

THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment Reserved on: 03.05.2011
Judgment Pronounced on: 05.05.2011

+ CS(OS) No. 1911/2000

Bhupinder Singh Plaintiff

- versus -

State Bank of India (SBI) Defendant

AND

+ CS(OS) No. 2552/2000

Mrs. Pushpa Singh **.....Plaintiff**

- versus -

State Bank of India (SBI) Defendant

AND

+ CS(OS) No. 2553/2000

Virender Singh Plaintiff

- versus -

State Bank of India (SBI) Defendant

AND

+ CS(OS) No. 2554/2000

Rajender Singh Plaintiff

- versus -

State Bank of India (SBI) Defendant

Advocates who appeared in this case:

For the Plaintiffs: Mr. Ajay Verma.

For the Defendant: Mr. S.N. Relan.

CORAM:-

HON'BLE MR JUSTICE V.K. JAIN

- | | |
|--|-----|
| 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 Digest? | Yes |

V.K. JAIN, J

1. The defendant was a tenant under Bhupinder Singh, plaintiff in Suit No. 1911/2000 in respect of premises, comprising main hall on the ground floor, small strong room, adjoining room, bath and W.C., and part of the mezzanine, all measuring 1820 sq. ft. The extended portion in mezzanine floor in the main hall on the ground floor admeasuring 315.84 sq. ft. was also later let out to the plaintiff by him. The defendant was also a tenant under Pushpa Singh, plaintiff in Suit No. 2552 of 2000 in respect of two halls on the first and second floor along with part of balconies and a bathroom on the first floor of the aforesaid property all admeasuring 427 sq. ft. It had also taken up two halls on the first floor and second floor along with a

bath room on the first floor on the aforesaid property all admeasuring 420 sq. ft. from Virender Singh, plaintiff in Suit No. 2553 of 2000 and two halls on the first and second floor along with bath room on the first floor, all admeasuring 427 sq. ft. from Rajender Singh plaintiff in Suit No. 2554 of 2000.

2. Bhupinder Singh, plaintiff in Suit No. 1911 of 2000 terminated the tenancy of the defendant vide notice dated 12th August, 1997, whereas Pushpa Singh, Virender Singh and Rajender Singh plaintiffs in Suit Nos. 2552 of 2000, 2553 of 2000 and 2554 of 2000 respectively terminated the tenancy of the defendant vide notice dated 07th October, 1997. The case of the plaintiff in Suit No. 1911 of 2000 is that as a result of termination of tenancy, the defendant became an unauthorized occupant of the tenancy premises w.e.f. 05th September, 1997. The case of Pushpa Singh, Virender Singh and Rajender Singh is that on account of termination of its tenancy, the defendant became unauthorized occupant w.e.f. 15th November, 1997 in respect of portion which it had taken on rent from them.

3. At the time of termination of tenancy, the defendant was paying rent at the rate of 27.50 per sq. ft. in

respect of the ground floor portion, at the rate of 13.75 per sq. ft. in respect of the mezzanine floor portion and at the rate of 13.22 per sq. ft in respect of the first and second floor portions. The defendant vacated the tenancy premises on 02nd September, 1999.

The plaintiff in suit No. 1911 of 2000 has claimed damages for use and occupation w.e.f. 05.09.1997 at the rate of Rs 80 per sq. ft., whereas the plaintiffs in the other suits have claimed damages for use and occupation w.e.f. 15th November, 1997 at the rate of Rs 60 per sq. ft. The plaintiffs have also claimed interest at the rate of Rs 18% per annum on the arrears of damages for use and occupation.

4. The defendant has contested the suits. The defendant has admitted having taken the aforesaid premises on rent as also the receipt of notice, whereby tenancy is alleged to have been terminated. It has, however, been claimed that the notices were not in conformity with the provisions of Section 106 of Transfer of Property Act, since clear 15 days notice was not given. It has also been alleged that the tenancy premises was not on the main road and was accessible only through narrow alleys and was in a

dilapidated condition. It has been alleged that there is a huge *Jamun* tree in the main banking hall, and the branches of that tree have erupted through the roof of the main banking hall causing much space for leakage and seepage of rainy water, thereby making it impossible to work in the main banking hall during rainy season. It is also claimed that the tenancy premises was not worth even the rent which the plaintiffs were receiving from the defendant up to the date the premises were vacated on 02nd September, 1999.

