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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.179/2011

25th March, 2011

M/S. JEEVAN DIESELS & ELECTRICALS LTD. Appellant
Through: Mr. Shiv K. Suri, Advocate with Mr.
Danish Hasanian, Advocate.

VERSUS

M/S. JASBIR SINGH CHADHA (HUF) & ANR. Respondents
Through: Mr. Deo Prakash Sharma, Advocate
with Mr. Umesh Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

Caveat No.259/2011 in RFA No.179/2011

Counsel for the caveator appears and thus the caveat stands discharged.

C.M. Nos.6161/2011 and 6162/2011(Exemption) in RFA No.179/2011

Exemption allowed subject to just exceptions.

Application stands disposed of.

RFA No.179/2011

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 14.12.2010 which has decreed

the suit of the respondents/plaintiffs for possession of the suit premises against the appellant who was a tenant. The facts of the case are that the premises being flat No.205 (2nd floor), Arunachal Building, 19, Barakambha Road, New Delhi, was let out to the appellant/defendant vide an unregistered lease deed dated 7.7.2003 at a monthly rent of Rs.23,200/- for a period of three years from 7.7.2003. The tenancy of the appellant/defendant was terminated vide notice dated 15.7.2006 and whereafter the suit was filed on 24.7.2007 for possession of the suit premises and for mesne profits.

2. This case has a slightly chequered history inasmuch as earlier the suit for possession was decreed under Order 12 Rule 6 CPC, however, the Hon'ble Supreme Court vide its judgment dated 7.5.2010 remanded the case back to the trial Court on the ground that there were no admissions and therefore the suit required trial.

3. The case was thereafter fixed in the trial Court after the judgment of the Supreme Court dated 7.5.2010 and though the respondents/plaintiffs led evidence, the appellant/defendant did not lead evidence in spite of opportunities given and consequently its right to lead evidence was closed. The impugned judgment thereafter been passed by the trial Court.

4. A reading of the facts of the present case shows that there is no dispute as regards there having existed a relationship of landlord and tenant between the parties and that the rent was more than Rs.3,500/- per month, taking the premises outside the protection of

Delhi Rent Control Act, 1958. Before the trial Court basically two main arguments were raised on behalf of the appellant/defendant/tenant. The first argument was based upon Clause 6 of the unregistered lease deed dated 7.7.2003 on a stamp paper of Rs.100/- which reads as under:-

“Clause 6 That although the Lease has been created for a period of 3 years yet the monthly rent payable by the Lessees to the Lessors shall stand increased by 20% (Twenty percent only) of the original rent with intervals of each period of three years after the expiry of the initial period of three years.”

On the basis of the aforesaid clause, it was contended that the appellant had a continued right as a perpetual tenant in the premises once rent was increased by 20% every three years. The second argument before the trial Court was that the notice of termination of tenancy dated 15.7.2006 was not validly served and therefore the tenancy was not validly terminated.

5. Learned counsel for the appellant has raised not only the same two arguments which were raised before the trial Court but has also argued a third point that the tenancy was renewed because enhanced rent was received by the respondents after the termination of the tenancy.

6. So far as the argument based upon Clause 6 of the lease deed is concerned, in my opinion, the argument is without substance as the lease document relied upon is an unregistered lease deed and which cannot create a lease for a fixed period unless the lease deed was duly registered. Unless and until a lease for fresh periods is in fact

duly entered into in terms of Clause 6 of the lease deed dated 7.7.2003, the appellant would remain a tenant only from month to month. In law, either there is a tenancy for a specific period in terms of a duly registered lease deed, and in which case the tenant would have protection for the period of lease or if there is no registered lease deed for the leased premises then the tenancy will be on a month to month basis. In the present case, there being no registered lease deed, even originally, or for further periods, the tenancy had always been a month to month tenancy which could be terminated by a notice under Section 106 of the Transfer of Property Act, 1882. Mere existence of Clause 6 would not automatically mean that there is an automatic creation of a registered lease deed for regular fresh periods of three years. This argument of the appellant is therefore rejected.

7. The second argument that the legal notice dated 15.7.2006 was not received by the appellant, and consequently the tenancy cannot be said to have been validly terminated, is also an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows:-

(i) The respondents/plaintiffs appeared in the trial Court and exhibited the notice terminating tenancy dated 15.7.2006 as Ex.PW1/3 and with respect to which the registered receipt, UPC and AD card were exhibited as Ex.PW1/4 to Ex.PW1/6. The notice admittedly was sent to the correct address and which aspect was not disputed before the trial Court. Once the respondents/plaintiffs led evidence and duly

proved the service of legal notice, the appellant/defendant was bound to lead rebuttal evidence to show that the notice was not served although the same was posted to the correct address. Admittedly, the appellant/defendant led no evidence in the trial Court. In fact, even leading of evidence in rebuttal by the appellant would not have ordinarily helped the appellant as the notice was sent to the correct address. In my opinion, therefore, the trial Court was justified in arriving at a finding that the legal notice dated 15.7.2006 was duly served upon the appellant resulting in termination of the tenancy.

(ii) The Supreme Court in the case of **Nopany Investments (P)Ltd. Vs.Santokh Singh (HUF) 2008 (2) SCC 728** has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of **Nopany (supra)** I hold that even assuming the notice terminating tenancy was not served upon the appellant (though it has been served and as held by me above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.

