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HIGH COURT OF DELHI AT NEW DELHI

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RSA 95/2008Date of decision : 10th September, 2009

SINGER INDIA LTD.

..... Appellant

Through : Mr. Vikram Nandrajog,
Advocate with Ms.Saahila
Lamba, Adv.

Versus

BIRENDER SINGH & ANR.

..... Respondents

Through : Mr. Amandeep Singh, Adv.

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CORAM:**HON'BLE MS. JUSTICE ARUNA SURESH**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? ✓
- (3) Whether the judgment should be reported ✓
in the Digest ?

J U D G M E N T**ARUNA SURESH, J. (Oral)**

1. Respondents herein filed a suit being Suit No.192/2002 for recovery of possession in respect of office Flat admeasuring 712.44 Sq.ft., bearing No.201, Guru Angad Bhawan, 71, Nehru Place; New

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file and no page is missing.

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Delhi situate on second floor including lobby and a bathroom against the appellant herein; the tenant inducted in the said premises by the respondents. The last paid rent was Rs.4165/- per month. The suit premises were leased out to the appellant vide Lease Deed dated 20.02.1980 for a period of three years with a clause that appellant had the option of successive renewal for three years on enhancement of rent by 10% of the existing rent at the time of each renewal. The tenancy of the appellant was terminated vide Notice dated 29.11.2007. After the termination of the tenancy, when appellant failed to hand over the vacant possession of the demised premises, respondents filed the instant suit against the appellant for possession as well as for mesne profits.

2. Respondents filed an application under Order 12 Rule 6 CPC seeking a decree for possession on the basis of admission made by the appellant. The said application was duly contested by the appellant. Vide its detailed order dated 16.11.2006, the trial court passed a decree of possession in respect of

suit property in favour of the respondents and against the appellant on the basis of admission. The appellant was directed to hand over the vacant and peaceful possession of the property to the respondents in its original condition.

3. Aggrieved by the said order and decree, the appellant filed an appeal being RCA No.31/2006. The appellate court while affirming the order and decree of the trial court was pleased to dismiss the appeal. Hence, this appeal under Section 100 CPC.
4. Learned counsel for the appellant has argued that since the appellant is in possession of the premises for a long period, his possession is protected under the provisions of Section 53-A of the Transfer of Property Act (hereinafter referred to as 'Act') and therefore the substantial question of law needs formulation, if the provisions of Section 53-A or the provisions of Section 107 of the Act would prevail.
5. Learned counsel for the respondents has submitted that under the facts and circumstances of the case when relationship of landlord and tenant existed

between the parties and the tenancy of the appellant was terminated by a notice under Section 106 of the Act, the provisions of Section 53-A of the Act are not applicable and there is no substantial question of law which needs formulation and to be decided as prayed.

6. The premises was leased out to the appellant by way of a registered Lease Deed initially for a period of three years. Subsequently, the tenancy was being continued as agreed between the parties but no Lease Deed was executed nor registered. Therefore, the tenancy inter se the parties became month to month tenancy. The tenancy of the appellant was terminated by service of notice under Section 106 of the Act. Appellant admits that the tenancy was terminated by way of a notice under Section 106 of the Act served upon it. Once, tenancy is terminated, the provisions of Section 111 of the Act become operative and, therefore, the appellant is legally bound to hand over the vacant peaceful possession of the suit property to the respondents.

7. Section 53-A of the Act protects the possession of a person who entered into a written contract for purchase of immoveable property for consideration and has taken possession of the property in part performance of the said contract. Therefore, under Section 53-A of the Act only a transferee is entitled to resist any attempt on the part of the transferor to disturb his lawful possession obtained by him under the contract of sale. Section 53-A of the Act, under the circumstances of this case, does not provide any protection to the appellant.
8. The appellant in another appeal filed by it titled **'Singer India Ltd. vs. Amit Gupta', 88 (2000) DLT 186 (DB)** took a similar plea. The Division bench of this court while dismissing the appeal of the appellant observed:-

"10. No doubt the possession is already with the lessee, i.e. appellant herein and he wants protection thereof. The protection would be available to him only to the extent that he can justify his possession, i.e. he is not a trespasser. Section 53-A will not enable him to press into service terms of a document which is unregistered though required by law

to be registered. Allowing the appellant to enforce the terms of an unregistered lease would be illegal. Section 53-A when used as a shield will at best enable the appellant to show that his possession is that of a tenant and not that of an unauthorised occupant or trespasser. It cannot take him any further. For going further, i.e., to show that he is a tenant in perpetuity, the tenant has to invoke a term of the lease deed which on account of being part of an unregistered document cannot be looked into. Section 53-A can at best make him a tenant from month to month and nothing more. This can be the only harmonious construction of the provisions of Section 53-A and 107 of the TP Act. A lease from month to month will survive so long as notice under Section 106 of the TP Act terminating the lease is not served. Extending protection for another period of three years means creation of three years lease which under the law can be only through a registered lease deed. You cannot do that indirectly what you cannot do directly. The appellant cannot be permitted to invoke terms of an unregistered lease by invoking Section 53-A of the TP Act."

9. Thus, it is clear that where a person has entered into possession of the property, pursuant to a Lease Agreement, even if not registered, the presumption under Section 106 of the Act would be attracted.

Even when the possession or the occupation of the suit property by that party, may be lawful and permissive, but as regards duration of the tenancy, it will be governed by provision of Section 106 of the Act, as in the present case. In the absence of a registered Lease Deed the tenancy would be decided to be month to month, terminated by a notice of 15 days.

10. The requirements of Section 106 and 107 of the Act having complied with, the relationship of landlord and tenant seized to exist between the parties. Under the circumstances of this case, therefore, Section 53-A of the Act cannot be pressed into service to protect the possession of the appellant in the suit premises.
11. The appellant having already failed in its efforts to seek protection under Section 53-A of the Act in another suit filed against them and also having lost the appeal, by virtue of law of estoppel, cannot re-agitate the same issue in this appeal. The findings of the Division Bench of this court in **Amit Gupta's**

case (supra) have attained finality and are binding upon the appellant even in this case.

12. The substantial question of law sought to be formulated in this appeal was also considered and decided by another Division bench of this court in **'Modern Food Industries (India) Limited vs. I.K. malik & Ors, 2002 VIII AD (Delhi) 88'**. The appeal against the said order was also dismissed.
13. Increase of rent by the appellant in part performance of the Lease Deed for its renewal after every three years by way of an oral unregistered lease deed does not protect his possession under Section 53-A of the Act. At the best, is only available as a defense to the appellant but does not confer any right in it to claim protection of possession in the suit premises against the respondent.
14. Since the substantial question of law sought to be formulated is no longer res integra, no such question needs to be formulated. Hence, I am of the considered view that no substantial question of law

arises in this appeal. Hence, the appeal is hereby dismissed.

15. Certified copy of the order be sent to the executing court of Shri Vinod Yadav, Civil Judge, Tis Hazari Court, within a week as the date fixed in the execution petition is 30th October, 2009.

16. Pending applications also stand disposed of accordingly.


(ARUNA SURESH)
JUDGE

SEPTEMBER 10, 2009
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