

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

**Judgment reserved on: 06.08.2009**

% **Judgment delivered on: 16.09.2009**

+ **CM(M) NO.1341/2008**

ANIL SURI & ORS. .... Petitioner  
Through: Mr. B. R. Sharma, Advocate.

versus

VIKRANT KHANNA & ANR. .... Respondent  
Through: Mr. K.C. Mittal, Senior Advocate  
with Ms. Ruchita Mittal and Mr.  
Sujeet Kumar Singh, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

- |    |                                                                           |     |
|----|---------------------------------------------------------------------------|-----|
| 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 |

### **J U D G M E N T**

**VIPIN SANGHI, J.**

1. In challenge in this petition under Article 227 of the Constitution of India is the order dated 26.09.2008 passed by Sh. Virender Bhat, ADJ, Delhi in Suit NO. 260/2008 whereby the petitioner's application under Order 12 Rule 6 read with Section 151 CPC, for judgment on admission stated to have been made by the defendants, has been dismissed.

2. The petitioners are the plaintiffs in the aforesaid suit. The respondents are defendants and are husband and wife and they are the sole proprietors of M/s. Saumye Trading Company and M/s. Saumye Sports respectively. The suit has been filed for recovery of possession, recovery of arrears of license fee, damages/mesne profits for the unauthorized and illegal use and occupation of the suit premises.

3. The admitted position is that the respondents-husband and wife, entered into two separate lease deeds on 27.06.2005 in respect of distinct half portions of lower ground floor/basement admeasuring 1670 Sq. Ft. each of property bearing No. A-4, Vishal Enclave, New Delhi. The first of these lease deeds was executed between Sh. J.P. Suri & Sons (HUF) through its karta Sh. J. P. Suri, and respondent no. 1 Sh. Vikrant Khanna as proprietors of M/s. Saumye Trading Company. The second lease deed was entered into between Mrs. Shanta Suri W/o. Sh. J.P. Suri and respondent no. 2 Mrs. Rachna Khanna W/o. Sh. Vikrant Khanna as proprietor of M/s. Saumye Sports. The terms of both these lease deeds are identical and both have been registered in the office of the Sub-Registrar. The tenure of the lease of these leases was three years commencing from 15.07.2005. The rent fixed in respect of both the leases was Rs. 45,000/- per month for the three year period from 15.07.2005 to 14.07.2008. Both these leases contain a clause for renewal of the lease being Clause no. 5 and the same reads as follows:

#### **“5. RENEWAL**

- 5.1 The Lessee shall have the option to renew the lease for further successive periods of three years each after the expiry of initial tenure of the lease on terms and conditions mutually

settled between the parties (3 Years to Extended after expiry of this lease both the parties agreed mutually).

5.2 The Lessee shall give a notice of three months to the Lessor for renewal of the lease before the expiry of the tenure of this lease.

5.3 A fresh lease deed shall be executed for the renewal term of the lease."

4. Clause 1.3 of both these lease deeds reads as follows:

"1.3 The Lessee/lessor will not withdraw the lease separately. The withdrawal of the lease will be both and not separately (The other part of lease is with the sister concern of this firm."

5. Consequently both the lease deeds could be terminated simultaneously and not at different points of time by the lessor, or the lessee, as the case may be. The lease deeds in question are admitted documents between the parties.

6. Sh. J.P. Suri, it appears, passed away after the aforesaid lease deed was executed by him as 'karta' of J.P. Suri & Sons (HUF). It appears that the petitioners issued a legal notice dated 30.09.2007 to the respondents alleging non-payment of rent and breach of the other terms and conditions of the two lease deeds. As a result of the same, a memorandum of understanding was entered into between Sh. J.P. Suri & Sons (HUF) represented through its coparceners Sh. Anil Suri and Sh. Vivek Suri both sons of Lt. Sh. J.P. Suri, and Smt. Shanta Suri w/o. Lt. Sh. J.P. Suri i.e. the lessors of the two premises respectively on the one hand, and Sh. Vikrant Khanna and Smt. Rachna Khanna, the two lessees on the other hand wherein the two lessees acknowledged that they had defaulted in the payment of rent. By the said

memorandum of understanding a compromise was arrived at between the parties whereby the two lessees undertook that they shall pay the amount of lease rent to the respective lessors on or before 15<sup>th</sup> of every month in advance positively, as per the terms of the lease agreements without any default and that they would pay the electricity bills as and when received regularly without any default and copies of paid bills would be sent to the respective lessors. The two lessees also undertook to furnish TDS certificates of tax deducted at source for payment of the lease rent to the lessors in question.