5. The following issues were framed on the pleadings of the parties:-

- “1. At what rate the plaintiff is entitled to mesne profits in respect of premises referred in para 4 of the plaint?
2. Whether plaintiff is entitled to interest? If so, at what rate, on which amount and for which period?
3. Whether tenancy of defendant was validly terminated by the notice dated 07th October, 1997?
4. Whether suit as framed is not maintainable as alleged?
5. Relief.”

Issue No. 3

6. As noted earlier, the receipt of notice, whereby the tenancy was terminated is not in dispute. Ex.P-1/14 is the notice dated 12th August, 1997 in respect of the premises taken on rent from Bhupinder Singh, plaintiff in Suit No. 1911/2000. This notice was received by the defendant on 12th August, 1997 as is evident from the endorsement and the stamp of defendant bank appearing on the notice. The receipt of this notice was also admitted during admission/denial of documents. Vide this notice, the tenancy of the defendant was terminated by the end of 04th September, 1997 or at the end of the month taken by the defendant as the tenancy month. Thus, more than 15 days clear time was given to the defendant to vacate the tenancy premises. Section 106 of Transfer of Property Act, to the extent it is relevant, provides that in the absence of a contract or a local law or usage to the contrary, a lease of immovable property for any purposes other than agricultural or manufacturing purposes can be terminated by giving 15 days notice expiring with a month of tenancy. The case of the plaintiff is that the month of tenancy expired on 04th September. Computed accordingly the defendant

got more than 15 days to vacate the tenancy premises. This is not the case of the defendant that the month of tenancy expired on a date other than 4th of the calendar month. Assuming, however, that the tenancy expired on some other day of the month, since the notice stipulated termination of the tenancy by the end of any other date in case the defendant took that date as the date of the end of tenancy month, the notice dated 12th August, 1997 fully complied with the requirement laid down in Section 106 of Transfer of Property Act.

Ex. P-4 is the notice dated 07th October, 1997 in Suit No. 2553/2000 received by the defendant bank on 09th October, 1997 whereas Ex.P-4 is the notice dated 07th October, 1997 in Suit No. 2554/2000 received by the bank on 09th October, 1997. Similarly, Ex.P-4 in Suit no. 2552/2000 is the notice dated 07th October, 1997 received by the defendant-bank on 09th October, 1997. In all these three notices, the tenancy of the defendant was terminated w.e.f. 14th November, 1997. It was further stated that in case defendant took any other date of tenancy month, the tenancy was terminated by the end of that tenancy month taking 15 days clear notice from the date of receipt. The

case of the plaintiff is that the tenancy month in respect of these three tenancies expired on the 14th of the month. This is not the case of the defendant that the month of tenancy expired on any date other than 14 of the calendar month. If the month of tenancy expired on 14th of the month, termination of tenancy w.e.f. 14th November, 1997 gave more than 15 days to the defendant to vacate the tenancy premises. In case the month of tenancy expired on some other date, the defendant still got the statutory notice of 15 days since it was clearly stated in the notice that in such an event, the tenancy would be terminated by the end of the month which the defendant took as the month of tenancy. Since the notice terminated, the tenancy w.e.f. the end of the month of tenancy and the defendant was given more than 15 days clear time to vacate the tenancy premises, the termination of tenancy was absolutely legal.

7. In ***Bhagabandas Agarwalla v. Bhagwandas Kanu and others, (1977) 2 SCC 646***, Supreme Court held that a notice to quit must be constructed not with a desire to find faults in it, which would render it defective, but it must be construed *ut res magis valeat quam pereat* and not with a desire to find faults in it. It was further observed

that the notice should not be read in a hyper-critical manner but must be constructed in a common sense way.

8. The purpose of giving notice of termination of tenancy by a landlord to the tenant is to make it known to him that he does not want him to continue in possession of the tenanted premises after the date from which the tenancy is being terminated by him, so that the tenant is not taken by surprise and gets adequate time to take possession of the tenanted premises. The above referred notices meet all the necessary requirements of a notice of termination of tenancy. Vide above referred notices, the plaintiffs expressed an unequivocal intention not to keep the defendant in occupation of the tenanted premises after the date stipulated therein and they gave more than 15 days time to the defendant for the said purpose. The date stipulated in the notices for vacating the premises also expired by the end of the month. Adopting a pragmatic and constructive approach to interpretation of such notices, I am of the considered view that these notices amount to valid notice of termination on the part of the plaintiff.

