

(c) To any premises, whether residential or not, whose monthly rent exceeds three thousand and five hundred rupees.

Section 4 and 6 though provides that the rent in excess of standard rent is not recoverable but, the same has been held unconstitutional by this

court in Raghunath Saran (Supra).

29. Section 6A of the Act provides for revision of rent and the same reads as under:

Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of

any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent. every three years.

30. Section 8 enacts for the notice of increase of rent:

(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and in so far

as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of the tenancy after the expiry of thirty days

from the date on which the notice is given.

(2) Every notice under sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in section 106 of

the Transfer of Property Act, 1982 (4 of 1882).

Proviso (a) to Section 14 of the Act provides for the grounds of eviction where the tenant has neither paid nor tendered the whole arrears of rent

legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served of him by the

landlord in the manner prescribed u/s 106 of Transfer of Property Act, 1882.

31. Section 26 (3) provides for the cases where the landlord or the authorized agent refuses to deliver the receipt of rent and the remedies for the

tenant:

(3) If the landlord or his authorised agent refuses or neglects to deliver to the tenant a receipt referred to in sub-section (2), the Controller may, on

an application made to him in this behalf by the tenant within two months from the date of payment and after hearing the landlord or his authorised

agent, by order direct the landlord or his authorised agent to pay to the tenant, by way of damages, such sum not exceeding double the amount of

rent paid by the tenant and the costs of the application and shall also grant a certificate to the tenant in respect of the rent paid.

32. Section 27 of the Act provides for the mode of deposit of rent and the same reads as under:

(1) Where the landlord does not accept any rent tendered by the tenant within the time referred to in Section 26 or refuses or neglects to deliver a

receipt referred to therein or where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may deposit such

rent with the Controller in the prescribed manner:

Provided that in case where there is a bona fide doubt as to the person or persons to whom the rent is payable, the tenant may remit such rent to

the Controller by postal money order.

(2) The deposit shall be accompanied by an application by the tenant containing the following particulars, namely:-

(a) the premises for which the rent is deposited with a description sufficient for identifying the premises;

(b) the period for which the rent is deposited;

(c) the name and address of the landlord or the person or persons claiming to be entitled to such rent;

(d) the reasons and circumstances for which the application for depositing the rent is made;

(e) such other particulars as may be prescribed.

(3) On such deposit of the rent being made, the Controller shall send in the prescribed manner a copy or copies of the application to the landlord

or persons claiming to be entitled to the rent with an endorsement of the date of the deposit.

(4) If an application is made for the withdrawal of any deposit of rent, the Controller shall, if satisfied that the applicant is the person entitled to

receive the rent deposited, order the amount of the rent to be paid to him in the manner prescribed:

Provided that no order for payment of any deposit of rent shall be made by the Controller under this sub-section without giving all persons named

by he tenant in his application under sub-section (2) as claiming to be entitled to payment of such rent being decided by a court of competent

jurisdiction.

(5) If at the time of filing the application under sub-section (4), but not after the expiry of thirty days from receiving the notice of deposit, the

landlord or the person or persons claiming to be entitled to the rent complains or complain to the Controller that the statements in the tenant''s

application of the reasons and circumstances which led him to deposit the rent are untrue, the Controller, after giving the tenant an opportunity of

being heard, may levy on the tenant a fine which may extend to an amount equal to two months'' rent, if the Controller is satisfied that the said

statements were materially untrue and may order that a sum out of the fine realised be paid to the landlord as compensation.

(6) The Controller may, on the complaint of the tenant and after giving an opportunity to the landlord of being heard, levy on the landlord a fine

which may extend to an amount equal to two months'' rent, if the Controller is satisfied that the landlord, without any reasonable cause, refused to

accept rent though tendered to him within the time referred to in Section 26 and may further order that a sum out of the fine realised be paid to the

tenant as compensation.

