

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA NO. 235/2009
% Judgment delivered on 19th May, 2011

BAJAJ ELECTRICAL LTD. Appellant

Through: Mr JP Sengh, Sr. Adv with
Mr. PK Dham, Mr. Anil Sharma,
Mr. Tarun Arora, Ms. Deepika
Madan, Advys.

versus

DHRUV DEVANSH INVESTMENT & FINANCE PVT. LTD

Through: Mr. Deepak Gupta, Mr. BB Gupta,
Mr. Mohit Nagar, Mr. Gaurav
Shankar. Advs

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

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 the Digest? **Yes**

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against the judgement and decree dated 17.04.2009 passed by the learned additional district judge decreeing the suit of the respondent under Order XII Rule 6 CPC.
2. The brief facts necessary to be noticed for disposal of the present appeal are that the appellant was inducted as a tenant at the ground floor of the property bearing municipal no. 2537, Ward No. X, now commonly known as 4/11, Asaf Ali Road, Near Delhi Gate, New Delhi (hereinafter referred to as "*suit property*") by its

erstwhile owners, Sh. Muni Lal Vohra and Sh. Hira Lal Vohra vide registered lease deed dated 09.10.1964 for a period of five years. The respondent has acquired the suit property from its erstwhile owners, Sh. Muni Lal Vohra and Sh. Hira Lal Vohra, vide registered sale deed dated 15.06.2007 and therefore, by operation of law, the appellant has become a tenant under the respondent. As per the information given by the erstwhile owners to the respondent, the appellant was stated to be in arrears of rent for several years and under the indenture of sale deed dated 15.06.2007, the erstwhile owners of the suit property had assigned their right to recover the arrears of rent in favour of the respondent. It is also not in dispute that the appellant has further sub-let the suit property to M/s Bajaj Auto Ltd. on a monthly rent of Rs. 8000/-. Since despite repeated requests the appellant has failed to pay the arrears of rent, the respondent, vide legal notice dated 08.08.2007, terminated the tenancy of the appellant. Despite the termination of tenancy, the appellants have failed to vacate the suit premises and thus, the respondent was compelled to file a suit for recovery of possession and mesne profits.

3. Summons was served upon the appellant and the written statement was filed on 21.01.2008. Amended written statement was filed on 11.09.2008. Pursuant to an application under Order I, Rule 10 of CPC filed by M/s Bajaj Auto Ltd., Bajaj Auto Ltd was impleaded as defendant no. 2 before the trial court. Defendant no.

2 filed its written statement alleging that since the suit property is in the possession of the defendant no. 2, the suit of the respondent is not maintainable since admittedly, no notice under section 106 of the Transfer of Property Act has been served upon the sub-tenant.

4. Subsequent to the filing of the written statement, the respondent filed an application under order XII Rule 6 CPC stating that parties are not in dispute with regard to questions of fact but are at issue only with regard to questions of law which are no longer *res integra*. The said application has been allowed by the learned trial court decreeing the suit of the respondent which has led to the filing of the present appeal.
5. It is contended by counsel for appellant that the impugned judgment is bad in law and is contrary to the factual position on record. The counsel states that the trial court has failed to appreciate the pleadings of the parties and the documents placed on record.
6. The counsel for appellant submits that the trial court has failed to appreciate the fact that the appellant has denied the title of the respondent over the suit property and there is no admission of the landlord-tenant relationship. The counsel questions the locus standi of the plaintiff/respondent in the absence of his knowledge of the alleged sale of the suit property by the erstwhile owners to the respondent. It is the case of the appellant that the appellant has

become a tenant of the suit premises by virtue of its amalgamation with M/s Matchwel Electricals (India) Ltd., the original tenant at the suit premises, and have lawfully sub-let the suit property to M/s Bajaj Auto Ltd. The counsel further submits that the question of lawful sub-letting has already been decided by the Rent Control Tribunal, Delhi and the appeal before the High Court against the order of the Tribunal stands abated.

