

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment dated 28th September, 2010

+ RFA 384/2010

RAM MOHAN MAHESHWARI Appellant
Through : Mr. A.K. Vashishta, Adv.
versus

PREMINDERJIT KHURANA & ORS. Respondents
Through : Mr. S. Goel, Adv.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Learned counsel for the parties submit that it would not be necessary to call for the trial court record and the present appeal may be heard and disposed of on the basis of the record, which has been filed along with the appeal.
2. Brief facts, which have led to the filing of the present appeal, are that the respondents had filed a suit for ejectment of the appellant from the premises bearing No.F-32, Kamla Nagar, New Delhi, and for recovery of rent, possession and damages for use and occupation of the said premises after the termination of the tenancy. The respondents are stated to be the joint owners of the aforesaid property, which was rented out to the appellant in terms of a lease agreement dated 2.3.2005 duly registered for a period of three years w.e.f.

1.5.2005 to 31.3.2008. In terms of Clause 4 of the lease agreement, parties agreed that the tenancy would be initially for a fixed term of three years. As per Clause 15, parties agreed that unless the period of lease is extended at the sole discretion of the lessor with agreed enhancement in rent in writing, the lease would be for a fixed period of three years and would terminate on 31.3.2008. Parties further agreed that in case the lease is not extended and the tenant continued to occupy the premises the premises would attract penal rent @ Rs.2000/-, per day.

3. On 8.1.2008, the respondents issued a legal notice to the appellant and informed him that they did not intend to continue with the tenancy after the expiry of the lease agreement on 31.3.2008. The appellant was further asked to hand over the vacant peaceful possession of the premises after the expiry of the lease period. According to the respondents, the appellant did not hand over possession of the suit property nor any rent was paid for the period from January to March, 2008.
4. The respondent instituted the suit on 30.4.2008. The appellant filed his written statement and counter claim. In the written statement a preliminary objection was raised that the lease stood extended for another period of three years w.e.f. 1.4.2008 and further the respondents had accepted the enhanced rent of Rs.33000/-, per month, besides the

respondents assured the appellant that a written document would be executed. Since the respondents failed to execute the written document the appellant issued a legal notice on 9.5.2008 to the respondents calling upon the respondents to execute a fresh lease deed.

5. In the written statement neither the ownership of the respondents was disputed nor the execution of lease agreement dated 2.3.2005 was disputed nor receipt of the legal notice was disputed.
6. The respondents have denied that at any point of time they had agreed for the extension of the lease nor enhanced rent was accepted by them. As per the respondents, the appellants deposited the amount of rent in the bank accounts of the respondents without their consent.
7. On an application filed by the respondents under Order XII Rule 6 CPC and on hearing counsel for the parties, learned trial court has passed a decree of possession of the suit property, which has led to the filing of the present appeal.
8. It is submitted by counsel for the appellant that (i) the impugned judgment and decree has error apparent on the face of record and, therefore, the same is liable to be set aside; (ii) the learned trial court has failed to appreciate the facts and defence taken by the appellant in his written statement and totally ignored the facts and circumstances set out in the written statement and counter claim duly filed by

the appellant for defending his case; (iii) the learned trial court has exceeded its jurisdiction by passing the impugned judgment as there is no admission at all has been made by the appellant in his written statement; (iv) the learned trial court has failed to consider that respondent no.1 approached the appellant and after due negotiations and discussions agreed to enhance the rent and thereafter duly accepted the enhanced rent in the sum of ₹ 33000/- and also consented to extend the lease for another period of three years; and (v) the respondents had also agreed to reduce the fresh terms into writing. Counsel for the appellant next contends that when the respondents failed to sign the fresh lease the appellant by a legal notice dated 9.5.2008 called upon the appellant to sign the fresh lease failing which the appellant would institute a suit for specific performance, which was filed as a counter claim.

9. In support of his plea that the lease stood extended, counsel for the appellant submits that by acceptance of the enhanced rent, the intension of the respondents would become clear which fact has been completely ignored by the learned trial court.
10. Mr. A.K. Vashishta, learned counsel for the appellant, submits that learned trial court has failed to appreciate that to pass a judgment on admission, the admission should be clear, unequivocal, unambiguous and explicit, but appellant has not

made any admission on the basis of which the learned trial court has passed the impugned judgment. It is also submitted that in view of Section 116 of the Transfer of Properties Act the lease would stand extended and the notice to quit would stand waived as per Section 113 of Transfer of Prosperities Act.

