

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 28.2.2011
Judgment Pronounced on: 11.3.2011

+ CS(OS) No.2569/2000

Tata Finance Ltd.**Plaintiff**
- versus -

P.S.Mangla & Ors.**Defendants**

Advocates who appeared in this case:

For the Plaintiff: Mr. T.K. Ganju, Sr. Adv. with Mr. B.L. Wali.
For the Defendant: Ms. Shalini Kapoor.

AND

+ CS(OS) 524/2004

KAMAL MANGLA & ORS. **Plaintiffs**
versus -

TATA FINANCE Ltd. **Defendant**

Advocates who appeared in this case:

For the Plaintiff: Ms. Shalini Kapoor.
For the Defendant: Mr. T.K. Ganju, Sr. Adv. with
Mr. B.L. Wali.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

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

V.K. JAIN, J

CS(OS) No.2569/2000

1. This is a suit for recovery of Rs. 32,53,824/- instituted by the Tata Finance Ltd. through its attorney Mr. Anil Sharma. The plaintiff – company had taken flat No. 401, New Delhi, House 27, Barakhamba Road, New Delhi – 110 001 admeasuring 1076 sq. ft. and comprising of one hall and a toilet on rent, from defendants 1 to 3 for a period of three years vide registered lease deed executed on 18.04.1995. Vide another agreement of the same day, defendant No.4 leased the furnishings and fittings provided in the aforesaid premises to the plaintiff company, for the same period. A sum of Rs.25,82,400/- was deposited by the plaintiff company as security vide yet another agreement executed between the plaintiff company and all the four defendants on the same date.

2. Clause 17 of the lease agreement gave an option to the plaintiff company to renew the lease for a further term of three years by giving notice in writing, by registered post at least six months before the expiry of the lease term, on the same terms and conditions except that in case of renewal, the rent was to increase 25% from the last paid rent. In

case of renewal, a fresh lease agreement was to be executed on the stamp papers of appropriate value at the cost of the plaintiff company. It was further stipulated in Clause 17 of the lease agreement that the lessee would be entitled to vacate the premises after giving a prior six English calendar months notice during the initial or renewed lease term. On expiry of six years, the lessee was to hand over vacant possession of the premises to the lessor unless the lease was renewed by execution of a fresh lease agreement. The security deposit was to be refunded to the lessee without any interest on the expiry of the said lease or the vacation of the said premises by lessee, whichever is earlier, against handing over peaceful vacant possession of the flat, furnishings and fittings in good condition and after deducting dues, if any.

3. The plaintiff company wrote a letter dated 07.10.1997 to the defendants exercising its option to renew the initial lease which was to expire on 31.03.1998 for a further period of three years, on payment of 25% higher rent in terms of clause 17 of the lease deed. Similar letter was issued by the plaintiff company with respect to furnishings and fittings provided in the premises. However, vide letter

dated 16.12.1998, the plaintiff company claims to have written to the defendants expressing its intention to vacate the tenanted premises six months therefrom, in exercise of its option to terminate the lease as per clause 17. Similar notice was given to defendant No.4 with respect to agreement for furnishings and fittings. However, vide subsequent letters dated 14.5.1999 and 14.07.1999, the plaintiff company sought extensions from the defendants to continue to occupy the premises on a month to month basis till 31.08.1999 on the ground that they had not been able to remove all their furnitures etc. and shift to a new premises.

4. Vide letter dated 29th September, 1999, the plaintiff company finally called upon the defendants to take possession of the tenanted premises and collect keys without any further delay. The defendants, according to the plaintiff company, failed to take possession and also did not refund the interest free security amount, which the plaintiff company had deposited with them. By letter dated 4th May, 2000, the plaintiff demanded the security deposit of Rs.25,82,400/- along with interest on that amount at the rate of 24% per annum with effect from 30th September, 1999. The amount of interest comes to Rs.6,71,424/-,

thereby making a total of Rs.32,53,824/-.

5. Defendant Nos. 2 to 4 have contested the suit and have also filed a counter claim for recovery of Rs.19,18,079/- from the plaintiff company. They have denied the authority of Mr. Anil Sharma to institute the suit on behalf of the plaintiff company. It has been claimed by them that defendant No.1 had gifted his share in the tenanted premises to defendant No.3 on 31st October, 1998 and the plaintiff was informed accordingly. On merits, execution of registered lease deed dated 18th April, 1995 has been admitted by the contesting defendants, who have claimed that the lease deed as also the agreement with respect to furnishing and fittings expired by efflux of time on 31st March, 2001. The contesting defendants have denied receipt of letters dated 16th December, 1998 and 14th May, 1999. They have, however, admitted receipt of letter dated 14th July, 1999 from the plaintiff company. They have also claimed that the plaintiff company wrongly stopped payment of rent with effect from September, 1999. The receipt of plaintiff's letter dated 29th September, 1999 has also been admitted by the contesting defendants. This is also their case that no notice terminating the tenancy in

terms of Clause 17 of the lease agreement dated 18th April, 1995 was given by the plaintiff company to them at any point of time and, therefore, the lease expired only by efflux of time on 31st March, 2001. The contesting defendants have claimed rent at the rate of Rs.1,34,500/- per month for the period from 1st September, 1999 to 31st March, 2001, Rs.4,03,500/- towards damages for use and occupation at the same rate for the period 1st April, 2001 to 31st June, 2001, Rs.48,984/- towards maintenance charges payable to the Capital Maintenance Society, Rs.12,09,381/- towards increase in property tax for the years 1995-96 to 2000-2001, Rs.1,05,114/- towards charges for use of electricity and water upto February, 2001 and Rs.18,000/- towards ground rent and insurance for the period of 1st April, 1995 to 31st March, 2001. They have also claimed Rs.1,60,000/- towards interest at the rate of 18% per annum on the balance amount after adjusting the security deposit. Thus, an amount of Rs.19,18,079/- has been claimed by the defendants after deducting the security deposit of Rs.25,82,400/-.

6. CS(OS) No.524/2004 has been filed by Shri P.S. Mangla, Shri Kamal Mangla and Smt. Sneh Lata Mangla,

who are defendants No. 1 to 3 in CS(OS) No.2569/2010, claiming possession of the aforesaid tenanted premises as well as furnishing and fittings provided therein as also for recovery of Rs.38,87,050/- towards damages for use and occupation for the period from 1st July, 2001 to 30th April, 2004 at the rate of Rs.1,14,325/- per month, Rs.6,85,950/- towards hire charges for the period from 1st July, 2001 to 30th April, 2004 at the rate of Rs.20,175/- per month, Rs.12,94,092/- towards increase in property tax for the years 2000-01 to 2003-04, Rs.1,17,909/- towards maintenance charges for the period from 1st August, 2001 to 30th April, 2004 at the rate of Rs.3573/- per month and Rs.9,250/- as ground rent and insurance for the period from 1st April, 2001 to 30th April, 2004. They have also claimed interest on the aforesaid amount at the rate of 12% per annum amounting to Rs.10,19,022/- besides claiming future damages for use and occupation as well as hire charges for the future.

7. The defendant company in this suit, which is plaintiff in CS(OS) No.2569/2000 has denied its liability towards payment of damages for use and occupation, hire charges, increase in house tax, maintenance charges,

ground rent and insurance. As regards claim for increase in house tax, it has been stated by the tenant that since no assessment has been finalized, the defendant company is not liable to pay any amount to the plaintiffs towards increase in house tax.