7. Mr. JP Sengh, learned senior counsel for appellants contends that in order to pass a decree under Order XII Rule 6 CPC, the admissions made must be unequivocal, unqualified and unambiguous. Reliance is placed upon ***Puran Chand Packaging Industrial (P) Ltd v. Sona Devi & Anthr*** reported at 154 (2008) DLT 113 and more particularly at paras 8 and 9 which reads as under:

“8. The only short question which arises for consideration in the instant case is as to whether a decree for possession on the basis of the admission purported to have been made by the appellant/defendant could be passed. Before advertng to the same it will be worthwhile to reproduce the language of Order 12 Rule 6:

“Order 12 Rule 6. *Judgment on admissions.*—

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

9. A perusal of the aforesaid provision would show that before a decree on the basis of admission in the pleadings can be passed, the admission must be made by the defendant or a party to the proceedings in an unequivocal, unambiguous manner. In other words the admission should not be vague or equivocal. Converse of it would mean that if there is an admission made by a party which is conditional wherein certain objections which go to the root of the matter have been raised then it could not be treated as an admission. Reliance in this regard can be placed in **State Bank of India v. M/s. Midland Industries and Others**, AIR 1988 Delhi 153. Though this is a judgment of the learned Single Judge of this Court but as this judgment lays down the correct proposition of law we have no hesitation in approving the same. Another point which has to be borne in mind while passing a judgment on the basis of an admission is that the document is to be read as a whole and the Court is not to take out one or two sentences so as to treat it as an admission. Moreover, passing of a judgment on this basis by the Court is a matter of discretion and not a matter of course. Reliance in this regard is placed on **Manisha Commercial Ltd. v. N.R. Dongre and Anthr**, 85 (2000) DLT 211=AIR 2000 Del. 176.”

8. The counsel for appellant next submits that admittedly, the rent of the premises is Rs. 1600 per month and therefore, the appellant is entitled to protection under the Delhi Rent Control Act. The counsel submits that M/s Matchwel Electricals (India) Ltd were inducted as tenants of the entire ground floor of the suit premises for a period of five years from 01.10.1964 with an option of renewal for a further period of five years at a monthly rent of Rs. 1600/- payable to two landlords in equal proportions. As no further lease deed was executed, the said M/s Matchwel Electricals (India) Limited became a statutory tenant under the Delhi Rent Control Act, 1958 paying a monthly rent of Rs. 1600 per month. The counsel further submits that after the amalgamation of the appellant with M/s Matchwel

Electricals (India) Ltd., the appellant is a statutory tenant at the suit property and is entitled to protection under the Delhi Rent Control Act.

9. It is further contended by counsel for appellant that the respondent , knowing fully well that the suit premises is in the possession of M/s Bajaj Auto Ltd (defendant no.2 before the trial court) and that they are lawful sub-tenants, has neither alleged any cause of action nor claimed any relief against them. The counsel also contends that the notice of termination of tenancy was admittedly not served upon the sub-tenant M/s Bajaj Auto Ltd and thus, the trial court has erred in decreeing the suit of the respondent.
10. Lastly, the counsel for appellant contends that Sh. OP Gupta is not authorised to sign and verify the plaint on behalf of the respondent and that the trial court has ignored the fact that the respondent has not proved the resolution dated 01.0.2007 passed by its Board of Directors authorising Sh. O.P. Gupta to sign and verify the plaint on its behalf.
11. Per contra, counsel for respondent submits that there is no infirmity in the impugned judgement as the appellant has no defence and has duly admitted the receipt of notice to quit and the rate of rent is also not disputed. Further, in view of the registered sale deed dated 15.06.2007 executed between the erstwhile owners and the respondent, the respondent is the owner of the suit property and appellant was a tenant of the respondent.

12. The counsel for respondent next submits that in view of the registered sale deed dated 15.06.2007 placed on record, it leaves no room for doubt that the respondent is the owner of the suit property and therefore, the appellant is the tenant of the respondent. Refuting the contention of the counsel for appellant that respondent has no cause of action since the appellant has no knowledge of the alleged sale of the suit property; the counsel for respondent contends that a landlord does not require a tenant's consent or attornment before the delivery of possession or for assigning the right to recover rent. Substantiating his argument, the counsel for respondent has placed reliance upon a decision of this Court in **Mr. JC Mehra v. Smt. Kusum Gupta** [CR 470/2008 & CM 1010/2003] wherein a Single Judge of this Court has held as under:

“It is not right to say that it needs a tenant's consent to attornment before delivery of possession takes place. Once possession-or right to recover rent- has been handed over, it is sufficient delivery of possession. Delivery of possession does not have to be physical. In these circumstances, that is for power of attorney sales, so long as the right to recover rent has been handed over, it is sufficient. The question is transfer of that right. Whether consequent to such transfer the transferee exercises these rights or not is not germane because it is transfer of that right and not the exercise of it that is relevant or matters. Provisions of Order 21 Rule 35 have been so worded because of court proceedings and third parties; but when two persons enter into an agreement they may decide upon whatever mode of delivery they deem proper.

