SCHEDULE - 4 [

JOURNAL SECTION

SCOPE OF SECTION 14 OF DELHI RENT CONTROL ACT, 1958 QUA COMMERCIAL TENANCY

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The Hon'ble Courts have been trying to strike a balance between rival interests, especially in so far as social legislations are concerned, keeping in view the changing social and economic needs of the society and considering various factors viz., business development, globalization, competition etc.

The necessity of doing so by the Hon'ble Courts has arisen due to the inaction on the part of the Executive to amend the existing laws to meet the ground realities.

A case in point is the Delhi and Ajmer Merwara Rent Control Act, 1947 (since repealed), later enacted as The Delhi Rent Control Act, 1958 ("DRCA"), the object of which is to protect tenants against eviction. The DRCA came into existence as a social and perhaps as a temporary legislation to deal with the problem of resettling of refugees in the aftermath of partition, whereby restrictions were imposed on the right of the landlords to evict the tenants except on specified grounds.

The gist of the grounds as available under Section 14 of The DRCA on which a tenant can be evicted by the landlords/owners are as below:

(a) Default on part of the tenant to pay or tender the whole of the arrears of the rent, legally recoverable from him within two months of the date on which a notice of demand of arrears of rent has been served on him by the landlord in the manner provided in section 106 of the Transfers of Property Act, 1882;

(b) Tenant has, on or after the 9th day of June, 1952, sublet, assigned or otherwise parted with the possession of the whole or any part of the premises without obtaining the consent in writing of the landlord;

(c) Tenant has used the premises for purpose other than that for which they were let;

(d) In case the premises were let for use as a residence and neither the tenant nor any member of his family has been residing for a period of six months immediately before the date of the filing of the application for the recovery of possession;

(e) The premises let out for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held

and that the landlord or such person has no other reasonably suitable residential accommodation;

(f) The premises have become unsafe or unfit for human habitation and are required bona fide by the landlord for carrying out repairs which cannot be carried out without the premises being vacated;

(g) In case the premises are required bona fide by the landlord for the purpose building or re-building or making thereto any substantial additions or alterations and that such building or re-building or addition or alteration cannot be carried out without the premises being vacated;

(h) The tenant has, whether before or after the commencement of the DRCA, built, acquired vacant possession of, or been allotted, a residence;

(i) The premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the commencement of the DRCA, to be in such service or employment;

(j) The tenant has, whether before or after the commencement of the DRCA, caused or permitted to be caused substantial damage to the premises;

(k) The tenant has, notwithstanding previous notice, used or dealt with the premises in a manner contrary to any condition imposed on the landlord by the Government or the Delhi Development Authority or the Municipal Corporation of Delhi while giving him a lease of the land on which the premises are situate;

(l) The landlord requires the premises in order to carry out any building work at the instance of the Government or the Delhi Development Authority or the Municipal Corporation of Delhi in pursuance of any improvement scheme or development scheme and that such building work cannot be carried out without the premises being vacated.

The DRCA has been amended from time to time and the last amendment came in the year 1988 by virtue of which premises fetching monthly rental of more than Rs.3500/- have been exempted from the purview of the DRCA.

However during all these years, Section 14 of the DRCA continued to be the same except that Section 14(1)(h) was modified to the extent that the word "built" was deleted and new ground under Section 14(1) was added i.e. sub clause (hh) by Act 57 of 1988 w.e.f. 01-12-1988 ("DRCA Amendment"). The amended ground 14(1) (h) and newly inserted ground 14(1) (hh) are as given below:

"(h) That the tenant has, whether before or after the commencement of the Act, acquired vacant possession of, or been allotted, a residence;

(hh) That the tenant has, after the commencement of the Delhi Rent Control (Amendment) Act, 1988, built a residence and ten years have elapsed thereafter."

Further Sections 14A, 14B, 14C & 14 D were introduced to recover possession in case of certain categories of persons viz., Central Government and Delhi Administration employees, Members of armed forces and widow.

