

REPORTED

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

% DATE OF RESERVE: March 10, 2010

DATE OF DECISION: April 06, 2010

+ RFA 455/2009 and CM Nos.17330/2009 and 2624/2010

MRS. ANITA MEHRA Appellant
Through: Ms. Gita Luthra, Sr. Advocate with
Mr. Shekhar G. Dewasa, Advocate.

versus

SH. D.K CHABLANI & ANR Respondents
Through: Mr. Jos Chiramel and Mr. Ramesh
Kumar, Advocates for the
respondent No.1.
Mr. Vikas Kakkar, Advocate with
Mr. Ranjeet Kumar, authorized
representative of the respondent
No.2.

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

: REVA KHETRAPAL, J.

1. This appeal arises out of the impugned judgment and decree dated 04.11.2009 passed by the learned trial court in Suit No.641/2009, wherein the learned trial court has allowed the application of the respondent No.1–landlord, filed under Order XII Rule 6 of CPC and passed a decree of eviction against the appellant, while keeping the

issue in respect of damages and mesne profits pending for further adjudication.

2. The facts of the case relevant for the disposal of the present appeal are as follows.

3. The respondent No.1 is the landlord owning the suit premises which are occupied by the appellant. The respondent No.1 filed a suit for possession, damages and permanent injunction in respect of its premises being a flat on the second floor of house No.3/9, Sarvpriya Vihar, New Delhi, comprising of two bedrooms with attached bathrooms, a drawing-cum-dining room, kitchen, balconies and a servant quarter on the third floor.

4. The respondent No.2, which is a private limited company, had taken on lease the aforesaid premises for the specific residential use of one of its employees, viz., the appellant Mrs. Anita Mehra, arrayed as defendant No.2 in the suit vide lease agreement dated 24.08.2006, for three years, at the rate of Rs.17,500/- p.m. The said lease agreement was admittedly an unregistered document. The rental of Rs.17,500/- p.m. was deducted by the respondent No.2 from the appellant's salary every month, and a cheque was then issued to the respondent No.1 by the respondent No.2, after deduction of TDS by the respondent No.2.

As per the terms agreed upon between the respondents No.1 and 2, the lease would automatically be terminated in the event of the appellant leaving the employment of the respondent No.2.

5. In December, 2008, the respondent No.1 was duly informed by the respondent No.2 that the appellant was no longer in their employment and that the lease was being terminated with effect from 16.01.2009. At the request of the respondent No.2, however, the respondent No.1 conceded to the prayer for further time till 31.03.2009 without prejudice to his rights. The appellant having failed to handover vacant possession of the suit premises to the respondent No.1, the respondent No.1 is saddled with a situation where neither the premises have been vacated nor any rent is being paid by the appellant. Hence the suit for possession and damages, etc. filed by the respondent No.1 against the respondent No.2, to which the appellant was later on added as a party defendant.

6. It is a matter of record that the defence of the appellant was struck off for want of payment of arrears of rent by an order dated 15.10.2009 passed by the learned trial court. By the same order, the learned trial court passed a decree for eviction against the respondent No.2, as the respondent No.2 had no objection to the same. An

application was thereupon filed by the appellant for recall of the order dated 15.10.2009, which was considered by the learned trial court along with the application under Order XII Rule 6 CPC filed by the respondent No.1 praying for a decree of eviction against the appellant. A composite order was passed in both the applications viz., the impugned order.

7. The admitted case of the parties is that at no point of time rent was ever accepted by the respondent No.1 from the appellant and the appellant was put in possession of the suit premises by the respondent No.2. It is also the admitted case of the parties that the appellant was employed with the respondent No.2 since October, 2001 and due to her inability to find any accommodation, she sought the assistance of the respondent No.2 with respect to a company lease. The respondent No.2 agreed to the same by providing her a company lease in the premises chosen by her vide lease agreement dated 24th August, 2006. Admittedly also, the respondent No.2 terminated the appellant's services with effect from 10th December, 2008 and settled her account on 27th February, 2009. In December, 2008, as stated above, the respondent No.1 was duly informed by the respondent No.2 that the appellant was no longer in their employment and the lease was being terminated with

effect from 16.01.2009.