The Law Lexicon by P. Ramanatha Aiyer 2nd edition 1997 (page 1848) defines symbolical delivery as under:-

“Symbolical delivery is a substitute for actual delivery, when the latter is impracticable, and leaves the real delivery to be made afterwards. As between the parties, the whole title passes by such delivery, when that is their intention.”

If the decision in **Sushil Kanta Chakravorty's case**¹(**Supra**) is read in its entirety, this was the precise question which was answered by the court. The only attempt to distinguishing it is made by the fact that in that case the property was vacant and in the present case, it was tenanted. If a property is tenanted, the sale thereof by any accepted mode does not have to be dependent or await attornment by the tenant. It depends on the agreement to sell, full payment and transfer of right to recover the rent as distinct from sending a letter of attornment to the tenant. The contention of the petitioner that asking the tenant to attorn is imperative may now be tested. If attornment letter is not sent by the purchaser would it mean that only on giving the information the power of attorney sale would be complete, or that the statutory authorities would assess the previous owner and not the purchaser as the owner. The answer to each is in the negative. To my mind omission to ask the tenant to attorn cannot be fatal or postpone the actual sale till that is done. The petitioner in his written submissions filed in this court conceded that in 1993 in the petition no. 9/96 titled JC Mehra v. Pushpawati filed by the petitioner, he was informed that property in question had been bought by the respondent herein. The date of proceedings is more than 5 years prior to filing of the eviction petition. I am fortified in this regard by a judgment of this court in **Jagdish Chander Gulati (Supra)**² which has been dealt with above. “

13. Counsel for respondent next submits that since the premises have been sub-let by the appellant to M/s Bajaj Auto Ltd at a monthly rent of Rs 8000 per month, the provisions of Delhi Rent Control Act have ceased to apply and the tenancy is governed by the provisions of the Transfer of Property Act *simpliciter*. Reliance is placed on **PS Jain Company Ltd. v. Atma Ram Properties (P)**

¹ Sushil Kanta Chakravorty v. Rajeshwar Kumar; 2000 (85) DLT 187

² Jagdish Chander Gulati v. Ram Chand Lakram; 45 (1991) DLT 660

Ltd & others reported at 65 (1997) DLT 308(DB) and more particularly at paras 5,6,7, 12 and 13 which read as under:

“5. The point for consideration in the appeal is: Whether a tenant who is paying a rent of Rs. 900 p.m. (less than Rs. 3,500 as specified in Section 3(c) of the Delhi Rent Control Act, 1958) can be evicted by a simple notice under Section 106 Transfer of Property Act, through the Civil Court if he has lawfully sub-let the premises to two tenants, one for Rs. 40,000 p.m. and another for Rs. 4,500 p.m. (in each case for more than Rs. 3,500 p.m.)

6. Section 3 of the Act deals with ‘premises’ to which the Delhi Rent Control Act, 1958 is not to apply. One of the clauses is Clause (c) as introduced in 1988. It reads as follows:

“Section 3. *Act not to apply to certain premises:—*
Nothing in this Act shall apply

(a)

(b)

(c) to any *premises*, whether residential or not, *whose* monthly rent exceeded three thousand and five hundred.”

7. It will be noticed, that the Sub-clause (c) refers to the “*premises*” which is fetching a rent in excess of Rs. 3,500 p.m. and not to a tenant who is paying rent in excess of Rs. 3,500. In fact, the emphasis in all the clauses in Section 3 is on the ‘premises’ which are exempt. Different classes of ‘premises’ which are exempt are enumerated in Section 3(c).

12. In our view, the intention behind Section 3(c) is that a premises which fetches a rent of Rs. 3,500 p.m. should be exempt and that protection should be restricted to buildings fetching a rent less than Rs. 3,500 p.m. In case a tenant paying less than Rs. 3,500 p.m. to his landlord has sub let the very same premises—may be lawfully—for a rent above Rs. 3,500 p.m., then the question naturally arises whether such a tenant can be said to belong to weaker sections of society requiring protection. By sub-letting for a rent above Rs. 3,500 p.m., the tenant has parted with his physical possession. He is receiving from his tenant (*i.e.* the sub-tenant) more than Rs. 3,500 p.m. though he is paying less than Rs. 3,500 p.m. to his landlord. The above contrast is well illustrated by the facts of the case before us. The

appellant tenant is paying only Rs. 900 p.m. to the plaintiff, while he has sublet the premises in two units, one for Rs. 40,000 p.m. and another for Rs. 4,500 p.m. In regard to each of these units, the sub-tenants have no protection of the Rent Act. In our view, the purpose of Section 3(c) is not to give any protection to such a tenant.