No amendment to the DRCA has come after 1988 to meet the changing needs of people considering the change in the business environment and living conditions.

The Hon'ble Supreme Court of India appreciating the difficulties faced by the Landlords/Owners to evict the tenants in respect of commercial tenancies took a step forward and gave its Judgment on 16th April'2008 in case titled as "Satyawati Sharma (Deceased through LR's) V/s Union of India & Anr", Appeal(Civil) 1897 of 2003 decided on 16.04.2008 and partially struck down Section 14(1) (e) of DRCA by deleting the words "let for residential purposes" and word "residential".

In Satyawati Sharma (supra), the Hon'ble Supreme Court held that the existing Section 14 (1) (e) could not stand the scrutiny of Article 14 and therefore, "read it down" to enable a fair resolution; the relevant discussion is as follows:

> "38. In view of the above discussion, we hold that Section 14 (1) (e) of the 1958 Actis violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non- residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.
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> 39. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14 (1) (e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14 (1) (e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14 (1) (e) so that the remaining part thereof may read as under:-
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> "that the premises are required bona fide by the landlord for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation."

This judgement enabled the Landlords/Owners to evict the tenants of commercial premises in case they require the premises for their bonafide need or for the needs of their family members dependent on them.

Thus the Hon'ble Supreme Court has harmoniously read the provisions of the DRCA so as to balance the rights of the landlords/owners and obligations of the tenants towards each other and extended the scope of Section 14 (1) (e) thereby allowing the landlords/owners of commercial premises to take the recourse and benefit as was earlier available only with respect to residential tenancies.

That apart from ground 14(1)(e), there are other grounds of eviction viz., Section 14(1) (d), Section 14(1)(h) and Section 14(1) (hh) which, at present, are only available for residential premises, can also be made applicable with

respect to commercial tenancies in the light of the judgment given by the Hon'ble Supreme Court in Satyawati Sharma (supra) case.

The provisions of Section 14(1)(d), 14(1)(h) and 14(1)(hh) of the DRCA provides as under:

> *"14. Protection of tenant against eviction.*— (1) Notwithstanding anything to the contrary contained in any other law or contract, no order or decree for the recovery of possession of any premises shall be made by and court or Controller in favour of the landlord against a tenant:
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> Provided that the Controller may, on an application made to him in the prescribed manner, make an order for the recovery of possession of the premises on one or more of the following grounds only, namely:-
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> (d) That the premises were let for use as a residence and neither the tenant nor any member of his family has been residing therein for a period of six months immediately before the date of the filing of the application for the recovery of possession thereof;
>
> (h) That the tenant has, whether before or after the commencement of this Act, acquired vacant possession of, or been allotted, a residence;
>
> (hh) That the tenant has, after the commencement of the Delhi Rent Control (Amendment) Act, 1988, built a residence and ten years have elapsed there-after;]"

A perusal of the said provisions would show that the said provisions come to rescue of the landlord only if the tenant has not been using the tenanted residential premises for a period of six months or has acquired, allotted or built residential premises.

However there is no corresponding provision under the DRCA which provides for an eviction where the tenant of a commercial premises has not been using the tenanted commercial premises for a period of six months or acquires, is allotted or has built commercial premises.

The anomaly created as a result of the absence of such a corresponding provision with respect to commercial premises is that on one hand the commercial and business activities undertaken by the tenants in the tenanted commercial premises of the landlord is permitted despite the tenants being in possession of alternate suitable accommodation or not using the tenanted premises, the landlord is deprived of their right to make economic gains out of their own properties.

The purpose of the DRCA was to control evictions thereby protecting the rights of the tenants but certainly not to enrich the tenants at the cost of the Landlords/Owners.

Keeping in view the change in the economic conditions, the applicability of provisions of Section 14(1)(d), (h) and (hh) of the DRCA in case of non user of the tenanted commercial premises and/or acquisition of commercial property by the tenants of commercial premises would be in consonance with the harmonious construction of the provisions of the DRCA to balance the rights and obligations of the landlords and the tenants.