8. The following issues were framed on the pleadings of the parties in respect of both suits:-

1. Whether the plaint is signed, verified and suit filed by a duly authorized person? OPP.
2. Whether the suit is bad for misjoinder of defendant No.3, if so, to what effect? OPD
3. Whether the plaintiff has duly terminated the tenancy in terms of Clause 17 and/or otherwise in accordance with law? OPP
4. Whether the plaintiff is entitled to refund of security amount, if so, to what extent? OPP.
5. Whether the plaintiff is entitled to interest, if so, at what rate and for what period? OPP.
6. Whether the plaintiff is liable to pay rent, electricity charges, water charges, property tax w.e.f. 1st September, 1999 and if so, till what date? OPD.
7. Whether the defendants are entitled to claim amount stated in the counter claim and, if so, to what extent? OPD.
8. Whether the defendants are entitled to interest, if so, at what rate and for what period? OPD.
9. Whether the defendants are entitled to adjust the security amount, if so, to what effect and what extent?

OPD.

10. What is the liability of the plaintiff in regard to payment of rent/damages and, if so, till what date?
OPD.

11. Relief.

ISSUE NO.1

9. PW-1 Mr. Pradeep Sehrawet, Regional Legal Incharge of the plaintiff company identified the signatures of Mr. Anil Sharma, Manager (Law) of the plaintiff company on the plaint and verification clause and stated that he was duly authorized to sign and institute the present suit vide power of attorney executed in his favour on 26th July, 2000. The original power of attorney in favour of Mr. Anil Sharma has not been filed by the plaintiff company though a photocopy is available on record, having been filed on 8th September, 2003. The cross-examination of the witness, however, shows that the original was not brought by him.

10. In ***Aktiebolaget Volvo and others v. R. Venkatachalam and another*** (I.A. No.5683/2008 in CS(OS) No.516/2007 decided by this Court on 18th May, 2009), this Court held that since a photocopy or a copy would also be a document and it cannot be said that the provisions of the CPC for filing of documents necessarily

relate to original documents. Dealing with the question as to whether under Order 13 Rule 1 of the CPC, the original documents has to be placed on the file of the Court and whether Evidence Act while providing for proof of documents by primary evidence requires filing/placing of the original document on the record of the Court, it was held that the legislative scheme permits production of originals for inspection only and filing of copies only. It was also held that endorsement/exhibit mark can also be put on the copies of the court record as well.

11. A perusal of the photocopy filed by the plaintiff shows that the power of attorney in favour of Mr. Anil Sharma was attested by public notary on 26th July, 2000. Since the power of attorney in favour of Mr. Anil Sharma purports to be attested by a Public Notary, there is a statutory presumption under Section 85 of Evidence Act that the Power of Attorney was executed by the person by whom it purports to have been executed and the person who executed the power of attorney was fully competent in this regard. In **Jugraj Singh and Anr. Vs. Jaswant Singh and Ors.**, AIR 1971 SC 761, the Power of Attorney attested by a Public Notary was disputed on the ground that it did

not show on its face that the Notary had satisfied himself about the identity of the executant. Supreme Court held that there was a presumption of regularity of official acts and that the Notary must have satisfied himself in the discharge of his duties that the person who was executing it was the proper person. In ***Rajesh Wadhwa vs. Sushma Govil*, AIR 1989, Delhi 144**, it was contended before this Court that till it is proved that the person who signed the said power of attorney was duly appointed attorney, the court cannot draw a presumption under Section 57 and 85 of the Evidence Act. Repelling the contention, it was held by this Court that the very purpose of drawing presumption under Sections 57 and 85 of the Evidence Act would be nullified if proof is to be had from the foreign country whether a particular person who had attested the document as a Notary Public of that country is in fact a duly appointed Notary or not. When a seal of the Notary is put on the document, Section 57 of the Evidence Act comes into play and a presumption can be raised regarding the genuineness of the seal of the said Notary, meaning thereby that the said document is presumed to have been attested by a competent Notary of that country. In ***Punjab National Bank***

vs. Khajan Singh, *AIR 2004 Punjab and Haryana 282*, the Power of Attorney in favour of a bank, which had been duly attested, was rejected by the learned District Judge on the ground that the presumption under Section 85 of Evidence Act was available to a particular class of Power of Attorneys described in the section, which was confined to its execution and authenticity alone. The High Court, however, rejected the view taken by the learned District Judge holding that absence of proof of resolution authorizing the executant to execute the Power of Attorney could not be sustained and a presumption in favour of the attorney would arise under Section 85 Act. Hence in this case also, the Court can presume not only that the power of attorney dated 26th July, 2000 was executed by Shri Dilip Sudhakar Pendse, Managing Director of the plaintiff company in favour of Shri Anil Sharma, the then Manager (Law) of the plaintiff company, it can be further presumed that Mr. Dilip Sudhakar Pendse was duly authorized by the plaintiff company to execute a power of attorney in favour of Mr. Anil Sharma. Hence, it was not necessary for the plaintiff company to produce the power of attorney executed by the plaintiff company in favour of Mr. Dilip Sudhakar Pendse,

Managing Director of the plaintiff company.

In any case, since no arguments were advance on behalf of the defendants in CS(OS) No.2569/2000 on this issue, I need not dilate further and record a specific finding on this issue.

ISSUE NO.2

12. There appears to be a typographical error in this issue since the case of the plaintiff is that it was defendant No.1, who had transferred his share in the tenanted premises to defendant No.3. It appears that the word defendant No.1 ought to have been typed in placed of defendant No.3 in this issue.

13. In para 2 of the written statement, the contesting defendants have specifically alleged that defendant No.1 had gifted his share of the tenanted premises to defendant No.3 Sneh Lata Bansal on 31st October, 1998 and informed the plaintiff about it vide letter dated 31st October, 1998 and 5th November, 1998. It is further alleged that by these letters, defendant No.1 had advised the plaintiff company to pay the rent of his share to defendant No.3. It is also alleged that defendant No.1 had also written to the plaintiff company that the security deposit had been transferred to defendant

No.3, who had undertaken to abide by all the terms and conditions of the lease agreement. These averments have not been specifically denied in para 2 of the replication/written statement to the counter claim and, therefore, are deemed to have been admitted. On the other hand, the plaintiff company claimed that the alleged transfer does not absolve defendant No.1 to refund the security deposit paid to him thereby admitting the transfer and claim by the contesting defendants. Exhibit DW2/1 is the letter dated 31st October, 1998 written jointly by defendant Nos. 1 and 3, Shri P.S. Mangla and Mrs. Sneh Lata Mangla to the plaintiff company informing it that defendant No.1 had gifted his 20% share in flat No.401, New Delhi House to Mrs. Sneh Lata Mangla, who already held 20% share in the aforesaid flat and requested the plaintiff company to pay future rent for the period commencing 1st November, 1998 to her. Exhibit DW2/2 is a letter dated 5th November, 1998 from defendant Nos. 1 and 3 to the plaintiff company requesting the plaintiff company to pay his share in the rent to defendant No.3 Smt. Sneh Lata Mangla and also informing that security deposit had also been transferred to defendant No.3, who had undertaken to abide

by all the terms and conditions of the lease deed. In fact, PW1, Mr. Pradeep Sehrawat has also admitted in para 9 of his affidavit dated 31st May, 2006 that defendant No.1 had informed the plaintiff company that he was gifting his interest in the property to defendant Nos. 2 and 3 as a part of his tax planning and the company had accordingly agreed to remit the future rent to defendant Nos. 2 and 3. Since, the rent with effect from 1st November, 1998 was required to be paid only to defendant Nos. 2 and 3 and the security deposit was also transferred to defendant No.3, the suit is bad for misjoinder of defendant No.1, whose name is struck off from the array of defendants in CS(OS) No.2569/2000.

ISSUE No.3

14. Clause 17 of the lease deed dated 18th April, 1994 reads as under:-

“On the expiry of the initial lease period of three years the lessees shall have the option to renew the lease for a further term of 3 years by giving notice in writing by Registered Post at least six months before the expiry of this lease term on the same terms and conditions except that the lease amount for the renewed 3 years term shall be increased by 25% of the last lease amount paid. In case of renewal of a fresh Lease Agreement will be executed on the stamp paper of appropriate value at Lessee’s cost. It is however agreed that

the Lessee shall be entitled to vacate the premises by giving a prior six English calendar months notice during the initial or renewed lease term. After the expiry of six years period of 31st March, 2001, the Lessee would handover peaceful vacant possession of the demised premises to the Lessors, unless of course, the lease is renewed further at mutually agreed terms 6 months prior to 31st March, 2001 by execution of a fresh Lease Agreement.”

