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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA 758/2010

% *Judgment Delivered on: 24.05.2011*

DEEPSONS DEPARTMENTAL STORE Petitioner
Through: Mr. Vikas Dhawan and Mr. S.P. Das,
Advocates

versus

Y.N. GUPTA Respondent
Through: Mr. Sandeep Sethi, Sr. Adv. with
Mr. Rajesh Gupta and Mr. Harpreet Singh,
Advs.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Present appeal has been filed by the appellant, assailing the judgment and decree dated 30.9.2010 passed by learned Additional District Judge, Delhi, on an application filed under Order XII Rule 6 Code of Civil Procedure (hereinafter referred to as "CPC") with respect to property bearing no.E-17, Connaught Place, New Delhi, (hereinafter referred to as "*the suit property*").
2. The brief facts of the case, as noticed by the learned Additional District Judge, are that the appellant is a partnership firm and was a month-to-month tenant of the suit property at a monthly rent of

₹3,543/-. The tenancy was terminated by the respondent by a notice dated 11.5.2009. The appellant had refused to accept the notice on 12.5.2009. Thus, according to the respondent, the appellant was deemed to have been served with the notice. It is also the case of the respondent before the trial court that the suit property has been sub-let by the appellant to M/s Reebok India Company and the respondent landlord without prejudice to the service of earlier notice dated 11.5.2009 had sent another notice dated 5.6.2009, which notice was again refused by the appellant. The trial court has also noticed that the appellant has not denied the execution of lease deed dated 13.8.1970 as this document has been filed by the defendant i.e. appellant herein. There is also no denial of the rate of rent.

3. The basic thrust of the argument of learned counsel for the appellant is that respondents have failed to satisfy the mandatory condition, as laid down in Section 106 of Transfer of Property Act of the service of a fifteen days' notice to the tenant terminating the tenancy.
4. It is contended by learned counsel for the appellant that appellant did not receive the legal notices dated 11.5.2009 and 5.6.2009. It is further contended that service report of refusal is manipulated and, thus, the judgment and decree passed by learned trial court is against the facts and law. It is next contended that learned trial court has grossly erred in not appreciating that evidence regarding

refusal of the notice must be clear and convincing. Counsel further contends that it is neither unusual nor unknown that endorsement of refusal can be got made through postman either without proper care or sometimes deliberately.

5. Learned counsel for the appellant submits that trial court has failed to appreciate the drastic consequences and the ease with which an endorsement of refusal may be available. Counsel further submits that it was the duty of the trial court to ensure that very clear and convincing evidence of the service of demand notice was available on record.
6. Learned counsel for the appellant has laboured hard in support of his contention that presumption under Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act are rebuttable presumptions. Mr. Dhawan submits that once the appellant had denied receipt of notice no decree could have been passed without recording the evidence in the case as to whether the alleged notices of termination of tenancy were tendered and, if tendered, to whom and who has refused to accept the same. Counsel further submits that the report made by the concerned postman is manipulated/procured and in the absence of service of notice of termination of tenancy under Section 106 of the Transfer of Property Act, no suit for possession was maintainable and secondly, no decree under Order XII Rule 6 CPC could have been passed.

7. While relying on *Janakiram Narhari Sahane v. Damodar Ramachandra Joshi* reported at AIR 1956 Nagpur 266, learned counsel for the appellant contends that when there is no evidence before the Court as to how the registered cover containing notice to quit under Section 106 of the Transfer of Property Act was tendered, to whom the same was tendered and who made the endorsement, the suit cannot be decreed.
8. The learned counsel for the appellant further submits that notices in question were neither tendered to the partners of the firm nor have they ever refused to accept the said notices. Counsel further submits that in view of the above situation and a clear cut denial, it was a fit case in which evidence was required to be adduced and no decree for possession under Order XII Rule 6 CPC could have been passed. Counsel also submits that the trial court has also failed to appreciate the law laid down in 1976 PCR 151, more particularly head note "C", which is reproduced below:

"C. Evidence Act – Section 114 – General Clauses Act – Section 27 – Transfer of Property Act – Section 106 of TP Act notice determining the tenancy sent through a registered cover- notice received back with endorsement "refused" – presumption of service under section 27 of General Clauses Act and Section 114 of the Evidence Act are not conclusive but rebuttable – Bare statement on oath denying tender is sufficient to rebut the presumption, if party making statement inspires confidence....

Held, a bare statement on oath by the tenant denying the tender and refusal to accept the delivery was sufficient to rebut the presumption because by making such a statement on oath the tenant has really produced the best possible evidence he could. The presumption raised there with regard to the tender to him of a postal cover and refusal by him of

its delivery. The best he could do is to make a statement on oath that no such tender was even made to him and there was, therefore, no question to refuse the delivery. What other evidence could be possibly given in such a case? Such evidence would be sufficient to shift the onus to the landlord to establish actual tender and refusal to accept the delivery inter alia by producing the postman concerned."