13. Indeed there will be a serious anomaly if such a tenant is to be allowed the benefit of the rent control legislation. If he should get protection, the strange situation will be that when he cannot be evicted except on limited grounds specified in the Act and that too only before the Rent Controller, he could, in his turn, evict his tenants *i.e.* the sub-tenants, by giving a simple notice under Section 106 of Transfer of Property Act, and then move the Civil Court. Further, he could after such eviction of his tenants (*i.e.* sub-tenants) induct fresh sub-tenants at still higher rents. In our view, an interpretation which places him in such an advantageous position is to be avoided.”

14. Further reliance is sought on ***Atma Ram Properties (P) Ltd v. Pal Properties (India) Pvt. Ltd & Others*** reported at (2002) 62 DRJ 623 at paras 15 and 16 which read as under:

“15. *Issue No. 3:* The rent of the premises in question is more than Rs. 3,500/- PM and, therefore, there is no protection of the provisions of Delhi Rent Control Act available to the tenants.

16. The last question which calls for determination is as to whether the tenancy of the defendants is protected under the provisions of Delhi Rent Control Act and the suit is not maintainable in view of Section 50 of the said Act. On this aspect facts are not in dispute. Defendants 1 to 3 are paying the rent of Rs. 1,540/-. However, they have sub-let a part of the tenanted premises to defendant No. 4 and defendant No. 4 is paying the rent of Rs. 24,701.25 paise to defendants 1 to 3. Therefore, no evidence is required and legal question which calls for determination is as to whether it is a rent of Rs. 1,540/- paid by tenants to the landlord or it is a rent of Rs. 24,701.75 paise paid by sub-tenant to tenants which would be a determinative factor in such proceedings. This issue is no more *res integra*. Identical question

came up for consideration before the Division Bench of this Court in the case of **P.S. Jain Company Ltd. v. Atma Ram Properties (P) Ltd. & Ors.**, reported in 65 (1997) DLT 308 (DB). In para-5, the question which fell for consideration was posed. It reads as under:

“The point for consideration in the appeal is : Whether a tenant who is paying a rent of Rs. 900/- p.m. (less than Rs. 3,500/- as specified in Section 3(c) of the Delhi Rent Control Act, 1958) can be evicted by a simple notice under Section 106, Transfer of Property Act, through the Civil Court if he has lawfully sub-let the premises to two tenants, one for Rs. 40,000/- p.m. and another for Rs. 4,500/- p.m. (in each case for more than Rs. 3,500/- p.m.) ?”

The answer to this question is found in paras 8, 9 and 12 of that judgment. After relying upon four Supreme Court judgments dealing with purposeful construction of a statute rather than adopting mechanical approach, in para-12 the Court observed as under :

“12. In our view, the intention behind Section 3(c) is that a premises which fetches a rent of Rs. 3,500/- p.m. should be exempt and that protection should be restricted to buildings fetching a rent less than Rs. 3,500/- p.m. In case a tenant paying less than Rs. 3,500/- p.m. to his landlord has sublet the very same premises may be lawfully for a rent above Rs. 3,500/- p.m., then the question naturally arises whether such a tenant can be said to belong to weaker sections of society requiring protection. By sub-letting for a rent above Rs. 3,500/- p.m., the tenant has parted with his physical possession. He is receiving from his tenant (*i.e.* the sub-tenant) more than Rs. 3,500/- p.m. though he is paying less than Rs. 3,500/- p.m. to his landlord. The above contrast is well-illustrated by the facts of the case before us. The appellant-tenant is paying only Rs. 900/- p.m. to the plaintiff, while he has sublet the premises in two units, one for Rs. 40,000/- p.m. and another for Rs. 4,500/- p.m. In regard to each of these units, the sub-tenants have no protection of the Rent Act. In our view, the purpose of Section 3(c) is not to give any protection to such a tenant.”