33. Section 36 provides for the powers of the Rent Controller and subsection (2) provides that it shall have powers of the civil court for the

purposes defined under the Act:

(2) The Controller shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a

suit, in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person and examining him on oath;

(b) Requiring the discovery and production of documents;

(c) Issuing commissions for the examination of witnesses;

(d) Any other matter which may be prescribed,

and any proceeding before the Controller shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the

Indian Penal Code (45 of 1860), and the Controller shall be deemed to be a civil court within the meaning of Section 480 and Section 482 of the

Code of Criminal Procedure, 1898 (5 of 1898).

34. Section 43 is a finality clause enacted to give finality to the orders of the Controller and the same reads as under:

Save as otherwise expressly provided in this Act, every order made by the Controller or an order passed on appeal under this Act shall be final

and shall not be called in question in any original suit, application or execution proceeding.

35. Section 50 sub section (1) bars the jurisdiction of the civil court in respect of certain matters and reads thus:

(1) Save as otherwise expressly provided in this Act, no civil court shall entertain any suit or proceeding in so far as it relates to the fixation of

standard rent in relation to any premises to which this Act applies or to eviction of any tenant there from or to any other matter which the

Controller is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the Controller under

this Act shall be granted by any civil court or other authority.

36. A collective reading of the aforementioned provisions of the Act reveals that the Act is a self regulating code for the purposes more specifically

rent, increase in rent defined under the Act relating to tenanted premises which are governed by the Act. The Act specifically defines u/s 2(f), the

expression ""lawful increase"" which would mean an increase in rent permitted under the provisions of the Act. There is a definition of standard rent

as well, which though does not call for discussion.

37. Section 6A provides for revision of rent wherein the rent may be increased by ten percent ( the interpretation is discussed under the separate

head).Section 14(1) proviso (a) provides for the ground of eviction on non payment of the rent and the same can be done by preferring the

application for eviction before the Rent Controller. The mechanism for tendering the rent before the Rent Controller is also provided u/s 26 and 27

of the Act. Further, the powers of the Rent Controller are akin to the civil court though for limited purposes and finality clause enacted in Section

43 gives finality to the orders of the Controller and specifically bars the calling into question in any original suit, application or execution proceeding

except in cases provided by the Act. To dispel any further doubt, Section 50 of the Act, provides for the express bar of jurisdiction of civil court in

relation to standard rent in respect of any premises to which this Act applied or to eviction of any tenant there from or to any other matter which

the controller is empowered by or under the Act to decide.

38. All these provisions are indicative of the mechanism and working of the Rent Controller and appeal tribunal formed under the Act. The said

provisions make it explicitly clear that the matters relating to standard rent or for that matter, increase in rent are the matters, which fall within the

exclusive domain of the Rent Controller as the same is clear by way of reading of Section 6A read with Section 9 of the Act.

39. Therefore, the matters relating to increase in rent or the standard rent which are falling within the exclusive domain of the Rent Controller to

decide, cannot fall within the domain of the civil court to decide in view of the express bar of jurisdiction envisaged u/s 50 of the Act. Thus, the

suits pertaining to matters of standard rent or increase in standard rent as contained Section 6, 7 and 9 of the Act would be straightforwardly

barred by way of operation of Section 50 of the Act read with Section 9 of CPC Code.

40. The question however falls for consideration is that if the same holds good for the purposes of Section 6 and 7 (which is that the suits relating

to standard rent and increase in standard rent are barred by way of Section 50) and can the same also be good for the purposes of Section 6A of

the Act which relates to revision of rent where there is no standard rent fixed which is a distinct eventuality than that of Section 6 and 7 of the Act.

To answer this question warrants an interpretation of Section 6A and the same is discussed hereinafter.

For the sake of convenience, Section 6A is reproduced hereinafter:

Notwithstanding anything contained in this Act, the standard rent, or, where no standard rent is fixed under the provisions of this Act in respect of

any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent. every three years.

41. A careful reading of Section 6A of the Act would reveal that the said provision is a non obstante clause. What follows from the same is that the

said provision enacts something which in addition to and not in derogation thereto contained under the Act. Thereafter, the said Section reads two

disjunctive portions; first in cases of standard rent and second where no standard rent is fixed under the provisions of this Act, the rent agreed

between the landlord and the tenant may be increased by ten percent, every three years.

