

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

+ **Date of Decision : 05.05.2009**

% **CS(OS) No. 2087/2008**

VIRENDER KUMAR SHARMA Petitioner
Through: Mr. D.S. Patial, Advocate.

versus

M/S. COGENT EMR SOLUTIONS Respondent
Through: Ms. Divya Jain, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No. |
| 2. To be referred to Reporter or not? | Yes. |
| 3. Whether the judgment should be reported in the Digest? | Yes. |

VIPIN SANGHI, J. (Oral)

1. The plaintiff has filed the present suit to seek a decree for possession against the defendant in respect of the suit premises bearing no. E-41/4, Block E, Okhla Industrial Area, Phase-II, New Delhi which is shown in red colour in the site plan Exhibit P-1, consisting of basement, ground floor, first floor and second floor admeasuring about 12000 Sq. Ft of covered area.

2. The admitted position is that the plaintiff is the landlord and he inducted the defendant as a tenant in the suit premises aforesaid

under lease deed dated 26.12.2006 on a monthly rent of Rs. 3,95,000/- commencing from 01.01.2007. The term of the lease was seven years. The said lease deed, Exhibit P-2 was registered vide registration no. 17574 in Book No. 1, Volume No. 6,877 on pages 104 to 115, on 27.12.2006 in the office of the Sub-Registrar-V, New Delhi. The case of the plaintiff in the suit is that the defendant did not make payment of rent for the months of May, June and July, 2008. Consequently, the plaintiff issued a legal notice dated 08.07.2008 determining the lease w.e.f. 31.07.2008, and calling upon the defendant to deliver peaceful and vacant possession of the suit premises. The plaintiff also states that since 01.08.2008, the defendant is in unauthorized occupation of the suit premises.

3. Upon issuance of summons in the suit, the defendant has filed its written statement. The defendant, apart from meeting the averments on the plaint raised a few preliminary objections. The first preliminary objection raised was that the suit is barred under Section 10 CPC. This objection is premised on the fact that the plaintiff had already preferred Suit No. 400/2008 titled as "*Virender Kumar Vs. Cogent EMR Solutions Limited*" which was, at the time of filing of the written statement, pending before the court of Additional District Judge, Delhi. It was contended that the issues involved in both the suits are primarily concerning validity of the termination of the lease deed. The second preliminary objection raised was that the present suit is barred under Order 2 Rule 2 CPC as the plaintiff had omitted to

seek the relief of recovery of possession of the suit property in the previously instituted suit for recovery of rent and *mesne* profits, as aforesaid. It was stated that the cause of action pleaded in both the suits are the same namely the alleged non-payment of rent and the issuance of the legal notice dated 08.07.2008. So far as these two preliminary objections are concerned, they raise no issue of fact as there is no dispute about the facts on which they are founded. These issues are purely legal and I have heard the parties at length and would presently dispose them off.

4. The defendant further states that vide letters dated 04.03.2008 and 02.04.2008, it has been informed to the plaintiff by the defendant that on account of the tariff violation, BSES Rajdhani Limited had raised a demand for Rs. 7.58 lacs for the period September, 2006 to March, 2007 in respect of the suit premises. This demand pertained to the period prior to the defendant's lease. The defendant was not liable to pay the same. Since BSES Rajdhani Limited had threatened the defendant with disconnection of the electricity, left with no other option, the defendant had paid Rs. 7.58 lacs to BSES Rajdhani Ltd. which the defendant is entitled to recover from the plaintiff. The defendant denied having made any default in the making of payment of the rent. It was further stated in Para 4 of the written statement that the rents for the months of May, June and July, 2008 were tendered to the plaintiff but the plaintiff refused to accept the same for reasons best known to him.

5. The defendant has not filed any documents in support of its defence. Even the written statement was filed after repeated opportunities on 19.03.2009. Vide order dated 13.03.2009, the parties were permitted to file original documents within three weeks. On 20.04.2009, the Joint Registrar recorded the request of the defendant seeking time to file certified copies of the documents. On 21.04.2009, the matter was listed before the court. After a preliminary hearing since it was felt that no issues of fact arise, and issue of law appeared to be straight forward and simple which could be decided without going into a trial, it was observed that the matter could be disposed off at this stage itself. Time was sought by the defendant to argue the matter on merits and it was accordingly adjourned to 04.05.2009. The arguments commenced on 04.05.2009 and have been concluded today. No application has been filed by the defendant to explain as to why the documents or even copies thereof were not filed with the written statement and no prayer has been made to seek any further extension of time for filing of documents. It is, therefore, clear that the defendant does not wish to file any documents in support of its defence.