11. In support of his submission counsel for the appellant relies upon *Bhuneshwar Prasad and another vs. United Commercial Bank and others*, reported at AIR 2000 Supreme Court 2796; *K. Anjanakumari v. Bhavani*, reported at AIR 2007 (DOC) 138 (MAD.); *Jacob Philip vs. State Bank of Travancore and others*, reported at AIR 1973 Kerala 51 (V 60 C 18); and *The Municipal Committee vs. Pyare Lal Rikhi Ram and others*, reported at AIR 1974 Punjab & Haryana 239 (V 61 C 81). In support of his contention that the admission shall be clear and unambiguous counsel for the appellant has relied upon *State Bank of India vs. M/s Midland Industries and others*, reported at AIR 1988 Delhi 153; and *Raj Kumar Chawla vs. M/s Lucas Indian Services*, reported at AIR 2006 Delhi 266.
12. Counsel for the appellant submits that the judgment sought to be relied upon by the trial court in the case of *Robin Sahwney vs. R.B. Singh*, reported at 2008 DLT 440 (DB) wherein it has been held that while dealing with an application under Order XII Rule 6 CPC the Court is to consider only three aspects is not applicable to the facts of this case.

13. Learned counsel for the respondents submits that the present appeal is a gross abuse of the process of the Court. It is contended by Mr. Goel, counsel for the respondents, that appellant has not denied the execution of a registered lease deed dated 2.3.2005. As per the lease deed, the premises, in question, were let out to the appellant for a period of three years at the rent of ₹30,000/-, per month. As per Clause 3 of this lease deed, the appellant was to deposit a sum of ₹90,000/-, equivalent to three months' rent, as an interest free security deposit, to be refundable to the lessee at the time of vacation of the premises, subject to the deduction for any damages/breakages to the premises or adjustment relating to the unpaid rent or electricity and water charges, if any. Counsel for the respondent further submits that one year lock-in period was fixed as per Clause 5 and further as per Clause 15 of the lease deed, the lease could have only been renewed at the option of lessor i.e. the respondents herein with agreed enhancement in rent in writing and in case the lease was not extended any further the appellant was to hand over vacant peaceful possession of the premises to the lessor.
14. It is next submitted by counsel for the respondents that since the period of lease was coming to an end, the landlord (respondent herein) well before the period of the lease expired, issued a legal notice dated 8.1.2008 to the tenant (appellant herein), wherein the appellant requested the tenant

to vacate the premises failing which he would be entitled to recover damages @ ₹2000/-, per day, for the illegal use and occupation of the premises. Further the appellant was called upon to hand over vacant peaceful possession by 31.3.2008. The respondents replied to the legal notice by a communication dated 14.2.2008 wherein it was stated that parties had in fact agreed that the tenancy would automatically be extended for a further period of three years with an increase of 10% in rent till the time the appellant was in a position to purchase his own premises and to continue his business. The respondents were asked to withdraw the notice under reply and it was pointed out that they would pay rent @ ₹33,000/-, per month from 1.4.2008 onwards. The tenant appellant thereafter issued another communication to the landlord respondent on 9.5.2008 wherein it was stated that the appellant had approached the landlord and requested him to extend the lease for a further period of three years at an enhanced rent of 10%. It was also stated in the said communication that the appellant had tendered three cheques in the total sum of ₹33,000/- and the respondents were called upon to execute a lease deed for another period of three years. The respondents by a legal notice dated 14.5.2008 pointed out that after the expiry of the lease of 31.3.2008, respondents had become an unauthorized occupant and further that respondents had noticed through their passbooks

that the tenant had deposited ₹8,250/- in the account of Ms. Neelam Khurana and Mr. Sameer Khurana and ₹ 16500/- in the account of Mr. Prem Inderjit Khurana without their knowledge and consent. It was also pointed out that these amounts have been adjusted towards damages and without prejudice to their rights and pending cases. It was also made clear that since the amounts were deposited without their knowledge it cannot be construed that the tenancy stood extended, which has been terminated by them and for which a suit for possession has also been filed.

15. Learned counsel for the respondents submits that by issuing the notice to quit in the month of January, 2008 would itself show the intention of the respondents was not to extend the lease. Counsel further submits that mala fide intention of the appellant is writ large on the face of the record. After receipt of notice to quit, the appellant did not pay rent for the months of January to March, 2008, with a view to exhaust the security deposit which was paid equivalent to three months' rent. As per the terms of the lease the security deposit was to be refunded only at the time of vacation of the premises. The appellant did not pay rent for the months of January to March, 2008, knowing fully well that the period of lease had come to an end and with a view to make an adjustment of the security deposit, which was lying with the respondents. Counsel also submits that the submissions made by counsel for the

appellant that appellant had extended the lease are belied from the mere fact that in case there was any intention to extend the tenancy, firstly, the appellant would have continued to pay rent for the months of January, February and March, 2008, and would not have exhausted the security deposit and, secondly, if at all, the tenancy was to be extended, the parties would have entered into a fresh written lease agreement as contained in Clause 15 of the lease deed, thus the submission that lease was extended is baseless.