7. The petitioners filed the above mentioned suit against the respondents on or about 12.02.2008. The petitioners pleaded that despite the said memorandum of understanding, the two lessees/respondents had again defaulted in payments of rent. The petitioners pleaded that they jointly issued a legal notice dated 10.01.2008 for termination of the two leases to both the tenants whereby the two leases were terminated and the defendants were called upon to vacate the tenanted premises. Since the respondents did not vacate the premises under their respective occupation as lessees, the plaintiffs/petitioners sought, *inter alia*, recovery of the suit premises from both the tenants. With regard to the failure of the two respondents to make payment of the rents respectively due from them, the averment made in the plaint in para 25 reads as follows:

“25. That in spite of the said Memorandum of Understanding, the defendants again defaulted in the payment of the lease rent as agreed upon. Their cheques No.88065, 880634 dated 3.1.2008 drawn on Indian Bank, Tilak Nagar, Delhi for Rs.38115/- each for the lease rent for

the months of October and November, 2007 were returned unpaid with the reason "Fund Insufficient". Further, a cheque No.612706 dated 3.1.2008 for Rs.38115/- in favour of the plaintiff No.3 for the lease rent for the month of November, 2007 for her portion was also returned unpaid with the reason "Funds Insufficient ". Not only this, you have not tendered the lease rent for the month of December, 2007 and January, 2008 and February by now."

8. The defendants, upon being summoned, filed their common written statement and in response to para 25 of the plaint the defendants stated as follows:

"25. Para 25 of the suit as stated is wrong and denied. It is denied that the said Memorandum of Understanding, the defendants again defaulted in the payment of the lease rent as agreed upon. It is submitted that in lieu of cheque no. 880635, 880634 & 612706 pay order nos. 11069, dated 31.01.08, 111070 dated 31.01.08 and 111066 respectively all of ICICI Bank has been paid to the plaintiffs."

9. Along with the written statement the defendants filed, as Annexures 2 and 3, the details of cheque payments allegedly made to Smt. Shanta Devi and the details of cheque payment allegedly made to Sh. J.P. Suri and Sons (HUF). The payment details, of payments made prior to 03.11.2007 (which is the date of memorandum of understanding entered into between the parties) are not relevant. However, the payment details of payments made after the date of the MOU, being relevant, are extracted from Annexures 2 & 3 and are produced herein below:

**DETAILS OF CHEQUES PAYMENT TO SHANTA SURI**  
**(Extract from Annexure 2)**

| <b>SR. NO</b> | <b>DATE</b> | <b>MONTHS OF RENT</b> | <b>CH. RETURN</b>   | <b>CH. NO.</b> | <b>AMOUNT</b>       | <b>BANK</b> | <b>RENT PAID UPTO MONTHS</b> |
|---------------|-------------|-----------------------|---------------------|----------------|---------------------|-------------|------------------------------|
| 29            | NOV.07      | 31.01.08              | 612706/<br>03.01.08 | 111066         | 38,115.00           | ICICI BANK  | NOV.07<br>14 DEC 07          |
| 30            | DEC.07      | 31.01.08              |                     | 111067         | 38,115.00           | ICICI BANK  | DEC.07<br>14 JAN 08          |
| 31            | JAN 08      | 31.01.08              |                     | 111068         | 38,115.00           | ICICI BANK  | JAN 08<br>14 FEB 08          |
|               | FEB 08      |                       |                     |                |                     |             | FEB 08<br>14 MARCH 08        |
|               |             |                       |                     | <b>TOTAL</b>   | <b>1,181,679.00</b> |             |                              |