9. Learned counsel for the appellant submits that in the present case the trial court did not offer any opportunity to the parties to lead evidence and in the absence thereof no decree could have been passed. Counsel for the appellant has also drawn the attention of the Court to the copy of the written statement placed on record, wherein in paragraphs 4 and 5 the appellant has categorically denied receipt of legal notices dated 11.05.2009 and 05.06.2009.
10. Learned counsel for the appellant has relied upon *V.N. Bharat v. Delhi Development Authority And Another*, reported at (2008) 17 Supreme Court Cases 321, more particularly paragraphs 24 to 28, in support of his contention that once the service of notice has been denied, the onus of proving notice shifts back on the person issuing the notice. Paragraphs 24 to 28 read as under:

"24. Ms Tripathy urged that since the notice of demand in respect of fifth and final instalment had been duly sent to the appellant by registered post with acknowledgment due at the address given by him, there would be a statutory presumption under Section 114 Illustration (f) of the Evidence Act that the demand notice had been duly served on the appellant. Ms Tripathy urged that the Commission rightly dealt with the matter and no ground had been made out on behalf of the appellant for interference with the same.

25. As will be evident from what has been mentioned hereinbefore, the real controversy in this appeal appears to be whether the demand letter dated 11-9-1996, for payment

of the fifth and final instalment had, in fact, been received by the appellant and as to whether non-compliance with the same resulted in termination of the appellant's allotment and whether the restoration of such allotment on a representation made by the appellant would amount to a fresh or new allotment.

26. As submitted by Ms Tripathy, except for the statutory presumption under Section 114 Ill. (f) of the Evidence Act, there is no other material to suggest that the demand notice had actually been received by the appellant.

27. The assertion of service of notice on account of such presumption has been denied by the appellant as a result whereof onus of proving service shifted back to the respondent. The respondent DDA has not led any other evidence in support of the presumption of service. In such circumstances, it has to be held that such service had not been effected. Therefore, when on the appellant's application for restoration of the allotment, the allotment was restored, the only conclusion that can be arrived at is that the earlier allotment continued as no cancellation and/or termination had, in fact, taken place in terms of Clause 4 of the Scheme in question.

28. As far as the MRTP Commission is concerned, there is no definite finding on the question of service of the demand notice. On the other hand, the Commission presumed that the appellant must have had knowledge of the allotment which had been widely publicised in leading newspapers. According to the Commission, it was for the appellant to have made inquiries relating to completion of the construction and it should have waited for a demand notice to have been sent to him. In our view, the Commission also erred in placing the onus of proof of service of the demand notice on the appellant, since except for denial there is nothing else that the appellant could have produced to prove a negative fact. As we have indicated hereinbefore, the presumption under Section 114 Ill. (f) of the Evidence Act is a rebuttable presumption and on denial of receipt of the registered letter from DDA the appellant discharged his onus and the onus reverted back to the respondent to prove such service by either examining the postal authorities or obtaining a certificate from them showing that the registered article had been delivered to and had been received by the appellant. It is on a mistaken understanding of the provisions of Section 114 Ill. (f) of the Evidence Act that the Commission came to the erroneous conclusion that the allegation of unfair trade

practice on the part of the respondent Authority had not been proved. In our view, from the material on record it is quite clear that the respondent Authority was unable to prove that service of the demand notice for the fifth and final instalment had been effected on the appellant."

11. Learned counsel for the appellant has also relied upon *Puwada Venkateswara Rao v. Chidamana Venkataramana*, reported at AIR 1976 SC 869, more particularly para 6, which is reproduced below:

"6. It is true that, in *Mangilal v. Sughan Chand Rathil (deceased)* AIR 1965 SC 101,, this Court has held that the provisions of Section 4 of the Madhya Pradesh Accommodation Control Act of 1955 do not dispense with the requirement to comply with the provisions of Section 106 of the Transfer of Property Act. In that case, however, Section 4 of the Madhya Pradesh Act merely operated as a bar to an ordinary civil suit so that service of a notice under Section 106 of the Transfer of Property Act became relevant in considering whether an ordinary civil suit filed on a ground which constituted an exception to the bar contained in Section 4 had to be preceded by a notice under Section 106 of the Transfer of Property Act. In the context of the remedy of ejectment by an ordinary civil suit, it was held that the usual notice of termination of tenancy under Section 106 of the Transfer of Property Act was necessary to terminate a tenancy as a condition precedent to the maintainability of such a suit."

12. It is contended by learned counsel for the appellant that the case of the appellant is also covered by a recent decision of the Apex Court in *M/s Jeevan Diesels & Electronics Ltd. V. M/s Jasbir Singh Chadha (HUF) & Anthr* reported at 2010 (6) SCC 601 where it has been held that whether or not there is clear unambiguous admission is essentially a question of fact and depends on the facts of each case. It is further contended that learned trial court has incorrectly relied upon the judgments cited by the respondent-landlord and

has failed to appreciate that in those cases the presumption was drawn only after the cases were put to trial and statement of parties were recorded.

13. Learned counsel for the appellant has relied upon *Jeevan Diesels And Electricals Limited v. Jasbir Singh Chadha (HUF) And Another*, (supra) more particularly at paras 6 to 9, which are reproduced below:

“6. In the written statement, which was filed by the appellant, Paras 5 and 6 of the plaint have been dealt with in Paras 5 and 6 of the written statement respectively. Those two paragraphs are set out below:

“5. That the contents of Para 5 of the plaint are a matter of record. It is submitted that tenancy has neither expired by efflux of time nor has it been terminated.

6. That in reply to the contents of Para 6 of the plaint, it is submitted that the defendant is in possession of the premises. There has been no determination of tenancy.”

It is clear from a perusal of the aforesaid averments in the written statement that the appellant has disputed (a) the fact of expiry of tenancy by efflux of time; and (b) the appellant has also disputed that there has been a determination of tenancy. So far as receipt of the notice referred to in Para 5 of the plaint is concerned, there has been no denial by the appellant.