The said Section 6A thus provides for two eventualities of revision of rent first relating to standard rent or in relation to the matters where the

standard rent is not fixed which operates disjunctively with the previous one and even in those cases, the rent agreed between the landlord and

tenant may be increased by 10% every three years.

42. The second eventuality is important, as it provides for an additional permission to the landlord or the tenant to increase the agreed rent by way

of 10% every three years. But, the said eventuality is in addition to and not in derogation to the other provisions of the Act. Consequently, nowhere

it follows that the said permission to increase the rent by way of 10 % can be read to mean that the said increase can be effected by the landlord

unilaterally. The said increase would again be governed by the provisions of the act and shall be done in the manner provided under the Act. The

said increase of agreed rent shall be done by way of operation of Section 8 in the manner provided therein as the said Section contemplates where

a landlord wishes to increase the rent of any premises. The said Section 8, thus, not merely relates to increase in standard rent but, also relates to

increase in rent of any premises.

43. Thus, the eventuality enacted u/s 6A relating to increase in agreed rate of rent shall be done by way of the manner provided u/s 8 of the Act

which is a bilateral Act and not unilateral one. Afortiori, it follows that Section 6A and the condition relating to increase in rent provided therein,

operates independent in some senses when it is compared to standard rent or increased in standard rent but cannot be said to be operating totally

outside the sway of the Act in view of clear terms of Section 8 and accordingly the said increase in rent shall be done in the manner provided u/s 8

and shall be subjected to the further consequences thereof provided in the Act.

44. Once it is realized that the increase of agreed rate of rent u/s 6A shall be governed by manner provided under the Act u/s 8 of the Act and the

consequences thereof, then immediately what follows is that the non payment of the said arrears and refusal to pay the same shall attract the

consequences provided under the Act including eviction u/s 14(1) proviso (a), etc. Therefore, the said aspect of non payment of arrears of rent or

remedy of eviction would then become the matters for which the Rent Controller is exclusively vested with the jurisdiction to adjudicate upon and

the finality clause and clear bar provided u/s 50 would therefore, continue to operate even in the cases relating to increase of agreed rate of rent

governed u/s 6A of the Act.

45. This has been discerned by way of plain reading of the provisions of the statute. It is well settled that the court should adopt the plain rule of

construction and it is impermissible to make a departure from the plain rule of construction unless the same leads to absurdity, in congruency or

repugnancy.

46. In the present case, the position in law becomes more clear, if one adopts the plain rule of construction of the enactment, it can be easily

discerned that the express bar contained u/s 50 would continue to govern the matters relating to increase in agreed rate of rent as the language of

Section 50 is wide enough when it enacts ""any other matter which the controller is empowered by or under this act to decide"" to take within its

sweep the matters relating to increase of the agreed rate of rent provided u/s 6A of the Act. Thus, the arrears of the rent or disputes relating

increase in the rent as provided u/s 6A would also attract the bar of Section 50 of the Act when it comes to the jurisdiction of the civil court as they

are matters falling within the domain of Rent Controller.

47. There is another aspect which needs enquiry at this stage, as there are submissions made at the bar and also there was a considerable debate

as to whether the revision or the increase in the rent provided by Section 6A can be said to be one which may exceed the limit of 10% every three

years. This needs some further evaluation of Section 6A.

48. If one reads Section 6A carefully, it is discernable that the Section being a non obstante clause provides an additional legislative permission or

lawful increase under the Act in addition to what has been the measures already provided in the Act. The said provision was enacted by way of the

amendment carried on in the year 1988 which also indicates to the same effect that the said provision provides for an additional lawful measure to

increase the rent in the manner provided therein subsequently.