6. So far as the objection founded upon Section 10 CPC is concerned, admittedly the same does not survive since the suit filed by the plaintiff in the court of the District Judge, Delhi being Suit No. 400/2008 titled as "*Virender Kumar Sharma vs. M/s. Cogent EMR Solutions Limited*" has been decreed by resort to Order 12 Rule 6 CPC.

The learned District Judge, Delhi has held that the plaintiff is entitled to recover arrears of rent amounting to Rs. 11,85,000/- and also damages at the rate of 3,95,000/- per annum till possession of the suit premises is handed-over to him. The plaintiff has been held to be entitled *pendente lite* and future interest at the rate of 15 per cent per annum on the said amount till realization of the same. Costs have also been awarded to the plaintiff. The certified copy of the order passed by the learned Additional District Judge, Delhi on 15.04.2009 decreeing the suit has been placed on record which has not been denied by the defendant. The preliminary objection is, therefore, rejected.

7. Learned Senior Counsel appearing for the defendant Mr. Sandeep Sethi who appeared when the matter was heard on 04.05.2009 forcefully argued that the present suit is barred by provisions of Order 2 Rule 2 CPC. He submitted that when the plaintiff filed the first suit in the court of District Judge, Delhi to claim recovery of Rs. 11,85,000/- towards rent, Rs. 44,440/- towards interest and Rs. 5,00,000/- towards *mesne* profits, the lease had purportedly been terminated. It was, therefore, open to the plaintiff to have prayed for relief of ejectment/possession at that stage itself. The plaintiff, however, did not pray for any such relief and the plaintiff also did not seek leave of the court to prefer a separate suit to claim the relief of ejectment/possession as now prayed for in the present suit. He submits that, therefore, the plaintiff is precluded from claiming the relief of ejectment/possession in the present suit, which is, admittedly,

the subsequent suit.

8. Learned counsel for the plaintiff on the other hand submits that the cause of action for filing the suit for recovery of *mesne* profits is separate and distinct from cause of action for filing suit for recovery of possession/ejectment. He places reliance on a Division Bench judgment of this court in ***Syndicate Bank Vs. Raj Kumar Tanwar*** 154 (2008) DLT 230 (DB) wherein this court by reference to Order 2 Rule 4 CPC has held that the cause of action for recovery of immovable property is distinct from the cause of action for a claim of *mesne* profits. It was further held that since the two reliefs are based on different causes of action, the bar of Order 2 Rule 2 CPC would not be attracted. Learned counsel for the plaintiff also submits that the relief of possession/ejectment as sought in the present suit could possibly not have been claimed in the suit filed before the District Judge, Delhi, since the said relief was beyond the pecuniary jurisdiction of that court, as the admitted annual letting value of the suit property is in excess of Rs.20 lacs (as the monthly rent of the suit property admittedly was Rs.3,95,000/-, the annual letting value would come to Rs.47,40,000/-). It is submitted that for the said relief, the plaintiff could not have approached the District Court. Whereas, the relief prayed for in the suit earlier filed fell within the pecuniary jurisdiction of the Court of the District Judge.

9. I find merit in both these submissions of learned counsel for the plaintiff. As held by the Division Bench in the aforesaid decision,

the cause of action for claim of *mesne* profits is separate and distinct from the cause of action for claiming possession/ejectment. Moreover, since the plaintiff could not have clubbed the relief for possession/ejectment in the suit earlier filed, there was no question of the provisions of Order 2 Rule 2 CPC being attracted. This preliminary objection is, therefore, rejected.

10. Learned counsel for the plaintiff has submitted that the defendant has not, in fact, disputed the receipt of the notice of termination of lease dated 08.07.2008. He refers to para 4 of the plaint and the corresponding para 4 of the written statement which reads as follows:

“Para 4 of the Plaint:

4. That the defendant did not make payment for the months May, June and July 2008 in terms of the lease deed, despite repeated request made by the plaintiff and even after service of legal notice dated 08.07.2008, vide which notice the tenancy of the defendant was terminated and he was directed to handover the peaceful possession of the premises in question as well as to make payment of the due rent but he failed to do so.

