

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

+ **RFA No.450/2011**

% **30th August, 2011**

M/S. BPL TRAVELS LTD. Appellant
Through: Mr. Abdul Sattar, Adv.

VERSUS

SH.DAVINDER VACHER & ANR. Respondents
Through: Mr. Rakesh Agarwal, Adv

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?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

Caveat No.785/2011

Counsel appears for the caveator. Caveat stands discharged.

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1. The challenge by means of this Regular First Appeal is to the impugned judgment and decree dated 7.5.2011 which has decreed the suit of the respondents/plaintiffs/landlords against the appellant/company/defendant/tenant for possession and mesne profits.
2. The facts of the case are that the appellant/company took on rent the premises being Flat no.710, Indraprakash Building, 21, Barakhamba Road, New Delhi admeasuring 595 square feet from the

respondents vide lease deed dated 16.12.2005 w.e.f. 1.1.2006 at monthly rent of Rs.22,000/- per month. Since the appellant/tenant failed to pay the rent w.e.f. 1.4.2007, the respondents/plaintiffs served a legal notice terminating the tenancy dated 7.10.2007 w.e.f. 31.10.2007. Since the appellant/company/tenant failed to vacate the premises, the subject suit for possession and mesne profits came to be filed.

3. In a suit for possession and mesne profits what is required to be seen is that there is a relationship of landlord and tenant between the parties. The rate of rent is more than Rs.3,500/- per month and therefore the premises are outside the protection of Delhi Rent Control Act, 1958 and the notice under Section 106 of Transfer of Property Act, 1882 has been served terminating the tenancy.

4. So far as the relationship of landlord and tenant is concerned, the same is not disputed. So far as the rate of rent is concerned whereas the appellant stated the rate of rent @ Rs.11,000/- per month, the respondents stated that the rent is Rs.22,000/- per month. This monthly rent @ Rs.11,000/- per month of the premises also in excess of Rs.3,500/- per month and thus the premises would be outside the protection of the Delhi Rent Control Act, 1958. So far as the service of notice is concerned, the Trial Court has noted that the notice was served at the residential addresses of the Directors of the appellant/company and therefore the tenancy has been validly terminated. In any case I have had an occasion to consider the aspect of the requirement of service of notice under Section 106 of the Transfer of Property Act, 1882 in the case of ***M/s. Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh Chaddha***

(HUF) & Anr. RFA 179/2011 decided on 25.3.2011. In the judgment of **M/s. Jeevan Diesels & Electricals Ltd. (supra)** I have held that the service of summons in the suit can be taken as a service of notice under Section 106 of the Transfer of Property Act, 1882 read with Order 7 Rule 7 CPC. I have also held that a copy of the notice terminating tenancy is served as a document upon the defendant and again due to which it can be said that the notice terminating tenancy has been served upon the tenant again read with Order 7 Rule 7 CPC. I have also referred to the intendment of the legislature in enacting Act 3 of 2003 bringing about the amendment in Section 106 of the Transfer of Property Act, 1882 to do away with the technical defences of inadequacies in service of notice of terminating tenancy as long as a period of 15 days expires prior to filing of the suit. An SLP against the said judgment being SLP No.15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

5. Accordingly, I do not find any fault with the impugned judgment and decree for possession inasmuch as there is a relationship of landlord and tenant, rate of rent is more than Rs.3,500/- per month, and the notice terminating tenancy has been validly served or in any case as per the judgment in the case of **M/s. Jeevan Diesels & Electricals Ltd. (supra)**, the suit has been validly filed.

6. The only issue is with respect to grant of arrears of rent as to whether the same should be at the rate of Rs.22,000/- per month or Rs.11,000/- per month. The Trial Court has referred to various aspects to hold that the rate of rent is Rs.22,000/- per month and not Rs.11,000/- per month. In para 19, the Trial Court has referred to the fact that the

defendant/appellant has not disputed the cheque dated 7.2.2006 exhibited as Ex.PW-1/8 was in fact given towards rent at the rate of Rs.22,000/- per month. In fact the DW1 in his cross-examination admitted that a cheque no. 230482 for Rs.22,000/- in December, 2005 was given towards the rent for January, 2006. The Trial Court has also noted that the appellant being a company would have been maintaining regular accounts, however, no statement of accounts was filed on behalf of the appellant/defendant either with respect to the fact of payment of rent or as to the rate of rent. Not only that the appellant did not file its statement of accounts, further no balance sheet or Income Tax Returns were filed because otherwise the same would have been demonstrated that the rate of rent was Rs.22,000/- per month and thus an adverse inference has been rightly drawn against the appellant-company. I may only note that though the appellant/tenant/company has for its convenience denied the signatures on the lease deed dated 16.12.2005, of course, the same was denial for the sake of convenience and the lease deed dated 16.12.2005 clearly mentions the rate of rent as Rs.22,000/- per month. In fact, in my opinion, the Trial Court has been more than liberal to the appellant because no increase in the rent has been granted though ordinarily taking judicial notice of increase of rates of rent higher mesne profits than the admitted rent is normally granted by the Courts.

7. The facts of the present case show that the respondents/landlords have been greatly harassed by the appellant/company/tenant for a number of years by not only not paying the rent but also by refusing to vacate by obdurately and malafidely denying

possession by raising false defences to the suit. I therefore find that present is a fit case in terms of the Para 37 of the judgment in ***Salem Advocate Bar Association Vs. Union of India (2005)6SCC 344*** that actual costs should be awarded to the respondent. I am also entitled to impose actual costs by virtue of Chapter VI Section I Rule 15 of Volumes 5 of the ***Punjab High Court Rules & Orders (as applicable to Delhi)***. Accordingly, the respondents should file an affidavit in this Court showing actual expenses towards the present appeal being the payment made to their lawyers and which affidavit will be supported by the certificate of the lawyers of having received the necessary fees with respect to this appeal. Such affidavit be filed within a period of 4 weeks from today. The fees which have been paid to the lawyers as stated in this affidavit shall be the costs which shall be payable by the appellant to the respondents for this appeal. With the aforesaid observations, the appeal stands dismissed with costs.

AUGUST 30, 2011
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VALMIKI J. MEHTA, J.