15. It is contended by counsel for respondent that the appellant has not denied the sale of the suit premises but has only pleaded that the alleged sale is not within his knowledge. Further contending that a general denial is of no consequence and in fact no denial in the eyes of law, the counsel has drawn the attention of the court to para 1 of the plaint and its reply in the written statement. Para 1 of the plaint reads as under;

“1. That the Plaintiff, M/s Dhruv Devansh Investment and Finance Pvt. Ltd. named above, is the (new) owner and consequently the landlord in respect of the immovable property earlier known as Ramjas Building, bearing municipal No. 2537, Ward No. X, now commonly known as 4/11, Asaf Ali road, Near Delhi Gate, New Delhi-110002 having acquired the same in terms of a sale deed dated 15th June, 2007 (duly registered in accordance with law) executed by the erstwhile owners (namely Shri Jagdish Prasad Vohra S/o late Shri Hira Lal R/o 14, The Mall, Amritsar and his other co-sharers/co-owners).”

Para 1 of the amended written statement reads as under;

“1. The contents of paragraph no. 1 of the plaint are not to the knowledge of the defendant and are denied. The Plaintiff is put to strict proof of the same.”

16. The counsel has further drawn the attention of the court to the reply dated 12.09.2007 sent by the appellant to the notice dated 08.08.2007 wherein the appellant has not denied the factum of sale of the suit property but only required the respondent to furnish details and supply a copy of the registered sale deed. The counsel contends that lack of knowledge of a fact pleaded by the plaintiff does not tantamount to denial of existence of a fact and

reliance is placed on ***Jahuri Sah v. DP Jhunjhunwala*** reported at AIR 1967 SC 109 and more particularly at para 10 which reads as under:

“10. In our opinion the High Court was right in holding that the Act is inapplicable to this case. The plaintiffs and defendants were admittedly co-owners of the property. As the property had not been partitioned it was open to either or both the parties to occupy it. The defendants occupied the property except a small portion which was in possession of the tenants. The plaintiffs acquiesced in it because of an agreement between the parties that the defendants would pay Rs 200 p.m. as compensation to them. The defendants did not dispute that there was an agreement about payment of compensation between the parties but their plea was that the amount agreed to was Rs 50 p.m. and not Rs 200 p.m. Their contention in this behalf was rejected by the High Court which accepted the plaintiffs’ contention that the amount was Rs 200 p.m. This part of the High Court’s judgment is not challenged before us by Mr Sarjoo Prasad. He, however, challenged the finding of the High Court that the claim to compensation was enforceable. But before we deal with this matter it would be appropriate to deal with the reasons given by him in support of the contention that the suit was not maintainable. He reiterated the argument urged before the trial court based upon the non-joinder of Shankarlal as a party to the suit. According to him, as Shankarlal’s adoption has not been established by the plaintiffs he was also a co-owner of the property and his non-joinder as a party to the suit rendered the suit incompetent. The High Court has pointed out that the plaintiffs have clearly stated in para 1 of the plaint that Shankarlal had been given in adoption to Sreelal. In neither of the two written statements filed on behalf of the defendants has this assertion of fact by the plaintiffs been specifically denied. Instead, what is stated in both these written statements is that the defendants have no knowledge of the allegations made in para 1 of the plaint. Bearing in mind that Order 8 Rule 5, CPC provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted, to say that a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial

of the existence of that fact, not even an implied denial. No specific issue on the question of adoption was, therefore, raised. In the circumstances the High Court was right in saying that there was no occasion for the parties to lead any evidence on the point. However, Sreelal who was examined as a witness on behalf of the plaintiffs has spoken about the fact of adoption and his statement can at least be regarded as prima facie evidence of adoption. It is true that he admits the existence of a deed of adoption and of its non-production in the court. This admission, however, would not render oral evidence inadmissible because it is not by virtue of a deed of adoption that a change of status of a person can be effected. A deed of adoption merely records the fact that an adoption had taken place and nothing more. Such a deed cannot be likened to a document which by its sheer force brings a transaction into existence. It is no more than a piece of evidence and the failure of a party to produce such a document in a suit does not render oral evidence in proof of adoption inadmissible. We, therefore, agree with the High Court that the plaintiffs' suit for partition of their half share in the property was not incompetent because Shankarlal was not made a party thereto."