8. The appellant in the written statement filed by her also did not dispute the fact (as indeed she could not have), that the lessor-lessee relationship existed only between the respondent No.1 and the respondent No.2, and being the employee of the respondent No.2 she was granted the right to stay in the demised premises. In her written statement, the appellant also did not deny that she is currently not in the employment of the respondent No.2 and that the respondent No.2 had terminated her services and settled her account on 27th February, 2009. It is further admitted by her that the said termination was to be with effect from 10th December, 2008.

9. It is, however, submitted by the appellant that at the time of settling the account she had requested the respondent No.2 to deduct the rental moneys till end August, 2009 from the full and final settlement of her dues and to issue a cheque to the respondent No.1, so that she could continue to stay at the demised premises. However, the respondent No.2 did not agree to this request, as they said that the respondent No.1–plaintiff had refused to receive a cheque from the appellant and, the respondent No.2 is not willing to issue a cheque to the respondent No.1 after the full and final settlement of the appellant's

account. In fact, it has been stated by her in the written statement that the respondent No.2 asked her to deal with the respondent No.1/plaintiff/landlord directly, which she did. It is further the case of the appellant that the respondent No.1 even stated to her that since the appellant was moving to USA, the respondent No.1 had no objection to her staying in the suit premises till the end of August, 2009, provided his rental cheque was given to him through the respondent No.2. The appellant thereby admits that rent was never accepted from her by the respondent No.1.

10. By the impugned order, the learned trial court held that the plaintiff/respondent No.1 was entitled to a decree under Order XII Rule 6 CPC against the appellant also and, the only other contentious issue was with regard to the damages/mesne profits and arrears of rent. The learned trial court, therefore, proceeded to frame the following issues:-

- “(i) Whether the plaintiff is entitled to any arrears of rent/damages? If so, from which defendant and how much and for what period?*
- (ii) Relief.”*

11. In the course of hearing of the appeal before this Court, a number of submissions were made by Ms. Gita Luthra, the learned senior counsel for the appellant, which are as follows:-

- (i)** The lease deed executed between the respondents is not in

accordance with law as is evident from a bare reading of Section 107 of the Transfer of Property Act, 1882. A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument. The lease dated 24th August, 2006 for three years commencing from the first day of September, 2006 and expiring on 31st August, 2009, is not a registered document as is clear from the order of the learned trial court. The Supreme Court in the case of **Anthony vs. K.C. Ittoop & Sons & Ors.** reported in **2000 (6) SCC 394** relying upon its earlier decision in **AIR 1958 SC 532** has held that an unregistered instrument required to be compulsorily registered by virtue of Section 107 of the Transfer of Property Act read with Section 17(1)(d) and Section 49 of the Indian Registration Act, 1908 cannot create a lease. In the decisions rendered in **Chemical Sales Agencies vs. Smt. Naraini Newar, AIR 2005 Delhi 76** also, the law has been stated to be that an unregistered lease agreement for a term exceeding one year is inadmissible in evidence to prove the transaction of

lease by virtue of the provisions of Section 17(1)(d) read with Section 49 of the Registration Act.

(ii) The appellant is the **actual** tenant of the suit premises on account of her salary being deducted by the respondent No.2 towards rental charges for the demised premises, and only thereafter was there a cheque issued by the respondent No.2 to the respondent No.1. Even otherwise, the electricity and water charges are paid by the appellant directly to the electricity provider and the respondent No.1 respectively.

(iii) There was no verbal/written notice issued to the appellant prior to the filing of the suit by either the respondent No.1 or the respondent No.2 terminating the lease as required by Section 106 of the Transfer of Property Act, though it is the appellant who is residing at the suit property. Reliance in this regard was placed by Ms. Luthra, the learned senior counsel for the appellant on the decision rendered in ***Smt. Kanta Manocha vs. M/s. Hindustan Paper Corpn., 74 (1998) DLT 493***, wherein it is laid down that if after the termination of lease, the lessee continues in

possession and the landlord accepts rent from such person or otherwise expresses assent to the continuation of his possession, a new tenancy comes into existence as contemplated by Section 116 of the Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 106 of the Act.