**DETAILS OF CHEQUES PAYMENT TO J.P.SURI & SONS**  
**(HUF) (Extract from Annexure 3)**

| <b>SR. NO</b> | <b>DATE</b> | <b>MONTHS OF RENT</b> | <b>CH. RETURN</b>   | <b>CH.NO.</b> | <b>AMOUNT</b>       | <b>BANK</b> | <b>RENT PAID UP TO MONTHS</b> |
|---------------|-------------|-----------------------|---------------------|---------------|---------------------|-------------|-------------------------------|
| 25            | JULY 07     | 29.11.07              | 880499/<br>27.11.07 | 144938        | 38,115.00           | ICICI BANK  | JULY 07<br>14 AUG 07          |
| 26            | AUG 07      | 04.12.07              | 880765/<br>03.12.07 | 880478        | 38,115.00           | INDIAN BANK | AUG 07<br>14 SEPT 07          |
| 27            | SEPT 07     | 04.12.07              |                     | 880775        | 38,115.00           | ICICI BANK  | SEPT 07<br>14 SEPT 07         |
| 28            | OCT 07      | 31.01.08              | 880635/<br>03.01.08 | 111069        | 38,115.00           | ICICI BANK  | OCT 07<br>14 NOV 07           |
| 29            | NOV 07      | 31.01.08              | 880634/<br>03.01.08 | 111070        | 38,115.00           | ICICI BANK  | NOV<br>14 DEC 07              |
|               | DEC.07      |                       |                     |               |                     |             | DEC 07<br>14 JAN 08           |
|               | JAN 08      |                       |                     |               |                     |             | JAN 08<br>14 FEB 08           |
|               | FEB.08      |                       |                     |               |                     |             | FEB 08<br>14 MAR 08           |
|               |             |                       |                     | <b>TOTAL</b>  | <b>1,105,533.00</b> |             |                               |

10. By relying upon the aforesaid tabulation filed by the respondents/defendants, the petitioners/plaintiffs filed their application under Order 12 Rule 6 CPC to seek a decree for recovery of possession which has been rejected by the impugned order.

11. In para 26 of the plaint the plaintiffs pleaded the issuance of the legal notice dated 10.01.2008 terminating the two leases. In the corresponding para of the written statement, the defendants did not deny the receipt of the notice but stated that the notice was based on wrong and concocted facts. It was denied that the defendants had not cleared arrears of the lease rents or that they are legally bound to deliver peaceful and vacant possession of the suit premises to the plaintiffs.

12. From the above narration it is clear that the relationship of landlord and tenant between petitioner no. 1 and 2 on the one hand and respondent no. 1 on the other hand, and similarly, between petitioner no. 3 and respondent no. 2 is admitted. The rate of rent which was Rs. 45,000/- per month in respect of both the tenanted premises, is also not in dispute. Consequently, the two tenancies of the two respondents are governed by the Transfer of Property Act. The factum of issuance and receipt of termination notice dated 10.01.2008 is also not disputed, though the defendants have disputed the correctness of the said legal notice. Therefore, the only question that needs determination is the aspect of legality of the legal notice dated 10.01.2008. If the allegation contained therein with regard to default in the payment of rent by the two respondents is found to be correct and

the said defaults entitles the petitioners to determine the two lease deeds, the respective leases would stand determined upon the issuance of the notice of termination and the continued occupation of the lease premises by them would be unauthorized and illegal.

13. What, therefore, needs to be firstly examined is whether there is any admission of breach of the lease deeds made by the defendants in their written statement and the Annexures above referred to, which was made the ground for termination of the lease deeds by the plaintiffs. If, on a scrutiny of the written statement and the Annexures filed therewith admissions of the defendants are discernible of their being in breach of their respective obligation to pay the rents, no question of trial would arise on the issue regarding the breach of the two lease deeds by the respondents.

14. The averments made in para 25 of the plaint as extracted above are the same as that made in para 5 of the notice dated 10.01.2008. Paras 5 and 6 of the said notice dated 10.01.2008 read as follows:

“5. It is a matter of record that the cheques No.880635, 880634 dated 3-1-2008 drawn on Indian Bank, Tilak Nagar, Delhi for Rs.38115/- in Favour of J.P.Suri & sons (H.U.F.) were the payment of the lease rent for the months of October, 2007 and November, 2007 and thereafter till date no cheque for the lease rent for the months of December, 2007 and January, 2008 has given to my above named clients. Further, another cheque No.612706 dated 3-1-2008 for Rs.38115/- in favour of Mrs. Shanta Suri, drawn on Indian Bank, Tilak Nagar, New Delhi was the payment of the lease rent for the month of November, 2007 and no cheque for the lease rent for the month of December, 2007 and January, 2008 has given

to my above named clients. It is made clear that no lease rent has been paid by you from December, 2007 to till date which is default as per the terms and conditions of the lease agreement as well as violation of the MOU.