ISSUE Nos. 1, 2, 4 & 5

9. It was contended by the learned counsel for the

defendant that since the premises in respect of which damages for use and occupation have been claimed by the plaintiffs is situated in a slum area, the suits are not maintainable without permission of the Competent Authority envisaged in Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, hereinafter referred to as the 'Act' and in support of his contention has referred to a decision of this Court in ***Shyam Kishore and another v. M/s Roop Saree Kendra & others, DCLR 2003 (II) Delhi 307.***

10. It cannot be disputed that damages for use and occupation/mesne profits can be recovered only from a person, who is in unlawful possession of the premises in respect of which damages/mesne profits are sought. In case, the person in possession of the premises is a tenant, he is liable to pay only the rent and not the damages for use and occupation/mesne profits.

11. The next question, which came up for consideration, is whether the defendant bank was a tenant under the plaintiffs during the period for which damages for use and occupation have been claimed by them. Since the agreed rent of premises in question was more than

Rs.3500/- per month, in view of the provisions of Section 3 (c) of the Delhi Rent Control Act, 1958, the provisions of the Delhi Rent Control Act, 1958 do not apply, though a person continuing in possession after termination of his tenancy is included in the definition of tenant given in Section 2 (1) of that Act.

12. The question which then comes up for consideration is as to whether for the purpose of recovery of damages for use and occupation of a property situated in a slum area, the Court should adopt the definition of 'tenant' as interpreted by the Full Bench of this Court in ***Bardu Ram Dhanna Ram v. Ram Chander Khirbu, AIR 1972 Delhi 34 (FB)*** and Supreme Court in ***Lal Chand (dead) by LRs. and others v. Radha Kishan, AIR 1977 SC 789*** for the purpose of the Act or it should look for the meaning of the word 'tenant' in terms of the provisions of the Transfer of Property Act, wherein a person ceases to be a tenant on a valid termination of his tenancy or the tenancy otherwise being determined in any other manner provided in Section 111 of the aforesaid Act.

13. In ***Jyoti Pershad v. Union Territory of Delhi, AIR 1961 SC 1602***, Supreme Court, while considering

constitutional validity of Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, inter alia, observed as under:-

“Obviously, if the protection that is afforded is read in the context of the rest of the Act, it is clear that it is to enable the poor who have no other place to go to, and who if they were compelled to go out, would necessarily create other slums in the process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere.

The Act, no doubt, looks at the problem not from the point of view of the landlord, his needs, the money he has sunk in the house and the possible profit that he might make if the house were either let to other tenants or was reconstructed and let out, but rather from the point of view of the tenants who have no alternative accommodation and who would be stranded in the open if an order for eviction were passed.”

14. In ***Bardu Ram (supra)***, the Full Bench of this Court observed as under:-

“The preamble of the Slum Areas Act shows that it was intended to afford further protection to the tenants living in slum areas from eviction. An essential object of the Slum Areas Act is to enable the poor, who have no other place to go to and who, if they were evicted to remain in their dwellings until provision is made for a better life for them elsewhere.”

15. If even a person against whom an order of eviction

has been passed by a Court continues to be a tenant for the purpose of Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, it is difficult to say that he ceases to be a tenant for the purpose of the aforesaid Act merely because his tenancy has been terminated by the landlord. A person against whom an order for eviction has been obtained cannot be treated on a footing better than of a person against whom no such order has been passed by a Court of law.

16. If a person whose tenancy has been terminated by the landlord is held not be a tenant for the purpose of recovery of damages for use and occupation, it will be very easy for the landlord to defeat the provisions of the Slum Areas (Improvement and Clearance) Act, 1956 including Section 19 thereof simply by claiming market rent from the tenants who belong to poor strata of the society and are not in a position to afford alternative accommodation even on rent. If made to pay market rent, they would have no option but to vacate the premises occupied by them in slum areas and in that event either they would come on the road and thereby become shelter less or would create another slum by shifting to some other area which then may get turned

into slum. An interpretation, which would result in defeating the provisions of the Act of Parliament would not be in consonance with public policy and needs to be eschewed from being taken. The Court cannot give two interpretations to the expression 'tenant' one for the purpose of his eviction and the other for the purpose of recovery of damages for use and occupation/mesne profit from him. The meaning to be given to the expression 'tenant', therefore, must necessarily be uniform for all purposes as far as the applicability of the provisions of the Act are concerned.