- (iv) There are monetary dues that need to be settled by the respondent No.2 towards the appellant regarding her employment and the termination thereof and the respondent No.2 owes a huge sum of money to the appellant, including the security charges of Rs.35,000/- which are to be refunded by the respondent No.1 upon possession of the property from the appellant and proof of payment of the electricity and water bills in full.
- (v) It is the respondent No.1's own admission in the trial court that subsequent to the respondent No.2's letter dated 23rd February, 2009, the respondent No.1 allowed possession of the premises for a further period of two months, i.e., till

the end of April, 2009, “without further renewing the lease and the money for the extended period was accepted as use and occupation charges”, thereby admitting to a verbal agreement with regard to the lease of the rented premises. Resultantly, there was a novation of the lease agreement dated 24th August, 2006 and an oral tenancy from month to month came into existence, thereby creating a jural relationship between the appellant and the respondent No.1. The respondent No.1 acknowledged the appellant as a tenant under Proviso 4 to Section 92 of the Indian Evidence Act. Reliance in this regard was placed by Ms. Luthra, the learned senior counsel for the appellant on the decisions rendered in *Niranjan Kumar and Ors. vs. Dhyan Singh and Anr., (1976) 4 SCC 89* and *B.R. Mulani vs. Dr. A.B. Aswathanarayana and Ors., AIR 1993 Kant 257*.

- (vi) There is no categorical admission made by the appellant in the written statement filed by her, which could justify the passing of a decree under Order XII Rule 6 CPC by the learned trial court. The Hon'ble Supreme Court in the case

of ***Dudh Nath Pandey (dead) by LRs vs. Suresh Chandra***

Bhattasali (dead) by LRs reported in **1986 (3) SCC 360**

has held that “*The admission must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other*”.

12. The learned counsel for the respondent No.1, Mr. Jos Chiramel in rebuttal contended that the appeal was liable to be dismissed in view of the fact that the appellant had nowhere disputed the findings recorded by the learned trial court in paragraph 7 of the judgment, which read as follows:-

“7. The plaintiff vide his application under order 12 R 6 CPC has prayed for a decree against defendant no.2 as her written statement does not dispute the facts that the lessor lessee relationship existed only between the plaintiff and defendant no.1, and being the employee of defendant no.1, she was granted the right to stay therein. She does not deny currently not being in the employment of defendant no.1. She further admits that rent was never accepted from her. As there was no lessor-lessee relationship between the plaintiff and defendant no.2, the plaintiff was not bound to address any notice or correspondence to her.

13. Mr. Jos Chiramel next drew the attention of this Court to the lease deed dated 24th August, 2006, which *inter alia* provides:-

“This Lease made on the 24th day of August,

2006 between **Mr. D.K. Chablani**, resident of A-1/136, Inderuri, New Delhi, 110012, hereinafter called the “**Lessor**” (which expression shall unless repugnant of the context or meaning thereof be deemed to mean and include his heirs, successors, legal representatives and assignees or the like) of the one part and **Connaught Plaza Restaurants Pvt. Limited**, a JV Company with McDonalds India Pvt. Limited, and having its registered office at 15th Floor Mohandev, 13 Tolstoy Marg, New Delhi-110001 (hereinafter called the “**Lessee**”, which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include his heirs, successors, legal representatives and assignees or the like) of the other part.

WHEREAS THE LESSOR is the owner of the premises known as 3/9, Sarvpriya Vihar, New Dehi-110017, having full and unfettered rights to lease out the same or any portion thereof at such terms and conditions as they may think fit.

AND WHEREAS THE LESSOR **has agreed to give on lease and Lessee has agreed to take on lease for the sole use and occupation of Mrs. Anita Mehra of the same company**, the entire said 2nd floor of the premises 3/9, Sarvpriya Vihar, consisting of 2 bedrooms, with attached bathrooms, drawing cum dining room, kitchen & balconies and a Servant Quarter on the 3rd floor, New Delhi-110017 and hereinafter referred to as “The Demised Premises”.

