

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

+ **CS (OS) No.2003/2009**

% Date of decision: 28th April, 2011

SH. MAHENDER YADAV ...Plaintiff

Through : Mr. Rajesh Yadav and
Ms. Ruchira Arora, Advs.

versus

M/S. SUBHIKSHA TRADING SERVICES LTD. ...Defendant

Through : None.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

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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 the Digest? | YES |

JUDGMENT (ORAL)

1. The plaintiff has filed this suit for possession and mesne profits in respect of property bearing No.69, Khasra No.53 situated at Village Nangli Poona, Delhi – 110036 admeasuring 18900 sq.ft. (2100 sq.yds.) comprising of constructed area of 12500 sq. ft., hereinafter referred to as the “suit property”.

2. Vide unregistered Lease Deed dated 19th November, 2005, the plaintiff let out the suit property to the defendant for a period of three years w.e.f. 15th November, 2005 at a monthly rent of Rs.89,000/-. By a Supplemental Deed dated 1st October, 2007, an additional rent of Rs.13,000/- was agreed to be paid by the defendant to the plaintiff over and above the monthly rent of

Rs.89,000/- w.e.f. 1st February, 2008 to 14th November, 2008. The
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plaintiff terminated the defendant's lease by notice dated 17th August, 2009.

3. The summons issued to the defendant at the registered office of the defendant returned back with the report "shifted" and the other address i.e. the suit premises returned back with the report "left". The defendant was served by publication of summons in Statesman dated 23rd February, 2010 and Hindu dated 22nd February, 2010. The defendant failed to appear and was proceeded ex-parte vide order dated 11th May, 2010.

4. The plaintiff appeared in the witness box as PW-1 and proved his case as under:-

- (i). PW-1 deposed that he is the owner/landlord of the suit property comprising of Plot No.69, Khasra No.53 situated at Village Nangli Poona, Delhi – 110036. The site plan of the suit property was proved as Ex.PW-1/1.
- (ii). Vide Lease Agreement dated 19th November, 2005, the plaintiff inducted the defendant as a tenant for a period of three years w.e.f. 15th November, 2005 at a monthly rent of Rs.89,000/-. The Lease agreement was proved as Ex.PW-1/2.
- (iii). Vide Supplemental Deed dated 1st October, 2007, the monthly rent was increased from Rs.89,000/- to Rs.1,02,000/- w.e.f. 1st February, 2009 till 14th November, 2008. The Supplemental Deed of lease Agreement was proved as Ex.PW-1/3.

- (iv). The aforesaid lease was for a period of three years w.e.f. 15th November, 2005.
- (v). The defendant has not paid the rent of the suit property w.e.f. October, 2008.
- (vi). The defendant's lease expired by efflux of time on 14th November, 2008.
- (vii). The plaintiff terminated the defendant's lease by legal notice dated 17th August, 2009 which was sent by registered post, courier as well as UPC at the registered office of the defendant as well as the suit property. The notice sent by courier to the defendant at its registered office and the suit property was received back with the remarks "shifted". The notice sent by registered post at the suit property returned with the remarks that the "company has been closed". Notice sent to the registered office of the company returned with the remarks "left". The plaintiff also affixed the notice on the front door of the suit property on 3rd September, 2009 and the photographs showing affixation were placed on record. The notice dated 17th August, 2009 was proved as Ex.PW-1/4, the registered AD receipt, UPC receipt and courier receipt were proved as Ex.PW-1/5, Ex.PW-1/6, Ex.PW-1/7 and Ex.PW-1/7A respectively. The returned envelopes were proved as Ex.PW-1/8, Ex.PW-1/9, Ex.PW-1/10 and

Ex.PW-1/11 respectively. The photographs showing affixation were proved as Ex.PW-1/12 (colly.)

(viii) The defendant failed to hand over the vacant and peaceful possession of the property and has not paid the rent w.e.f. October, 2008. The arrears of rent w.e.f. October, 2008 upto the date of termination of tenancy i.e. 14th September, 2009 at the rate of Rs.1,02,000/- amounts to Rs.12,24,000/-.