16. It is further submitted by Mr.Goel, counsel for the respondents that there was no occasion for the respondents to have accepted the rent at an enhanced rate after 31.3.2008 for the months of April and May, 2008, after issuance of the legal notice. It is further submitted that the appellant in a clandestine manner, without the consent, knowledge and concurrence of the respondents have deposited the cheques in their Bank accounts. It is also submitted that the arguments, sought to be raised by counsel for the appellant, that the respondents had accepted the rent is further belied from the fact that the respondents have purchased the Court fee for filing of the suit in the month of April, 2008, itself, and in fact the suit was filed on 30.4.2008 and the suit came up for hearing on 1.5.2008. It is submitted that the defence, sought to be raised by the appellant, is dishonest and only with a view to delay the adjudication of the matter and further with the

illegal object and design to stay in the premises after the expiry of the lease. It is stated that the law on this subject is well settled that if four basic conditions are satisfied the Court would be well within its right to pass a decree under Order XII Rule 6 CPC, which are (i) tenant-landlord relationship, which stand established by the execution of a registered lease deed, which has not been denied on payment of rent by the appellant to the respondent; (ii) rent of over ₹ 3500/-, this stand established by the fact that the agreed rate of rent of suit premises was ₹30,000/- and, thus, the case would not fall within the purview of Delhi Rent Control Act; (iii) notice to quit (this stands established in view of the fact that not only a notice was issued, it was received by the respondents and duly replied to); (iv) period of tenancy, which was 3 years as per the lease.

17. Learned counsel for the respondents submits that in this case the parties had entered into a registered lease and thus all the factors stand satisfied and thus the Court was well within its right to pass a decree under Order XII Rule 6 CPC. In support of his submission, counsel for the respondents has relied upon *Charanjit Lal Mehra and Ors. v. Smt. Kamal Saroj Mahaja & Anr.*, reported at JT 2005 (3) SC 213, and more particularly paras 5 and 8, which are reproduced below:

5. From the pleadings of the parties the trial court framed certain issues and when the case was at the stage of evidence an application under Order XII Rule 6 was filed

by the plaintiff on April 26, 2002 for passing a judgment on the admission made in the pleadings. This application was opposed by the defendants by filing a detailed reply and a plea taken was that it was not a joint tenancy and it was individual tenancy and each one of the tenants has to pay rent at the rate of Rs. 625/-. However, learned trial court did not decide this issue and felt that the same be decided after evidence was adduced and therefore, dismissed the said application. Aggrieved against the said order, a revision application was filed before the High Court and the learned Single Judge of the High Court after hearing the parties and examining the matter in detail came to the conclusion that the admitted facts are that (i) there existed the relationship of landlord and tenants between the parties which is created by the lease deed executed on 4th September 1997; (ii) notice of termination under Section 106 of the Transfer of Property Act has been duly served and notice for enhancement of rent from time to time under Section 6A of the Act had also been served; (iii) the rate of rent exceeded Rs. 3500/- per month when the notice under Section 106 of the Transfer of Property Act was served; (iv) the rent was always tendered on behalf of all four brothers and not individually on behalf of any of them. Learned Single Judge of the High Court examined the matter in detail and found that in fact there was a common/composite tenancy and not individual tenancy created in favour of four defendants each. Learned Single Judge also referred to certain communications referred to by appellants. One of the communications was of the date August 19, 1992 when a cheque for a sum of ₹ 42,500/- as arrears of rent was tendered to the respondent No. 1 plaintiff for the period from April 1, 1991 to August 31, 1992 and the cheque was signed by only one person i.e. Yashpal Mehra. In this connection, the plaintiff wrote a letter on September 17, 1992 that Yashpal Mehra is one of the tenants and he is not the only tenant. From this letter an argument was sought to be raised that this was not a composite tenancy but it was an individual tenancy. The learned Judge rightly commented that the letter did not indicate that there were separate tenancies. In fact, in the said letter, Yashpal Mehra was described as a co-tenant. Subsequently when a cheque for a sum of Rs. 60,000/- was sent as rent for the period from April 1, 1991 to May 31, 1993 the same was accepted by the landlady vide receipt dated May 24, 1993. This cheque was tendered on behalf of the four brothers. Therefore the argument is advanced on the basis of the letter dated September 17, 1992 that it is not a case of admission as the plaintiff

herself treated it as a separate tenancy. The learned Single Judge examined the matter and found that this subsequent cheque of Rs. 60,000/- was sent on behalf of four brothers. Therefore, one isolated letter does not change the character of the tenancy and accordingly, learned Single Judge found that there is admission on the part of the defendants that there is a joint tenancy and the rent exceeded more than Rs. 3500/-. Therefore, on the admission of the defendants, learned Single Judge accepted the application under Order XII Rule 6 C.P.C. and passed a decree for eviction. Aggrieved against the said order, the present Special Leave Petition has been tiled.