14. Mr. Chiramel also referred to Clause No.2 and Clause No.13 of

the lease deed, which, being apposite, are reproduced hereunder:-

Clause No.2

“2. That the Lessor has let out and the Lessee has taken on lease the demised premises

for a period of 3 years commencing from 1st day of September, 2006, and expiring on 31st August, 2009. In case Mrs. Anita Mehra leaves the service of Connaught Plaza Restaurants Pvt. Limited this lease will automatically stand terminated.”

Clause No.13

“That the premises shall be used exclusively for the purpose of residence of Mrs. Anita Mehra of Connaught Plaza Restaurants Pvt. Limited and her family members and in the event of her transfer or vacating the premises during the currency of this lease deed, the lessee shall be at the liberty to terminate this lease upon giving one month prior written notice or rent amount in lieu thereof to the lessor and shall not be required to pay the rent for the unexpired period of the lease. However, the amount of security deposit shall be refunded by the lessor to the lessee, on the vacation of the premises by the lessee subject to the clearing of last electricity and water bill. The lessor shall be at the liberty to terminate this lease if there is any breach of the lease deed agreement by giving the lessee an 3 month notice period after the expiry of the lock-in period of 1 year.”

15. The contention of Mr. Chiramel is that, the provisions of the lease deed coupled with the fact that it is the admitted case of the parties that the rent was being received by the respondent No.1 from the respondent No.2, make it abundantly clear that the jural relationship of landlord and tenant existed only *inter se* the respondent No.1 and the respondent No.2. The appellant was only an “interested party”, as is

borne out from her repeated use of the expression in the appeal filed by her before this Court. Admittedly also, the appellant was impleaded as a party to the suit by the respondent No.1 by amending the suit by way of abundant caution and thereupon summons directed to be issued to her by the learned trial court. The said summons were refused by the appellant and the appellant was accordingly proceeded ex parte on 14.07.2009. On 19.09.2009, however, the appellant filed an application for setting aside the ex parte order, which was allowed subject to payment of Rs.500/- as costs. The appellant though filed a written statement did not tender the costs. On 15.10.2009, the learned trial court decreed the suit against the respondent No.2 so far as possession is concerned on the admission of the respondent No.2 that the lease had been terminated by it. On the same day, i.e., on 15.10.2009, the appellant was directed to deposit the entire rent upto 1st April, 2009. The appellant refused to deposit the same and instead on 29.10.2009 filed an application for recall of the order dated 15.10.2009.

16. Mr. Jos Chiramel next pointed out that on the very next day, i.e., on 30.10.2009, the appellant as a counter-blast filed a suit bearing Suit No.1436/2009 before the Senior Civil Judge seeking permanent injunction from her dispossession. The learned counsel contended that

the order of the Senior Civil Judge dated 18.12.2009 makes it abundantly clear that the appellant had embarked upon a course of hoodwinking the Courts. The relevant portion of the said order of the Senior Civil Judge was referred to by the learned counsel, which reads as under:-

“The question which arises is whether the plaintiff is entitled for grant of discretionary relief of injunction in view of the present factual matrix. This court is quite disturbed by the attitude/the manner in which plaintiff has proceeded the case. Perusal of proceeding sheets show the matter was listed for 1/12/09 for service upon defendants. In between i.e. before next date of hearing, an application was filed for grant of stay order and the file was taken up on 5/11/09 at 2 PM. Advocate Mr. Devender Chaudhary on an affidavit submitted that the order of interim relief though passed by this Court but was not reflecting in order dated 3.11.2009. He further insisted upon disposal of his application for interim relief, stating the apprehension of dispossession of Plaintiff, without disclosing the judgment passed on 4.11.2009 by Ld. ADJ against Plaintiff.

In view of such situation, it has to be seen whether the plaintiff, who has indulged in so abusing the process of the courts, entitled to discretionary relief of injunction. It is settled position of law that a party which approaches the court, especially for ex-parte ad-interim relief is bound by duty to carefully place before the court all the facts, which may enable the court to consider the feasibility of grant of such relief.

The conduct of plaintiff is found wanting

in this regard.