7. The learned counsel for the appellant also argued before us that the lease deed cannot be terminated in view of certain clauses contained in the lease. The said argument was opposed by the learned counsel for the respondent-plaintiffs. But in the facts of this case and in view of the nature of the judgment we propose to pass we need not decide those contentions at all.

8. It may be noted herein that to the written statement filed by the appellant, the respondent-plaintiffs did not file any rejoinder. They filed an application under Order 12 Rule 6 of the Code of Civil Procedure for passing a judgment on admission. In the said petition in Para 4, the respondent-plaintiffs also averred as follows:

“4. That in view of the admission (i) on existence of relationship of landlord and tenant and thereafter (ii) service of the termination notice, the only question left for adjudication for the purpose of possession is whether the termination of the tenancy has been validly terminated?”

9. To that application the appellant had given a reply. In Para 2 of the reply it was again denied by the appellant that there was any admission by them about termination or determination of tenancy. In the said reply it has been stated that in the suit issues are still to be framed and the case be tried in accordance with the Civil Procedure Code as there is no admission by the appellant and the respondent-plaintiffs have to prove its case with legally admissible evidence. As such prayer was made to dismiss the application of the respondent-plaintiffs under Order 12 Rule 6.”

14. The counsel for appellant contends that a statement on oath of a party denying the receipt of notice is sufficient to rebut the presumption under section 27 of the General Clauses Act and the burden then shifts back to the respondent landlord to prove that the service was actually effected. Learned counsel for the appellant has relied upon *Green View Radio Service v. Laxmibai Ramji And Another*, reported at (1990) 4 SCC 497, paragraphs, 3, 4 and 7, which are reproduced below:

“3. In this connection, we may also point out that the provisions of Section 106 of the Transfer of Property Act require that notice to quit has to be sent either by post to the party or be tendered or delivered personally to such party or to one of his family members or servants at his residence or if such tender or delivery is not practicable, affixed to a conspicuous part of the property. The service is complete when the notice is sent by post. In the present case, as pointed out earlier, the notice was sent by the plaintiff's advocate by registered post acknowledgement due. The acknowledgement signed by the party was received by the advocate of the plaintiff. Thus in our view the presumption of service of a letter sent by registered post can be rebutted by the addressee by appearing as witness and stating that he never received such letter. If the acknowledgement due

receipt contains the signatures of the addressee himself and the addressee as a witness states that he never received such letter and the acknowledgement due does not bear his signature and such statement of the addressee is believed then it would be a sufficient rebuttal of the presumption drawn against him. The burden would then shift on the plaintiff who wants to rely on such presumption to satisfy the court by leading oral or documentary evidence to prove the service of such letter on the addressee. This rebuttal by the defendant of the presumption drawn against him would of course depend on the veracity of his statement. The court in the facts and circumstances of a case may not consider such denial by the defendant as truthful and in that case such denial alone would not be sufficient. But if there is nothing to disbelieve the statement of the defendant then it would be sufficient rebuttal of the presumption of service of such letter or notice sent to him by registered post.

4. In the present case it is an admitted position that the notice by registered post had been sent at the proper address. Similar address appeared in the earlier notice given to the defendant and the same is admitted to have been received by the defendant. It has come on record that the defendant proprietor Amarjeet Singh signs his name differently at different times. This is borne out from his signatures on the receipt of summons in the suit, vakalatnama of his former advocate Mr Mattai and the written statement in the suit which have been signed by him in English in three different ways. It may be further noted that Amarjeet Singh had deposed that he had paid rent for April 1963 to the Gurkha employee of the plaintiffs but no rent receipt was brought to him. He also produced a copy of letter dated June 5, 1963 addressed by him to plaintiffs together with a certificate of posting as Ex.7 (Col. 1). The plaintiffs in this regard did not admit the receipt of this letter and their case was that the copy of letter and certificate of posting Ex.7 (Col. 1) have been fabricated by the defendant of the original written statement. The trial court while dealing with this matter arrived at the conclusion that the copy of the letter dated June 5, 1963 and the certificate of posting were not genuine documents and no reliance could be placed upon them. The above matter was also examined by the High Court in detail and it recorded the finding that the appellant (defendant) had made an unsuccessful attempt by inserting on record a suspicious document in order to make out a case of payment of rent for the month of March 1963. The High Court observed that the learned trial Judge had rightly disbelieved this evidence and it found no reason to differ from him on this point. The above conduct of the defendant goes to show that no reliance can at all be placed on the bald denial of Amarjeet Singh that he did not receive the notice

dated September 3, 1963 sent to him by registered post. He was capable of introducing certificate of posting (Ex.7) in support of his case which was found to be not genuine. As already mentioned above, Amarjeet Singh was signing in different manner and his above conduct of relying on a fabricated document clearly goes to show that no credence can be given to his statement that he had not received the notice in question.

7. However, in the facts and circumstances of the case and particularly in view of the fact that the appellant has been carrying on the business at the suit premises for the last about 40 years, we are of the view that a sufficient time should be given to find out alternative premises. We, therefore, direct that the eviction decree shall not be executed for a period of three years from today subject to the appellant giving the usual undertaking within four weeks from today."