8. Learned counsel made an alternative submission that the revision petition was not maintainable and the lease deed is not registered one and therefore, it is not maintainable. None of these objections were raised by the defendants before the learned Single Judge. Even before the trial court, the non-registration of lease deed (which did not prescribe any term) was not put in issue, it is only devised now to some how defeat and delay the eviction and possession of the premises to the landlady. In fact, Order XII Rule 6, C.P.C. is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute; then, in such a case in order to expedite and dispose of the matter such admission can be acted upon, in the present case, looking at the terms of lease deed, there can be no two opinions that the tenancy was joint/composite and not individual one. Therefore, on these admitted facts the view taken by learned Single Judge of the High Court appears to be justified. In this connection, a reference may be made to a decision of this Court in the case of ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India and Ors.***, reported at JT 2000 (9) SC 78. Their Lordships have held as follows:

"in the Objects and Reasons set out while amending Rule 6 of Order 12 CPC it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on Admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the" relief to which according to the admission of the defendant, the plaintiff is entitled."

The Supreme Court should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment"

Therefore, in the present case, as appearing to us, there is a clear admission on behalf of the defendants that there existed a relationship of landlord and tenants, the rent is more than Rs. 3500/-and the tenancy is joint and composite one. As such on these admitted facts, there is no two opinion in the matter and the view taken by the learned Single Judge of the High Court appears to be correct and there is no ground to interfere in this Special Leave Petition and the same is dismissed.

18. Counsel for the respondents has further relied upon in the case of *Rohini Varshnei v. R.B. Singh*, reported at 155 (2008) DLT 440 (DB) and more particularly para 10, which is reproduced below:

10. It is trite to say that in order to obtain a judgment on admissions, the admissions must be clear and unequivocal. In the matter of landlord and tenant, there are only three aspects which are required to be examined:

- i) A relationship of landlord and tenant;
- ii) Expiry of the tenancy by afflux of time or determination by valid notice to quit; and
- iii) The rent of the premises being more than Rs. 3,500/- per month in view of the provisions of the said Act.

19. Counsel for the respondents has also relied upon *Sharex Acting through Vinod Kumar Chadha v. Sudershan Suri*, reported at 170 (2010) DLT 600; *Sarup Singh Gupta v. S. Jagdish Singh & Ors.*, reported at 128 (2006) DLT 534 (SC); *Shanti Prasad Devi and Another v. Shankar Mahto and Others*, reported at (2005) 5

SCC 543; and *H.G. Gupta & Sons v. Silvertone Motors Pvt. Ltd. & Ors.*, reported at 148 (2008) DLT 441.

20. Counsel for the respondents has relied upon the case of *Sharex Acting Through Vinod Kumar Chadha v. Sudershan Suri*, reported at 170 (2010) DLT 600, more particularly para 20, which reads as under:

“20. To conclude, in the instant case the execution of the lease deed has been unequivocally admitted by the appellant. Once the execution of the document has been admitted, Sections 91 and 92 of the Evidence Act, come into play. Section 91 lays down that when the terms of a contract or of any other disposition of property have been reduced to the form of a document, no evidence shall be given in proof of the terms of such contract or other disposition of property, except the document itself. Section 92 further lays down that when the terms of any such contract or other disposition of property have been proved according to the last Section, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument for the purpose of contradicting, varying, adding to or subtracting therefrom. Thus, quite obviously, the pleas raised by the appellant against the contents of the lease deed are barred by Sections 91 and 92 of the Evidence Act and appear to have been made only for the purpose of delaying the trial of the case. Such pleas as ruled by this Court in the *Parivar Seva Sansthan case (supra)* can be ignored by the Court while adjudicating an application under Order XII Rule 6 CPC if otherwise the Court finds, either on an application of any party or on its own motion, that the admissions made in the pleadings or otherwise taken as a whole justify the passing of a decree thereon. In fact, the Court in the said case has gone so far as to say that even a constructive admission firmly made can be made the basis of the decree. All that the Court is required to do is to satisfy itself that the question raised in the suit can be determined without evidence. The Court having satisfied itself, there does not appear to be any justifiable reason why the appellant should be allowed to enjoy the premises of the respondent without payment of rent to the respondent, more so, as his own case is that he was permitted to stay for a period of three years only without rent. The

said three years admittedly came to an end on 1st December, 2003. The occupation of the respondent of the suit property thereafter is not even sought to be justified by the appellant himself. In the instant case, insofar as the respondent-plaintiff has prayed for the recovery of the sum of Rs. 4,03,519/- and other reliefs are concerned, the trial court has yet to frame issues on the rest of the reliefs and the parties thereafter shall be allowed to adduce evidence in support of their respective cases.”

21. Counsel for the respondents has relied upon in the case of *Sarup Singh Gupta v. S. Jagdish Singh & Ors.*, reported at 128 (2006) DLT 534 (SC), more particularly para 7, in support of his submission that even after termination of the tenancy if rent is accepted that by itself would not amount to extension of leave. Para 7 reads as under:

“7. A somewhat similar situation arose in the case reported III (2005) CLT 1 (SC)+2005 (5) SCC 543. That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was urged on behalf of the tenant in that case that Section 116, Transfer of Property Act was attracted and there was a demand renewal of the lease. Negating the contention, this Court observed that mere acceptance of rent for the subsequent months in which the lessee continued to occupy the premises even after the expiry of the period of the lease, cannot be said to be a conduct satisfying his assent to the continuing of the lease even after the expiry of the lease period. Their Lordships noticed the conditions incorporated in the agreement itself, which provided for renewal of the lease and held that those conditions having not been fulfilled, the mere acceptance of rent after expiry of period of lease did not signify assent to the continuance of the lease.”