(ix) The plaintiff claims Rs.10,000/- per day towards mesne profits in terms of clause 19 of the Lease Deed Ex.PW-1/2.

5. Mr. Rajesh Yadav, leaned counsel for the plaintiff, submits that the lease has been validly terminated vide notice Ex.PW-1/4 and, therefore, the plaintiff is entitled to the decree for possession and mesne profits in respect of the suit property.

6. The lease agreements – Ex.PW-1/2 and Ex.PW-1/3 purports to create a lease in respect of the suit property for a period of three years. However, the lease agreements Ex.PW-1/2 and Ex.PW-1/3 being unregistered are hit by Section 49 of the Indian Registration Act, 1908 and are, therefore, inadmissible as evidence of any transaction affecting the suit property. In terms of the principles laid down by the Hon'ble Supreme Court in the case of **Burmah Shell Oil Distributing vs. Khaija Midhat Noor, AIR 1988 SC 1407**, the lease shall be deemed to be a lease from month to month terminable by notice under Section 106 of the Transfer of Property Act, 1882.

7. The plaintiff has validly terminated the defendant's lease by notice Ex.PW-1/4. The said notice was sent by registered AD, courier as well as UPC at the registered office as well as at the suit premises. However, the said notices returned unserved with the report "shifted/left". The notice was also affixed by the plaintiff on the suit property. Similar notice was given to the defendant in CS(OS)No.241/2010 in which this Court has passed a judgment dated 3rd December, 2010 reported as **(2011) 1 AD (Delhi) 164** holding the notice to have been duly served. Following the aforesaid judgment, the notice, Ex.PW-1/4 is held to be duly served on the defendant. The relevant findings of this Court in **(2011) 1 AD (Delhi) 164** are reproduced hereunder:-

"16. In **M/s. Madan and Co. Vs. Wazir Jaivir Chand** AIR 1989, SC 630, the notice sent by the landlord to the tenant by registered post was received back with the endorsement "left without address returned to sender". The relevant statutory provision which in the case before Supreme Court was Section 12 of J&K Houses and Shops Rent Control Act, 1966 provided for receipt of a notice of demand of rent by the tenant. The question which came up for consideration before the Court was as to whether the notice sent by registered post could be said to have been served and the tenant could be said to have received it. It was observed by the Court all that a landlord can do to comply with the requirement of sending notice is to post a pre-paid registered letter, containing the tenant's correct address, and once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under Section 27 of General Clauses Act. It was further observed that a tenant can so many manipulate the matters that the notice gets returned to the sender with vague endorsement such as "not found" "not in station", "addressee has left" and so on. It was contended before the Court that a landlord knowing that the tenant is away from the station for some reasons, could go

through the motions of posting a letter to him which he knows will be served. Recognizing such a possibility, the Court was of the view that if a registered letter, addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct and that if he is compelled to be away for some time, all that he has to do is leave necessary instructions with the postal authorities either to detain the letters addressed to him for some times until he returns or to forward them to the address where has gone or to deliver them to some other person authorized by him.

17. In **K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another**, (1999) 7 SCC 510, the notice sent under Section 138 of Negotiable Instruments Act, was returned with the endorsement "addressee absent" and "intimation served on addressee's house". Observing that giving of notice is distinguished from receiving of notice, it was observed by Supreme Court that a person gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it. It was further observed that if a strict interpretation is given that the drawer should have actually received the notice, for the period of 15 days to start running, no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It was held that when a notice is returned by the sender as unclaimed such date would be the commencing date for reckoning the period of 15 days contemplated in Clause (c) to the proviso of Section 138 of the Act. Of course such reckoning would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address.

In the case before this Court the defendant has not come forward to contest the suit and to claim that it had no knowledge of the notice sent by the plaintiffs and was not in any manner responsible for its non-service.

18. In **D. Vinod Shivappa Vs. Nanda Belliappa** (2006) 6 SCC 456, Supreme Court while dealing

with a notice issued under Section 138 of Negotiable Instruments Act and sent by registered post *inter alia* observed as under:

“This leaves us with the third situation where the notice could not be served on the addressee for one or the other reason, such as his non availability at the time of delivery, or premises remaining locked on account of his having gone elsewhere etc. etc. If in each such case the law is understood to mean that there has been no service of notice, it would completely defeat the very purpose of the Act. It would then be very easy for an unscrupulous and dishonest drawer of a cheque to make himself scarce for sometime after issuing the cheque so that the requisite statutory notice can never be served upon him and consequently he can never be prosecuted.”