17. It is true that some tenants even in slum areas may not belong to poor strata of society and on account of their financial means, they, in the event of being evicted from the premises occupied by them in a slum area, are not likely to create another slum and are likely to shift to an approved and well planned area. This is more likely in the case of commercial premises. It is not open to the Court to give two different meanings to the same expression, one for the purpose of those who belongs to weaker and economically backward section of the society and the other for those, who belongs to rather affluent section of the

society.

It is not as if the landlord is helpless in evicting an effluent tenant from the premises occupied by him in a slum area or recovering the prevailing rent from him as damages for use and occupation. It is open to the landlord to seek permission from the Competent Authority under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 for eviction of such a tenant. Once the permission is granted, it will be possible for the landlord to not only evict such a tenant from the premises occupied by him in a slum area but also to recover the prevailing market rent from him as damages for use and occupation of the premises. Of course, there would be no occasion for the landlord to seek such a permission in case the premises is vacated by the tenant on his own, but, then, he is liable to pay only rent and not damages for use and occupation/mesne profit for the period he continues to occupy the tenancy premises in a slum area.

18. Sub-Section 4 of Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 stipulates the factors required to be taken by the Competent Authority in granting and refusing the grant of permission sought from it

either for obtaining a decree or order for eviction of a tenant from any building or land in a slum area or for his eviction in case such a decree or order has already been obtained. These factors include as to whether alternative accommodation within the means of a tenant would be available to him if he is evicted. But, it is for the Competent Authority and not for the Civil Court to go into this aspect and take a view as to whether the tenant possesses sufficient means to acquire alternative accommodation or not.

19. In my view, if the Court in such a suit does not adopt the definition of the word 'tenant' as interpreted for the purpose of Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, this would not be in consonance with the scheme of the Act and would frustrate the very object behind enactment of the Act, the primary object behind enactment of the Act being to improve and clear slum areas and afford protection to all tenants in such areas from eviction.

20. Hence, for the purpose of these suits what is relevant is as to whether the defendant, during the period for which damages for use and occupation have been

claimed in these suits was tenant within the meaning of Slum Areas (Improvement and Clearance) Act, 1956, which applies to all the premises whether residential or commercial, which are situated in a slum area. The Act does not define the expression 'tenant' though it does define the expression 'occupier' in Section 2(f) to include any person, who is liable to pay, to the owner, damages for use and occupation of any land or building. Even a licensee in occupation of any land or building in a slum area is included in the definition of 'occupier'.

21. Construction of an expression 'tenant' for the purpose of the Slum Areas (Improvement and Clearance) Act, 1956 came up for consideration before a Full Bench of this Court in ***Bardu Ram Dhanna Ram v. Ram Chander Khirbu (supra)***. It was held that the word 'tenant' in Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, which, to the extent it is relevant, provides that no person shall except with the previous permission in writing of the Competent Authority institute any suit or proceedings for obtaining an order for eviction of a tenant from any building or land in a slum area, includes a person in occupation of tenanted premises even though a decree or

order for eviction has been obtained against him.

22. Approving the aforesaid view, Supreme Court in ***Lal Chand (dead) by LRs and others v. Radha Kishan, (supra)*** observed as under:-

“Slum Clearance Act looks at the problem of eviction of tenants from slum areas not from the point of view of the landlord and his needs but from the point of view of tenants who have no alternative accommodation and who would be stranded in the open if they were evicted. The policy of the Slum Clearance Act being that the slum dweller should not be evicted unless alternative accommodation is available to him. We are of the view that the word ‘tenant’ which occurs in Section 19(1)(1) must for the purpose of advancing the remedy provided by the statute be construed to include a person against whom a decree or order for eviction has been passed. We might mention that a Full Bench of the Delhi High Court in *Bardu Ram Dhanna Ram vs. Ram Chander Khirbu*, AIR 1972 Delhi 34 (FB) has taken the same view namely, that the word ‘tenant’ in Section 19 of the Slum Clearance Act includes a person against whom decree or order of eviction has been passed.”

23. The learned counsel for the plaintiffs has referred to the decisions of this Court in ***Bismilla Jan v. Jain***

Tractors & Author Spare, 1985 Rajdhani Law Reporter 477, Dimple (P) Ltd. v. Harish Kumar Aggarwal & Another, 71 (1998) Delhi Law Times 318 and Kohli Motors India v. M/s Asha Menon & another, 72(1998) DLT 440.