Para 4 of the written statement:

That the contents of paragraph no.4 are false, misconceived, incorrect and vehemently denied. It is respectfully submitted that the contents of preliminary submissions/objections be read as part and parcel of the para under reply. It is incorrect and denied that the Defendant has not paid rent for three months i.e of May, June and July, 2008. It is submitted that the representative of the Defendant went to pay for the rent to the Plaintiff, but, the Plaintiff refused to accept the same for the

reasons best known to him. It is worth to mention here that the Defendant has always been diligent to pay the rent amount on time and hence therefore delay, if any, is due to Plaintiff's own conduct and not due to the Defendant and as such there is no violation of the Lease Deeds as alleged. It is also pertinent to mention here that the Defendant vide letter dated 04.03.2008 and 02.04.2008 communicated to the Plaintiff about the tariff violation issued by enforcement office of BSES Rajdhani Ltd of Rs.7.58 lacs for the period of September, 2006 to March 2007. It is submitted that the Defendant submits that the Defendant is not liable to pay such amount as the said demand does not pertain to the period of the lease of the Defendant, therefore, the whole demand of BSES Rajdhani Ltd was on account of the Plaintiff only, which the Plaintiff never bothered to attend the same. It was only when the Plaintiff didn't resolve the BSES issue and rather tried to run away from his liabilities, BSES Rajdhani Ltd started threatening the Defendant with disconnection of the supply of power to the premises and leaving no other option to the Defendant but to approach the Hon'ble Delhi High Court to seek the quashing of the said demand of BSES. It is submitted that however, it is also pertinent to state that as on date, the Defendant have already paid Rs.7.58 lacs which the Defendant is entitled to recover from the Plaintiff."

11. He submits that since there is no specific denial of receipt of the legal notice, the defendant is deemed to have admitted the receipt of the notice dated 08.07.2008 under Order 8 Rule 5(1) C.P.C. He submits that the only issue that needs determination is with regard to the legality of the said notice.

12. On the aspect of receipt of the notice dated 08.07.2008, I may refer to a finding by the learned Additional District and Sessions Judge, Delhi in Suit No. 400/2008. On this aspect, in para 5 of his judgment,

the learned Additional District Judge by reference to para 4 of the written statement before him stated that the defendant did not deny the receipt of the said notice. In fact, the defendant remained silent about the said notice. He, therefore, concluded that the defendant admitted the receipt of legal notice dated 08.07.2008. In fact, the defendant even moved an application seeking amendment of the written statement but that application was not allowed. The said application under Order 6 Rule 17 CPC was rejected by the learned Additional District Judge on the same date and certified copy of that order has also been placed on record. The same is not denied or disputed by the defendant. The defendant had sought to amend para 4 of the written statement before the learned ADJ by adding in para 4 of the reply on merits averments to the effect that the legal notice dated 08.07.2008 was never received, and the plaintiff has no cause of action/right to issue any such notice.

13. The reasoning of the learned Additional District Judge is found in para 5 of the said order dismissing the said application. Para 5 of the said order reads as follows:

“The record reveals that the Defendant in the Para-4 of the written statement did not deny the receipt of notice dated 08.07.08, though it did deny the receipt of legal notice dated 06.08.08 in para-5 of the said written statement. Admittedly the Plaintiff has filed two suits, but that can not be said to have created any confusion in the mind of the Defendant. The two legal notices dated 08.07.08 and 06.08.08 are different. They were mentioned in two different pars. Moreover, the Plaintiff filed replication to the

written statement and thereafter, also moved an application under Order 12 Rule 6 read with Section 151 CPC. It was only after the filing of the application under order 12 Rule 6 read with Section 151 CPC, that the Applicant / Defendant realized that the notice dated 08.07.08 was not denied by it. It is, therefore, clear that the plea taken by the Applicant in the application, is only an afterthought and an attempt to wriggle out of the implication / consequences / effects of its admissions, under Order 12 Rule 6 CPC. The plea that there was some confusion (which has not been explained), can be no ground for seeking amendment of the written statement on such an important and vital fact. The Applicant / Defendant could not have missed, inadvertently or otherwise, to deny such an important fact unless it were true. The application, therefore, has no merits and is liable to be dismissed.”

