

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

% Judgment Pronounced on: 23.08.2011

+ CS(OS) 2314/2010

GURVINDER SINGH DHINGRA ..... Plaintiff  
Through: Mr Rakesh Aggarwal, Adv.

versus

K.K. BINDAL .... Defendant  
Through: None.

**CORAM:-**

**HON'BLE MR JUSTICE V.K. JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

**V.K. JAIN, J. (ORAL)**

1. This is a suit for recovery of possession, rent and mesne profit. The plaintiff is alleged to be the owner of property bearing No. E-6, Maharani Bagh, New Delhi, rear portion of which comprising one drawing room and dinning room, one kitchen, one study room, one bathroom on the ground floor, four bedrooms with three attached bathrooms and one separate bathroom on the first floor, and bedroom with attached bathroom on the second floor with the terrace, one garage and one servant quarter above the

garage, lawn in the rear with separate drive way was let out to the defendant for a period of two years commencing from 1<sup>st</sup> May, 2009, on a monthly rent of Rs 2,25,000/- vide lease deed dated 23<sup>rd</sup> April, 2009. The defendant was also required to pay electricity and water charges in addition to the agreed rent and hand over the original bills after payment. It is alleged that since the defendant defaulted in payment of rent as well as electricity and water charges, his tenancy was terminated vide legal notice dated 28<sup>th</sup> July, 2010. It is alleged that now a sum of Rs 10,50,000/- is due to the plaintiff towards arrears of rent for the period from 1<sup>st</sup> May, 2010 to 31<sup>st</sup> October, 2010, after adjusting the amount of Rs 3,00,000/-, received for this period. The plaintiff has claimed the aforesaid amount along with Rs 46,550/- as interest on it @ of 12% per annum. The plaintiff has also claimed mesne profit/damages for use and occupation at the rate of Rs 10,000/- per day, in terms of the stipulation contained in the lease deed in this regard.

2. Since the written statement was not filed by the defendant, his right to file the written statement was closed and his defence was struck off vide order dated 1<sup>st</sup> June, 2010. The plaintiff was, however, directed to file affidavit by

way of evidence in order to satisfy the Court with respect to the merits of this case.

3. In his affidavit by way of evidence, the plaintiff has supported, on oath, the case setup in the plaint and has stated that the suit premises was let out to the defendant @ Rs 2,25,000/- exclusive of electricity and water charges and the defendant had continuously defaulted in payment of rent. According to him, a sum of Rs 10,50,000/- was due to the plaintiff on the date of filing of this suit. He has stated that a sum of Rs 6,75,000/- was due from the defendant towards rent for the period from 1<sup>st</sup> May, 2010 to 31<sup>st</sup> July, 2010, out of which Rs 3,00,000/- was paid to him, leaving a balance amount of Rs 3,75,000/- for the aforesaid period. According to him, thereafter, the defendant defaulted in payment of rent for the period from 1<sup>st</sup> August, 2010 to 31<sup>st</sup> August, 2010 and a sum of Rs 6,75,000/- is due from him for that period. Thus, according to the plaintiff, a total sum of Rs 10,50,000/- was due to him from the defendant towards arrears of rent from the period ending 31<sup>st</sup> October, 2010. He has further stated that the defendant made payment of Rs 15,00,000/- to him during pendency of the suit.

4. Ex.PW-1/1 is the registered lease deed, whereby the suit property was let out by the plaintiff to the defendant at the rent of Rs 2,25,000/- per annum. I see no reason to disbelieve the unrebutted deposition of the plaintiff with respect to arrears of payment due to him. His testimony would show that a sum of Rs 10,50,000/- was due to him from the defendant as arrears of rent for the period ending 31<sup>st</sup> October, 2010.

5. Ex.PW-1/14 is the notice dated 28<sup>th</sup> July, 2010 sent by the plaintiff to the defendant through his counsel Shri Rakesh Aggarwal. The notice was sent vide Certificate of Posting Ex.PW-1/16 and postal receipt, Ex.PW-1/15. Ex. PW-1/17 is the envelope in which the notice was sent to the defendant by registered post. A perusal of the endorsement made on the envelope would show that the notice was refused by the defendant. Refusal amounts to a valid service of notice and, thereby, the plaintiff duly served the notice Ex.PW-1/14 on the defendant. The notice was also sent under Certificate of Posting. There is a presumption under Section 114 (f) of the Evidence Act that the notice was delivered to the addressee in the ordinary course of business of the Postal Department. In V.S.Krishnan v.