24. In ***Bismilla Jan (supra)***, the petitioner apply to competent authority seeking permission under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 to sue for eviction of the respondent, which was in the business of auto parts. The Competent Authority, however, declined the requisite permission and the order was upheld by the Financial Commissioner in appeal. The writ petition filed by the landlord was, however, allowed by this Court. During the course of judgment, this Court, inter alia, observed as under:-

“In the case of a juristic person while determining the financial status, the standards have necessarily to be different.”

“If persons who have financial interest in a Pvt. Ltd. Co. own several other concerns and are sufficiently rich, no protection is contemplated under the Slum Act because even if the company, which is a tenant, is going into losses, because even if eviction order is passed the company is not likely to create

slums. The Slum Act was enacted for giving protection to poor individual tenants who have small means and cannot afford to get alternate accommodation outside the slum area or within the slum if evicted. If a couple of persons with substantial means float a company which goes into losses, even if they are evicted from the premises, they cannot create slumps, particularly when the same persons own other concerns which also have offices at different places.”

In ***Dimple (P) Ltd. (supra)***, the petitioner company was tenant in respect of the first floor of a property situated in a slum area. Permission for initiating eviction proceedings against the petitioner was granted by the Competent Authority under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, which came to be challenged before this Court. It was contended before this Court that the petitioner was a very poor company running into losses. It was contended on behalf of the landlord that since the petitioner company was a juristic person, protection meant for poor tenants from their respective accommodations cannot be made available to it. Accepting the contention, this Court, inter alia, held as under:-

“Admittedly the petitioners are a company. Thus they are a juristic person. A Company is formed when

certain persons join hands with a view to carrying on some commercial or industrial undertaking. Thus it can naturally be formed by those persons who have got sufficient funds to carry on their business. A Company cannot be run by poor persons with no financial means to run the same. The object and the purpose for the enactment of the Slum Areas (Improvement & Clearance) Act, 1956 was to clear the slums and to provide protection to poor tenants against harassment at the hands of landlords who bring forward and initiate proceedings for their eviction. Their Lordships of the Supreme Court while anim-adverting on the said object of the Act opined in **Jyoti Pershad v. Administrator for the Union Territory of Delhi and others, AIR 1961 Supreme Court 1602, (para 15)....** “it is after this that we have Chapter VI whose terms we have already set out. This chapter is headed “Protection of tenants in Slum Areas from Eviction.” Obviously, if the protection that is afforded is read in the context of the rest of the Act, it is clear that it is to enable the poor who have no other place to go out, would necessarily create other slums in the process and live perhaps in less commodious and more unhealthy surroundings than those from which they were evicted, to remain in their dwellings until provision is made for a better life for them elsewhere....”

The petition challenging the grant of petition was dismissed by this Court.

In ***Kohli Motors India (supra)***, the petitioner before this Court challenged the order of the competent authority granting permission to landlord to institute proceedings for its eviction. Relying upon the decisions of this Court in the case of ***Bismilla Jan (supra)*** and ***Dimple (P) Ltd. (supra)***, this Court dismissed the petition challenging the order of the competent authority.

It would be noticed that in all these cases, the observations extracted above were made by this Court while considering grant of permission under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 and not in a suit for recovery of damages for use and occupation from a person, who was occupying a premises in a slum area. Therefore, these judgments do not apply to the issue as to whether damages for use and occupation can be recovered from a person, who was indicted as a tenant in a premises situated in a slum area and whose tenancy has been terminated under the provisions of Transfer of Property Act, 1882.

25. In ***Shyam Kishore and another (supra)***, defendant No.1, which was a partnership firm, had taken on rent the first floor, second floor and terrace of a property

situated in Katra Choban, Chandni Chowk, Delhi, which is a slum area. The tenancy was terminated vide notice issued under Section 106 of the Transfer of Property Act. On failure of the tenant to vacate the premises, the plaintiff filed a suit claiming damages/mesne profits at the rate of Rs.60,000/- per month, though the agreed rent was Rs.6000/- per month. At the time of filing of the suit, petition of the plaintiff seeking permission of the Competent Authority to institute a suit for recovery of possession of the tenancy premises was pending decision before the Competent Authority. The defendants challenged the maintainability of the suit on the premise that a suit for mesne profit was not maintainable unless and until it is accompanied with a prayer for recovery of possession of the tenancy premises. The contention was rejected by the Court and it was held that prior permission from competent authority was not a condition precedent for filing a suit for recovery of rent/mesne profit and, therefore, an independent suit for recovery of rent or mesne profits alone was maintainable. The next question which came up for consideration before the Court was as to whether a suit for mesne profit was maintainable against a tenant whose tenancy had been