22. Counsel for the respondent has relied upon *Shanti Prasad Devi and Another v. Shankar Mahto and Others*, reported at (2005) 5 SCC 543, more particularly para 19, which reads as under:

“19. The lessor in the present case had neither expressly nor impliedly agreed for renewal. The renewal as provided in the original contract was required to be obtained by following a specified procedure i.e. on mutually agreed terms or in the alternative through the mediation of Mukhias and Panchas. In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was 'an agreement to the contrary' within the meaning of Section 116 of the Transfer of Property Act. In the face of specific clauses (7) & (9) for seeking renewal there could be no implied renewal by 'holding over' on mere acceptance of the rent offered by the lessee. In the instant case, option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was “holding over” as a lessee within the meaning of Section 116 of the Transfer of Property Act.”

23. Counsel for the respondent has relied upon *Yashbir Sharma v. Sulakshna Lal*, reported at 2005 (118) DLT 52, more particularly paras 12 to 18, which read as under:

“12. It was contended by learned Counsel for the Appellants that respondents Nos.1 to 4 have been accepting the rent tendered to them and, therefore, a fresh tenancy had been created in favour of appellant No.1 or, in any case, it was a case of appellant No.1 becoming a tenant by holding over in terms of Section 116 of the Transfer of Property Act, 1882.”

13. I am afraid the position both on facts and in law does not support the contention of learned counsel for the Appellants.

14. The principal judgment on the subject is *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and another*, (1949) FCR 262. It has

clearly been held in that case that acceptance of rent must be acceptance of rent as such and in clear recognition of a tenancy right asserted by the person who pays it. This is essentially a question of fact as was noted by the Federal Court on page 277 of the Report where it was found on facts that the money paid by defendants No.2 and 3 therein to the plaintiff therein was not only paid as rent but was also received as rent. On this basis, it was held that a monthly tenancy came into existence under the provisions of Section 116 of the Transfer of Property Act.

15. In Bhuneshwar Prasad and Anr. v. United Commercial Bank and Ors., : AIR2000SC2796, the Supreme Court accepted the extended principle laid down in Ganga Dutt Murarka v. Kartik Chandra Das, [1961]3SCR813 that apart from an express contract, the conduct of the parties may undoubtedly justify an inference that a fresh tenancy has been entered into between the parties. In that case, there was a payment of increased rent and, therefore, on the facts of that case it was held that a fresh tenancy had been created.
16. Learned counsel for the Appellants also relied upon Smt. Kanta Manocha v. M/s. Hindustan Paper Corporation, 74(1998)DLT493, Ram Kishore v. Ambika Prasad, AIR 1966 All 515, Gurcharan Singh Jodh Singh v. Chairman, Delhi Improvement Trust, New Delhi, and Tayabali Jaferbhai Tankiwala v. M/s Asha & Co. & Anr., [1970]2SCR554 in support of his contention. These decisions essentially follow the principle laid down in Kai Khushroo.
17. The facts of the present case, therefore, take on considerable importance for deciding whether a fresh tenancy was created in favor of Appellant No.1 or if Appellant No.1 became a tenant by holding over.
18. The admitted position is that on 10th July, 1991 a notice was given to Appellant No.1 to vacate the suit premises, in view of the fact that the period of one year for which he was entitled to retain the premises was due to expire on 12th August, 1991. In view of this, it cannot be said (unless there is something quite substantial to the contrary) that Respondents No.1 to 4 had any intention of initiating a relationship of landlord and tenant with Appellant No.1.

19. It is true that rent was being paid by appellant No.1 to respondent Nos.1 to 4 and that they were unreservedly accepting this amount, but I do not think this fact by itself would indicate that a new relationship had developed between appellant No.1 and respondent Nos.1 to 4 and he was under an obligation to pay for its user. On the other hand, respondent Nos.1 to 4 had no real option but to accept the amount tendered by appellant No.1 because refusal would have unnecessarily opened a new arena of dispute. It is perhaps in view of this that neither appellant No.1 insisted on any rent receipt nor did respondent Nos.1 to 4 issue any rent receipt to him. There was, under the circumstances, no clear intention of the parties to treat the payments made by appellant No.1 as rent for use and occupation of the suit premises. This is a concurrent finding of fact arrived at by both the Courts below."
24. I have heard counsel for the parties and given my thoughtful consideration to the matter. Counsel for the appellant has assailed the judgment and decree passed by learned trial court basically on two grounds. Firstly, in view of the defence raised by the appellant in his written statement and in view of the fact that there are no clear unequivocal or unambiguous admissions in the written statement the suit of the respondents could not have been decreed under Order 12 Rule 6 of the CPC. The main thrust of the argument of counsel for the appellant is that parties extended the lease upon mutual understanding and the rent was also increased from ₹30,000/- to ₹33,000/- for another period of three years; and that the rent for the months of April 2008 and May, 2008 at the enhanced rates was accepted by the landlords. Thus the trial court should have framed the issues and decided the matter