17. I have heard the counsel for the parties and have carefully perused the entire material on record. The contention of the counsel for appellant may be summarised as under:

- The appellant is entitled to protection under the Delhi Rent Control Act since the rent of the suit premises is less than Rs.3500 per month
- For a decree under Order XII Rule 6 CPC, the admissions must be unequivocal, absolute and unambiguous. The appellant has not made any such admission so to entitle the respondent to a decree under Order XII Rule 6 CPC.
- Suit not maintainable since no notice to quit has been served upon the sub-tenant M/s Bajaj Auto Ltd who is in lawful

possession of the premises and no relief has been pressed against it.

- Sh. OP Gupta is not authorised to sign and verify the plaint on behalf of the respondent company.

18. The arguments of the counsel for respondent may be summarised as under

- Since property has been sublet at a monthly rent exceeding Rs 3500/-, the appellant is not entitled to the protection under the Delhi Rent Control Act and the tenancy is governed by the provisions of the Transfer of Property Act and there is no requirement of service of notice to the sub-tenant.
- Respondent is entitled to a decree under Order XII Rule 6 CPC since the appellant has admitted the rate of rent and the receipt of notice dated 08.08.2007. The appellant has not denied the sale of the suit property but has only pleaded lack of knowledge of the alleged sale.

19. The law with regard to Order XII Rule 6 CPC is fairly well settled. The principle behind Order XII Rule 6 is to give the plaintiff a right to speedy judgement as regard so much of the rival claim about which there is no controversy. **In Uttam Singh Duggal & Co. Ltd. v. United Bank of India** reported at (2000) 7 SCC 120, the Apex Court observed as under:

“12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said

Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”

20. It was observed in the case of **Rajiv Sharma And Another v. Rajiv Gupta**, reported at (2004) 72 DRJ 540, that the purpose of Order XII Rule 6 of CPC is to enable the party to obtain speedy justice to the extent of relevant admission, which according to the admission, if the other party is entitled for. Admission on which judgment can be claimed must be clear and unequivocal. In the case of **Ms. Rohini v. RB Singh** reported at 155(2008) DLT 440 it has been held as under: “it is trite to say that in order to obtain judgment on admission, the admissions must be clear and unequivocal. In the matter of landlord and tenant there are only three aspects which are required to be examined – (i) relationship of landlord and tenant; (ii) expiry of tenancy by efflux of time or determination of valid notice to quit; and (iii) the rent of the premises being more than Rs. 3500/- per month , in view of the Act.”

21. It is not in dispute that the appellant is a tenant at the suit property at a monthly rent of Rs.1600. It is an admitted fact that the suit property has been further sublet by the appellant to M/s

Bajaj Auto Ltd at a monthly rent of Rs 8000/-. Applying the law laid down in ***Atma Ram Properties (supra)***, it is clear that the tenancy of the appellant is governed by the Transfer of Property Act and that the appellant is not entitled to the protection under the Delhi Rent Control Act. Therefore, the submission made by counsel for appellant is without any force.

22. I find that it is the appellant's own case that the appellant was inducted as a tenant in the suit property in as far back as 1964 for a period of five years and after the lease expired by efflux of time in 1969, no fresh lease deed has been executed. Thus, as per section 106 of the Transfer of Property Act, the tenancy of the appellant is a month-to-month tenancy that can be validly terminated by a fifteen days' notice to the appellant. The respondent alleges that vide legal notice dated 08.08.2007, the respondent terminated the tenancy of the appellant and called upon the appellant to handover the vacant physical possession of the suit property. The receipt of said notice has also not been denied by the appellant. In fact, the appellant had duly replied to the said notice vide communication dated 12.09.2007.

23. I further find that the appellant has admitted its landlord and tenant relationship with the erstwhile owners, but has disputed the title of the respondent over the suit property on the ground of lack of knowledge of the alleged sale of the suit property vide sale deed dated 15.06.2007. The respondent has placed on record a certified

copy of the registered sale deed dated 15.06.2007. It is not the case of the appellant that respondent is not the owner of the suit property neither has the appellant pleaded that the said sale deed is forged and fabricated nor the sale of the suit property has been denied by the appellant. A perusal of the reply dated 12.09.2007 makes it evident that the appellant has not denied the sale of the suit property but has only asked the respondent to furnish the details of the sale and a copy of the sale deed. A certified copy of the sale deed has also been filed during the pendency of the appeal. During the course of hearing, no such objection has been raised by the counsel for the appellant.