14. Not only this is a finding of fact arrived at by the learned Additional District Judge *inter partes* and is therefore *res judicata*, but even independently I find that the position is no different in the present suit. As seen above, there is no specific denial of the receipt of the notice dated 08.07.2008 stated to have been issued by the plaintiff in para 4 of the plaint. The said averment, therefore, is liable to be taken to be admitted by the defendant. As in the suit filed before the learned Additional District Judge, Delhi, so also in these proceedings, the defendant has, in para 5 of the written statement specifically denied the receipt of the subsequent notice dated 06.08.2008 allegedly sent by the plaintiff. The contradistinction in the defendants averments with regard to the two notices dated 08.07.2008 and 06.08.2008 is remarkable and relevant. Pertinently, while the defendant attempted

to amend para 4 of the written statement in the suit filed before the District Judge, Delhi, though unsuccessfully, no such attempt has been made in the present suit. Consequently, I am of the view that no issue of fact arises from the pleadings of the parties with regard to the receipt of the notice dated 08.07.2008 which would call for a trial, and the receipt of the same is taken to be an admitted position.

15. The only issue that now survives for determination is with regard to the legality of the notice dated 08.07.2008 whereby the plaintiff purported to determine the lease of the defendant in respect of the suit property. The lease in the present case is lease of immovable property for industrial/commercial/officer purpose. Reference in this regard may be made to Clause 13 of the lease Exhibit P-2. Though there is no pleading by the defendant on this aspect, and no argument has been advanced on its behalf, assuming the highest against the plaintiff by treating the lease to be one for manufacturing purpose, the same could be deemed to be lease from year-to-year terminable on part of either lesser of lessee by six months notice by virtue of Section 106 of the Transfer of Property Act. However, the said deeming fiction, would arise *"in the absence of a contract or local law or usage to the contrary"*. The issue that would, therefore, need consideration is whether there is a contract to the contrary which contra indicates that the lease in question was not a lease from year-to-year, but lease from month-to-month, and, therefore, terminable by 15 days notice under Section 106 of the Transfer of Property Act. As aforesaid, there is no

pleading of the defendant to say that the lease was not intended to be from month-to-month and that the same was a lease from year-to-year.

16. To determine the aforesaid issue it is necessary to consider all the clauses of the lease deed which have a bearing on the aforesaid aspect. Clause 1 of the lease deed recites that the lesser has offered the suit property on lease to the defendant *"for a term of 7 years (seven years) commencing and effecting from 01.01.2007 and the lessee has agreed to take the same on rent and after seven years the parties may renew the lease as may be mutually agreed between the parties."*

17. Clauses 2 to 7, 16 19 and 22 of the lease are relevant and reads as follows:

"2. That the monthly rent shall be Rs. 3,95,000/- (Rupees Three Lakhs Ninety Five Thousand Only) for the period commencing from 01/01/2007. The month shall start on first day and end with the last day of every month of English calendar.

3. That the lessee hereby deposits three months rent amount with lesser towards Advance Rent deposit of the Subject Property. The amount towards the same Rs. 11,85,000/- (Rs. Eleven Lakhs Eighty Five Thousand Only) has been paid by Lessee vide cheque no. 278490 dated 26.12.06 drawn on Karur Vysya Bank. The lesser acknowledged the receipt of the same.

4. That the lessee shall pay three months rent as advance to the lessor. The said three months rent as advance shall be Rs. 11,85,000/- (Rs. Eleven Lakhs Eighty Five Thousand Only) and the same shall be adjusted in a period of Six Months in equal proportions. The amount towards the same Rs.

11,85,000/- (Rs. Eleven Lakhs Eighty Five Thousand Only) has been paid by Lessee vide cheque no. 278491 dated 26.12.2006 drawn on Karur Vysya Bank. The lesser acknowledged the receipt of the same.

6. That the lesser shall forego the rent of first two months in favour of the lessee in order to facilitate in carrying out white washing, painting and minor repairs and required interiors etc.

7. That the Lessee shall pay the agreed monthly rental by way of cheque in advance by 7th of the each and every respective English calendar month to the Lesser.