The pleadings before the appellate court as well as the order Ld. A.D.J. filed by defendants clearly show the plaintiff, impleaded as defendant No.2 therein, whose defence was struck off for non payment of arrears of rent and her application for recalling of that order was found untenable. Strangely enough, plaintiff has not uttered even a word in her application before Ld. A.D.J. as to the alleged overtures, pornographic material allegedly displayed on M.D. of defendant No.2's laptop or about SMSs, physical displays or intimacy though the present plaint is replete with such averments, which was filed subsequently on 31.10.2009 before this court.

I also find the conduct of plaintiff, pressing upon ex-parte ad-interim status quo vide application on 05.11.2009, without disclosing the factum of judgment against her, entitling her for grant of any interim injunction. It also shows that it did not occur even to the advocate for plaintiff who has filed a false affidavit, stating thereunder the interim relief having passed on 03.11.2009 but not reflecting in the order sheet. No explanation has come for this.

From the overall surrounded (sic.) circumstances, it is clear that plaintiff is guilty of suppression of material facts and the application seeking interim relief is liable to be dismissed on the ground of concealment of facts alone.

In reply to the application of defendants, it is apparent that nowhere plaintiff states that she was not aware of the order/decreed passed on 04.11.2009 by Ld. A.D.J. It only mentions the said order having reserved as was not dictated on 04.11.2009 and became available on 12.11.2009. This itself clearly is an overt

act of “**fraud**” attempted to be played with court, which vitiates all the actions and the plaintiff conducting the same is not worthy of any benevolence or discretionary relief from the court. I am placing reliance upon the judgment in the case of **S.P. Chengalvaraya Naidu Vs. Jagannath and Ors., AIR 1994 SC 853** wherein it was held that the Courts of law are meant for imparting justice between the parties. One who comes to the Court must come with clean hands and provide entire information relevant to the litigation. In case **Satish Khosla Vs. M/s. Eli Lilly Ranbaxy Ltd. and Anr. 1998 (1) AD (Delhi) 927**, it has been held that a party that does not come to the Court with clean hands and suppresses material facts is not entitled to interim relief.

Having observed so, I feel the conduct of the Plaintiff is not above the board (sic.). The *ex parte* status quo order dated 5.11.2009 stands vacated. The applications are allowed. Pursuant to the observations passed by this Court as above, let a preliminary issue be framed for arguments:

1. Whether the plaintiff is entitled to any arrears of rent/damages? If so, from which defendant and how much and for what period?
2. Relief.

Put up for arguments on 23.4.2010. The earlier date 18.2.2010 is hereby cancelled.”

17. Mr. Jos Chiramel, the learned counsel for the respondent No.1 further submitted that the order dated 15.10.2009 passed by the learned trial court was not challenged by the appellant by filing of an appeal nor the appellant ever offered to pay rent. Reference was made by him in

this regard to the judgments rendered by this Court in **Surjit Singh vs. H.N. Pahiley, 65 (1997) DLT 22** and **Erum Travels vs. Kanwar Rani, 69 (1997) DLT 567**. In **Erum Travels (supra)**, the case debated on the permissibility of striking off the defence for non-payment of rent/damages under Section 151 and Order XXXIX Rule 10 of the Civil Procedure Code. A learned Single Judge of this Court held as follows:

“The combined effect of Order XII Rule 1 and Order XXXIX Rule 10 of the Code of Civil Procedure is that a Court can, in a case of this kind, in fair exercise of its judicial discretion order for deposit of money pending decision of a suit. Surely, the provisions of Section 151 of the Code of Civil Procedure can be invited in aid to cover all such cases as are analogous to these principles. This being the position, invocation of Section 151 in the present case would neither be in conflict with what has been expressly provided in the Code nor against the intention of the Legislature. Having reached the conclusion that there is jurisdiction to pass an order for deposit of arrears of rent under Order XXIX Rule 10, Civil Procedure Code and in case of default to pass an order under Section 151 Civil Procedure Code for striking out the defence, let us consider whether the said jurisdiction has been exercised lawfully in the instant case?”