15. In exercise of the option given to the plaintiff company, a letter dated 7th October, 1997 was written by the plaintiff company to defendant Nos. 1 to 3, giving a notice exercising option to renew the lease agreement for further period of 3 years from 1st April, 1998 on the same terms and conditions except that the monthly rent to increase by 25%. Similar notice was given to defendant No.4 with respect to furnishing and fittings provided to the plaintiff company and the same is Exhibit P-2. However, admittedly no lease agreement was executed between the parties despite exercise of option in this regard by the plaintiff company.

16. Clause 17 of the lease deed dated 18th April, 1998 specifically stipulated that in case of renewal, a fresh lease agreement would be executed on the stamp paper of

appropriate value at Lessee's cost. Even otherwise, a lease for three years, even if it was a renewed lease in exercise of an option given to the tenant under the original lease, could be created only by execution and registration of an instrument as required by Section 107 of the Transfer of Property Act, which to the extent it is relevant, provides that 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.

17. In ***Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. v. Khaja Midhat Noor and Others***, (1988) 3 SCC 44, the lease was executed for a period of 10 years which expired on January 16, 1958. The lease could be renewed for a further period of 5 years. On considering the provisions of Sections 106 and 107 of the Transfer of Property Act, Supreme Court, inter alia, observed as under:-

“In view of the para 1 of Section 107 of the Act, since the lease was for a period exceeding one year, it could only have been extended by a registered instrument executed by both the lessor and the lessee. In the absence of registered instrument, the lease shall be deemed to be “lease from month to month”. It is clear from the very language of Section

107 of the Act which postulates that 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. In the absence of registered instrument, it must be a monthly lease.”

Hence, in the absence of a registered lease deed, the lease dated 18th April, 1995 did not get renewed for a further period of 3 years and expired by efflux of time on 31st March, 1998.

18. It is, however, an admitted case that even after expiry of the lease deed dated 18th April, 1995 by efflux of time on 31st March, 1998, the tenant continued to occupy the tenancy premises and the landlords continued to accept rent from the tenant.

19. Section 116 of Transfer of Property Act, to the extent it is relevant, provides that if a lessee remains in possession of the tenanted premises after the determination of the lease granted to him, and the lessor or his legal representative accepts rent from the lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose

for which the property is leased, as specified in Section 106. Section 106 of Transfer of Property Act, to the extent it is relevant, provides that in the absence of a contract or local law or usage to the contrary, a lease of immoveable property for other than agricultural or manufacturing purposes shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice. Therefore, since the defendants allowed the plaintiff to continue in possession of the tenancy premises and also accepted rent from it, even after the term of the lease had expired by efflux of time, the lease came to be renewed from month to month being a lease for commercial purpose.

In ***Bhawanji Lakhamshi and others v. Himatlal Jamnadas Dani and others, (1972) 1 SCC 388***, Supreme Court observed as under:-

“The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding

words of Section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise.”

The Court also referred to the following observations made by Patanjali Sastri, J. in ***Kai Khushroo Bezonjee Capadia (supra)*** :-

“Turning now to the main point, it will be seen that the section postulates the lessee remaining in possession after the determination of the lease which is conduct indicative, in ordinary circumstances, of his desire to continue as a tenant under the lessor and implies a tacit offer to take a new tenancy from the expiration of the old on the same terms so far as they are applicable to the new situation, and when the lessor assents to the lessee so continuing in possession, he tacitly accepts the latter’s offer and a fresh tenancy results by the implied agreement of the parties. When, further, the lessee in that situation tenders rent and the lessor accepts it, their conduct raises more readily and clearly the implication of an agreement between the parties to create a fresh tenancy.”

In the case before this Court, since the plaintiff company, on expiry of the lease by efflux of time on 31st

March, 1998, continued in possession with the consent of the landlords, it became 'a tenant holding over' the tenanted premises, and is not a 'tenant at sufferance'.

20. The next question which comes for consideration is as to whether the tenancy could have been determined by the plaintiff company by giving 15 days notice in terms of Section 106 of the Transfer of Property Act or it was required to give six months notice in terms of Clause 17 of the lease deed dated 18th April, 1995.

It was contended by the learned counsel for the defendants that since the provisions of Section 106(1) of the Transfer of Property Act providing for termination of tenancy for any purpose other than agricultural or manufacturing purposes by giving 15 days notice apply only in the absence of a contract to the contrary, and since clause 17 of the lease agreement dated 18th April, 1995, which is a contract between the parties, provides for six English Calendar Month's notice and no such notice was ever given by the plaintiff, the tenancy was not validly terminated.

21. In ***Burma Shell Oil Storage and Distributing Co. of India Ltd. v. State of Uttar Pradesh, AIR 1984 Allahabad 89***, the following question of law was referred

for the opinion of the Full Bench:-

“Whether, for the purposes of Section 116 of Transfer of Property Act, it was necessary that there should be a contract subsequent to the termination of the original lease regarding the period of notice required under Section 106, P.T. Act.”

During the course of the judgment, the Full Bench noted that a Division Bench of that Court in an earlier decision in **Suiti Devi v. Banarsidas Bhagwan-das, AIR 1949 Allahabad 703**, had taken a view that the contract regarding the period of notice could also be earlier to the termination of the lease and had, to ascertain the period of notice, looked into the original contract between the parties. It was further noted that another Division Bench of that High Court in **Radha Ballabh v. Bahore Ram Chand, AIR 1955 Allahabad 679** had clearly laid down that the contract regarding the period of tenancy could be either in the original lease deed itself or could be arrived at between the parties after the extermination of the original lease. It also took note of an earlier decision of its Full Bench in **Shiv Nath v. Shri Ram Bharosey Lal, AIR 1969 Allahabad 333** wherein the above referred two decisions were approved and a decision of Oudh High Court holding that where a

new tenancy is created by reason of the landlord allowing the tenant to hold over after termination of the original lease deed then in the absence of any terms in respect of the new tenancy, the terms governing the original lease deemed to have been accepted by the parties. The Full Bench was of the view that the decision of another Division Bench of the Court in ***Zahoor Ahmad Abdul Sattar v. State of U.P.***, ***AIR 1965 Allahabad 326*** was also to the same effect that renewal of lease under Section 116 of the Transfer of Property Act would be on the same terms as the original lease except that it would be a lease from year to year or from month to month according to the nature of the tenancy, the other conditions remaining the same. The question referred to the Full Bench was answered holding that it is not necessary that there should be a contract subsequent to the termination of the original lease regarding the period of notice required under Section 116 of the Transfer of Property Act and that the contract could be either in the original lease or could be arrived at between the parties after termination of the original lease. This was also the view taken by the Calcutta High Court in ***Krishna Char an Sukladas vs. Nitya Sundari Devi***, ***AIR 1926***

Calcutta 1239 and by Madras High Court in **K. Gnanadesikam Pillai and Ors. vs. Antony Benathu Boopalarayar, AIR 1934 Madras 458**. It would also be pertinent to note here that the decision of the Allahabad High Court in the case of **Zahoor Ahmad (supra)** was affirmed by the Supreme Court in **State of U.P. v. Zahoor Ahmad and another, AIR 1973 SC 2520** though the issue as to whether the agreement envisaged in Section 116 of the Transfer of Property Act had necessarily to be post termination of tenancy or could also be an earlier agreement was not examined by Supreme Court.