6. That further, the cheque nos. 880635, 880634 and 612706 as stated above has been returned unpaid with the reason "Fund Insufficient". Thus, you have made further default and as such you have no respect to the terms & conditions of the lease agreement as well as to the MOU."

15. The case of the plaintiff pleaded in para 5 of the legal notice and in para 25 of the plaint was that cheque nos. 880635 and 880634 dated 03.01.2008 for Rs. 38115/- favouring Sh. J.P. Suri & Sons (HUF), were given towards rent for the months of October, 2007 and November, 2007. It was their positive case that no cheque had been issued towards payment of rent for the month of December, 2007 and January, 2008 in favour of M/s. J.P. Suri & Sons (HUF). Similarly, it was claimed by the plaintiffs that cheque no. 612706 dated 03.01.2008 for Rs. 38115/- drawn in favour of Mrs. Shanta Suri was tendered towards payment of lease rent for the month of November, 2007. It was further pleaded that no cheque towards payment of rent for the months of December, 2007 and January, 2008 had been delivered to Mrs. Shanta Suri.

16. It was, therefore, pleaded by the petitioners that from December, 2007 lease rent had not been paid by the two defendants to the plaintiffs in respect of their respective tenancies. It was further pleaded that even the three above mentioned cheques bearing nos. 880635, 880634 and 612706 all dated 03.01.2008, had been

dishonoured on presentation on account of insufficiency of funds. To these averments, the reply of the defendants in para 25 of the written statement is merely to say that in lieu of the aforesaid three cheques, pay order nos. 11069 and 111070 dated 31.01.2008, and 111066 respectively, all of ICICI Bank, had been given to the plaintiffs.

17. Consequently, it cannot be accepted (as contended by the plaintiffs) that there is an admission by the defendants that payment of rents for the months of October and November, 2007 in respect of the two tenancies has been defaulted with. It would have to be established at the trial whether rents for the months of October and November, 2007 in respect of the two tenancies have been paid or not.

18. However, from the written statement of the defendants, it is clear that they are completely silent with regard to the plaintiffs clear and categorical averment made (both in the legal notice as well as in the plaint) that rents for the months of December and January, 2008 (and for February, 2008 as pleaded in the plaint) have not been made. The silence of the defendants in this regard cannot but be taken as admission on their part of the fact that rents for the months of December, 2007 and January and February, 2008 have not been paid by the defendants in respect of their tenancies.

19. The pleading of the defendants in para 25 of the written statement does not match with the Annexures 2 and 3 extracted above. While it is stated in para 25 of the written statement that payment in lieu of the cheque nos. 880635, 880634 (which were issued to M/s. J.P. Suri & Sons (HUF)) towards rent for the months of

October and November, 2007, and cheque no. 612706 issued in favour of M/s. Shanta Suri towards rent for the month of November, 2007, was made vide pay order nos. 111069, 111070, 111066 dated 31.01.2008 respectively, a perusal of the first tabulation above shows that the defendants claim to have issued the instrument bearing no. 111066 towards payment of rent for the month of November, 2007 in favour of Shanta Suri. Similarly, from the second tabulation, it appears, that the defendant's claim to have given pay order nos. 111069 and 111070 towards rent in favour of M/s. J.P. Suri & Sons (HUF) for the months of October and November, 2007. For the months of December, 2007 and January, 2008, while it is claimed as per the statement in Annexure 2 that rent has been paid on 31.01.2008 vide instrument nos. 111067 and 111068, no pleading is found in the written statement to this effect. Pertinently, in so far as the lease granted by J.P. Suri & Sons (HUF) is concerned, even according to the statement in Annexure 3, no payment of rent is shown to have been made for the months of December, 2007, January, 2008 and even February, 2008.

20. It is, therefore, abundantly clear that for the months of December, 2007, January, 2008 and February, 2008, there is no definite averment of the defendants that they have made payment of the rent to the plaintiffs. Consequently, the basis on which the notice of termination dated 10.01.2008 was issued by the plaintiffs against the defendants stands established. Under the lease agreements in question, the lease rentals were to be paid each month, by the 15<sup>th</sup> day of every month in advance. The rent for the tenancy month 15<sup>th</sup>

December, 2007 to 14<sup>th</sup> January, 2008 was payable by 30<sup>th</sup> December, 2007 and the rent for the tenancy month 15<sup>th</sup> January, 2008 to 14<sup>th</sup> February, 2008 was payable by 30<sup>th</sup> January, 2008. At the time when the notice dated 10.01.2008 was issued, rent for the tenancy months 15<sup>th</sup> December, 2007 to 14<sup>th</sup> January, 2008 was already due and in arrears.