24. A reading of the amended written statement makes it clear that the erstwhile landlords have not accepted the rent of the suit property since August 2002. It is the appellant's own contention that after the death of the erstwhile landlords, it was agreed that the share of lease rental of Sh. Muni Lal Vohra would be paid to Smt. Asha Rani Sajdeh while there being no legal heir to Sh. Hira Lal Vohra, his share was to be deposited in a separate account. However, since August, 2002, the cheques forwarded to Smt. Asha Rani Sajdeh are being received back unaccepted and her share is also being deposited in a separate account by the appellant till date. In the amended written statement, the appellant has conceded that the appellant would release the arrears of rent in favour of the respondent once the respondent establishes its

credential before the Rent Controller and an order to that effect is passed by the Rent Controller.

25. Applying the law laid down in **Jahuri Sah v. D.P. Jhunjhunwala** (supra), I find the denial with regard to ownership of the respondent is only a general denial. Nowhere has the appellant specifically denied the sale of the tenanted premises but instead has only pleaded no knowledge of the alleged sale. Pleading that the appellant has now knowledge of a fact asserted by the respondent does not tantamount to even an implied denial. Further a certified copy of the sale deed dated 15.6.2007 has also been placed on record.

26. It has also been argued by the counsel for appellant that the suit is not maintainable on the ground that no notice under section 106 of the Transfer of Property Act has been served upon M/s Bajaj Auto Ltd who is the lawful sub-tenant and the suit property is admittedly its possession.

27. In **Balvant N. Viswamitra v. Yadav Sadashiv Mule** reported at (2004)8 SCC 706, the Apex Court observed as under:

“26. As held by this Court in *Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue, Bihar*³ there is a distinction between “necessary party” and “proper party”. In that case, the Court said: (SCR p. 681)

“The law on the subject is well settled: it is enough if we state the principle. A *necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be*

³ 1963 Supp(1) SCR 676 : AIR 1963 SC 786

made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.”(emphasis supplied)

27. In *Importers and Manufacturers Ltd. v. Pheroze Framroze Taraporewala*⁴ this Court held that in a suit for possession by a landlord against a tenant, the sub-tenant is merely a proper party and not a necessary party.

28. In *Rupchand Gupta v. Raghuwanshi (P) Ltd*⁵ an *ex parte* decree was passed in favour of the landlord and against the tenant. An application for setting aside the decree was made by the sub-tenant by invoking the provisions of Order 9 Rule 13 of the Code of Civil Procedure, 1908, *inter alia* contending that the decree was collusive inasmuch as the sub-tenant was not joined as the party-defendant. The decree was, therefore, liable to be set aside. Repelling the contention, this Court observed: (SCR p.764)

“[I]t is quite clear that the law does not require that the sub-lessee need be made a party. It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a suit would bind the sub-lessee. *This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an improper act.*”(emphasis supplied)

28. A single judge of this Court in ***S. Rajdev Singh & Others v. Punchip Associates Pvt. Ltd.*** reported at AIR 2008 Delhi 56 was

⁴ AIR 1953 SC 73 : 1953 SCR 226

⁵ AIR 1964 SC 1889 : (1964)7 SCR 760

faced with the same question whether notice of termination of tenancy was required to be served upon the sub-tenant. Answering the above question in the negative, it was observed:

“Whether any notice of termination of tenancy was required to be served on the sub-tenants' If so, its effect? OPD-2 to 4.

23. The aforesaid issue arises from the plea that the sub-tenants had an independent right to be served with a notice of termination prior to the eviction proceedings being initiated. Admittedly, no such notice was issued to the sub-tenants, defendants 2 to 5.

24. It is the case of the plaintiffs that such sub-tenants had no independent right and their rights would not arise as claimed by defendant No. 1, as a tenant. The termination of the tenancy of the tenant (defendant No. 1) would result in the termination of the sub-tenancy. It has been urged that the sub-tenants are not even necessary parties to the present proceedings and have been so impleaded in order to ensure that in case of decree for possession being passed no difficulty is created in the way of the plaintiffs.