The following was the view of the Federal Court in **Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and Another, AIR 1949 (50) FC 124**, where the Court agreed with the following statement contained in Woodfall's "Law of Landlord and Tenant"

"Where a tenant for a term of years holds over after the expiration of his lease he becomes a tenant on sufferance, but when he pays or expressly agrees to pay any subsequent rent at the previous rate a new tenancy from year to year is thereby created upon the same terms and conditions as those contained in the expired lease so far as the same are applicable to and not inconsistent with an yearly tenancy."

22. However, this issue also came to be considered by a Full Bench of this Court in ***Mrs. Daman Kaur Sethi and others v. Indian Bank*** (Suit No.2075/1999 decided on 31st January, 2002). In that case, the plaintiffs before the Court had let out premises to the defendant bank by way of registered lease deed for a period of 5 years, which expired on 13th February, 1994. The lease could be renewed at the option of the defendant bank for the further period of four years by enhancing the rent by 15%. The defendant bank started paying rent to the plaintiffs at the enhanced rate though no lease deed was got registered. The plaintiffs terminated the tenancy of the defendant bank by 15 days notice. Relying upon a clause in the lease deed providing for termination of the tenancy only by serving a six months' notice, it was contended on behalf of the defendant bank that 15 days notice issued by the plaintiff to them was not a valid notice. The contention of the plaintiffs, however, was that on expiry of the period of lease, a month to month tenancy came into being, which could be terminated by 15 days notice as provided in Section 106 of the Transfer of Property Act. The contention on behalf of the bank was that

since the period of notice terminating the tenancy as stipulated in Section 106 of Transfer of Property Act is subject to an agreement to the contrary and the lease deed dated 27th January, 1989 contained a requirement for six months' notice to be served by the tenant, the notice dated 28th May, 1999 terminating the monthly tenancy from 13th July, 1999 must be held to be bad in law. It was also contended that the mode of termination provided in the registered deed of lease remains applicable even in the case where the tenant continues to be in possession of the tenanted premises as a tenant holding over in terms of Section of 116 of the Transfer of Property Act. Rejecting the contention of the defendant bank, the Full Bench, inter alia, held as under:-

“The expression ‘agreement to the contrary’, used in Section 116 is referable to the terms of the tenant holding over and not to the terms of the original lease. In the absence of any agreement to contrary statutory tenancy created under Section 116 has to be invariably determined in accordance with Section 106 (See **Rayappa Basappa Killed v. The Land Tribunal and others, AIR 1976 Karnataka 205.**”

“The parties, however, in this case proceeded on the basis that the defendant became a tenant holding over.

In such a situation, in our opinion, the lease becomes month to month lease, as the nature of tenancy in terms of Section 106 is directly relatable to the purpose for which a lease has been granted. Where the period of lease, as specified in the registered instrument, comes to an end, the lease itself comes to an end. Subsequent lease must, therefore, be in terms of the provisions contained in Section 107 of the Transfer of Property Act. The purported agreement of lease not being a registered one the same having been made in contravention of Section 107 as also Section 17(1) (d) of the Indian Registration Act, it having regarding to the purpose mentioned in Section 106 must be held to be a month to month lease. The stipulation as regards the service of six-months' notice for termination of tenancy as embodied in the original lease deed cannot have an application after the same came to an end."

23. Regarding the decision of the Full Bench of the Allahabad High Court in ***Burma Shell Oil Storage and Distributing Co. of India Ltd. (supra)***, the Full Bench of this Court, inter alia, observed as under:-

"We may now consider the decision cited by Mr. Nayyar. A Full Bench of Allahabad High Court in **Burmah Shell Oil Storage and distributing Co of India Ltd v. State of Uttar Pradesh**, AIR 1984 Allahabad 89, proceeded on the basis that the term of the new lease would be the same as of old lease, except the conditions of the original lease as to the period of the lease. With

utmost respect to the learned Judges, we cannot subscribe to the said view. If an indenture of lease comes to an end by efflux of time the terms and conditions of the said lease do not subsist. The terms and conditions embodied in a deed of lease perish with it. Renewal being a fresh grant, the terms and conditions thereof either must refer to the original lease or fresh terms and conditions must be agreed to by the parties. In the instant case, admittedly an unregistered agreement of lease was executed. It is not the case of the defendant that service of six months' notice for terminating the tenancy was also stipulated therein. In any event, the said agreement of tenancy being an unregistered one, the same would not be admissible in evidence being for the purpose of relevance on the terms and conditions thereof. In terms of Section 116 also the lease becomes month to month one. As such for the said purpose, service of 15 days' notice terminating the tenancy with the expiry of the tenancy month would meet the requirement of law."

In view of the above referred decision of the Full Bench of this Court, I hold that the tenancy of the plaintiff company could have been determined by giving 15 days notice in accordance with Section 106 of the Transfer of Property Act.

24. In the case before this Court, the case of the plaintiff is that it had determined the lease agreement vide notice dated 16th December, 1998, which is exhibit PW1/1

and purports to have been received by one T. Ramani on behalf of Shri P.S. Mangla and others on 21st December, 1998.

25. The letter Exhibit PW1/1 purports to have been received by Mr. T. Ramani on behalf of the defendants. The case of the defendants is that Mr. T. Ramani was not their agent and was not authorized to receive this letter on their behalf. Mr. T. Ramani happens to be an attesting witness to the lease deed dated 18th April, 1995. The case of the plaintiff company is that Mr. Ramani was brought by the defendants to witness the lease deed. Assuming that Mr. Ramani had witnessed the lease deed on the request of the defendants, that by itself did not make him an agent of the defendants nor did that authorize him to receive letters on behalf of the defendants. Therefore, receipt of this letter by Mr. T. Ramani does not amount to receipt by the defendants. It would be pertinent to note here that Mr. Ramani has not been produced in the witness box to prove that he had received the letters Exhibit PW1/1 and Exhibit PW1/2 from the plaintiff company and that he was acting as an agent of the defendants while receiving this document from the plaintiff company.

26. This is also the plaintiff's own case that vide letters dated 14th May, 1999, Exhibit PW1/3 and Exhibit PW1/4, it had sought extension upto 31st July, 1999 to vacate the tenanted premises and vide letters dated 14th July, 1999, which are Exhibits P-3 and P-4 had sought extension of time upto 31st August, 1999 to vacate the tenanted premises.

27. Exhibit P-3 is the letter sent by the plaintiff company to the defendants on 14th July, 1999 referring to its earlier letters dated 16th December, 1998 and 14th May, 1999 regarding termination of the lease agreement and handing over possession of the tenanted premises and seeking extension upto 31st August, 1999 for vacating the premises. This letter was received by the defendants on or before 3rd August, 1999 as is evident from letter Exhibit P-5, which contains a reference to this letter and is an admitted document. Vide letter dated 29th September, 1999 (Exhibit PW1/5), informing them that despite their telephonic messages since 27th September, 1999 to take possession of the tenanted premises, no one from their side had come forward to collect the keys, they conveyed to the defendants that they would not be liable to pay rent after 30th

September, 1999 and they should take possession of the tenanted premises and refund the security deposit lying with them. In my view, the letter dated 14th July, 1999 can, in the facts and circumstances of the case, be safely taken as a notice under Section 106 of the Transfer of Property Act terminating, with effect from 31st August, 1999, the month to month tenancy, which was created by the plaintiff continuing in possession even after expiry of tenancy by efflux of time on 31st March, 1998 and acceptance of rent by the defendants from the plaintiff. In this regard, it would be useful to refer to the provisions of sub-Section 3 of Section 106 of the Transfer of Property Act, which provides that a notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

In ***Bhagabandas Agarwalla v. Bhagwandas Kanu and others, (1977) 2 SCC 646***, Supreme Court held that a notice to quit must be constructed not with a desire to find faults in it, which would render it defective, but it must be construed *ut res magis valeat quam pereat* and not

with a desire to find faults in it. It was further observed that the notice should not be read in a hyper-critical manner but must be constructed in a common sense way.