21. Under Section 108 (e) of the Transfer of Property Act, the lessee is bound to pay or tender at the appropriate time and place the premium or rent to the lessor or his agent in this behalf. This is also one of the covenants/undertakings/warranties given by the respondents in clause 12.1 of the two lease deeds which reads "*The lessee shall regularly pay the lease rental hereby reserved at the time and in the manner aforesaid.*" The breach of the aforesaid condition entitles the lessor to terminate the lease, as the lessor is "*deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption*" (see Section 108 (c)). This is also specifically provided in clause 13.6 of the two lease deeds. This clause reads as follows:

**"13.6 That on the conditions that the lessee continue to pay the rent hereby reserved and observe and perform several convenience on their part herein contained,** the lessee shall peacefully and quietly hold enjoy the premises during lease period(s) without any interruption of disturbances by lessor or any other person lawfully claiming under or in trust for his/her or any other person whatsoever." (emphasis supplied).

22. The sequitor of this covenant is that if the lessee does not pay the rent reserved regularly, the lessor is not obliged to let the lessee enjoy the leased premises without interruption. This, in my view, is an express condition which provides that on breach of Clause 12.1 of the lease deeds, the lessor may re-enter the lease. The use of the expression “if” in clause (c) of Section 108 shows that the obligation of the tenant to pay the rent reserved by the lease and to perform the contracts binding upon the lessee is a precondition to the obligation of the lessor to let the lessee hold the property during the time limited by the lease without interruption. If the lessee breaches the precondition of, inter alia, payment of rent under the lease, the lessor is liberated from the obligation to let the lessee enjoy the lease uninterruptedly, and the lessor would be entitled to interrupt the lease by determining the same under Section 111(h) of the Transfer of Property Act. This is the only reasonable and meaningful interpretation of clauses 12.1 and 13.6 of the two lease deeds. If interpreted otherwise, (to mean that the lessor only has a right to recover the rent through a legal process, but that he has no right to determine the lease because the lease does not provide by any other clause for forfeiture of the lease on default in payment of rent), it would lead to absurd consequences. It could leave the lessor practically remediless against a lessee who is a willful defaulter and who camouflages his assets, or against a lessee who may have become financially incapacitated/sick from making payment of rent regularly. Obviously, the lessor is not expected to take the law in his own hands and physically interrupt the enjoyment of the lease by

the lessee in such a situation. This only means that the lessor would, in the event of breach of a condition analogous to the one contained in Section 108 (c) of the Transfer of Property Act (which in the present case is contained in Clause 12.1 of the lease deeds), by virtue of the condition analogous to that contained in Section 108 (e) of the said Act (which in the present case is contained in clause 13.6 of the lease deeds), be entitled to terminate the lease deeds. I may refer to the decision of the Supreme Court in **Raghuram Rao v. Eric P. Mathias** AIR 2002 SC 797 where the Supreme Court held in para 27 as follows:

“27. .... If there is breach of contract, that is to say, express condition of lease, then it gives option to the lessor to determine the lease and re-enter the properties let out.....”

23. The lease was determinable by resort to the procedure prescribed in Section 106 of the Transfer of Property Act which, admittedly, has been resorted to by the petitioners by issuing the notice dated 10.01.2008. On the expiration of the notice period requiring the defendants to quit the leased premises, the lease of each of the respondent stood determined (see Section 111 (h) of the Transfer of Property Act).

24. Consequently, it is evident that the two leases of each of the respondents stood duly determined by the notice dated 10.01.2008 issued by the petitioners. The petitioners, therefore, became entitled to seek the ejectment of the respondents from their respective lease premises. Pertinently, it is not the respondent's case that they acted in accordance with the provision contained in Section 114 of the

Transfer of Property Act by paying the arrears of rent along with interest and full costs, or by giving security to the satisfaction of the Court.

25. Unfortunately, the trial Court appears to have completely misdirected itself in law while passing the impugned order in failing to appreciate the above position. The trial court while dismissing the application appears to have been influenced by the fact that the respondents have raised objections with regard to the existence of arbitration clauses in the two lease deeds; the fact that the suit had been filed by Sh. Anil Suri and Sh. Vivek Suri in place of Sh. J.P. Suri & Sons (HUF) which was the landlord; and the fact that a single suit has been filed in respect of two independent lease transactions. In my view, neither of these issues were such as required the holding of a trial. These issues are purely legal and should have been dealt with by the trial court at the stage of considering the petitioner's application under Order 12 Rule 6 itself.