49. Once it is realized that Section 6A is the statutory or legislative measure to increase the (which has been inserted by way of amendment by the

legislature) providing the manner of the increase in the rent, then the said legal means or permission or lawful increase has to be given due respect

and the same then attains the status of legislative command. Thus, it is difficult to visualize as to how the manner of increase provided by the

legislature u/s 6 A can be ignored and the court can read into it the increase by way of market rate, which would lead to the court re-legislating the

provision. The reasons to the same are manifold, few of which are highlighted below:

a) It is well settled canon of interpretation that when the statute prescribes a things to be done in a particular manner, the said things are to be done

in that particular manner to the exclusion of the others. (Kindly See State of Uttar Pradesh Vs. Singhara Singh and Others, wherein the Supreme

Court approving the principle of Taylor vs. Taylor, (1875) 1 Ch. D. 426 observes as under: -In Nazir Ahmed''s case(2) the Judicial Committee

observed that the principle applied in Taylor v. Taylor(3) to a Court, namely, that where a power is given to do a certain thing in a certain way, the

thing must be done in that way or not at all and that other methods of performance are necessarily forbidden, applied to judicial officers making a

record under s. 164 and, therefore, held that magistrate could not give oral evidence of the confession made to him which he had purported to

record under s. 164 of the Code

(Emphasis Supplied)

However, one may say that in the present case, the statute in the Act indeed provide a thing to be done in a particular manner by way of increase

in the rent but does not prescribe consequences in mandatory form and assuming that argument can be taken, then recourse to the objects and

scope of the Act can be taken to resolve such conflict.

50. In the case of Seth Bikhraj Jaipuria Vs. Union of India (UOI), it was observed that where a statute requires that a thing shall be done in a

particular manner or form but does not itself set out the consequences of non-compliance the question whether the prescription of law shall be

treated as mandatory or directory could only be solved by regarding the object, purpose and scope of that law. (Emphasis Supplied). The ratio in

Bhikraj finds approval of Supreme Court in B.O.I. Finance Ltd. Vs. Custodian and Others, .

51. Applying the said principle of law to the present case, even assuming that straightaway the principle relating to things to be done in a particular

manner cannot be applied to the present case, then one may take into the consideration to the object and the scope of the Act to resolve such

conflict. In the present case, if one tests the enactment of Section 6A existing under the Act, the primary object of which has always been to

protect the tenant from the unnecessary escalation of the rent or demands by the landlord and in that way it is a beneficial piece of legislation

holding the field for the purposes of the protection of tenants. It can be easily discerned that the legislature could not have contemplated a provision

to be inserted by way of amendment u/s 6A to operate in so widely or loosely to subsume the market rate of rent which may even take away such

protection accorded by the statute to the tenant.

52. Thus, reading of the said Section 6A corresponding to the object and scope of the Act resolves the conflict and testifies for the application of

the principle in affirmative, that is, Section 6A prescribes a particular manner of increase which is 10%, every three years and departure to the

same is impermissible.

53. Once, it is clear that the Section 6A prescribes a particular manner of increase to be done in that particular manner, then immediately

contextual reading of the word ""may"" in the section attains a kind of significance as that of the word ""shall"". This is due to the reason that the

manner of increase u/s 6A is less of discretion and more of legal permission to increase.

54. It is now well settled that in the cases where the statute provides the things to be performed in a particular manner, then the wordings like

may"" or ""shall"" occurring in those provisions can be interpreted only after examining the context in which such words are occurring and also after

examining the scope and purpose of the thing to be performed.

In the case of The Official Liquidator Vs. Dharti Dhan (P) Ltd., , the apex court has held as under :

10. The principle laid down above has been followed consistently by this Court whenever it has been contended that the word ""may"" carries with it

the obligation to exercise a power in a particular manner or direction. In such a case, it is always the purpose of the power which has to be

examined in order to determine the scope of the discretion conferred upon the donee of the power. If the conditions in which the power is to be

exercised in particular cases are also specified by a statute then, on the fulfilment of those conditions, the power conferred becomes annexed with a

duty to exercise it in that manner. This is the principle we deduce from the cases of this Court cited before us: Bhaiya Punjalal Bhagwanddin Vs.

Dave Bhagwatprasad Prabhuprasad, , State of Uttar Pradesh Vs. Jogendra Singh, , Sardar Govindrao and Others Vs. State of Madhya Pradesh,

, Shri A.C. Aggarwal, Sub-divisional Magistrate, Delhi and Another Vs. Mst. Ram Kali, etc., ) and Shri Prakash Chand Agarwal and Others Vs.