The purpose of giving notice of termination of tenancy by a tenant to the landlord is to make it known to him that he does not propose to continue in possession of the tenanted premises after the date from which the tenancy is being terminated by him, so that the landlord is not taken by surprise and gets adequate time to take possession of the tenanted premises and to look for another tenant in case he wants to let it out to another person. The letter dated 14th July, 1999 meets all the necessary requirements of a notice of termination of tenancy. Vide this letter, the plaintiff company expressed an unequivocal intention not to continue in occupation of the tenanted premises after 31st August, 1999, it gave more than 15 days time to the defendants to take possession and the date stipulated in this letter for vacating the premises also expired by the end of the month. Adopting a pragmatic and constructive approach to interpretation of such notices, I am of the considered view that this letter amounts to a valid notice of termination of notice on the part of the plaintiff company.

The month to month tenancy, therefore, stood terminated with effect from 31st August, 1999. The issue is decided accordingly.

ISSUE NO.6,7 & 10.

Rent

28. Vide letter dated 29th September, 1999, which is Exhibit PW1/5, the plaintiff company wrote to defendant No.1 Shri P.S. Mangla requesting him to take possession of the tenanted premises and informing him that they would not be liable to pay any rent after 30th September, 1999. The receipt of the letter dated 29th September, 1999 (Exhibit PW1/5) has not been disputed by the defendants. As noted earlier, receipt of this letter by the defendant on 6th October, 1999 has been acknowledged in their letter dated 11th October, 1999, which is Exhibit P-6. Earlier on receipt of a letter dated 14th July, 1999 from the plaintiff company, defendant No.1 Shri P.S. Mangla had written a letter dated 3rd August, 1999 to Mr. B.A. Suvarna, Executive Director (Legal) of the plaintiff company acknowledging the receipt of the letter dated 14th July, 1999. It is quite obvious from a bare perusal of this letter that the defendants wanted the plaintiff company to continue occupying the tenanted

premises and wanted it to reconsider its decision to vacate the premises by 31st August, 1999. On receipt of the letter dated 29th September, 1999, defendant Kamal Mangla referring to Clause 17 of the lease deed informed the plaintiff company that no notice of vacating the flat as per aforesaid clause of the lease deed had been received by them and if the plaintiff company had decided to vacate the flat, they should do the needful in terms of Clause 17 of the lease deed and in the meantime continue to pay monthly rent during the notice period. Thus, the stand taken by the defendants was that the plaintiff company was required to give six months' notice to them before vacating the tenanted premises. The case of the plaintiff company is that despite their having written various letters to the defendants requiring them to take possession of the tenanted premises, the defendants failed to take possession from them and, therefore, they are not liable to pay rent for the period subsequent to September, 1999. As noted earlier, the plea taken by the defendants on receipt of the letter dated 29th September, 1999 was that the plaintiff company was required to serve six months' notice and keep on paying rent to them during notice period. The stand taken by the

defendants was not in accordance with law as held by me while deciding the issue No.3. Therefore, the defendants could not have insisted on six months' notice being given to them by the plaintiff company as a precondition to take possession of the tenanted premises. On receipt of the letter dated 29th September, 1999 from the plaintiff company, the defendants ought to have gone to the office of the plaintiff company and taken possession of the tenanted premises from them. They, however, failed to take possession despite willingness of the plaintiff company in this regard. Vide letter dated 19th February, 2000 (Exhibit P-7), defendants Kamal Mangla and Sneh Lata Mangla wrote to the plaintiff company that they had come to take possession but the possession was not given to them. However, the letter does not indicate the day on which they had gone to take possession nor does it indicate the place where they had gone and the person to whom they had met. In the natural course of human conduct, if the tenant despite offering possession to the landlords refuses to deliver possession to them, the landlords would immediately write to him specifying the day as well as the time they approached the tenant to take possession, the person whom

they met and the exact response of that person to their request to hand over possession to them. It has come in the testimony of the witnesses of the plaintiff that the plaintiff company had vacated the tenanted premises and started functioning at the new premises with effect from 1st September, 1999. The plaintiff company also published an advertisement in 'Hindustan Times' New Delhi on 27th August, 1999 informing the public at large that from 31st August, 1999, they were consolidating their regional office under one roof and were shifting from 3rd and 4th floor of New Delhi House, Barakhamba Road, New Delhi to 4th Floor, Kanchenjunga Building, 18, Barakhamba Road, New Delhi. The plaintiff company, therefore, had no incentive to continue to hold possession of the tenanted premises and thereby incur liability towards payment of rent and other charges, when it was no more using those premises. It would be pertinent to note here that there is no evidence to prove that the plaintiff company was actually carrying out any activity in the tenanted premises after September, 1999. PW-3 Vaideghi Sreedharan, who was employed as a receptionist with the plaintiff company at the relevant time, has specifically stated in her affidavit that the branch office

was functioning from Flat No.401, New Delhi House, 27, Barakhamba Road, New Delhi till 31st August, 1999 and thereafter the plaintiff company had completely vacated the aforesaid premises and shifted the entire branch office to new premises at Kanchenjunga Building, 4th Floor, 18, Barakhamba Road, New Delhi-110001 with effect from 1st September, 1999. In fact, according to her, she on the instructions of Assistant General Manager of the plaintiff company contacted the defendants a number of time on telephone and requested them to come and take keys and possession of the tenanted premises. She claims to have spoken to P.S. Mangla and Kamal Mangla several times in this regard and, according to her, both of them were evasive in their replies on this issue and did not agree to take back the keys and possession of the premises. According to her, Mr. Kamal Mangla had gone to the extent of shouting on her on telephone and telling her that they would talk only to Ratan Tata on the issue. PW-4, Ram Kumar Tiwari, is an executive with the plaintiff company. He also stated that the plaintiff company had completely vacated the tenanted premises and shifted to Kanchenjunga Building with effect from 1st September, 1999. No positive evidence has been

led by the defendants to controvert the deposition of these witnesses and to prove that the plaintiff company continued to carry on business from the tenanted premises even after September, 1999. I, therefore, have not hesitation in holding that the plaintiff company was not using the tenanted premises after September, 1999, it had offered possession to the defendants and the defendants, who were insisting on six months' notice, were not willing to take possession.

29. In ***ICRA Ltd. v. Associated Journals Limited and another, 2007 (98) DRJ 638***, the lessee by its letter dated 18th November, 1997 sent a notice of termination with effect from 19th November, 1997 calling upon the landlords/defendants to take possession of the tenanted premises and refund the security deposit after deducting the rent of previous three months along with stipulated interest. Vide reply dated 22nd November, 1997, the defendants requested the plaintiff for a rethinking in the matter. This letter was followed by several reminders. On 16th April, 1998, the lessee communicated to the lessor that it had shifted to new building and was no longer in possession of the tenanted premises. In reply, the landlord claimed that

delivery of vacant possession of the tenanted premises was a condition precedent to the refund of the security deposit. The case of the plaintiff, however, was that constructive possession was handed over by them to the defendants with the determination of the lease and actual possession was subject to reciprocal arrangement on the part of the defendants to refund the amount of the security deposit along with stipulated interest. As per the agreement between the parties, the security was interest free and was refundable on determination/termination of the lease. Since the defendants/landlords failed to refund the security amount, the plaintiff/tenant filed a suit seeking recovery of the amount of security along with interest, after adjustment of rent payable by them. The defendants filed a counter claim claiming that determination of the lease was not in accordance with the agreement since the plaintiff continued to be in possession of the demised premises and without giving possession, the notice stood withdrawn/waived and hence no claim for refund of balance security amount was made out. This was also the case of the defendants that they had come into possession of the tenanted premises only on plaintiff's delivering the keys to them on 7th