15. Learned counsel for the appellant has relied upon *Sodhi Transport Co. And Others v. State of U.P. And Others*, reported at (1986) 2 SCC 486, more particularly at para 14, which is reproduced below:

"14. A presumption is not in itself evidence but only makes a prima facie case for party in whose favour it exists. It is a rule concerning evidence. It indicates the person on whom the burden of proof lies. When presumption is conclusive, it obviates the production of any other evidence to dislodge the conclusion to be drawn on proof of certain facts. But when it is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed the purpose of presumption is over. Then the evidence will determine the true nature of the fact to be established. The rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts, and circumstances.

16. Per contra, it is contended by counsel for respondent that there is no infirmity in the impugned judgment and decree in view of the facts of the case and the provisions of law. It is submitted by the counsel for respondent that the appellant has clearly admitted the

existence of landlord-tenant relationship and the rate of rent has also not been disputed. As regards the service of notice terminating the tenancy of the appellant is concerned, the counsel submits that by virtue of section 27 of the General Clauses Act, there is deemed service of notice and therefore, the respondent is entitled to a decree under Order 12 Rule 6 CPC.

17. Mr. Sandeep Sethi, counsel for respondent has vehemently argued that in view of the fact that the envelopes containing the said notices were sent at the correct address and were returned by the postal authorities with the remarks “not claimed” and “refused” and that the defendant (appellant herein) has refused to accept the said envelopes, the notices are deemed to have been duly served upon him by implication of law as per the provision of section 27 of the General Clauses Act. Reliance is placed on **K. Bhaskaran v. Sankaran Viadhyan Balan** reported at AIR 1999 SC 3762 at paras 22 to 25:

“**22.** It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him (vide *Harcharan Singh v. Shivrani*¹ and *Jagdish Singh v. Natthu Singh*²).

23. Here the notice is returned as unclaimed and not as refused. Will there be any significant difference between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The section reads thus:

“27. *Meaning of service by post.*—Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the

¹ (1981)2 SCC 535

² (1992)1 SCC 647

expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

24. No doubt Section 138 of the Act does not require that the notice should be given only by “post”. Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.

25. Thus, when a notice is returned by the sendee as unclaimed such date would be the commencing date in reckoning the period of 15 days contemplated in clause (d) 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 present case the accused did not even attempt to discharge the burden to rebut the aforesaid presumption.”

18. Further substantiating the above contention, counsel submits that not only the notices, but even the summons sent to the appellant by all modes have also been refused by the appellant. Summons sent through ordinary process were refused by the servant of the appellant stating that the appellant is away from Delhi. Summons sent through speed post and courier receipts have been delivered to the appellant as per the tracking report; and summons sent through registered cover have been received back with the report of refusal. As the appellant had refused to accept the summon.

The court proceeded ex-parte against the appellant on 17.12.2009 and the appellant appeared only on 17.04.2010 by which time ex-parte evidence had already been recorded and the matter was kept for final arguments. An application was preferred under Order IX Rule 7 which was allowed by the learned trial court and the appellant filed his written statement. In his written statement, the appellant has not questioned the issuance of notices nor has he questioned the stamps nor the fact that notices were sent at the correct address but has merely denied the receipt of the said notices. The appellant has not placed any document in support of its contention that the postal receipts, refusal report and certificate of posting are false. To support his contention, the counsel has placed reliance on **C.C. Alavi Haji v. Palapetty Muhammed and another** reported at (2007)6 SCC 555 and more particularly at para 8 which reads as under:

“8. Since in *Bhaskaran case*³ the notice issued in terms of Clause (b) had been returned unclaimed and not as refused, the Court posed the question: “Will there be any significant difference between the two so far as the presumption of service is concerned?” It was observed that though Section 138 of the Act does not require that the notice should be given only by “post”, yet in a case where the sender has dispatched the notice by post with correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 (for short “the GC Act”) could profitably be imported in such a case. It was held that in this situation service of notice is deemed to have been effected on the sendee unless he proves that it was not really served and that he was not responsible for such non-service.”

³ (1999)7 SCC 510 : 1999 SCC (Cri) 1284

19. Reliance is also placed on ***M/s Madan and Co. v. Wazir Jaivir***

Chand reported at AIR 1989 SC 630 and more particularly at para

6 :

“6. We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to clause (i) of Section 11(1) and the proviso to Section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insist that before any amount of rent can be said to be in arrears, a notice has to be *served through post*. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. 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 the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a court under Order V of the CPC. The statutory provision has

to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, 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. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

20. Reliance is also placed on **Hill Elliot and Company Ltd. v. Bhupinder Singh** reported at 2011(121) DRJ 438 (DB) and more particularly at para 15 which reads as under:

"15. Coming to the presumption of service of notice dated 09.08.2008, the notice was sent to Hill Elliott by