26. So far as the objection with regard to the existence of the arbitration agreements in the two lease deeds is concerned, a perusal of the said clause shows that the same is rather ambiguous. Clause 16 deals with jurisdiction and reads as follows:

**"16. JURISDICTION**

16.1 That in the event of any dispute between the Lessor and the Lessee in terms of the Premises, the same shall be subject to jurisdiction of the Courts in Delhi. Arbitrator shall be appointed from the side of decision of the each arbitrators shall be final and acceptable to both for parties."

27. This clause states that the jurisdiction shall be that of the courts in Delhi. It also talks about an Arbitrator being appointed. It is clear that the arbitration clause is not properly worded. It is not rather vague. It is not clear whether the parties at all intended to refer their disputes to arbitration. It is also not clear whether the arbitration agreement was for appointment of a sole Arbitrator or a panel of two or three Arbitrators. In any event, the respondent/defendants filed their written statements to the suit and did not invoke Section 8 of the Arbitration and Conciliation Act. Though the first preliminary objection raised by the respondents is that there is an Arbitration Agreement, there is no prayer made that the disputes be referred to arbitration and it is not even stated that the defendants are filing their written statement without prejudice to their right to seek reference of the disputes to arbitration. Section 8 of the Arbitration and Conciliation Act states that *"if a party so applies not later than without submitting his statement from the substance of the dispute"* in any action brought before judicial authority which is the subject matter of arbitration agreement, the judicial authority shall refer the parties to arbitration. Sub-section (2) of Section 8 states that such an application shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof. The written statement filed by the defendants/respondents certainly does not comply with the requirements of Section 8 (2) of the Arbitration and Conciliation Act. From the conduct of the respondents/defendants it is clear that they

waived their right, if any, to seek arbitration in respect of disputes arising in this suit.

28. Coming to the second objection raised by the respondents with regard to the maintainability of the suit by Sh. Anil Suri and Sh. Vivek Suri, both sons of Lt. Sh. J.P. Suri, when the lease itself was granted by the HUF, I find that the said objection was also wholly meritless and the trial court failed to exercise its jurisdiction by failing to deal with the said issue presently. The lease was granted by Sh. J.P. Suri & Sons (HUF) through its 'karta' Sh. J.P. Suri. It is the case of the plaintiffs that Sh. J.P. Suri has passed away and that defendant no. 1 has attorned to Sh. Anil Suri and Sh. Vivek Suri who are now the coparceners of J.P. Suri & Sons (HUF). The factum of demise of Sh. J.P. Suri on 07.07.2007 is not in dispute and has been admitted by the respondents in para 3 of their written statement. The fact that Sh. Anil Suri and Sh. Vivek Suri are the sons of Lt. Sh. J.P. Suri is not so denied, and is rather admitted. This is evident from para 20 of the preliminary objections raised in the written statement. Sh. Anil Suri and Sh. Vivek Suri have filed the suit on the basis that their father, who was the 'karta' of J.P. Suri & Sons (HUF) having expired, they have jointly become coparceners of the HUF holding the suit property which was leased out to respondent no. 1. The two being co-owners and coparceners of J.P. Suri & Sons (HUF) are entitled to maintain the suit. Pertinently, even after the demise of Sh. J.P. Suri the defendant no. 1 continued to make payment of rent in favour of J.P. Suri & Sons (HUF) represented by Sh. Anil Suri and Sh. Vivek Suri. The first legal notice

dated 13.07.2007 was issued by inter alia, Sh. Anil Suri and Sh. Vivek Suri. The receipt thereof is already admitted by the defendants. As a result of that notice the parties entered into a memorandum of understanding wherein Sh. J.P. Suri & Sons (HUF) was represented through its coparceners Anil Suri and Vivek Suri. This is evident from the opening lines of the MOU dated 03.11.2007 which too is an admitted document. This being the position, there was absolutely no merit in the preliminary objection raised by the respondents with regard to the maintainability of this suit by Sh. Anil Suri and Sh. Vivek Suri on behalf of M/s. J.P. Suri & Sons (HUF), of which they are the coparceners.