December, 1998. On receipt of letter dated 18th April, 1998 from the defendants, the plaintiff reiterated its willingness to give actual possession on receipt of the refund of the security deposit. The factual position which emerged from the correspondence between the parties was that the plaintiff/tenant had terminated the lease, and had called upon the defendants/landlords to take possession of the tenanted premises and refund the balance security. Accepting the plea taken by the plaintiff/tenant, this Court held that the offer to vacant possession of the demised premises having been made by the plaintiff company, it was the duty of the defendants thereafter to act on the same and take possession after notice of termination of the lease. Regarding handing over of possession of the tenanted premises, this Court held that constructive possession was handed over to the defendants by the plaintiff by making an offer to take over actual possession on payment of the balance security deposit, which was sufficient to fulfill the requirement of the lease agreement between the parties. Decreeing the suit filed by the tenant, this Court, inter alia, held as under:-

21. Taking into consideration the

aforesaid, I am of the view that when possession of the tenanted premises is offered upon termination of the lease, the landlord/Lessor must act upon the same and cannot refuse to take the possession. If the Lessor/landlord refuses to take the possession or act upon the offer being made, the lease would not continue and therefore the contention of the defendant that the plaintiff had been in continued possession of the demised premises making him liable to pay the rent for the same would not stand. In such a case, the plaintiff who has done the needful on this part is left with no other option but to remain in possession of the said premises.”

30. In ***Onida Finance Ltd. v. Mrs. Malini Khanna, 2002 III AD (Delhi) 231***, the security deposit, which was equivalent to six months’ rent, was refundable to tenant on expiry or termination of the lease. The plaintiff terminated the lease vide notice dated 18th January, 1997, with effect from 14th February, 1997 and called upon the defendant to return the security amount as also the amount of advance rent. The landlord was also intimated that the tenanted premises would remain vacant at her risk and the plaintiff shall not be liable to pay any rent from the date the tenancy stood terminated. The contention of the defendant before the Court was that mere offer to surrender possession was of no consequence unless actual physical possession was

delivered to her. Rejecting the contention, this Court, *inter alia*, held as under:-

“28. It is trite that when the lease is terminated by notice and the possession is offered, the landlord cannot refuse to take the possession. If the landlord refuses to take the possession, the lease would not continue. Therefore, even if the contention of the defendant herein was that the tenancy was for a period three years, she could take possession and thereafter sued the plaintiff for rent. She did not do so. She took calculate risk by challenging the action of the plaintiff in terminating the tenancy and avoided to take possession.”

31. In ***The Calcutta Credit Corporation Ltd., & another v. Happy Homes (P) Ltd., AIR 1968 SC 471***, the written lease was for a period of 12 years commencing 1st January, 1939. On expiry of the term of the lease, the tenant continued to hold over the premises. A notice was served on the landlords intimating the intention of the tenant to vacate the premises on 31st August, 1953 and the landlord was requested to arrange to take delivery of possession. However, vide subsequent letter dated 26th August, 1953, the tenant informed the landlord that they did not intend to vacate the premises as originally intimated and their notice may be treated as cancelled. The tenant

continued to be in possession and later sub-let a part of the premises. The landlord then sued the sub-tenant for possession of the premises. The suit was resisted on the ground that the tenancy of Allen Berry and Company Ltd. (the tenant) had not been determined before they sub-let the premises. Supreme Court rejected the contention of the landlords that in order to determine the tenancy under the Transfer of Property Act at the instance of the tenant, means there must be actual delivery of possession before the tenancy is effectively determined. The Court found the contention to be contrary to the provisions of Section 111(h) of the Transfer of Property Act, which, inter alia, provides that a lease of immovable property demises on the expiry of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

32. The learned counsel for the defendants has referred to ***Uberoisons (Machines) Ltd. v. Samtel Color Ltd., 105 (2003) DLT 383*** and ***Tamil Nadu Handloom Weavers' Co-operative Society v. Harbans Lal Gupta, 2009 (107) DRJ 418 (DB)***. In ***Uberoisons (Machines) Ltd.(supra)*** the parties entered into a lease agreement for a

period of 3 years. The lessee had deposited an interest free security with the lessor, which was to be refunded at the time of vacation of the premises and handing over possession thereof along with fittings and fixtures in the same condition as received from the landlord. Lessor, however, was not entitled to deduct/adjust the amount of security towards dues of rent. On expiry of the term of the lease or its earlier determination, the lessee was required to hand over vacant possession of the demised premises to the lessor in good condition against refund of the security deposit. The defendant/lessee gave notice to the plaintiff, expressing intention to vacate the demised premises on completion of 3 months. When the authorized representative of the plaintiff/lessor went to take possession and for settlement of accounts, it transpired that the demised premises had not been brought back to the original condition in which the same was let out. The plaintiff/lessor wrote to the defendant/lessee emphasizing that he would be liable to pay rent till vacant possession of the tenanted premises was given to him. The defendant, in reply to the letter of the plaintiff, called him upon to pay the amount of security and take vacant possession. An

estimated cost of repairs was also conveyed by the lessor to the lessee. The defendant, thereafter, informed the plaintiff that repairs had been carried out and, therefore, possession be taken after settling the accounts. Simultaneously, he also sent legal notice to the plaintiff/lessor intimating that possession be taken on or before the date stipulated in the notice and the advance and security deposit be refunded. The plaintiff informed the defendant that the security had been forfeited and lease cancelled as arrears of rent for more than 2 months had not been paid. The defendant/lessee was called upon to pay arrears after adjusting advance rent and handing over possession within 3 days. The defendant, however, did not comply with the notice. By the time, this suit filed by lessor for possession, arrears of rent, mesne profit and damages came up for final adjudication, the only question which remained to be decided was that with respect to entitlement of the plaintiff to arrears of rent, mesne profits and damages. The plaintiff wanted arrears of rent upto the date to which the possession was retained by the defendant. The contention of the defendant on the other hand was that he had always been ready and willing to hand over possession of the premises but in view of the

attitude adopted by the plaintiff in not refunding the security amount, did not hand over possession and, therefore, was not obliged to pay rent. Rejecting the contention of the defendant, this Court, inter alia, held as under:-

“12. Now the question arises whether the tenant could have retained the possession of the premises without paying the rent thereof on account of non-refund of security amount by the plaintiff. The answer is emphatic `no'. The tenant has an independent remedy to recover the security but in no way can retain the possession of the premises on the plea that until and unless security is refunded, possession will not be handed over. Such a possession by the tenant is a possession for which he has to pay the rent as the premises could not have been put in use by the landlord nor have been let out by the plaintiff. No tenant can take the defense that he is entitled to retain the possession of the premises unless security amount is refunded to him. When there is an independent remedy to recover this amount, the retention of possession cannot be justified. In order to avoid the liability of rent, the tenant has the obligation to handover the possession. It is immaterial whether premises was put into use by the defendant/tenant or not. What is material was whether possession is retained by him or not.”

33. In ***Tamil Nadu Handloom Weavers' Co-operative***

Society (supra) the lease granted for six years was terminable by 3 months' notice. The plaintiff/tenant terminated the lease with effect from 31st March, 1997 and demanded the amount of security, he had deposited with the lessor. One of the issues which came up for consideration before the Division Bench of this Court in that case was as to whether the plaintiff had validly terminated the lease of the subject premises. Relying upon the decision of the Rajasthan High Court in **Raja Laksman Singh v. State, AIR 1988 Rajasthan 44**, this Court, inter alia, held as under:-

“21. The law with respect to the termination of lease by the tenant is well settled. Where the tenant vacates the tenancy premises and notifies the landlord to take the delivery of possession, the lease comes to an end. The refusal of the landlord to accept the possession will amount to delivery of possession and the possession shall be deemed to have been delivered to the landlord though the landlord may not accept the same...”