registered AD post, speed AD post, UPC and by courier service. It was specifically pleaded that the Hill Elliott had refused to accept the notice sent by the courier service whereas a confirmation was given by the Postal Authorities regarding delivery of the notice (article through postal receipt No. 4527 and 4528 dated 9.8.2008) on 12.08.2008. It has been submitted by Shri G.L. Rawal, learned senior counsel for the Appellant that presumption under Section 27 of the General Clauses Act is a rebuttable presumption and since Hill Elliott has denied service of notice dated 9.8.2008 it became a triable issue and the learned Single Judge committed a grave error in presuming service of the notice upon Hill Elliott. In support of his contention, the learned senior counsel has referred to "**Tele Tube Electronics Ltd. v. Delhi Sales Tax Appellate Tribunal and Ors., 101 (2002) DLT 337 (DB): 2003(67) DRJ 68(DB)**" "**D. Vinod Shivappa v. Nanda Belliappa,(2006) 6 SCC 456: 2006(89) DRT 129 (SC)**"; "**M/s. Green View Radio Service v. Laxmibai Ramji and Anr., AIR 1990 SC 2156**". There is no dispute about the proposition of law that the presumption of service of notice under Section [27](#) of the General Clauses Act is a rebuttable presumption. However, the facts of each case have to be seen to reach the conclusion whether any rebuttal is forthcoming from the party who is deemed to have been served. We have already referred to hereinbefore as to how the notice terminating the tenancy was sent to Hill Elliott. A perusal of the relevant paragraphs of the written statement filed by Hill Elliott would show that it had simply denied the receipt/service of notice. The circumstances under which the notice dated 9.08.2008 was not received by Hill Elliott were not stated either in para 7 of the Preliminary Objections of the written statement or in reply to Para 5 of the Plaint. Hill Elliott has not stated that the premises during the period the notice is purported to have been served were lying locked; that no responsible person of Hill Elliott was present in the premises during this time or there was any other reason by which the normal course of business of service of notice was prevented. Thus, the denial of service of notice shall be treated as a vague denial and thus deemed to have been admitted."

21. Counsel next submits that the appellant does not dispute the issue of notice nor the appellant pleaded that the address is wrong but

has only disputed the receipt of the said notices. Relying upon the case of **Jindal Dychem Industries Pvt. Ltd. v. Pahwa International Pvt. Ltd.**, (2009)113 DRJ 214; counsel for respondent submits that where the notice is dispatched at correct address, then there is a presumption of service under section 27 of the General Clauses Act. The relevant portion of the judgment is reproduced below:

“12. In view of the record placed by the plaintiff and in light of the fact that the notice was dispatched to the defendant's correct address through registered post and the AD card was also received back from the defendant, the denial in respect of the said notice by the defendant has no value. The rebuttal in this case, does not go beyond a bald and interested denial of service of the notice by the defendant, which does not displace the onus to rebut the presumption of service. I am unable to accept the arguments advanced by the defendant before this Court that by merely saying the AD card bears somebody else's signature, they have discharged the initial burden to rebut the presumption.

13. In my considered view all the requirement of Order XII Rule VI C.P.C are satisfied, as far as the factum of landlord and the tenant relationship; and the factum of amount of rent is above Rs. 3,500/- both is undisputedly admitted by the defendant and in view of the documents placed on record by the plaintiff, the denial of service of termination of notice is sham and false denial, it was observed by this Court that such kind of bald denial should be ignored in such kind of circumstances. This was so observed in the case of **Ms. Rama Ghai v. State Handloom Corporation 91 (2001) DLT 386 Para 16** and similar view is reiterated by this Court in the case of **Rajiv Saluja v. Bhartia Industries Ltd. and Anr. AIR 2003 Del 142**, which reads as under:

“16. Though in the instant case the service of notice under Section 106 of the Act was not at all necessary because the tenancy had expired by efflux of time by virtue of Section 111A of the T.P. Act but to be on the safer side the plaintiff served

notice under Section 106. Mere denial of receipt of such notice cannot come to the rescue of defendant No. 2. Denial is far outweighed by not only postal receipts proving the dispatch at all the addresses of the defendant but also through a certificate from the postal authorities as to the receipt of the notice by the defendants at the suit premises.

17. I have taken a view in **Rama Ghai v. UP State Handloom Corporation 2001 4 AD (DEL) 471** that in order to invoke the provisions of Order 12 Rule 6 CPC the Court has to scrutinise the pleadings in their totality and ignore the evasive and unspecific denials either as to the relationship or as to the service of notice or as to the nature of tenancy.

18. If the landlord either under the legal advice or by way of abundant precaution sends notice for termination of tenancy under Section 106 of the T.P. Act after the expiry of tenancy by way of efflux of time his intention is not to terminate the tenancy but to insist and impress upon the tenant to hand over the possession after the expiry of agreed period of tenancy."

14. In any case, the documentary evidence assembled by the plaintiff is sufficient to raise a strong presumption of Section 27 of General Clauses Act that notice had been properly served by the applicant. It would be appropriate to reproduce the language of Section 27 General Clauses Act, 1897, as under:

"27- Meaning of service by post.- Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

15. It is apparent from the reading of the section that service shall be deemed to be effectuated by properly addressing, pre paying and posting by registered post, a letter containing the notice. This presumption is no doubt rebuttable but unless it is disproved, dispelled or rebutted, the court can treat the presumption as tantamounting to proof.

16. In **Green View Radio Service v. Laxmibai AIR 1990 SC 2156**, the Supreme Court observed as under:

There is a legal presumption that the communication sent by post properly addressed to the addressee is received by him in due course of business and that the acknowledgment was received back from the post office duly signed with the recipient's signature and that acknowledgment is on record. The notice was sent by the respondent-landlord's advocate and the acknowledgment was received at his office. The court further held that Amarjeet Singh, the proprietor of the premises was in the habit of changing his signature from time to time and had signed different documents in different styles. The appellant further did not lead sufficient evidence to rebut the presumption of service. It was admitted by Amarjeet Singh that either he himself or his brother or his employee would always be present in the suit premises. Although he came out with an alibi that he was not present in the premises on the date on which the postal acknowledgment is signed, he has not stated that nobody else was present in the shop on that day and hence nobody could have received the said notice on behalf of the appellant. The courts, therefore, held that the service of the notice on the appellant was proved. Since the rent was admittedly not paid within thirty days of the receipt of the said notice, according to the mandatory provisions of the Act, the appellant was liable to be evicted.