(iii) In the suits for rendition of accounts of a dissolved partnership at will and partition of HUF property, ordinarily it is required that a notice be given of dissolving the partnership at will or for severing the joint status before the filing of such suits because such suits proceed on the basis that the partnership is already dissolved or the joint status of an HUF stands severed by service of notices prior to the filing of such suits. However, it has been held in various judicial

pronouncements that the service of summons in the suit will be taken as the receipt of notice of the dissolution of the partnership or severing of the joint status in case of non service of appropriate notices and therefore the suits for dissolution of partnership and partition of HUF property cannot be dismissed on the technical ground that the partnership was not dissolved before filing of the suit or the joint status was not severed before filing a suit for partition of the HUF property by serving of appropriate notices. In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice under Section 106 of the Transfer of Property Act. Once we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule 7 CPC can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice under Section 106 is to give 15 days to the tenant to make alternative arrangements. In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also. In this regard, I am keeping in view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003 and as per which Amendment no objection with regard to termination of tenancy is permitted on the ground that the

legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat substantial justice and the suit for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

(iv) Another reason for rejecting the argument that the tenancy would not be terminated by the legal notice Ex.PW1/3 is that the respondents/plaintiffs admittedly filed a copy of this notice alongwith the suit way back in the year 2007. Once the summons in the suit alongwith documents were served upon the appellant/tenant, the appellant/tenant would obviously have received such notice. Even if we take this date when the appellant/tenant received a copy of the notice when served with the documents in the suit, once again, the period of 15 days has expired thereafter and keeping the legislative intendment of amended Section 106 in view, the appellant therefore cannot argue that the tenancy is not terminated and he did not get a period of 15 days to vacate the premises. I am in view of this position consequently entitled to take notice of subsequent events under Order 7 Rule 7 CPC, and taking notice of the subsequent events of the expiry of 15 days after receipt of a copy of the notice alongwith documents in the suit, I hold that the tenancy has been validly terminated, and as on date, the appellant/tenant has no right to stay in the premises and

consequently the decree for possession was rightly passed by the trial Court.

8. Therefore, looking at it from any point i.e. the fact that legal notice terminating tenancy was in fact served, the suit plaint itself can be taken as a notice terminating tenancy or that the copy of the notice alongwith documents was duly served to the appellant/tenant way back in the year 2007, I hold that the tenancy of the appellant/tenant stands terminated and the appellant/tenant is liable to hand over possession of the tenanted premises.

9. Learned counsel for the appellant in desperation sought to argue that the respondents accepted rent after termination of tenancy and therefore a fresh tenancy came into existence. It is alleged that in fact enhanced rent was paid to the respondents/plaintiffs. This aspect is very strenuously denied by the learned counsel for the respondents/plaintiffs who states that his client never accepted the enhanced rent and in fact the alleged enhanced rent was not even tendered to the respondents/plaintiffs. In my opinion, I need not at all go into this aspect because the parties are confined in an appeal to the record of the Court below. In the impugned judgment, I do not find that any such argument was raised by the appellant that a fresh tenancy came into being after termination of the tenancy inasmuch as the appellant had paid enhanced rent to the respondents. If in the opinion of the appellant although this point was taken up in the pleadings and was so argued before the trial Court, and the trial Court did not

deal with the same, then, the only way in which the matter could have been approached was to move the trial Court immediately once the impugned judgment was pronounced and when the matter was fresh in the mind of the Judge praying that this point of creation of fresh tenancy was argued before the Court but not adjudicated upon. This was incumbent upon the appellant/defendant in view of the decision of the Supreme Court in the case of ***State of Maharashtra Vs. Ramdas Srinivas Naik AIR (1982) 2 SCC 463*** in which it has been held that a party cannot be allowed to file an affidavit to challenge the factual contents of a Court record and the only way in which the factual aspect wrongly recorded can be corrected is by moving the same Court which has recorded wrong facts at the earliest possible and if it is not so done then the record of the trial Court becomes final. In the present case, therefore in accordance with the decision of the Supreme Court in the case of ***Ramdas Srinivas Naik (supra)*** if the appellant had argued this point and the trial Court had not dealt with the same, the appellant ought to have filed immediately an application either for review or any other application to bring this on record before the trial Court. The appellant not having done so, the matter cannot be allowed to be raised before this Court. I may note that the Supreme Court has reiterated the ratio of the decision in the case of ***Ramdas Srinivas Naik (supra)*** in at least 10 to 12 reported judgments thereafter. The argument of the appellant now raised in this Court is also further liable to be not considered because a reading of the grounds of the appeal

also shows that no ground at all to this effect has been raised that a fresh tenancy came into existence on payment of enhanced rent. Learned counsel for the respondents/plaintiffs also states that the list of dates filed by the appellant, in this Court also does not mention this aspect. Quite clearly therefore this third argument raised by the appellant is mala fide, mischievous and an abuse of the process of law. I must also note that the Supreme Court in the case of **Sarup Singh Vs. S. Jagdish, 2006 (4) SCC 205** has held that receipt of rent after termination of tenancy can be taken as charges towards use and occupation because after all a tenant is bound to pay charges till he vacates the tenanted premises. Finally, I must add that after all the appellant has not led any evidence in the trial Court and assuming the case was pleaded of creation of a fresh tenancy by acceptance of higher rent, the appellant had necessarily to lead evidence to prove this aspect and which it did not. I thus fail to understand as to how this argument can at all be raised.

10. In view of the above, I find the appeal to be wholly without merit and an abuse of the process of law. In fact, the appeal is nothing but a link in the chain of actions for continued illegal possession of the suit premises on the part of the appellant. Being a commercial litigation, in accordance with para 37 of the decision of the Division Bench judgment of three Judges of the Supreme Court in the case of **Salem Advocate Bar Association Vs. Union of India (2005) 6 SCC 344** I find that the present is a fit case where actual costs must

be imposed upon the appellant and in favour of the respondents. I quantify the costs in this case at Rs.25,000/- in favour of the respondents and against the appellant, which shall be paid in two weeks. Appeal is therefore dismissed accordingly.

March 25, 2011
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VALMIKI J. MEHTA, J.