

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.04.2008

+ **IA No. 164/2008 (u/O 12 R 6 CPC) & CS (OS) 918/2007**

MS ROSHINI KHATTAR

... Plaintiff

- versus -

MR ABHISHEK VERMA

... Defendant

Advocates who appeared in this case:

For the Plaintiff : Mr Naresh Thanai with Ms Shyel Trehan

For the Defendant : Mr Mukesh Thakur with Mr Jitendra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

IA No. 164/2008 (u/O 12 R 6 CPC)

1. This application has been filed by the plaintiff seeking a decree of possession on the basis of admissions made by the defendant in the written statement. The plaintiff's case is that the suit property — Villa -1B, Empire Estate situated at Mehrauli Gurgaon Road, Sultan Pur, New Delhi — was let out to the defendant for the first time on

01.10.2001 for a period of 12 months. However, that was done on the basis of a lease deed which was unregistered and improperly stamped. The tenancy of the defendant was continued from time to time and it was last renewed by virtue of another similar lease deed which was unregistered and unstamped and which was dated 01.10.2003. That lease was also for a period of two years. It was also averred that the last rent paid by the defendant was for the month of May, 2006 and it was in the sum of Rs 1,10,000/-.

2. It is the case of the plaintiff that the leases that were entered into between the parties, being unregistered and improperly stamped, would have to be disregarded and consequently the tenancy of the defendant was a month to month tenancy which could be terminated by issuance of a notice under Section 106 of the Transfer of Property Act, 1882. It is contended by the learned counsel that such a notice was issued on 19.02.2007 which was sent by registered post. He submitted that the receipt of this notice is admitted by the defendant inasmuch as subsequent to the filing of the suit, a reply also has been sent to this notice by the defendant. However, because the defendant was lodged in jail at that point of time (and he continues to be in jail even today), the

plaintiff for better safety issued a second notice dated 09.04.2007 to the defendant through the Jail Superintendent, Tihar Jail, New Delhi. The learned counsel for the plaintiff submitted that this notice was also received by the defendant. By virtue of the notice dated 19.02.2007 the plaintiff had given 15 days clear notice requiring the defendant to vacate the premises by the end of 31.03.2007. The second notice required the handing over of possession by the end of 30.04.2007.

3. Since the defendant' did not vacate the premises despite such notices, the plaintiff was constrained to file the present suit for possession as well as for damages and mesne profits inasmuch as the defendant had not paid any rent or any sum whatsoever for occupation of the said premises after May, 2006.

4. The learned counsel for the defendant submitted that although the relationship of landlord and tenant is not denied between the plaintiff and the defendant, there was an oral understanding that the defendant be allowed to occupy the premises without payment of rent. He also submitted that though there is no denial of receipt of the two notices, the said notices were illegal. He submitted that had the first notice been

legal, what was the necessity of sending the second notice. He also submitted that since the defendant was in jail since August, 2006 and his financial assets had been frozen by the CBI, the defendant could not make any payment for occupation of the said premises to the plaintiff. He submitted that there was sufficient dispute raised by the defendant and, therefore, the suit required to proceed to trial and could not be decided on the basis of this application.

5. From the pleadings and the submissions made by the counsel for the parties, it is clear that the plaintiff let out the premises in question to the defendant. It is also clear that there was no registered lease deed in respect of the said premises. Consequently, the tenancy was a month to month tenancy. The same could be terminated by the plaintiff by issuing a notice under Section 106 of the Transfer of Property Act. Such a notice was sent on 19.02.2007. The receipt of the same is not denied. The second notice dated 09.04.2007 was only sent by way of abundant caution inasmuch as the defendant was lodged in jail at that point of time and the plaintiff was advised to send a notice to the defendant through the Jail Superintendent so that later on the defendant could not raise the objection that the notice was not served at the correct address. The

arguments advanced by the learned counsel for the defendant that there was an oral understanding that the defendant could occupy the said premises without payment of rent does not inspire any confidence. It is only a sham defence which the defendant seeks to raise particularly because the defendant has admitted the tenancy. There can be no tenancy without payment of rent. The other argument of the defendant that what was the need for issuing the two notices if the notices were legal, is also without substance. This is because if the first notice was valid then the second notice is merely an additional notice and can be disregarded. On the other hand, if the first notice was invalid, nothing has been pointed out by the learned counsel for the defendant which would go to show that the second notice was in any way illegal or invalid. Whichever way the matter is looked at, the position is this that the plaintiff inducted the defendant into the said premises as a month to month tenant. By virtue of the notice dated 19.02.2007 the tenancy was terminated by giving more than 15 days to the defendant to vacate. Since the defendant did not vacate, the plaintiff was clearly entitled to file the present suit for possession. In view of the admitted position and admitted facts, the plaintiff is entitled to a judgment in respect of prayer (i) of the plaint. Consequently, the plaintiff is entitled to a decree of

possession in respect of the suit premises. It is ordered accordingly.

This application stands disposed of.

BADAR DURREZ AHMED
(JUDGE)

April 11, 2008
SR