16. That the Lessee can leave the premises by giving one month's written notice to the lesser subject to full and final rendition and realization of accounts. That all the legal rights of the property No. E-41/1, Okhla Industrial Area Phase-II, New Delhi, along with electric points, power and water connections etc. standing in the name of LESSERS shall always vest and deem to be his property and the LESSEE shall never have any right, interest title of whatsoever nature to the said property of the LESSERS.

19. It is hereby specifically agreed that the said security deposit of Rs. 11,85,000/- (Rs. Eleven Lakhs Eighty Five Thousand only) shall be refunded back to the Lessee by the lesser at the time of handing over the physical vacant Possession of the leased Premises by the LESSEE.

22. That if the LESSEE does not pay the lease charges for a continuous period of three months, under this agreement, the LESSERS will be entitled to terminate this lease agreement forthwith and LESSERS will also be entitled for all the rights that he has on the termination of lease agreement."

18. From the above clauses, it is seen that the parties have provided for payment of monthly rent, and not yearly rent. It is further provided that the month i.e. the tenancy month shall start on the first day and end on the last day of every month of English calendar. Even the

advance rent deposit under Clause 3 is in respect of three month rent. Clause 4 also talks about the lessee paying three months rent as advance which would be adjusted in a period of six months in equal proportion. Clause 6 also talks about the lessee foregoing the rent of first two months to enable the lessee to facilitate in carrying out white wash, painting and minor repairs etc. Clause 7 obligates the lessee to pay the agreed monthly rental by way of cheque in advance on 7th of each respective calendar month to the lesser. Clause 16 entitles the lessee to leave the premises i.e. to terminate the lease by giving one month written notice. This does not mean that the defendant as lessee was also entitled to be given one month's notice. Reference may be made to **AIR 1957 Cal 475**. Upon non-payment of rent for three consecutive months, clause 22 entitles the lessee to terminate the lease agreement "forthwith" and states that the lesser will be entitled for all rights that he has on termination of the lease agreement.

19. From these clauses it is evident that the contract between the parties was to enter into monthly lease i.e. a lease from month to month even though the lease of the suit property was for manufacturing purposes. Reference in this regard may be made to AIR 1975 Gujarat 1. In AIR 1952 SC 23, the Supreme Court held "*It has no doubt been recognized in several cases that the mode in which a rent is expressed to be payable affords a presumption that the tenancy is of a character corresponding thereto. Consequently, when the rent reserved is an annual rent, the presumption would arise that the*

tenancy was an annual tenancy unless there is something to rebut the presumption." There is no pleading of the defendant in the written statement to rebut the presumption. Without a pleading, no evidence can be led. On the contrary, the said presumption in favour of a lease from month to month is further strengthened in this case by the other clauses of the lease deed above referred to. Consequently the presumption that the lease was only from month to month stays. I hold that the lease Exhibit P-2 was a lease from month to month, according to the English calendar month.

20. Under Section 106 of the Transfer of Property Act, subject to a contract to the contrary, a lease of immovable property from month to month is terminable on part of either lesser or lessee by 15 days notice. Clause 22 entitles the lesser to terminate the lease agreement 'forthwith'. Therefore, it is evident that the lease in question was terminable by giving a mere notice of termination of the lease "forthwith". There was no obligation to give any time to the defendant to vacate the suit property. Reference in this regard may be made to the decision reported as **AIR 1952 All 141**. However, in the facts of this case, since the plaintiff has given more than 15 days notice to the defendant, this discussion is academic.

21. Under Clause 22 of the lease deed Exhibit P-2, the lesser was entitled to terminate the lease upon the lessee not paying the lease charges for continuous period of three months. The said Clause has been reproduced earlier. The admitted position in the written

statement is that the rent for three months i.e. May, June and July, 2008 was not paid by the defendant to the plaintiff. Though it is sought to be explained by the defendant that the said amount had not been paid on account of the defendant having paid an amount of Rs. 7.58 lacs to the BSES Rajdhani Limited on account of the plaintiff, the defendant, as aforesaid, has filed not a shred of document to either:

- a. Show that any such demand was raised by the BSES Rajdhani Limited and that the same pertained to the period prior to the defendant being inducted as a tenant lessee.
- b. Show that the same was paid by the defendant to BSES Rajdhani Limited.
- c. Show that the defendant had demanded the said amount from the plaintiff.
- d. Show that the defendant had put the plaintiff to notice that in case the amount is not paid the same shall be adjusted from the rents due from the months of May, June and July, 2008.