on merits. While relying upon the *State Bank of India vs. M/s Midland Industries and others*, reported at AIR 1988 Delhi 153, counsel for the appellant has submitted that the judgment on admission is not a matter of right and defendant who raises objections which go to the root of the matter, cannot be decided on an application under Order 12 Rule 6 of the CPC.

25. Counsel for the appellant has placed reliance on *Raj Kumar Chawla vs. M/s Lucas Indian Services*, reported at AIR 2006 Delhi 266 wherein the Division Bench of this Court has held that “it is also settled principle of civil jurisprudence that judgment on admission is not a matter of right and rather it is a matter of discretion of a Court. Where the defendant has raised objection which will go to the root of the case, it will not be appropriate to exercise this discretion.....”.
26. Strong reliance has been placed by learned counsel for the appellant on the case of *Bhuneshwar Prasad and another vs. United Commercial Bank and others*, reported at AIR 2000 Supreme Court 2796. The observation of the Supreme Court relied upon by the counsel for the appellant are reproduced below:

“7. In *Bhawanji Lakhamshi and Ors. v. Himatlal Jamnadas Dani and Ors.* [1972 (1) SCC 388], again the question that came up for consideration was as to whether a fresh tenancy was created or not by acceptance of rent by the lessor after the termination of the tenancy by efflux of time. This Court declined the prayer to reconsider *Ganga Dutt Murarka's* case (supra) and held that acceptance by landlord from the tenant,

after the contractual tenancy had expired, of amounts equivalent to rent or amounts which was fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of Section 116 of the Transfer of Property Act. The present is not a case of acceptance of amounts equivalent to rent or amounts fixed as standard rent but acceptance of increased rent. It was also observed that "we do not say that the operation of Section 116 is always excluded whatever be the circumstances under which the tenant pays the rent and the landlord accepts it." The whole basis of Section 116 is that a landlord is entitled to file a suit for ejectment and obtain a decree for possession and, therefore, his acceptance of rent after expiry of lease is an unequivocal act referable to his desire to assent to the tenant continuing possession. It would be absent in cases where there are the restrictions as contemplated by Rent laws. In such cases, therefore, it is for the tenant where it is said that the landlord accepted the rent not as a statutory tenant but only as a legal tenant indicating his assent to tenant's continuing possession, to establish it.

8. In the present case, the bank from the conduct of the owners has established that the acceptance of increased rent was in token of owners assent to the bank continuing in possession after expiry of the lease, thereby creating lease from month to month within the meaning of Section 116 of Transfer of Property Act, 1882. The High Court has rightly reversed the judgment and decree of the trial court. Before parting we may make it clear that we are not concerned with the proceedings for fixation of the rent if pending before the appropriate authorities under the Act, as the same are not the subject matter of this appeal and the fixation of the standard rent and from when it is payable is a matter to be decided by the said authorities in accordance with law.

9. For the aforesaid reasons, we dismiss the appeal. The parties are, however, left to bear their costs."

27. At this stage, it would be useful to reproduce certain clauses of the registered lease agreement entered into between the parties. Clauses 4 and 15 read as under:

- “4. That the tenancy under the Lease Deed is initially for a fixed term of three years commencing with effect from 1.4.2005 upto 31.3.2008.
15. Unless the period of lease is extended on the sole discretion of the Lessor with agreed enhancement in rent in writing, the lease is for a fixed term of three years and would terminate on 31.3.2008, if not extended further as per clause 4 supra, Lessee would hand over vacant and peaceful possession of the premises to the Lessor. Any unauthorised occupation by the Lessee of the premises beyond the tenure of lease would attract penal rent @ Rs.2,000/- per day which the Lessee would not under legal obligation to pay to the Lessors on weekly basis for each day of unauthorised occupation till the premises is vacated together with reimbursement of collection cost and legal expenses incurred for effecting the recovery.”
28. As per the agreed terms and conditions the tenancy was for a fixed term of three years commencing from 01.04.2005 up to 31.03.2008. As per clause 15, unless the period of lease was extended which was at the sole discretion of the lessor with agreed enhancement in rent in writing, the lease was to be for a fixed term of three years and would terminate on 31.03.2008. This was the clear and explicit understanding between the landlords and the tenant. The discretion to extend the lease was with the landlords and the extension would be upon agreed enhancement of rent; and that the third important factor which was agreed upon was that the same would be in writing. Clause 15 further lays down a stipulation that in case the lease was not extended and the tenant did not hand over vacant peaceful possession, it would attract penal rent @ ₹2000/- per day. The respondent / landlords well

before the expiry of the lease on 08.01.2008 issued a legal notice to the appellant that they did not wish to continue the lease agreement and thus the premises be vacated on or before 31st March, 2008. Paragraphs 3, 4, 5 & 6 of the legal notice dated 08.01.2008 read as under:

- “3. That as per the terms and conditions of the Lease Agreement the tenancy could be terminated by giving two months notice in writing to other party after expiry of lock-in-period of one year. However, our clients are giving you the notice of termination of tenancy as abundant caution so that legal issue in this regard may not be raised subsequently.
4. That the Lease of the tenanted premises is going to expire on 31st March 2008 and our clients do not wish to continue the lease agreement further and thus the notice of termination of lease agreement is hereby given and after the expiry of the lease period as well as notice their shall be no relationship of landlord and tenant between you and our clients and the lease agreement shall stand terminated from the midnight of 31st March 2008 and 01st April 2008.
5. That in terms of the Lease Agreement you are requested to vacate the premises and handover the peaceful and vacant possession of the premises to our client failing which our client shall be entitled to recover the damages @ 2.5 lacs per month for the illegal use and occupation of the premises after the termination of tenancy and also after the expiry of the lease period.

We therefore, for and behalf of our clients call upon you to accept the notice of termination and handover the peaceful and vacant possession to our clients after 31st March 2008 failing which our clients shall be forced to initiate legal proceedings for eviction and recovery of damages at your sole risks, costs and responsibilities.”

29. By means of this legal notice the landlord had made his intention crystal clear. It was stated in the notice that even

though it was not necessary to issue any legal notice, notice was being issued by way of abundant caution so that a legal issue in this regard may not be raised subsequently. The appellant was further put to notice that in case vacant possession of the premises is not handed over, they would be liable for damages @2.50 lacs per month. The mala fide intention and dishonest in its approach is evident from the shifting stand taken by the appellant. The appellant in his reply dated 14.02.2008 to the legal notice has stated that at the time of execution of the lease, parties had agreed that the lease would be automatically extended for a further period with increase of 10% rent and till such time the appellant is in a position to purchase his own premises, to continue his business. This understanding is most absurd, nor does it find mention in the registered lease deed. The appellant also called upon the respondents to withdraw legal notice and extend the lease and accept the enhanced rent @ ₹33,000/- per month. The respondent being sure and firm in their intention not to renew the lease and as per the notice issued, without loss of any time purchased the Court fee in the month of April, 2008, itself and filed the present suit on 30.04.2008 which was listed before the Court on 01.05.2008.

30. According to counsel for the appellant, respondents / landlords accepted the enhanced rent which is disputed by the respondents and it has been stated that the appellant has

without their consent, concurrence or knowledge deposited the cheques in their bank accounts. This submission of counsel for the appellant is without any force, in view of the undisputed sequence of events, the conduct of the respondent and also the terms of the registered lease deed more particularly, clauses 4 and 15 of the lease deed. The intention of the landlord not to extend the lease is evident from the following factors (i) issuance of a legal notice almost three months prior to the expiry of the lease; (ii) purchase of court fee in April, 2008; and (iii) filing of the suit at the earliest, in April 2008, and suit listed in court on 1.5.2008; iv) no written document executed, in no way gives the impression by their conduct or on the basis the documents placed on record that there was any intention to extend the lease.

31. The appellant has failed to satisfy this court that a new relationship had developed between the appellant and the respondent in writing or by conduct to extend the tenency. While in the case of *Bhuneshwar Prasad and another (Supra)*, by the conduct of the parties inference was drawn that the fresh tenency has been created.
32. The facts of the case have been noticed by the Supreme Court in paras 2 and 3 of *Bhuneshwar Prasad and another (Supra)*, which are reproduced below:

2. A suit seeking a decree of eviction of the bank from the premises was filed by the owners. It has been, inter alia, alleged in the plaint that the bank was inducted as a tenant in the premises for a fixed period

of five years commencing from 1st April, 1981 to 31st March, 1986 through a registered deed of lease. The bank was given an option to get the lease renewed for two terms of five years each provided it gives notice for renewal of the lease each time one month prior to the expiration of the period of lease. The bank exercised this option one month prior to 31st March, 1986 and accordingly the lease was renewed for the period from 1st April, 1986 to 31st March, 1991 at a monthly rent of Rs. 10,876/-. It seems that before 31st March, 1991, the bank did not exercise option for renewal of the lease. The bank was asked to vacate the premises by 31st May, 1991 under plaintiff's letter dated 22nd April, 1991. Now, the bank by letter dated 24th April, 1991 requested the plaintiffs for renewal of lease but the plaintiffs did not agree and requested for vacation of the premises. It has also been stated in the plaint that after expiry of lease on 31st March, 1991, the bank used to deposit the rent in the account of the plaintiffs in their branch but that was without their consent and mere payment of rent without consent would not create any fresh tenancy. Under the aforesaid circumstances, the owners sought eviction of the bank on the sole ground of expiry of the period of the lease under clause (e) of sub-section (1) of Section 11 of Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (for short 'the Act').