25. Learned Counsel for the plaintiffs has referred to the judgment of the Apex Court in **Importers and Manufacturers Ltd. v. Pheroze Framroze Taraporewala [1953]4SCR226** where in paragraph 4, it has been observed that under the ordinary law a decree for possession passed against a tenant in a suit for ejectment is binding on a person under or through that tenant and is executable against such person whether or not he was or was not a party to the suit. Thus, non-joinder of such a person does not render the decree any the less binding on him and such a person was held not to be a necessary party to the ejectment suit against the tenant. Simultaneously it was recognised that such a person would nevertheless be a proper party to the suit in order that the question where the lease has been properly determined and the landlord/plaintiff is entitled to recover possession of the premises may be decided in his presence so that he may have the opportunity to see that there is no collusion between the landlord and the tenant under or through whom he claims and to seek protection under the TP Act, if he is entitled to any.

26. A reference has also been made to the judgment in **Rupchand Gupta v. Raghuvanshi (P) Ltd**

[1964]7SCR760 to the effect that the law does not require the sub-lessee to be made a party where the landlord institutes a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee. The decree in the suit would bind the sub-lessee and even though it may sound harsh on the sub-lessee, this is the position well understood by him when he took the sub-lease.

27. On consideration of the aforesaid judgments and the submissions of the parties to show that the notice of termination is required only to be given to the tenant, the sub-tenants are at best, proper parties to the proceedings. In the present case, the sub-tenants have been impleaded as defendants. Even in the eviction proceedings filed before the Rent Controller, the sub-tenants were impleaded as parties.

28. Learned Counsel for the defendants did not even contend that they were statutory tenants, especially in view of their objections raised in the proceedings before the Rent Controller, which had resulted in the order dated 4.10.1995. It was on consideration of the said objection that the Rent Controller found that the provisions of the Rent Act would not apply in view of the legal position enunciated therein as once the sub-tenant was paying a rent of over Rs. 3,500 per month, the Rent Controller would have no jurisdiction. The said judgment would, thus, be binding on the defendants insofar as the plea of lack of jurisdiction of the Rent Controller and the conformant of the judgment in the civil court is concerned.

29. Learned Counsel for defendant No. 2 does not seek to contend that the notice is defective on account of the fact that the lease commenced on the 18th day of the month and thus the monthly tenancy would expire on the end of the 18th day and not at the end of the month. However, it would be seen that the lease had already expired and the defendants were holding over as tenants. Such holding over on a month to month basis would be by the end of the month. The termination notice dated 9.4.1995, in fact, directed the defendants to vacate the premises on or before 31.5.1995, thus giving a little less than two months to vacate the premises and thus either way, there was sufficient time given as per Section 106 of the TP Act to the defendants to hand over vacant and peaceful possession of the suit property. This is, of course, apart from the fact that there is not even an issue framed in this behalf.

30. In my considered view, the legal position set forth makes it abundantly clear that there was no requirement of any notice to be served personally on the said sub-tenants for the plaintiff to seek eviction of the defendants from the tenanted premises and, thus, the issue is answered in favor of the plaintiffs.”

29. Applying the settled law, I concur with the view of the Single Judge of this Court and do not find any infirmity with the view of the trial court that notice to a tenant is sufficient to terminate the tenancy and no notice is required to be served upon the sub-tenant. Further, a perusal of the letters dated 4.07.2007 and 05.07.2007, exhibited as Ex. P-1 and Ex. P-2 respectively, make it clear that the same persons exercise influence over the appellant and the sub-tenant. The said letters are also admitted documents. In any case no appeal has been preferred by sub-tenant M/s Bajaj Auto Ltd. against the judgment and decree of eviction nor any inter-pleader suit has been filed.

30. A faint argument has been advanced by counsel for appellant that Sh. OP Gupta is not authorised to sign and verify the plaint on behalf of the respondent company. As regards the aforesaid contention, I find that Sh. OP Gupta is stated to be one of the Directors of the respondent company duly authorised by the Board of Directors vide resolution dated 01.08.2007 to sign, verify, institute and pursue the suit of the respondent. Even otherwise, Sh. O P Gupta is stated to be fully conversant with the facts and circumstances of the present case and as per Order XXIX Rule 1 of

CPC, any director who is able to depose to the facts of the case can verify and sign a pleading on behalf of the corporation. Para 2 of the affidavit filed with the plaint states that Sh. OP Gupta is fully conversant with the facts and circumstances of this case and is competent to sign and verify the plaint.

31. In view of the above the appeal filed by the appellant is without any merit and the same is dismissed with costs of Rs. 15,000/-.

G.S.SISTANI, J.

19th May, 2011
Msr//