17. Reference may also be made to **Rail India Technical & Economic Service Ltd. v. I.M.Puri and Ors. 2000(52) DRJ 538**, and **M. Nar Singh Rao v. State of Andhra Pradesh AIR 2001 SC 318**.

18. It would be appropriate to appreciate locus classicus on the issue in **Harihar Banerji v. Ramshashi Roy AIR 1918 PC 102** wherein it was observed by Lord Atkinson:

A letter sent under Registered post was held to be giving rise to a stronger presumption especially when a receipt for the letter is produced, even when signed on behalf of addressee by some person other than the addressee himself.

19. Similarly, in **Atma Ram Property Ltd. v. Pal Property Pvt. Ltd. 91 (2001) DLT 438**, this Court has observed:

13. Coming to the service of the notice, the plaintiff has placed on record the copy of the notice sent to the defendants under Section 106 of the Transfer of Property Act. The plaintiff has also placed on record the postal receipt in original by which notice was sent by registered post to the defendants. The plaintiff has also produced on record the original acknowledgement received back which is addressed to Pal Properties India Pvt. Ltd. Address is rightly mentioned as H-72, Connaught Circus, New Delhi. It bears stamp and is signed by some person acknowledging the receipt of the letter.

14. In view of these documents on record it cannot be said that the defendants did not receive the notice. Bare denial would not serve any purpose. [Ref.: **Shimla Development Authority and Ors. v. Smt. Santosh Sharma and Anr. JT 1996(11) SC 254; Madan and Co. v. Wazir Jaivir Chand AIR 1989 SC 630.**”

22. Without prejudice to the contention that the notices were duly served upon the appellant, the counsel for respondent further submits that in view of the various decisions by the Apex Court and this Court, there is no requirement of service of notice to quit and filing of the suit itself by the landlord can be taken as a notice to

quit communicating the intention of the landlord to terminate the tenancy of the tenant. Further substantiating his arguments, the counsel submits that filing of the suit pursuant to issuance of notices dated 11.05.2009 and 05.06.2009 is itself an act in furtherance of the respondent's intention to obtain possession of the suit premises from the appellant. A strong reliance has been placed on ***Nopany Investments (Pvt.) Ltd. v. Santokh Singh (HUF)*** reported at (2008)2 SCC 728 and more particularly at para 22 which reads as under:

“22. In the present case, after serving a notice under Section 6-A read with Section 8 of the Act, the protection of the tenant under the Act automatically ceased to exist as the rent of the tenanted premises exceeded ₹3500/- and the bar of Section 3(c) came into play. At the risk of repetition, since, in the present case, the increase of rent by 10% on the rent agreed upon between the appellant and the respondent brought the suit premises out of the purview of the Act in view of Section 3(c) of the Act, it was not necessary to take leave of the Rent Controller and the suit, as noted hereinabove, could be filed by the landlord under the general law. The landlord was only required to serve a notice on the tenant expressing his intention to make such increase. When the eviction petition was pending before the Additional Rent Controller and the order passed by him under Section 15 of the Act directing the appellant to deposit rent at the rate of Rs 3500 was also subsisting, the notice dated 9-1-1992 was sent by the respondent to the appellant intimating him that he wished to increase the rent by 10 per cent. Subsequent to this notice, another notice dated 31-3-1992 was sent by the respondent intimating the appellant that by virtue of the notice dated 9-1-1992 and in view of Section 6-A of the Act, the rent stood enhanced by 10 per cent i.e. from Rs 3500 to Rs 3850. It is an admitted position that the tenancy of the appellant was terminated by a further notice dated 16-7-1992/17-7-1992. Subsequent to this, Eviction Petition No. 432 of 1984 was withdrawn by the respondent on 20-8-1992 and the suit for eviction, out of which the present appeal has arisen, was filed on 6-2-1993. That being the factual position, it cannot at all be said that the suit could not be filed without the leave of the Additional Rent Controller when, admittedly, at the time of filing of

the said suit, the eviction petition before the Additional Rent Controller had already been withdrawn nor can it be said that the notice of increase of rent and termination of tenancy could not be given simultaneously, when, in fact, the notice dated 16-7-1992/17-7-1992 was also a notice to quit and the notice intending increase of rent in terms of Section 6-A of the Act was earlier in date than the notice dated 16-7-1992/17-7-1992. In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in *V. Dhanapal Chettiar v. Yesodai Ammal*⁴."

23. During the course of arguments, the counsel for respondent submits that even otherwise assuming without admitting that the notices sent were not received by the appellant the appellant was put to notice when he received a complete paper book i.e. plaint documents filed by the respondent including copy of the notices. Mr. Sethi submits that at best the date of termination of tenancy be treated as the date of receipt of plaint by the appellant along with all the documents including the notice terminating the tenancy of the appellant and that statutory period of fifteen days be calculated therefrom.
24. It is strongly contended by counsel for respondent that a bald denial in the written statement filed by the appellant is not sufficient to rebut the presumption under section 27 of the General Clauses Act. He further contends that the said denial is evasive and sham since a perusal of the postal receipts and acknowledgment cards, originals of which have been placed on record, would show

⁴ (1979)4 SCC 214 : AIR 1979 SC 1745

that the notices were issued to the appellant at the correct address. No documents have been filed by the appellant to prove that the notices were not duly served and a mere plain denial by the appellant is not sufficient to rebut the presumption raised by section 27 of the General Clauses Act.