The Court was of the view that the plaintiff had validly terminated the lease with effect from 31st March, 1997 by issuing notice of termination, which was duly received by the defendant. As regard the liability of the

tenant to pay rent, the Court noticed that the plaintiff was insisting on refund of security deposit but was not ready to deliver the possession without taking back the security deposit. The Court upheld the decision of the trial Court that in such circumstances, the tenant was liable to pay rent upto 30th April, 1997 when possession was delivered to the defendant through a Local Commissioner.

However, neither of these two judgments apply to the facts of the case before this Court, since there is no evidence or even allegation that the plaintiff company was insisting on refund of the security deposit before handing over possession of the tenanted premises to the defendant though, vide letter dated 16th December, 1998 (Exhibit PW1/1 and PW1/2) terminating the tenancy with effect from 15th June, 1999, receipt of which has been denied by the defendants, the plaintiff had requested the defendants to take possession against refund of security deposit. While writing the letter dated 29th September, 1999, the plaintiff company did not insist of refund of the security deposit as a pre-condition of handing over possession to defendant though it did demand the refund of security lying with the defendants. This is not the case of the defendants that

when they went to take possession of the tenanted premises, the plaintiff company refused to hand over possession to them on the ground that the security deposit had not been refunded to it. There is no averment to this effect even in the letter dated 19th February, 2000 (Exhibit P-7) written by them to the plaintiff company. Seeking refund of the security while asking the lessor to take possession of the tenanted premises is altogether different from insisting upon payment of security deposit before handing over possession of the tenanted premises. Had the plaintiff company insisted on refund of the security deposit before handing over possession of the tenanted premises to the defendants, it would certainly have been liable to pay rent to the defendants till the time possession was actually delivered to them but, the evidence on record does not make out any such insistence on the part of the plaintiff company. In fact, since the security deposit agreement (Exhibit P-11) with respect to security deposit provided that the security would be refundable on expiry of the lease or on vacation of the premises by the lessee, whichever be earlier against handing over peaceful vacant possession of the flat, furnishing and fittings in good conditions and after

deducting dues, if any, the plaintiff company, in my view, could have insisted on simultaneously refund of the security deposit while handing over possession of the tenanted premises to the defendant, though it could not have insisted on the security being refunded to it before handing over possession to the defendant. In fact, the evidence on record does not indicate even that the plaintiff company was insisting on refund of the security simultaneous with handing over possession to the defendants.

It transpired during arguments that rent upto September, 1999 stands paid to the defendants. In view of the above discussion, I hold that the plaintiff company was not required to pay rent after September, 1999.

Electricity & Water Charges

The defendants in CS(OS) No.2569/2000 have claimed a sum of Rs.1,05,114/- towards electricity and water charges upto February, 2001. The defendants, however, have not told the Court how they arrived at the aforesaid amount of Rs.1,05,114/-. Clause 4 of the lease deed provided that lessee shall pay charges for consumption of electricity and water, as per actual bills of the authorities concerned. No bills of electricity and water charges for the

period upto 31st August, 1999 have been proved by the defendants in the Court. In fact, neither the written statement nor the evidence produced by the defendants gives precise amount of electricity and water charges with respect to electricity and water consumed in the tenanted premises upto 31st August, 1999. In the absence of evidence from the defendants quantifying the amount of electricity and water charges in respect of electricity and water consumed upto 31st August, 1999, the Court is not in a position to direct payment of any specified amount by the tenant in this regard.

Maintenance Charges, Ground Rent & Insurance

34. The defendants in CS(OS) No.2569/2000 have also claimed a sum of Rs.48,984/- alleged to have been paid to the Capital Maintenance Society towards maintenance charges. In CS(OS) No.524/2004, the landlords, who are plaintiffs in the suit have claimed a sum of Rs.1,17,909/- towards maintenance charges for the period from 1st August, 2001 to 30th April, 2004 and Rs.9250/- towards ground rent and insurance for the period from 1st April, 2001 to 30th April, 2004. The maintenance charges have been claimed at the rate of Rs.3573/- per month whereas

ground rent and insurance appears to have been claimed at the rate of Rs.250/- per month. The counter claim does not indicate either the rate at which maintenance charges have been claimed nor does it disclose the period to which these charges pertain. Moreover a perusal of Exhibits D-6 and D-7, which are the confirmation of deposits, would show that the plaintiff company has paid maintenance charges upto 31st March, 2002. A perusal of the lease deed dated 18th April, 1995 would show that the tenant was liable to pay all proportionate society dues and charges including charges for common maintenance, service, capital assets, replacement fund, ground rent, fire fighting fund etc. as per the bills received from the maintenance society. The defendants have not produced any evidence to prove that maintenance charges, ground rent and insurance have been paid by them to the maintenance society. The defendants are entitled to claim these amounts from the plaintiff company only after they have paid them to the maintenance society. Since no such proof has been produced by them, no amount can be awarded to them towards maintenance charges, ground rent and insurance.

Increase in House Tax

35. The defendants in CS(OS) No.2569/2000 have, as a part of their counter claim, demanded a sum of Rs.12,09,381/- towards increase in property tax for the years 1995-96 to 2000-01. In CS(OS) No.524/2004, they have claimed a sum of Rs.12,94,092/- towards increase in property tax for the years 2000-01 to 2003-04. Thus, the alleged increased in the property tax for the year 2000-01 has been claimed in the counter claim as well as in the independent suit filed by them. Admittedly, the increase in property tax was effected vide assessment order dated 26th March, 1999, which is Exhibit DW1/4. Vide this order, the ratable value was increased to Rs.14,26,776/- less 10% for the year 1995-96 and the same ratable value was adopted for the years 1996-97 to 1999-2000. The notice of demand issued by the NDMC to the defendants are Exhibit DW1/5 and DW1/6. Admittedly, the aforesaid assessment order have been set aside in an appeal filed by the defendants. This fact has been expressly admitted by DW-2 P.S. Mangla in his cross-examination. He admitted that the assessment order was set aside and appeal filed by the NDMC in the High Court was also turned down. He has further admitted

that after setting aside of assessment order, no revision has since been done. Since the increase in ratable value of the tenanted premises and consequent increase in the demand of property tax has been set aside and no fresh assessment order has thereafter been passed, the defendants cannot claim any amount from the plaintiff towards increase in property tax so long as a fresh assessment order is not passed and fresh demand is not raised accordingly.

During the course of arguments, it was contended by the learned counsel for the defendants that the defendants had made a part payment to the NDMC in compliance of the interim order passed by the Court. Even if that be so, the defendants cannot claim any amount from the plaintiff towards increase in property tax till a fresh assessment order is passed and a fresh demand is raised against them. Of course, as and when a fresh assessment order is passed and a demand is raised accordingly, the defendants would be entitled to recover the increase in demand to the extent it pertains to the period for which the plaintiff company is held liable to pay rent/damages for use and occupation to them, from the plaintiff.

Mesne Profits & Hire Charges

36. A perusal of the proceedings dated 7th May, 2001 and 11th July, 2001 passed in CS(OS) No.2569/2000 would show that on 7th May, 2001, learned counsel for the defendants stated that he was ready to take back possession of the premises even on that day without prejudice to the rights and contentions of the parties. The proceedings also show that there was no response from the plaintiff to the above referred offer made by the defendants through their counsel. However, on 6th April, 2004, the learned counsel for the plaintiff stated that the plaintiff was inclined to deposit the keys of the premises in the Court. The keys were accordingly deposited in the Court on 28th May, 2004 and were directed to be kept in safe custody. A perusal of the order passed by this Court on 16th September, 2004 shows that on that day the learned counsel for the plaintiff objected to handing over possession to the defendants in CS(OS) No.524/2004 despite the fact that the keys were in possession of the Court in CS(OS) No. 2569/2000. In the face of the objection of plaintiff Tata Finance Limited, the Court directed that the prima facie they would become liable for payment of damages upto the date when possession would be handed back to the landlord

though a final decision on this question would have to be passed in Suit No.524/2004. A perusal of the order dated 11th May, 2005 shows that on that day, after some arguments, it was agreed between the parties that without prejudice to their rights and contentions, keys of the suit property be delivered to the defendants in CS(OS) No.2569/2000 so as to enable them to utilize the premises or give it on rent. It was further agreed that they would not sell or transfer the suit property pending final disposal of the suit.