29. The third legal objection raised by the respondents was with regard to the maintainability of one suit in respect of two different lease transactions wherein both the lessors and the lessee were separate and distinct. The answer to this issue lies in Order 1 Rule 1 and Rule 3 CPC. Order 1 Rule 1 C.P.C, inter alia, provides that all persons may be joined in one suit as plaintiffs where *“if such persons brought separate suits, any common question of law or fact would arise”*. Similarly Order 1 Rule 3 states that all persons may be joined in one suit as defendants, inter alia, where *“if separate suits were brought against such persons, any common question of law or fact would arise”*.

30. In the present case both the lease deeds executed in favour of defendant no. 1 and defendant no. 2 respectively are identical in respect of one half portion each of built up lower ground floor /

basement admeasuring 1670 Sq. Ft. respectively. As already noticed above, the lease deeds specifically provide that the lessee or lessor will not withdraw the lease separately. The withdrawal of the lease would be in respect of both the leases simultaneously and not separately. Both the leases acknowledge that two firms of the two defendants are sister concerns wherein the husband and the wife are the sole proprietors. The first notice of termination dated 30<sup>th</sup> September, 2007 was a common notice given by petitioner nos.1 and 2 jointly, and by petitioner no.3, to their respective tenants namely defendant no.1 on the one hand and defendant no.2 on the other hand. The memorandum of understanding was also jointly executed by both sets of landlords and tenants. Similarly, the notice of termination dated 10.01.2008 was also issued as a common notice. Even the written statement filed by the defendants is a common written statement through a common lawyer. The counter claim made by the defendants is also common counter claim. It is, therefore, clear that practically all the issues of fact and law which would arise in respect of each of these transactions are common between the parties. Therefore, there is no substance in the objection of the respondents that the suit, as filed by the plaintiffs jointly against the defendants is not maintainable.

31. Quiet independent of the aforesaid aspects, there is yet another important aspect of the matter which has not been noticed by the learned trial court while passing impugned order. The tenure of the initial lease was three years beginning 15.07.2005 and upto 14.07.2008. The suit had been filed by the petitioners before the

expiry of the said tenure, after terminating the lease some time in February, 2008. However, during the pendency of the suit and before the passing of the impugned order, the tenure of the lease came to an end on 14<sup>th</sup> July, 2008 and stood determined by efflux of time. Consequently, the plaintiffs/petitioners, in any event, became entitled to recover possession of the suit property as the initial lease came to an end by efflux of time on 14.07.2008 (assuming that the same was not validly terminated by the petitioners vide legal notice dated 10.01.2008). Since the petitioners have filed the present suit for seeking ejectment of the respondents, it is evident that there possibly cannot be any mutuality between them with regard to the renewal of the lease in terms of clause 5 of the lease deeds which has been detailed above. It is not even the respondent's case that they have given notice of three months to the respective lessors for renewal of the lease before the expiry of the tenure of lease on 15 July, 2008 or even thereafter. Pertinently, the parties have been litigating since February, 2008. Therefore, in any event, the respondents are not entitled to remain in the tenanted premises.

32. Reference in this regard may be made to the decision of this court in ***K.Kishore and Construction (HUF) Vs. Allahabad Bank*** 71 (1998) DLT 581. The plaintiff had filed the suit for ejectment against the defendant on the ground floor that the defendant bank had been amalgamated with another bank. The plaintiff refused to recognize the amalgamated bank as the tenant and on that basis claimed that the defendant was in unauthorized occupation. While the

suit was being contested, the period of the lease came to an end by efflux of time. The suit was at the trial stage at the relevant time. The plaintiff moved an application under Order 12 Rule 6 CPC. Since the admitted position, even according to the defendant, was that the lease was valid only till 01.02.1997 and during the pendency of the suit the said date lapsed, this court held that there was no triable issue which needs investigation so far as the relief of possession is concerned. The suit to that extent could be decreed under Order 12 Rule 16 of the Code. It was accordingly decreed.

33. Therefore, viewed from either point of view, it is evident that the petitioners / plaintiffs are entitled to the grant of a partial decree for ejectment/possession of the suit property.

34. Consequently, the impugned order is set aside and the application preferred by the petitioners under Order 12 Rule 6 is allowed. The matter be placed before the trial Court for passing consequential orders and decree.

**(VIPIN SANGHI)**  
**JUDGE**

**SEPTEMBER 16, 2009**  
dp/as