25. I have heard the counsel for the parties and have also perused the record and given my thoughtful consideration to the matter. The contentions of the counsel for appellant may be summarised as under:

- The impugned judgement is bad in law and facts
- No notice has ever been served upon the appellants nor has any notice been refused
- Presumption under section 27 of the General Clauses Act is a rebuttable presumption and denial of notice by the appellant raises a triable issue which requires leading of evidence. Therefore, a decree under Order XII Rule 6 CPC cannot be passed.
- The presumption stands rebutted by a denial of the receipt of notice and the onus shifts back on the respondent-landlord to prove that the notices were duly served upon the appellant.
- For a decree under Order XII Rule 6, the admissions must be unambiguous, absolute and unequivocal.

26. The contentions of counsel of respondent may be summarised as under:

- There is no infirmity in the impugned judgement as the appellant has admitted the landlord-tenant relationship and the rate of rent has not been disputed. The notices are deemed to be duly served as there is enough material placed on record to raise presumption under section 27 of the General Clauses Act.
- Though presumption under section 27 of the said Act is a rebuttable presumption, but a mere bald denial is not sufficient to rebut the aforesaid presumption.
- The appellant has deliberately avoided/refused the receipt of notices and refusal to accept notice is deemed service.

27. The law with regard to section 27 of the General Clauses Act is well settled. It inter alia lays down that where a document is required to be served by post then, unless contrary is proved, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of *due service* or *proper service* if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It has been consistently held by the Apex Court that the principle incorporated in section 27 of

the General Clauses Act would apply to a notice sent by registered post at the correct address, and it would be for the party against whom the presumption of service is drawn to prove that it was really not served and that he was not responsible for such non-service.

28. In ***Harcharan Singh v. Shivrani*** reported at (1981)2 SCC 535, the Hon'ble Apex Court categorically laid down that presumption of deemed service would also mean that the person to whom the communication has been sent would be deemed to know the contents of the communication so deemed to be served upon by him. The relevant portion of the judgment is reproduced as under:

“7. Section 27 of the General Clauses Act, 1897 deals with the topic— “Meaning of service by post” and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, *the service shall be deemed to be effected* by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of *due service* or *proper service* if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent

by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise. In the instant case, additionally, there was positive evidence of the postman to the effect that the registered envelope was actually tendered by him to the appellant on November 10, 1966 but the appellant refused to accept. In other words, there was due service effected upon the appellant by refusal. In such circumstances, we are clearly of the view, that the High Court was right in coming to the conclusion that the appellant must be imputed with the knowledge of the contents of the notice which he refused to accept. It is impossible to accept the contention that when factually there was refusal to accept the notice on the part of the appellant he could not be visited with the knowledge of the contents of the registered notice because, in our view, the presumption raised under Section 27 of the General Clauses Act as well as under Section 114 of the Indian Evidence Act is one of proper or effective service which must mean service of everything that is contained in the notice. It is impossible to countenance the suggestion that before knowledge of the contents of the notice could be imputed the sealed envelope must be opened and read by the addressee or when the addressee happens to be an illiterate person the contents should be read over to him by the postman or someone else. Such things do not occur when the addressee is determined to decline to accept the sealed envelope. It would, therefore, be reasonable to hold that when service is effected by refusal of a postal communication the addressee must be imputed with the knowledge of the contents thereof and, in our view, this follows upon the presumptions that are raised under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act."

29. The counsel for appellant has cited various judgements to the effect that mere denial of receipt of notice is sufficient to rebut the presumption under section 27 of the General Clauses Act as a denial in a statement on oath is the best possible evidence that can

be rendered for a negative fact. A perusal of the judgments cited would show that the settled position of law is that the courts have discretion to rely upon the statement of the party denying the service of the notice and that this rebuttal would depend upon the veracity of the statement of the defendant. To determine the veracity of the statement, the conduct of the defendant becomes an important factor. The counsel for appellant has sought reliance upon **V N Bharat n DDA (supra)** to the effect that once the receipt of notice is denied by a party, the onus of proving due service shifts back upon the sender. The above case is not applicable to the case of the appellant as in that case, DDA has failed to place on record any positive evidence to prove that the notice was duly sent by registered post and was received by the appellant. The court was primarily influenced by the fact that the appellant VN Bharat has already made the payment towards the final instalment before the issue of a fresh notice thereby showing his willingness to make the said payment and an inference that there was no reason for the appellant to avoid or refuse the service of demand letter issued by DDA.

30. Even the case of **Green View Radio Service (supra)** relied upon by the counsel for appellant does not come to his rescue since in this case, the court refused to rely upon the statement of one Amarjeet Singh denying the receipt of notice taking into account his past conduct of putting different signatures on different

documents. The case of ***Puwada Venkateswara Rao (supra)*** also does not help the case of the appellant as it has been categorically held by the Apex Court in para 10 of the judgement that “the denial of service by a party may be found to be incorrect from its own admissions or conduct”.