22. I also find the stand of the defendant contradictory, in as much as, it claimed on the one hand that the rents were not paid for the three months aforesaid on account of the liability of Rs. 7.58 lacs being met by the defendant on account of the plaintiff, while on the other hand, it is stated in para 4 of the written statement that the defendant had tendered the rent for these three months but the plaintiff refused to accept the same for reasons best known to him. So, on the one hand the defendant claims adjustment of the amount of Rs. 7.58 lacs, while on the other it states that the entire rent for the month of May, June and July, 2008 was offered to the plaintiff. Even if the stand of the defendant with regard to the so called liability of Rs. 7.58/-

lacs were to be believed, the rent for the period of three months aggregated to Rs. 11,85,000/-. There is not even a whisper to suggest that the defendant tendered the balance amount of rent to the plaintiff at any point of time. The defendant possibly cannot lead evidence beyond its own pleading. The court is required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. See **147 (2007) DLT 483 (DB)**.

23. There is yet another reason why the said stand of the defendant cannot be accepted and does not call for any further investigation in a trial. In the aforesaid Civil Suit No. 400/2008 filed by the plaintiff against the defendant, the plaintiff had preferred an application to seek the issuance of a direction to the defendant to make payment of the admitted rent to the plaintiff. This application was disposed off by the Ld. A.D.J. vide order dated 27.01.2009. A certified copy of this order has been produced in court and not denied by the defendant. Paragraphs 6 to 10 of this order are highly revealing and explains the conduct of the defendant in holding back the relevant documents pertaining to the deposit of Rs. 7.58 lacs by the defendant with BSES Rajdhani Limited. These paragraphs from the order dated 27.01.2009 read as follows:

“6. The Defendant has admitted that the rent for the months of May, June and July, 2008 became due and has not been paid to the Applicant/Plaintiff. The defendant has not disputed the relationship of lessor/lessee. The Defendant has also not disputed the amount of rent and the fact that the rent has not been paid by it. The only plea taken by the

Defendant is that a dispute has arisen regarding the payment of dues of Rs.7.58 Lacs against Tariff violations issued by BSES Rajdhani Ltd and it was made to deposit the said amount on the directions of the Hon'ble High Court of Delhi.

7. The record reveals that the Plaintiff let out a part of the suit premises to the Defendant vide Lease Deed dated 27.12.2006. It is also revealed from the record that there were no electricity dues outstanding against the suit property when the lease was executed. In fact, the copy of the last bill placed on record by the Applicant/Plaintiff shows that no dues were outstanding on 27.12.2006. The Enforcement Cell of BSES Rajdhani Ltd conducted inspection of the meter installed at suit premises on 18.9.2007. The Enforcement Cell found that electricity was being misused. It was also found that the Defendant was drawing much more load than the sanctioned load. A show cause notice was issued to the Defendant/consumer and a speaking order was passed by the competent authority/assessing Officer of BSES after hearing the Defendant. A notice under Section 56 of the Electricity Act, 2003 was thereafter served on the Defendant(consumer).

8. The Defendant challenged the order of BSES Rajdhani Ltd by way of petition in the Hon'ble High Court was pleased to direct the Defendant to deposit the sum of Rs.7.58 Lacs. The Hon'ble High Court also directed that in the event of Defendant succeeding in the petition, the Respondent (BSES) shall give credit for that amount against the electricity charges payable by in future. It was also directed that BSES shall be liable to pay interest @ 8% p.a on the said amount w.e.f. the date on which the deposit was made.

9. It is evident from the record that there were no outstanding electricity dues on 27.12.2006 when the said property was let out to the Defendant. It is also evident from the record that it was the Defendant only who was consuming electricity when inspection was conducted by Enforcement Cell of BSES Rajdhani Ltd on 18.9.2007. It was the

Defendant (consumer) only who was found misusing the electricity and drawing load more than the sanctioned load. The liability, therefore, is of Defendant (consumer) only and the Applicant/Plaintiff cannot be held responsible for the act of the Defendant.