Hindustan Steel Ltd., ).

(Emphasis Supplied)

55. Applying the said principles to the present case, Section 6A not merely provides the limit by way of increase of 10% but also provides the

relevant conditions in which such increase can be effected. The said increase can be made where there is a standard rent or where there is no

standard rent which is fixed which is case of agreed rent. The said increase of 10% can be done in the period of every three years. In these

circumstances, the contextual reading of the provision makes things contemplated under the said provision to be performed in that particular

manner only and not otherwise and the word ""may"" u/s 6A attains the status of ""shall"".

The Supreme Court for the purposes of interpreting the word ""may"" or ""shall"" has observed in the case of Dinesh Chandra Pandey Vs. High Court

of Madhya Pradesh and Another, to the following terms:

15. The courts have taken a view that where the expression ""shall"" has been used it would not necessarily mean that it is mandatory. It will always

depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose

sought to be achieved and the object behind implementation of such a provision. This Court in Sarla Goel v. Kishan Chand, took the view that

where the word ""may"" shall be read as ""shall"" would depend upon the intention of the legislature and it is not to be taken that once the word ""may

is used, it per se would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or

mandatory. It would have to be interpreted in the light of the settled principles, and while ensuring that intent of the Rule is not frustrated.

(Emphasis Supplied)

56. Applying the said principle to the provision of Section 6A under the Act, the conclusion is again inescapable, the said provision is statutory

measure to increase the rent of the premises governed by the Act. It prescribes a particular manner in which such rent is to be increased with the

inbuilt conditions. The object of the Act is to protect tenants. The purpose of exercising such increase in the rent would give some relief to the

landlords but at the same time retaining the underlying object of the Rent Control Legislation which is the protection of the tenants, thus, the

legislative intent, mischief sought to be remedied, the object and purpose of the enactment, purpose of the performance of the power, all speak in

one voice, the said things prescribed u/s 6A has to be interpreted in the particular manner. The word ""may"" occurring in the enactment cannot be

read to be discretionary but rather it is mandatory and provision is in the nature of legislative command wherein only such increase is permissible

and not otherwise.

57. It is also a well settled principle of interpretation of beneficial legislation that where there are two views permissible to interpret the statute, the

one which tilts in the favour of the persons for whose benefit/protection the statute is enacted, keeping in mind the objectives behind the Act, the

same must be accepted over and above the other view.

58. In the context of the Act, the protection of tenant was the paramount object behind the enactment of the Act. The said Act thus protects the

tenants at greater level. Thus, the legislature while amending the law could be said to be unconscious of the said object while inserting Section 6A

and ought to have necessarily introduced a provision which permits a lawful increase in the rent with the object of protection of tenant going hand in

hand. Thus, the said provision of Section 6A as couched in the present form cannot be given an interpretation which can enable to include a

market rent"" keeping the objects of the Act in mind.

59. It is to be noted that this court is not to be misunderstood to be giving any interpretation favourable to the tenant. But it is the legislative vacuum

which needs to be filled up by the legislature. Till the time, the Act holds the field, the tenant somehow, continue to remain protected by the Act.

The court has to perform its duty of giving interpretation to the law and the same shall be done what is available under the existing law and not

visualize or speculate a provision which may be inserted in to the Act in future.

60. For all these reasons, on the plain reading of the statute and applying any canon of interpretation, keeping the objects of the Act in mind, it

cannot be said Section 6A leaves any other room for increase in the rent except than the condition prescribed therein which is 10%, every three

years and cannot subsume the market rate increase. The use of the word ""may"" thus is inconsequential and does not leave any discretion with the

court or rent controller.

61. The above discussion is made on the basis of the plain reading of the statute and interpreting the same. However, the judicial opinion in this

respect is equally well settled that there cannot be any increase in the rent as per the market rate in case the premises are governed by the Act. The

suits to recover such arrears based on the dictum of this Court in Raghunandan Saran (Supra) declaring the provisions ultra vires does not lead to

conclusion that the courts are empowered to increase the rents in such cases in the absence of the legislative provision.

