

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

+ **RFA No.189/2011**

% **29th March, 2011**

PUNJAB NATIONAL BANK Appellant
Through: Mr. Rajinder Wali, Advocate.

VERSUS

SHRI MUKUL GUPTA Respondent
Through: Mr. Vijay Tandon, 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.274/2011 in RFA No.189/2011

Since the counsel for the caveator appears, the caveat stands discharged.

C.M. No.6440/2011 (Exemption) in RFA No.189/2011

Exemption allowed subject to just exceptions.

Application stands disposed of.

+ RFA No.189/2011 and C.M. No.6439/2011 (stay)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is by a tenant

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bank to the impugned judgment and decree dated 10.1.2011 whereby the suit of the respondent/landlord for possession has been decreed under Order 12 Rule 6 CPC.

2. The fact that there is a relation of landlord and tenant between the parties was/is an admitted fact. It is also not a disputed fact that as per the original lease deed, the lease was for a period of three years plus three years plus three year plus one year and which period came to an end on 15.3.2010. I may note that the registered lease was only for the original period of three years. There was an earlier litigation between the parties and as per which a fresh lease deed was to be executed for three years from 16.3.2006, which however was not executed. The respondent/landlord had also terminated the tenancy by notice dated 19.2.2010 which is admittedly received by the appellant. The appellant/tenant/bank has thus as on date overstayed its welcome in the suit premises by over one year, assuming that there was a registered lease for 10 years, and in fact the trial Court has been more than liberal in granting further time to the appellant by the impugned judgment dated 10.1.2011 to vacate the premises by 10.7.2011.

3. I do not find any illegality or perversity in the impugned judgment and decree which calls for any interference by this Court because there are no disputed questions of facts which required trial as to either the existence of relationship of landlord and tenant or the premises being outside the Delhi Rent Control Act, 1958 as the rent is

more than Rs.3,500/- or the fact that the tenancy (even assuming it was by a registered lease deed for ten years) would have come to an end by efflux of time on 15.3.2010. In reality, the appellant was only a monthly tenant as no registered lease deed was executed from 16.3.2006 and monthly tenancy was terminated by the notice dated 19.2.2010.

4. Learned counsel for the appellant sought to place reliance upon a Division Bench decision of this Court in the case of **Puran Chand Packaging Industrial Pvt. Ltd. Vs. Sona Devi 2008 (154) DLT 111** in which it was held that acceptance of rent after termination of tenancy would or would not amount to a waiver of a notice to terminate the tenancy is a disputed fact which requires trial and it was therefore argued in this case on behalf of the appellant that since the respondent/landlord has received rent for two months after 15.3.2010 consequently a fresh tenancy came into existence and which aspect requires evidence to be led and therefore the impugned judgment passed under Order 12 Rule 6 CPC cannot be sustained. I note that the trial Court has relied upon a decision of the Supreme Court reported as **Sarup Singh Gupta Vs. S. Jagdish Singh & Ors. 128 (2006) DLT 534 (SC): 2006 (4) SCC 205** and as per which judgment, the Supreme Court has held that merely and only because rent is received after termination of tenancy will not imply creation of a fresh tenancy and the landlord is very much entitled to take charges for use and occupation after termination of tenancy and the rent paid by the

tenant can be treated as paid towards charges for use and occupation. Counsel for the respondent states that payment which was made by the appellant, and that was for just two months, has been taken as charges for use and occupation. Para 7 of the decision in the case of **Sarup Singh (supra)** is relevant and the same reads as under:-

“7. In the instant case, as we have noticed earlier, two notices to quit were given on 10th February, 1979 and 17th March, 1979. The suit was filed on June 2, 1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitute an act on the part of the landlord showing an Intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constituted an act of the nature envisaged by Section 113, Transfer of Property Act showing an Intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted rent which was being paid to him by the tenant It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.”

In the present case, it is noted that the only ground for urging that a fresh tenancy had been created is the mere acceptance of rent after the termination of the tenancy. The appellant has not

pleaded any other facts or circumstances for creation of a fresh tenancy except the payment of rent after termination of the tenancy. Therefore, mere acceptance of rent, without pleading anything more showing creating of fresh tenancy (and that too rent for mere two months) will not amount to waiver of notice or creation of a fresh tenancy in accordance with the decision in the case of **Sarup Singh**. If the appellant would have pleaded other facts to show creation of a fresh tenancy, then the same would be a disputed question of fact requiring trial but the appellant has only alleged fresh tenancy on account of mere acceptance of rent after the termination of tenancy and which even if accepted cannot lead to creation of a fresh tenancy in terms of the decision in the case of **Sarup Singh**.

5. I note that the Division Bench decision of this Court in the case of **Puran Chand** does not refer to the binding decision of the Supreme Court in the case of **Sarup Singh** and as per which judgment simple acceptance of rent after termination of tenancy is in fact to be taken as payment towards charges for use and occupation and not as a fact for waiver of notice or creation of a fresh tenancy. Therefore in accordance with **Sarup Singh** I hold that mere acceptance of two months' rent without any further facts being pleaded cannot show that there was a creation of a fresh tenancy between the parties and thus there cannot be said to exist any disputed question of fact which required trial.

6. In view of the above, I do not find any merit in the appeal, which is therefore dismissed, leaving the parties to bear their own costs.

I must at this stage note that in the arguments as raised by the counsel for the appellant it was submitted that the appellant is a nationalized bank and therefore deserves liberal consideration. Not only obviously there is no law to support such an argument, but in fact, on the other hand the appellant as a nationalized bank and an arm of the State is in fact failing in its legal duty to vacate the premises in terms of an agreement as per which at the very best it would have been entitled to stay upto 15.3.2010. Not only this, as I have already observed above, the trial Court has granted further time till 10.7.2011 for vacation of the suit premises but the appellant bank is still not satisfied. All this is very unfortunate to say the very least.

The appeal is therefore dismissed.

MARCH 29, 2011
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VALMIKI J. MEHTA, J.