In **V. Raja Kumari Vs. P. Subbarama Naidu and Anr** 2004 8 SCC 774, dealing with a case where the notice could not be served on account of the fact that the door of the house of the drawer was found locked, Supreme Court held that the principle incorporated in Section 27 of General Clauses Act will apply to a notice sent by post and it would be for the drawer to prove that it was not really served and he was not responsible for such non-service. In **State of M.P. Vs. Hiralal and Ors** 1996 (7) SCC 523, the respondent managed to have the notice returned with postal remarks “not available in the house”, “house locked” and “shot closed”. It was held that the notices had been served on the respondents. In **C.C. Alavi Haji Vs. Palapetty Muhammed and Anr.** 2007 6 SCC 555, a Three-Judges Bench of Supreme Court was called upon to re-consider an earlier decision of Two-Judges Bench in the case of **D. Vinod** (supra), Supreme Court reiterated that where the payee despatches the notice by registered post with correct address of the drawer of cheque, the principle incorporated in Section 27 of General Clauses Act would be attracted. During the course of the judgment, the Court, *inter alia*, observed as under:-

“Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of

the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.”

19. In the case before this Court also, it was for the defendant-company, if it decided to lock the suit premises which it had been taken on rent from the plaintiffs, to make necessary arrangements for service of the letters, etc that could be sent to it, either by instructing the postal authorities to re-direct those letters to another address or to make some other arrangement for receipt of letters, etc. on its behalf. Same would be the position with respect to the registered office of the defendant-company, if it had decided to change its registered office or to altogether close down its operations as well as its registered office, without shifting the same to another place, (though as long as a company exists, it must have a registered office), it ought to have either provided an alternative address to the postal authorities for re-directing its letter to that address or should have made some alternative arrangement for receipt of letters, etc. sent to its registered office. Another option available to the defendant-company was to give public notice communicating its new address to the public at large and/or to all those with whom it had transacted any business, including its debtors and creditors as well as the landlords of the premises which it had taken on rent. If the defendant-company decided not to adopt any of these courses available to it, the plaintiffs cannot be blamed for non-receipt of the notice by the defendant-company. The plaintiffs did the best they could have done by sending notice by registered post not only at the suit premises, but also at the registered office of the defendant-company and in these circumstances, the statutory presumption under Section 27 of General Clauses Act with respect to service of notice sent by registered post cannot be denied to the plaintiffs.

20. I, therefore, have no hesitation in holding that by sending the notice dated 11th November, 2009 which was returned back with the remarks “shirted” “on repeated visits premises found

locked” and “left without instructions” the plaintiffs have duly complied with the requirement of Section 106 of Transfer of Property Act.”

8. The plaintiff is entitled to decree of possession of the suit property. The plaintiff is also claiming mesne profits at the rate of Rs.10,000/- per day. However, no evidence has been lead to prove the market rent of the suit property. In the absence of any positive evidence, the plaintiff shall be entitled to the mesne profits equal to the last agreed monthly rent of Rs.1,02,000/-.

9. In view of the above, the decree for possession of property bearing No.69, Khasra No.53 situated at Village Nangli Poona, Delhi – 110036 admeasuring 18900 sq.ft. (2100 sq.yds.) comprising of constructed area of 12500 sq. ft. is passed in favour of the plaintiff and against the defendant. The suit is also decreed for the rent at the rate of Rs.1,02,000/- per month for the period from 1st October, 2008 to 14th September, 2009. The suit is also decreed for mesne profits at the rate of Rs.1,02,000/- per month for the period from 15th September, 2009 till delivery of possession. The plaintiff shall be entitled to interest at the rate of 9% per annum from the date of filing of the suit till realization. The plaintiff is also awarded costs including the Court fees paid earlier and the Court fees to be now paid.

APRIL 28, 2011
s.pal

J.R. MIDHA, J