62. In the case of Santosh Vaid vs. Uttam Chand in CM (M) No.48/2011 decided on 15th February, 2012 recently upon the reference of the

learned Single Judge of this court to the Division Bench in view of the contrary opinion existing in the case of M/s. Pearey Lal Workshop Pvt. Ltd.

(supra). The Division Bench authoritatively has now settled the said question by observing that the authority of Raghunandan Saran (supra)

declaring the provisions ultra vires does not entitle the landlords to increase the rents on the basis of the market value. Similarly the Division Bench

also holds that the view in Pearey Lal (supra) is not correct. The learned Division Bench observed this in following words :

15. A Division Bench of this Court in Raghunandan Saran Ashok Saran held that Sections 4, 6 and 9 of the Delhi Rent Act relating to standard

rent had not taken into account the huge difference between the cost of living in the past and the present time and did not pass the test of

reasonableness and had become obsolete and archaic and accordingly struck down the same. However the only effect of the said judgment is that

a tenant could not apply to have the standard rent thereof determined and thus could not avoid paying agreed rent, as he was able to before this

judgment. Undoubtedly, the Division Bench, while so striking down the said provisions, did observe that the said provisions dealing with the

standard rent did not take into account the rise in the consumer price index and the huge costs required for maintaining the tenanted premises and

there was no justification for not updating the frozen rents but all this was in the context of striking down Sections 4, 6 and 9 only. Thus the said

judgment cannot be said to be a judgment on the proposition that landlords are entitled to have the rent increased as per the consumer price index

or rate of inflation.

(Emphasis Supplied)

It would thus be seen that Pearey Lal cannot be said to be an authority in favour of the right of a landlord to have the rent increased to bring it at

par with the consumer price index or to account for the rate of inflation. It is the settled position in law (See Jitendra Kumar Singh and Another Vs.

State of U.P. and Others, ) that a judgment is a precedent on what it decides and not on other things. Though certain observations of wide sweep

were certainly made in the said judgment but that judgment also towards the end accepts that the Court cannot tell a tenant to pay the rent at the

present day market value.

(Emphasis Supplied)

Mohd. Ahmed (supra) was also a case were the Supreme Court gave certain suggestions/laid guidelines to minimize

landlord-tenant litigation. The same were again in the context of UP Rent Act. The same also have no application to the position as prevailing in

Delhi.

(Emphasis Supplied)

63. If the eviction is prohibited, the possession cannot be said to be unauthorized and the question of mesne profits does not arise. If it were to be

held that though owing to the prohibition against eviction contained in the Rent Control Legislations, the landlord is not entitled to evict the tenant

but is nevertheless entitled to recover mesne profits for the period after the expiry of the period for which the premises were let out, the same

would result in reducing the Rent Control Legislation to a dead letter and defeating its purpose. The same cannot be permitted. Thus, in the

absence of a provision in the statute it cannot be held that a landlord is entitled to market rent from a protected tenant.

64. Even though the 10% increase in rent every three years provided for under the Delhi Rent Act may be perceived by some as inadequate but

that is no reason for this court to provide for a higher or more frequent increase. The same falls in legislative domain. This court cannot step into the

shoes of legislature (see Union of India and another Vs. Deoki Nandan Aggarwal, ). It may be noted that Section 6A (supra) was inserted in the

Act with effect from 1st December, 1988 to quell the criticism thereof of being unevenly balanced against the landlord. The Legislature in its

wisdom having considered increase in rent as provided in Section 6A as appropriate to balance the rights of the landlord and the tenant governed

by the provisions of the Act, it is not for this Court to delve into the validity thereof, particularly in exercise of appellate/revisionary jurisdiction.

65. Applying the said position in law to the facts of the case, the present suit filed by the plaintiff seeking recovery of arrears of rent which, as per

the plaintiff, should be as per the market rate, the same falls within the exclusive domain of the Rent Controller in view of the discussion done

above and the rent cannot be increased beyond the prescribed limit of 10% per annum every three years as per Section 6A of the Act. Thus, any

suit, like the present one, seeking to recover such arrears at the escalated rate would be clearly barred by the provisions of Section 50 of the Act

read with Section 9 of the code.