On a civil revision appeal having been filed by **M/s. Erum Travels (supra)**, the appellate court affirmed the findings of the Single Judge, holding that:-

“It is apparent that the petitioner wishes to continue to enjoy the use and benefit of the premises without having to pay for the same. In these circumstances, the impugned orders would seem to be fully justifiable and do not warrant any interference in the exercise of revisional jurisdiction. The revision petitions have no merit and are dismissed.”

18. Mr. Chiramel also contended that a party who flouts the order of the Court is not entitled to be heard. He further contended that the contention of the appellant that it is a tenancy by holding over cannot be countenanced at the appellate stage. Once there is an admission emanating from the appellant's mouth, the need for trial is quite obviously obviated. Even otherwise, the tenancy after August, 2009, he stated, had expired by efflux of time. It was also contended by the learned counsel that the respondent No.1 had nothing to do with the employer-employee dispute and settlement of the dues of the appellant, if any by the respondent No.2 Company. This was a matter which was between the respondent No.2-employer and the appellant-employee. If the respondent No.2 owes huge sums of money to the appellant, the respondent No.1 is not concerned with the outstandings.

19. On a consideration of the submissions made by the parties' counsel on their behalf, this Court is of the view that the present appeal is a blatant abuse of the process of the Court. Clauses 2 and 13 of the

lease deed dated 24th August, 2006 make it abundantly clear that it was the respondent No.2 which was the tenant of the respondent No.1. The jural relationship of landlord and tenant existed only between the respondent No.1 and the respondent No.2 and as specifically stated in clause 2 of the lease deed, the lease deed was to expire on 31st August, 2009. In case, however, the appellant left the services of Connaught Plaza Restaurants Pvt. Limited (the respondent No.1) prior thereto, the lease would **“automatically stand terminated”**. The recital portion of the lease deed also clearly shows that the respondent No.1 was the lessor and the respondent No.2 was the lessee, who had agreed to take on lease the premises for the use of the appellant during the period of her employment with the respondent No.2. It was also clearly set out in the lease deed that the lessee would be at liberty to terminate the lease upon giving one month's prior written notice or rent amount in lieu thereof to the lessor. The amount of security deposit was to be refunded by the **lessor to the lessee** on the vacation of the premises by the lessee.

20. It is stated at the risk of repetition that the appellant in her written statement filed before the learned trial court has clearly stated that the respondent No.1 had provided her with the company lease in the premises chosen by her vide lease deed dated 24th August, 2006. This

admission coupled with the admission that her services had been terminated by the respondent No.2 and her account settled on 27th February, 2009 with effect from 10th December, 2008, clearly shows that there was no relationship of landlord and tenant between the appellant and the respondent No.1. The further admission made by the appellant as recorded in paragraph 7 of the judgment of the learned trial court that no rent was ever accepted by the respondent No.1 from the appellant at any point of time and not even during the period when the appellant continued to enjoy the premises after termination of the lease deed further bears out the fact that the appellant had no jural relation whatsoever with the respondent No.1. The averment of the appellant that she was allowed to continue to reside in the premises in dispute with the permission of the landlord, who told her that he had no objection to her staying at the said premises till the end of August, 2009, is also not borne out from the record. Had it been so, the respondent No.1 would not have instituted a suit for recovery of possession, damages, etc. on 05.05.2009. The institution of the said suit by the respondent No.1 for eviction on 05.05.2009 further goes to show that the landlord had every objection to the appellant residing in his premises. It is nowhere stated by the appellant that she was not aware

of the institution of the suit. As already stated, summons of the suit were refused by the appellant and she was proceeded ex parte. The said ex parte order was set aside on the condition of payment of costs, which costs have not been paid till date.

21. Then again, the appellant was directed by the learned trial court to deposit the entire rent upto 1st April, 2009 which she failed to deposit, resulting in her defence being struck off by order dated 15.10.2009. The appellant's contention that she was all along offering the rent which was being refused thus cannot bear scrutiny in view of the fact that the appellant has consistently refused to deposit the rent of the premises before the learned trial court and even before this Court. In fact, before this Court, an offer was made by the learned counsel for the respondent No.1 that he would keep on hold the execution petition till the disposal of the appeal before this Court subject to the appellant depositing her passport in this Court, as his apprehension was that the appellant would flee the country without clearing the arrears of rent/damages for use and occupation of his premises. The said offer was categorically declined by the appellant.