10. The Defendant has deposited the amount of Rs.7.58 lacs demanded by BSES Rajdhani Ltd. as directed by the Hon'ble High Court and if the Defendant succeeds ultimately, it would be entitled to adjustment of the amount deposited and interest thereon @ 8% p.a. The plea that the Defendant has levied charges w.e.f. September, 2006 when the premises was not let out to it, is not material. The BSES Rajdhani Ltd. imposed the penalty has been w.e.f. September, 2006 as per the law/rules and the penalty has been imposed only because of the act of Defendant (consumer). Moreover, if the Defendant succeeds, it would be entitled to adjustment of the amount deposited with BSES Rajdhani Ltd with interest @ 8% thereon. In any case, it is none of the fault of the applicant/Plaintiff and, therefore, he cannot be deprived of the amount of rent as per the terms of the lease. The contention that the Plaintiff and, therefore, he cannot be deprived of the amount of rent as per the terms of the lease. The contention that the Plaintiff ought to have deposited the impugned demand has no merits whatsoever since the Defendant alone was consuming the electricity and it was because of its conduct only that the penal charges have been levied by BSES Rajdhani Ltd. The contention of Ld. Counsel for the Defendant is, therefore, rejected."

24. It is, therefore, evident that the amount of Rs. 7.58 lacs paid by the defendant to BSES Rajdhani Limited pertain to the period after the commencement of the defendant's lease and the said demand was raised on account of tariff violation by the defendant. Obviously the plaintiff could not be held responsible for the same and the defendant

could not have withheld payment of the rent on that ground. It is evident that there was a default in payment of rent by the defendant for the months of May, June and July, 2008 , and the plaintiff was entitled to terminate the lease forthwith.

25. The notice of termination dated 08.07.2008 is, therefore, held admissible in evidence and exhibited as Exhibit C-1. The said notice Exhibit C-1 recites that rent for the three months i.e. May, June and July, 2008 has not been paid by the defendant. The said notice further states that on account of non-payment of the said rent the defendant has made itself liable to be evicted for violation of the terms of the lease deed. The plaintiff also communicated its intention not to continue the tenancy of the defendant any more and effectively terminated the tenancy of the defendant calling upon the tenant to handover peaceful possession of the tenanted premises on or before 31.07.2008 midnight. It is not the defendant's defence that Exhibit C-1 dated 08.07.2008 did not give the defendant 15 day's notice prior to the expiry of the tenancy month of July, 2008 (though I am of the view that even the 15 days notice was not necessary, and a mere notice of termination forthwith would have sufficed.) The lease has been terminated by giving notice expiring with the end of the month of the tenancy. The same has been sent by the plaintiff's counsel Sh. D.S. Patial, Advocate under instructions from and on behalf of the plaintiff. The same has been sent and delivered to the defendant. The said notice fully complies with the requirements of Section 106 of the

Transfer of Property Act and has the effect of terminating monthly lease of the defendant in respect of the suit property w.e.f. the midnight of 31.07.2008. Consequent upon the termination of the lease, the defendant's status quo the suit property was reduced to that of a trespasser.

26. For the aforesaid reasons, I see no reason to hold a trial in the matter and the present is a fit case for passing of a decree as prayed for, since the relationship between the parties as landlord and tenant is admitted; the factum of the rent for three consecutive months not being paid is admitted and also established by the judgment and decree passed by the learned Additional District Judge in suit No.401/2008; the lease deed dated 26.12.2006 entitles the plaintiff to determine the lease deed forthwith upon failure of the defendant to pay the rent for three consecutive months; the tenancy created under the lease was monthly i.e. from month-to-month and therefore, in any event terminable by a 15 day's notice under Section 106 of the Transfer of Property Act; the receipt of the notice dated 08.07.2008 terminating the lease w.e.f. 31.07.2008 is not disputed, and; the said notice has been validly issued and served having the effect of terminating the lease in accordance with Section 106 of the Transfer of Property Act. The effect of the termination of lease of the defendant w.e.f. 31.07.2008 was that from 01.08.2008 onwards the defendant had no surviving right, title or interest in the suit property entitling it to occupy and use the same. The status of the defendant

since 01.08.2008 is that of a trespasser and the defendant is, therefore, liable to be ejected from the suit property.

27. Accordingly, the present suit is decreed in terms of the prayers made in this suit. Plaintiff shall also be entitled to costs.

VIPIN SANGHI, J.

MAY 05, 2009
dp