66. Now I shall deal with the submissions made by the learned counsel for the plaintiff in seriatim:

a) Firstly, the learned counsel for the plaintiff has based his case on the basis of dictum of Raghunandan Saran (Supra) and on that basis claimed

that as the provisions relating to standard rent have been held unconstitutional by this court, thus the plaintiff is well within his right to seek the

increased rent based on the market value. The said submission has been dealt with by the Division Bench in extenso recently in Santosh Vaid (

Supra). Another Division Bench also took the same view. Thus, the same may not require reconsideration, except to the extent of saying that the

legislative vacuum cannot be filled by the courts. This court cannot re-legislate the provisions under the Act. Section 6A which still remains in the

statute book and was never considered unconstitutional. Thus, it is futile exercise to draw corollary from Raghunandan Saran (Supra) as the said

case does not decide this point and the said submission has been rejected twice by two Division Benches of this court in Model Press Ltd. (supra)

and Santosh Vaid (supra) from time to time.

b) The plaintiff"s argument that the observation of the court in Raghunandan Saran (supra) relating to ground realities should come to the rescue of

the plaintiff in order to enable this court to belief that the increase in rent must be practicable and not imaginary. No doubt the observation of this

court are practical in nature, but as stated above, this court has to abide by what has been provided by the statute and cannot due to practical

implication do something which is not permissible under the statute. As discussed above, Section 6A permits an increase to the extent of 10 %

every three years and the scope of the Section cannot be enlarged to include market rate, which if done, would lead to doing injustice with the

wordings of the statute. Thus, the said observation although considered by this court cannot be used to aid the case of the plaintiff and more so

when Division Bench recently upheld the same view by rejecting the similar suit based on Raghunandan Saran (Supra) on the same grounds.

c) The plaintiffs argument that there is a difference between the weak cause of action and the plaint not disclosing cause of action or barred by law

is considered and rejected. It is clear that increase in the rent contemplated by Section 6A of the Act is not unilateral act and shall be governed by

the provisions of the Act. The said aspect falls within the domain of the Rent Controller and thus the suit in relation to recovery of arrears and other

ancillary reliefs are thus barred by law. Once that is the conclusion of the discussion, then it would be wrong to belief that there is merely a weak

cause of action. Rather, the present suit is barred under the law by clear applicability of Order VII Rule 11 (d) read with Section 9 of the Code.

d) The submissions of the plaintiff that this court should consider the ground realities otherwise, inflation and taxes paid by the plaintiffs. All these

do not change the legal position as summarized above and do not aid the case of the plaintiff. The said justifications also do not enable the court to

increase the rent which otherwise is legally impermissible. Thus, the said submissions are also rejected as meritless.

e) So far as the judgment passed by the Supreme Court in the case of Mohd. Ahmed (supra) is concerned, the same has again been dealt with by

Division Bench of this court in the case of Santosh Vaid (supra) by observing about the same in following words:

Mohd. Ahmed (supra) was also a case were the Supreme Court gave certain suggestions/laid guidelines to minimize landlord-tenant litigation. The

same were again in the context of UP Rent Act. The same also have no application to the position as prevailing in Delhi.

(Emphasis Supplied)

67. Thus, in view of the same, the observations of the Supreme Court although are noteworthy and are also indicative of the effect that the same

could have been done by the Apex Court under its plenary powers. But, as the said observations have been dealt with by Division Bench of this

court being contextual in nature and cannot impact the case premised on the Act. Thus, I have to endorse the said view expressed by Division

Bench and consequently the said judgment does not aid the case of the plaintiff.

68. No further submission is left unanswered. In view of the discussion done above, it can be safely said, the suit in the present form is barred by

the law i.e. Section 50 read with Section 6A of the Act.

69. Both applications being IA No.14067/2007 in CS(OS) No.1422/2006 and I.A. No.7775/2008 in CS(OS) No.1971/2006 under Order VII

Rule 11 CPC are, thus, allowed. The plaint in both cases are rejected under the provisions of Order VII Rule 11 (d) CPC being barred by the

law. No costs.