3. The suit was resisted by the bank, inter alia, pleading that the bank has been in occupation of the premises as tenant since 1963 and from time to time the rent has been enhanced. The bank has claimed to be a tenant month to month. The bank pleaded that it regularly deposited the rent in the account of the plaintiffs and they were withdrawing the rent so deposited every month after 31st March, 1991 at the enhanced rate of rent of Rs.13,595/- per month in place of Rs.10,876/-. The bank pleaded that the amount is being paid as monthly rent as per its letter dated 7th September, 1991 addressed to the owners and after discussion, they agreed to receive the said enhanced rent and are withdrawing the same. It has thus been claimed that the bank is not tenant for any fixed term period but is a monthly tenant.

33. A careful reading of the facts would show that the Bank not only deposited the enhanced rent in the account of the landlord but the owners agreed to receive the enhanced rent

and were withdrawing the same. Whereas in the present case the enhanced rent was deposited in the bank of the landlords, without their consent, which is evident from the fact that no receipts were issued by the landlords. The rent deposited was never withdrawn by the landlords. There is nothing to indicate that respondents agreed to the continuance of the appellants in the suit property. This consent should be evident from the conduct of the parties while in this case the landlords have from the very inception of the tenancy followed the due process of law by entering into a written registered lease deed. The landlords by way of abundant caution and much prior to the expiry of the lease issued a clear legal notice showing their intention not to extend the lease. The tenant was also put to notice that in case he did not vacates within the time allowed, he would be liable to pay damages @₹2.50 lacs per month. The intention of the landlords to have the premises vacated is also evident from the conduct of the landlords who without any loss of time issued notice, purchased the court fee in the month of April, 2008 and filed a suit for ejectment in April, 2008 itself. The tenor of the legal notice dated 08.01.2008 leaves little or no room for doubt that the respondent did not want to extend the terms of the lease. Another relevant fact which is to be taken into consideration is that the appellant on receipt of the legal notice did not pay the rent for the last three months i.e. of January, February and

March, 2008 with a view to adjust the refundable security deposit. In case there was any intention on the part of the respondent to extend the terms of the lease or in case there were any negotiations the appellants would not have stopped paying rent nor would have adjusted the same from the security deposit, but would have paid the security deposit at the fresh rate. The appellant issued a legal notice to the respondent on 09.05.2008 wherein the landlords were called upon to enter into a fresh lease, which would show that no lease was executed till May, 2008. Paragraph 4 of this legal notice reads as under:

“4. That vide legal notice dated 08.01.2008 sent through your lawyer, you called upon my client to handover the possession of the demised premises to you as the lease was going to expire on 31st of March, 2008 by the efflux of time and adjusted the refundable security amount of Rs.90,000/- against the rent for three months i.e. January, February and March, 2008, which was given to you at the time entering into a lease contract.”

34. In para 4 of this notice it has been stated that the landlords had adjusted the refundable security deposit of Rs.90,000/- against rent for three months i.e. for January, February and March, 2008 which was given at the time of entering into a lease contract. It is not understood as to how the respondent could have adjusted the security deposit and what prevented the appellant/ tenant from making the payments of rent for three months in case parties had decided to extend the terms

of the lease. Thus it is clear that with view to secure the sum of Rs.90,000/- paid to the respondent as a security deposit equivalent to 3 months rent, the appellant did not pay rent for the months of January, February and March, 2008. Thus the defence, sought to be raised, that respondents agreed to renew the lease is patently false. It is only as an afterthought that the appellant deposited the rent for the months of April and May, 2008 in the accounts of respondents. Thus the judgment sought to be relied upon by counsel for the appellant is not applicable to the facts and circumstances of this case as the appellant has miserably failed to establish that the respondents had by their conduct or otherwise agreed to extend the lease.

35. Taking into consideration the terms and conditions of the lease deed, the legal notice issued by the respondents to the appellant and also taking into consideration that the suit was filed by the landlord at the earliest, leaves no room for doubt that the respondent had neither expressly nor impliedly agreed for renewal. Even otherwise, as per clause 15 of the lease deed, the renewal could only have taken place at the option of the respondents on agreed terms of rent and by a written agreement. In the present case, the execution of the lease deed has been unequivocally admitted by the appellant. The relationship of the landlords and tenant has also been admitted. The rate of rent has been admitted; and that not

only the receipt of legal notice dated 08.01.2008 has been admitted, but even a reply has been issued by the appellant. Based on the application of the respondent under Order 12 Rule 6 CPC the admission made in the pleadings and even otherwise it is a fit case which justifies the passing of the decree. No defence, which requires leading evidence, has been raised. I find no merit in the appeal and the same is accordingly dismissed.

September 28, 2010
'msr/ssn'

G.S. SISTANI, J.