determined under Section 106 of the Transfer of Property Act. It was held that termination of tenancy of a tenant by way of notice under Section 106 of the Transfer of Property Act does not render the possession of the tenant either unlawful or wrongful for the purpose of Slum Clearance Act, which affords additional protection to the tenant and, therefore, remedy to recover mesne profit is not available against those persons whose tenancy has been terminated under Section 106 of the Transfer of Property Act since such a notice does not convert the possession of tenant in respect of premises situated in a slum area into a wrongful or unlawful possession entitling the landlord to claim mesne profits for him. The Court was of the view that wherever there is a statutory protection against dispossession of a person even in spite of termination of the lease is deemed to be lawful possession.

This Court was of the view that if a person carries the status of tenant even after eviction order has been passed, his possession cannot be said to be unlawful or wrongful merely because his tenancy has been terminated under Section 106 of the Transfer of Property Act.

26. The judgment of this Court in the case of **Shyam**

Kishore (supra) was sought to be distinguished by the learned counsel for the plaintiff on two grounds. Firstly, it is pointed out that in the case of **Shyam Kishore (supra)** the tenant was still occupying the tenancy premises and the petition of the landlord seeking a permission of the competent authority under Section 19 of the Act was pending decision when suit for recovery of damages for use and occupation was filed whereas in the present suit the defendant had vacated the premises before these suits were filed. The second distinguishing feature is that the defendant in these suits is a large company being the largest bank in the country having thousands of branches throughout the country, whereas the defendant in that suit was a partnership firm though using the premises for commercial purpose. It is also pointed out that after determination of its tenancy, the defendant bank could conveniently have taken on rent another premises situated outside slum area and, therefore, there would have been no compulsion for the defendant to create another slum by shifting from one premises to another premises in the slum area. I, however, find no merit in this contention. It is immaterial whether the defendant is a partnership firm or a

largest banking company. Not only a large banking company but also a partnership firm may be in a position to afford alternative accommodation and may not create a slum in the event of being evicted from the premises occupied by it in a slum area. In fact, a rich individual also may not, in the event of being evicted, necessarily create a slum and may like to shift to a premises situated in a posh and regular area. Therefore, legal status of the tenant, whether his company, or partnership or individual, to my mind, would not be a relevant consideration. The fact as to whether the tenant is occupying the premises at the time damages for use and occupation are claimed from him or not is also not relevant since damages for use and occupation can be recovered only from an unauthorized occupant and not from a tenant irrespective of whether the occupant happens to be a company or firm or an individual. The possession of the defendant in the premises situated in a slum area cannot be said to be unlawful considering the protection afforded by the Slum Areas (Improvement and Clearance) Act, 1956 even if it is in a position to take another suitable premises outside the slum area. As noted earlier, the financial status of the tenant and unlikelihood of

creating another slum, are the factors required to be considered by the Competent Authority in case its permission is sought under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956 and not by a Civil Court in a suit seeking recovery of damages for use and occupation. Of course, once permission is granted by the Competent Authority under Section 19 of the Slum Areas (Improvement and Clearance) Act, 1956, the possession of the tenant would become unlawful and the landlord would be entitled to recover damages for use and occupation of the premises from him even without seeking eviction or in case eviction is sought even for the period prior to the recovery of possession from him, but, the same does not hold in case permission from the Competent Authority, even if applied, has not been obtained.

27. It was pointed out by the learned counsel for the plaintiffs that the plea taken during arguments has not been taken in the written statement. The plea being purely of law and there being no dispute that permission of the Competent Authority was not obtained even up to the time the premises were vacated by the defendant, the plea, in my view, can be taken at the stage of arguments.

28. For the reasons given in the preceding paragraphs, I hold that the plaintiffs are not entitled to recover damages for use and occupation from the defendant. Admittedly, agreed rent already stands paid. Since the plaintiffs are not entitled to recover damages, I need not go into the question as to what would be the prevailing rent of the premises during the period for which damages for use and occupation have been claimed in these suits. The issues are decided accordingly.

Order

All the four suits are hereby dismissed without any order as to costs. Decree sheet be drawn accordingly.

(V.K. JAIN)
JUDGE

MAY 05, 2011
bg/vk