

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

+ **RFA No.74 /2012**

% **8th February, 2012**

PUNJAB NATIONAL BANK Appellant
Through: Mr. S.S. Katyal, Advocate with Mr.
Sanjay Katyal, Advocate.

VERSUS

SH. VIRENDRA PRAKASH & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. I must begin this judgment with a preface. Certain tenants, in this country, consider it an inherent right not to vacate the premises even after either expiry of tenancy period by efflux of time or after their tenancy is terminated by means of a notice under Section 106 of Transfer of Property Act, 1882. All such tenants, including the present appellant-bank, feel that they ought to vacate the tenanted premises only when the Courts pass a decree for possession against them. Considering the facts of the case, it is high time that a strict message is sent to those tenants who

illegally continue to occupy the tenanted premises by raising frivolous defences only and only to continue in possession of the tenanted premises. Such incorrigible tenants should be appropriately burdened with penal costs, and which aspect of costs, I will deal with later noting the recent judgment of the Supreme Court reported as *Ramrameshwari Devi and Others v. Nirmala Devi and Others*, (2011) 8 SCC 249 in which it has been held that it is high time that actual and realistic costs be imposed in order to pre-empt and prevent dishonesty in litigation.

2. With this preface, let me turn to the present case. There are three requirements for decreeing a suit for possession, which is filed by a landlord against a tenant in Delhi. These requirements are: firstly, the existence of a relationship of a landlord and tenant, secondly rent being more than Rs. 3,500/- per month thereby taking the premises outside the protection of Delhi Rent Control Act, 1958, and thirdly that the monthly tenancy is terminated by means of a legal notice under Section 106 of Transfer of Property Act, 1882 as the tenancy of a fixed period has expired by efflux of time.

3. All the aforesaid three aspects are not disputed by the appellant/tenant/defendant. Last paid rent is ₹ 55,030/- per month after deduction of TDS. The only dispute which is raised is that after the tenancy

period expired by efflux of time, the respondents/landlords had accepted the rent and therefore the tenancy relation was created afresh by virtue of provision of Section 116 of Transfer of Property Act, 1882.

4. In my opinion, there cannot be a more frivolous, vexatious and malafide defence than the one raised by the appellant/tenant inasmuch as the respondents/landlords in this case even before the period of tenancy expired by efflux of time wrote their letter dated 28.12.2010 asking the appellant/defendant to vacate the property on the expiry of the tenancy period. Obviously, the appellant-bank, which has a lot of monetary resources however deemed it fit not to vacate the premises. The landlords thereafter sent a legal notice dated 4.2.2011 terminating the tenancy. Once again, the appellant gargantuan organization failed to comply with the notice and failed to vacate. Since the appellant-bank has the account of respondents/landlords in its branch, it started depositing rent in the said account and claimed that by acceptance of such amount deposited, a fresh tenancy came into existence. However, this aspect is not only factually incorrect so far as the conclusion of creation of fresh tenancy is concerned but legally too the same is misconceived. Factually, the stand of creation of fresh tenancy is wrong because the landlords when they came to know of the surreptitious and unilateral deposit of rent in their bank account, they

wrote their letter dated 12.7.2011 that the rent is being deposited without any instructions on their behalf and therefore the deposit will be taken without prejudice to their rights. Legally the stand of the appellant is incorrect because the Supreme Court in the judgment reported as ***Sarup Singh Gupta v. S. Jagdish Singh & Ors., 2006 (4) SCC 205*** has categorically clarified this position and said that any amount received after the termination of tenancy can surely be taken as charges towards use and occupation because after all the tenant has continued to use and occupy the tenanted premises and is liable consequently to pay user charges thereof. A fresh tenancy is a bilateral matter of a contract coming into existence. Unless there is a bilateral action and an agreement is entered into to create a fresh tenancy, mere acceptance of rent after termination of tenancy, cannot create fresh tenancy as held in the case of ***Sarup Singh Gupta (supra)***.

5. Learned counsel for the appellant sought to rely upon the judgment of the Supreme Court in the case of ***M/s. Jeevan Diesels & Electricals Ltd. Vs. M/s. Jasbir Singh Chadha (HUF) & Anr. AIR 2010 SC 1890*** to argue that since the appellant-bank had disputed all aspects in the written statement, therefore, a decree could not be passed by the trial Court under Order 12 Rule 6 CPC. The reliance upon the decision in the

case of *M/s. Jeevan Diesels & Electricals Ltd. (supra)* on behalf of the appellant is clearly misconceived because the existence of relationship of landlord and tenant, the factum of the premises not having protection of Delhi Rent Control Act, 1958 and the fact that tenancy was terminated by service of a legal notice are not disputed in the written statement. So far as the aspect of deposit of rent and creating a fresh tenancy is concerned, I have dealt with this aspect above by referring to the judgment of the Supreme Court in the case of *Sarup Singh Gupta(supra)*

6. There is therefore no merit in the appeal which is thus liable to be dismissed.

7. Now, the issue is with respect to costs. I have already given a preface at the very beginning of this judgment. This preface, is a preface which was necessary inasmuch as there is a flood of litigation unnecessarily burdening the Courts only because obdurate tenants refuse to vacate the tenanted premises even after their tenancy period expires by efflux of time or the monthly tenancy has been brought to an end by service of a notice under Section 106 of Transfer of Property Act, 1882. In the present case, the tenant is not a poor or a middle class person, but is a bank with huge resources and hence can contest litigation to the hilt. It is therefore necessary that I strictly apply the ratio of the Supreme Court

judgment in the case of *Ramrameshwari Devi and Others (supra)*. In the judgment of *Ramrameshwari Devi and Others (supra)*, the Supreme Court on the aspect of costs has observed as under:-

“43. We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In *Swaran Singh v. State of Punjab* MANU/SC/0320/2000 : (2000) 5 SCC 668 this Court was constrained to observe that perjury has become a way of life in our courts.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

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56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.” (underlining added)

Dishonest and unnecessary litigations are a huge strain on the judicial system which is asked to spend unnecessary time for such litigation.

8. In view of the gross conduct of the appellant in the present case, I dismiss the appeal with costs of ₹ 2 lacs. Since the respondents are not represented, costs be deposited in the account of Registrar General of this Court maintained in UCO Bank, Delhi High Court Branch for being utilized towards juvenile justice, surely a just cause. Costs be deposited within a period of four weeks from today. Obviously, the costs may be peanuts for a huge organization such as the appellant-bank but I hope the spirit of the costs will be understood by the appellant-bank as also all other

tenants who refuse to vacate the premises although they have overstayed their welcome in the tenanted premises.

The appeal is dismissed and disposed of as aforesaid.

9. List before the Registrar for compliance of the order for deposit of costs on 26th March, 2012. In case, costs are not deposited, Registrar will list the matter before the Court so that further action as per law can be taken against the appellant.

VALMIKI J. MEHTA, J

FEBRUARY 08, 2012

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