31. It is an admitted position that the notices sent by registered post had been sent to the correct address. Similar addresses appear on both the notices and it is not the case of the appellant that the addresses mentioned are wrong. Both the said notices have been returned unserved with the report of refusal. The counsel for appellant contends that the said notices were neither tendered nor were they ever refused by the appellant. The counsel further submits that the postal receipts, reports of refusal and certificate of posting produced by the respondent-landlord are false, manipulated and fabricated. Apart from a bald assertion, nothing has been placed on record by the appellant in support of his contention. It is the also the case of the respondent landlord that not only has the appellant refused to accept the said notices, but it had even refused to accept the court process on three occasions. A perusal of the order dated 05.11.2009 of the learned trial court would show that summons were sent to the appellant –defendant by ordinary process in which it is reported that the servant of the appellant refused to take the summons stating that his employers are away from Delhi. The tracking report placed on record by the

counsel for respondent before the trial court state that the summons were delivered to the defendant-appellant on 13th and 14th October, 2009 through speed post and courier respectively. The summons sent through registered cover was received back with the report of refusal. Since the appellant did not appear, they proceeded ex parte. After conclusion of the evidence by the respondent-plaintiff, the matter was fixed for final arguments on 06.04.2010 when counsel for appellant-defendant entered appearance and filed an application under Order IX Rule 7 CPC which was allowed in the interest of justice.

32. In the application under Order IX Rule 7 CPC, the appellant has conceded that a process server had come to the said shop in first week of November, 2009 and since the partners of the appellant firm were not available, the process server duly informed the staff of the appellant that one Mr. Gupta has filed a suit against them in respect of the said shop. The application also states that the staff of the appellant duly informed the partners when they came to the shop. It has also been stated in the application that that the partners through whom the notice was effected used to come to the said shop only in the evenings atleast once a week and that the shop is managed by Mr. Ajay Haryani, who is the son of one of these partners. Taking note of the fact that suit premises is a shop from where the appellant is running its business, it is hard to believe that when the process server had visited in November,

2009; the partners were informed about the visit of the process server only in March 2010.

33. I have carefully gone through the trial court record. There is enough material on record to raise a presumption under section 27 of the General Clauses Act. The counsel for respondent has placed on record the original certificate of posting (Ex. PW1/9), registered AD card (Ex. PW1/8 and Ex. PW1/7) and also the envelope with the endorsement "not claimed" (Ex. PW1/10) with respect to notice dated 11.05.09. Original registered Ad card (Ex. PW1/13 and Ex. PW1/14) and envelope with endorsement "refused" (Ex. PW1/17) have also been placed on record with regard to notice dated 05.06.2009 terminating the tenancy of the appellant. No document has been placed on record by the appellant along with the written statement to prove that the said documents are false, manipulated and fabricated. It is also not the case of the appellant that the premises are permanently locked or that the partners are away from the country and thus no notice was served or that there was any other reason which would have prevented the notices from being served in the ordinary course of past.
34. The argument raised by counsel for the appellant that the report of refusal of notices is false and manipulated is completely without any force for the reason that it would be in the interest of the landlord to serve the legal notice as it is well known that in case where the rent is more than Rs.3500/-, per month, and landlord-

tenant relationship is not denied the only other defence available is non-receipt of legal notice. This seems to be the precise reason for the appellant to deny the receipt of notices.

35. Having regard to the settled position of law and based on the judgments relied upon by counsel for the appellant as also the respondent, it cannot be said that as a universal rule the moment receipt of a notice is denied the sender can only prove the same by leading evidence.
36. Considering the conduct of the appellant and in view of the fact that no document has been placed on record to show that the notices were not served upon the appellant and applying the settled position of law, I am of the view that there is enough material on record to raise a presumption under section 27 of the General Clauses Act and that the notices were duly served. The denial by the appellant has been far outweighed by the documents placed on record by the respondent-landlord. The appellant who has overstayed in the suit premises cannot be permitted to delay the matter to his benefit. Accordingly, I concur with the view of the trial court that mere denial of service of notice is not rebuttal to the presumption under section 27 of the said Act.
37. The Supreme Court in the case of **Nopany Investments (Pvt.) Ltd.** (supra) has held that tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the law laid down by the Apex Court, I hold that even assuming

that the notice of tenancy was not served upon the appellant the tenancy would stand terminated on the filing of the present suit against the appellant. I also hold that assuming the notice was not served upon the appellant, the appellant was put to notice on receipt of the plaint and documents and based on the statement made by counsel for the respondent the date of termination would be fifteen days from receipt of the plaint and documents. Although in the facts of the present case, this Court has come to the conclusion that appellant was duly served with the notice of termination.

38. The law with regard to Order XII Rule 6 CPC is fairly Well Settled. The principle behind Order 12 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.”

39. 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 a flux 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.”
40. In the present case, the appellant have admitted the landlord-tenant relationship and the rate of rent has also not been disputed. Legal notice terminating the tenancy of the appellant firm is deemed to be duly served upon the appellant by virtue of presumption under section 27 of the General Clauses Act as sufficient evidence, in form of postal receipts, registered AD card and certificate of posting, has been placed on record by the respondent-landlord. Thus, the respondent landlord was entitled to a decree under Order XII Rule 6 CPC.

41. A faint argument has also been made by counsel for appellant that the suit is bad for non-joinder of all the partners of the appellant company. As regards the aforementioned contention, I concur with the view of the trial court that since the premises were let out to the firm, the tenancy was validly terminated by addressing the notice to the appellant firm and that the suit is not bad for non-joinder of the partners of the appellant firm.
42. In view of the observations made above, I find no infirmity in the judgment of the trial court.
43. Accordingly, the appeal is dismissed with costs of Rs.20,000/-.

May 24, 2011
'msr/'

G.S. SISTANI, J.