37. It would, thus, be seen that not only did the plaintiff fail to accept the offer made by the learned counsel for the defendants on 7th May, 2001 to take back possession of the suit premises without prejudice to rights and claims of the parties, it went to the extent of opposing the request made by the defendants for handing over the keys of the premises to them despite the fact that the keys had already been deposited in the Court. The defendants, therefore, were deprived of use of the tenanted premises for the period from 7th May, 2001 to 11th May, 2005 solely on account of total untenable attitude adopted by the plaintiff company. Since the plaintiff company had already shifted from the

tenanted premises and had also offered possession of the same to the defendants, there was no justification for not accepting the offer made by the defendants on 7th May, 2001 and then oppose the request to deliver the keys of the tenanted premises to them. Had the plaintiff accepted the fair offer made by the learned counsel for the defendants/landlords in the Court on 7th May, 2009¹, the defendants would have been able to utilize the tenanted premises or let it out to another tenant. I, therefore, have no hesitation in holding that the plaintiff in CS(OS) No.2569/2000 is liable to pay damages for use and occupation, maintenance charges, ground rent and insurance for the aforesaid period. The plaintiff company is also liable to pay the electricity and water charges, if any, paid/payable by the defendants to the NDMC for the aforesaid period.

As regards electricity and water charges, as noted earlier, since no evidence has been led by the defendants to prove what were the charges demanded by the NDMC and paid by them for the aforesaid period, it is not possible for the Court to direct payment of any specific amount or allow its adjustment to the defendants. No payment or

adjustment towards maintenance charges, ground rent and insurance can be allowed to the landlords, as they have failed to prove the payments, if any, made by them in this regard.

ISSUE Nos. 4, 5, 8 and 9 & 11

38. In view of my findings on issue Nos. 6, 7 and 10, defendant Nos. 2 and 3 in CS(OS) No.2569/2000, who are also plaintiff Nos. 1 and 2 in CS(OS) No.524/2004 are entitled to recover damages for use and occupation as well as hire charges for furnishings and fixtures from the plaintiff in CS(OS) No.2569/2000 for the period from 7th May, 2001 to 11th May, 2005. The plaintiff in CS(OS) No.2569/2000 had admittedly deposited a sum of Rs.25,82,400/- with the defendants in that suit towards security, which was to be refunded on expiry of the lease or vacation of the premises by the lessee, whichever be earlier, against handing over peaceful possession of the tenanted premises along with furnishings and fittings in good condition and after deducting dues, if any. The amount of damages for use and occupation including charges for furnishings and fixtures at the agreed rate of Rs.1,34,500/- per month for the period from 7th May, 2001 to 6th May,

2002, comes to Rs.16,14,000/-. The amount of mesne profit and hire charges for the period from 7th May, 2002 to 6th May, 2003 comes to Rs. 16,14,000/-. The amount of mesne profit and hire charges for the period from 7th May, 2003 to 6th May, 2004 comes to Rs. 16,14,000/-. The amount of mesne profit and hire charges for the period from 7th May, 2004 to 11th May 2005 comes to Rs. 16,31,932/-.

39. In **Ramnik Vallabhdas Madhvani and others v. Taraben Pravinlal Madhvani, (2004) 1 SCC 497**, Supreme Court, with respect to calculation of interest on mesne profits, inter alia, observed as under:-

“9. A mistake has been committed by the High Court in calculation of interest on mesne profits. Interest has to be calculated on yearly basis because the amount of mesne profits on which interest is to be awarded has to be arrived at on year-to-year basis. Mesne profits for the first year would be from 5-5-1969 to 4-5-1970, for the second year it will be from 5-5-1970 to 4-5-1971 and so on. It keeps adding on from year to year. The total amount of mesne profits found due by the High Court on the basis of the Commissioner's report comes to Rs.38,41,920. This amount is the total of mesne profits calculated on yearly basis. Interest cannot be allowed on the whole amount from the beginning. Interest had to be worked out on amounts falling due towards mesne profits on yearly basis i.e. on the amount of mesne profits which could be taken to be due to the plaintiff at the end of each successive year.”

40. The learned counsel for the landlords pressed for

payment of interest while computing mesne profits. In ***Mahant Narayana Dasjee Varu and Others v. Board of Trustees, Tirumalai Tirupathi Devasthanam, AIR 1965 SC 1231***, Supreme Court while dealing with computation of interest on mesne profits, inter alia, held as under:-

“Under Section 2(12) of the Civil Procedure Code which contains the definition of “mesne profits”, interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. That proceeds on the theory that the person in wrongful possession appropriating income from the property himself gets the benefit of the interest on such income.”

However, since no mesne profits/damages for use and occupation are being awarded to the landlords for pre-suit period, and pendente lite and future interest to be awarded under Section 34 of the CPC is in the discretion of the Court, these judgments do not apply to the facts of this case.

41. Since the security deposit was lying with the defendants and it became payable on the date constructive possession was delivered to the defendants, the plaintiff in CS(OS) No.2569/2000 is entitled to interest on the aforesaid amount in terms of Section 3 of the Interest Act, which to the extent it is relevant, provides that in any proceedings for

the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings.

Since the security was refundable to plaintiff in CS(OS) No.2569/2000 under the written agreement Exhibit P-11, the aforesaid provisions of Interest Act are applicable and the plaintiffs in CS(OS) No.2569/2000 is awarded interest on the security deposit for the period from 1st October, 1999 till the date of filing of the suit.

Exhibit P-8 is the notice/letter written by the plaintiff company to the defendants seeking refund of the security deposit along with interest at the rate of 24% per annum. In the facts and circumstances of the case, I feel that interest on security deposit should be awarded at the rate of 6% per annum. The amount of interest, on the security deposit, at the rate of 6% per annum for the period

from 1st October, 1999 till 15th November, 2000, the date of filing of the suit, comes to Rs.1,74,312/-.

42. After adjusting the amount of security deposit and interest thereon till the date of filing of the suit from the amount of damages and hire charges for furnishings and fittings to which the defendants in CS(OS) No.2569/2000 are held entitled for use and occupation of the suit premises by the plaintiff in the aforesaid suit, defendant Nos. 2 and 3 in CS(OS) No.2569/2000 are entitled to recover the balance amount of Rs.37,17,221/-from the plaintiff in CS(OS) No.2569/2000. The issues are decided accordingly.

ORDER

A decree for Rs.37,17,221/- with proportionate costs is hereby passed in favour of defendant Nos. 2 and 3 in CS(OS) No.2569/2000, who are also plaintiff Nos. 1 and 2 in CS(OS) No.524/2004 and against the plaintiff company in CS(OS) No.2569/2000, which is also defendant in CS(OS) No.524/2004. The amount of security deposit gets adjusted in rent and hire charges of about 20 months. I do not propose to award pendente lite interest to the plaintiff company in CS(OS) No.2569/2000 on the security deposit and on the amount of mesne profits, to the defendants in

the aforesaid suit, for the period upto 11th May, 2005 when the plaintiff in the suit agreed that the keys of the tenanted premises may be delivered to the defendants in that suit, so as to balance their respective claim of interest for the aforesaid period. In the facts and circumstances of the case, I award interest to defendants 2 and 3 in CS(OS) No. 2569/2000 on the aforesaid amount of Rs.37,17,221/-, at the rate of 6% per annum, with effect from 12th May, 2005 till realization of the decretal amount.

(V.K. JAIN)
JUDGE

MARCH 11, 2011
‘sn/vkm’