22. The contention of the appellant that she was entitled to a notice under Section 106 of the Transfer of Property Act in view of the settled

legal position that a tenancy cannot be terminated without service of notice to quit and the reliance placed by the appellant upon the decision of this Court in ***Kanta Manocha's*** case (*supra*) are misconceived. In the said judgment, relying upon the decision in ***Gooderham & Worts Ltd. vs. Canadian Broadcasting Corporation, AIR 1949 PC 90; Bhawanji Lakhamshi & Ors. vs. Himmatlal Jamnadas Dani & Ors., AIR 1972 SC 819; Kai Khushroo Bezonjee Capadia vs. Bai Jerbai Hirjibhoy Warden & Anr., AIR 1949 FC 124*** and ***Ganga Dutt Murarka vs. Kartik Chandra Das & Ors., AIR 1961 SC 1067 (1069)***, this Court held that where on the termination of the lease the lessee continues in possession and the rent is paid and accepted by the landlord, the tenancy is renewed as is contemplated by Section 116 of the Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 106 of the Act. The said judgment is clearly inapplicable to the facts of the present case. In the written statement, no plea of holding over has been taken by the appellant, as indeed the same could not have been taken in view of the fact that the appellant admitted in her written statement that the rent was being paid by her employer, the respondent No.2 and not by her. The

institution of the suit by the respondent No.1 on 05.05.2009 also clearly shows that the respondent No.1 was not agreeable to the continuation of the possession of the appellant. There was no question, therefore, of the appellant holding over.

23. As regards the respondent's reliance upon proviso 4 to Section 92 of the Evidence Act, the aforesaid proviso, in my opinion, has no application to the facts of the present case. The said proviso provides for admission of oral evidence in the circumstances stated therein and reads thus:-

“Proviso (4).– The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.”

24. In the instant case, as already stated above, the agreement of lease was executed between the respondent No.1 and the respondent No.2. There was no question of imposing a totally new contract of lease on the respondent No.1 between himself and the appellant. In a somewhat similar situation, the Supreme Court in the case of **Niranjan Kumar (supra)**, relied upon by the appellant herself, upon considering

proviso 4 to Section 92, in the penultimate paragraph of its judgment, held as follows:-

“9. Even assuming for the purposes of argument that respondent 2 acted as an agent of the firm which was in existence in 1963 it would, in any event, be impossible to hold that the new firm which was constituted on the retirement of respondent 2 in March, 1968 also became a tenant of respondent 1. No notice of dissolution was given to respondent 1 and one cannot impose a totally new contract on him as between himself and the partnership which was formed on the retirement of respondent 2.

10. For these reasons, we confirm the judgment of the High Court and dismiss the appeal, with costs in favour of respondent 1.”

25. It may be pointed out that in ***Niranjan Kumar's case (supra)***, the lease was for a period of 11 months. It was not a registered deed and was not required to be registered. Referring to the aforesaid facts in ***Niranjan Kumar's*** case, the Supreme Court in a subsequent three Judge Bench decision rendered by in ***Anthony's case (supra)*** held that its earlier decisions, including the decisions rendered in ***1950 (1) SCR 30*** and ***1975 (2) SCR 42***, lead to a conclusion that in the case of a document registered, oral evidence is permissible **if the terms contained in the document are ambiguous** and are not clear in order to determine the true intention of the parties and the correct nature of the document. In the present case, I do not find any ambiguity in the lease

deed dated 24th August, 2006 which is clear and explicit on the face of it.

26. In view of the aforesaid, there is no merit in the present appeal which, as already stated, is a flagrant abuse of the process of the Court. The appeal is accordingly dismissed with costs of Rs.30,000/-, payable to the respondents.

RFA No.455/2009 and CM Nos.17330/2009 and 2624/2010 stand disposed of.

REVA KHETRAPAL, J

APRIL 06, 2010
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