Westfort Hi-Tech Hospital Ltd. (2008) 3 SCC 363, Supreme Court drew the presumption of service sent under certificate of posting for the purpose of Section 53(2) of the Companies Act, 1956. In Samittri Devi & Anr. v. Sampuran Singh & Anr. (2011) 3 SCC 556, Supreme Court observed that it will depend upon the facts of each case as to whether a presumption of service of a notice sent under postal certificate should be drawn and that such a presumption is expected to be drawn when the facts so justify, even in the case of a letter sent under postal certificate. In the case before this Court, the defendant has not filed Written Statement controverting the averments made in the plaint. Hence, I find no reason for not raising a statutory presumption of service of the notice sent under certificate of posting Exh. PW-1/16.

A presumption with respect to the notice sent under certificate of posting was raised by Punjab & Haryana High Court in Amrit Lal Sharma v. Narainder Sharotri 2000 (1) PLJR 806 (P&H) and by Andhra Pradesh High Court in M.A.Ghani v. P. Rama Reddy 2003 (3) Andh LT 120 (AP).

Vide this notice, the tenancy was terminated on the expiry of 31<sup>st</sup> October, 2010. In view of the provisions

contained in Section 106 of Transfer of Property Act, a lease of immovable property for a purpose other than agricultural or manufacturing purpose is terminable by fifteen days' notice on the part of either the lessor or lessee. Since the suit premises was let out to the defendant for residential purpose, as is evident from the lease deed itself, the tenancy could have been terminated by giving fifteen days' notice. The notice by registered post was sent on 28<sup>th</sup> July, 2010. In ordinary course, it must have been tendered to the defendant within two-three days thereafter.

6. Assuming that the notice was refused on 31<sup>st</sup> July, 2010, the defendant got at almost three months to vacate the tenancy premises. The notice sent under Certificate of Posting on 28<sup>th</sup> July, 2010 also would in the normal course have been delivered to the defendant within two-three days, i.e., by 31<sup>st</sup> July, 2010. The tenancy, therefore, was validly terminated. In any case, the tenancy being for a period of two years, it also expired by efflux of time on 30<sup>th</sup> April, 2011.

7. Clause 3 of the lease deed provided that in case the lessee did not vacate and hand over the possession of the demise property to the lessor on the expiry of its term, he

shall be liable to pay damages @ Rs 10,000/- per day for use and occupation of the premises. The lease deed, however, does not stipulate payment of mesne profit/damages @ Rs 10,000/- per day, for a period prior to expiry of the term of the lease deed. It does not stipulate that in the event of determination of the tenancy before expiry of its term, the lessee would be required to pay damages to the lessor @ Rs 10,000/- per day, for use and occupation of the tenancy premises. Thus, the plaintiff is entitled to recover damages for use and occupation @ Rs 10,000/- per day only w.e.f. 1<sup>st</sup> May, 2011. As regards the period from 1<sup>st</sup> November, 2010 to 30<sup>th</sup> April, 2011, the plaintiff has not led any evidence to prove what the market rate of the suit premises was during the aforesaid period. Hence, for the period from 1<sup>st</sup> November, 2010 to 30<sup>th</sup> April, 2011, the plaintiff is entitled to recover damages for use and occupation only @ Rs 2,25,000/- per month.

8. Since the tenancy of the defendant was validly terminated w.e.f. 31<sup>st</sup> October, 2010, and in any case, it has also expired by efflux of time on 30<sup>th</sup> April, 2011, the plaintiff is also entitled to recover the possession of the suit premises from the defendant.

9. Though the plaintiff has also claimed interest @ 12% per annum, there is no agreement between the parties for payment of interest. However, interest can be awarded to the plaintiff in terms of Section 3 of Interests Act, 1978, which to the extent it is relevant, provides that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings;

In the facts and circumstances of the case, I award interest to the plaintiff @ 6% per annum. The amount of interest @ 6% per annum comes to Rs 23,275/-.

### **ORDER**

In view of above discussion, a decree for possession of the suit premises comprising one drawing room and dining room, one kitchen, one study room, one

bathroom on the ground floor, four bedrooms with three attached bathrooms and one separate bathroom on the first floor, and bedroom with attached bathroom on the second floor with the terrace, one garage and one servant quarter above the garage, lawn in the rear with separate drive way, of property No. E-6, Maharani Bagh, New Delhi, recovery of Rs 10,73,27511/- towards arrears of rent for the period ending 31<sup>st</sup> October, 2010, and interest up to filing of the suit, recovery of damages for use and occupation/mesne profit @ Rs 2,25,000/- per month for the period from 1<sup>st</sup> November, 2010 to 30<sup>th</sup> April, 2011 and @ Rs 10,000/- per day for the period from 1<sup>st</sup> May, 2011 till recovery of possession of the suit premises of the plaintiff is hereby passed in favour of the plaintiff and against the defendant. The plaintiff will also be entitled to proportionate costs of the suit. The plaintiff will get pendente lite and future interest @ 6% per annum. The plaintiff will pay the deficient Court fee in respect of damages for use and occupation within two weeks from the date of this judgment.

**(V.K. JAIN)**  
**JUDGE**

**AUGUST 23, 2011**  
**bg**