

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

+ RFA No.697/2010

% Reserved on : 16th March, 2012
Date of decision : 25th May, 2012

SKY LAND INTERNATIONAL PVT. LTD. Appellant
Through : Mr. Aman Mehta, Adv.

versus

KAVITA P LALWANI Respondent
Through : Mr. Anil Sharma, Mr. Vinod
Kumar, Mr. Abhishek Misra
and Mr. Arun Bali, Advs.

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

JUDGMENT

1. The Trial Court has passed a decree for possession of property bearing No.R-719, New Rajinder Nagar, New Delhi (hereinafter referred to as the "suit property"), against the appellant under Order XII Rule 6 of the Code of Civil Procedure which is under challenge in this appeal.

2. Vide registered lease deed dated 13th May, 2002, the respondent let out the suit property to the appellant for a period of two years. The aforesaid lease was renewed on 14th December, 2004 for a further period of two years at a monthly rent of ₹13,500/- per month. Vide registered lease deed dated 7th November, 2006, the aforesaid lease was renewed for a further period of two years at a monthly rent of ₹15,000/- per month. The lease deed dated 7th November, 2006 expired by

efflux of time on 6th November, 2008. There is no renewal clause in the lease deed. The respondent claims that upon the expiry of the aforesaid lease, she requested the appellant to hand over the peaceful possession of the suit property to her.

3. Vide notice dated 20th June, 2009, the respondent notified the appellant that the registered lease deed dated 7th November, 2006 expired by efflux of time on 6th November, 2008, and the respondent does not wish to keep the appellant as her tenant any more. The respondent further notified the appellant to hand over the vacant and peaceful possession of the suit property on or before 15th July, 2009. The respondent also demanded the arrears of rent and mesne profits.

4. The aforesaid notice was sent by registered AD post to the registered office of respondent at K-26, Connaught Place, New Delhi – 110001 as well as at D-29, Okhla Industrial Area, Phase I, New Delhi. K-26, Connaught Place, New Delhi has been mentioned as the registered office of the appellant in the lease deed dated 7th November, 2006 whereas D-29, Okhla Industrial Area, Phase I, New Delhi is the present office of the appellant as per the memorandum of the appeal.

5. The notice sent to the registered office of the appellant at K-26, Connaught Place, New Delhi returned with the remarks “left” whereas the notice sent to the appellant at D-29, Okhla

Industrial Area, Phase I, New Delhi was served and the acknowledgement card was received back by the respondent. The respondent obtained a certificate dated 20th May, 2010 from the Department of Posts in which it was certified that the letter sent to the appellant at D-29, Okhla Industrial Area, Phase I, New Delhi was delivered on 22nd June, 2009. The original postal receipts, original AD card in respect of the notice sent to the appellant at D-29, Okhla Industrial Area, Phase I, New Delhi, returned envelope of the notice sent at K-26, Connaught Place, New Delhi and the original certificate dated 20th May, 2010 issued by the Department of Posts have been filed by the respondent before the Trial Court.

6. On 22nd September, 2009, the respondent instituted a suit for recovery of possession and mesne profits against the appellant in respect of the suit property before the Trial Court. The appellant contested the suit on various grounds *inter alia* that the notice of termination dated 20th June, 2009 was not received. The appellant further pleaded that after November 2008, the appellant had been requesting the respondent to renew the lease deed dated 7th November, 2006 for further period of two years, but the respondent had been avoiding to renew the said lease on one pretext or the other. The appellant also challenged the title of the respondent and

pleaded that the respondent was neither the co-owner nor had any right, title or interest in the suit property. The appellant claimed the respondent to be a trespasser. The appellant pleaded that the dispute between the respondent and the other co-owners of the suit property was pending before the Court and the appellant claimed entitlement to continue the possession till the decision of that suit

7. On 3rd May, 2010, the respondent filed an application under Order XII Rule 6 of the Code of Civil Procedure before the Trial Court seeking a decree on admissions. The learned Trial Court allowed the aforesaid application and passed the decree for possession which is under challenge in this appeal.

8. The learned counsel for the appellant has urged at the time of hearing of this appeal that the notice of termination dated 20th June, 2009 has not been served on the appellant. Without prejudice, it is submitted that the notice is not valid as it has not been given by all the co-owners of the suit property. The appellant has disputed the title of the respondent and has urged that the dispute between the respondent and the other co-owners of the suit is pending before the Court. It is further submitted that respondent let out the suit property to the appellant in violation of a *status quo* order passed in a suit between the co-owners. It is lastly submitted that the

appellant has not made any admission before the Trial Court. It is submitted that the decree on admissions under Order XII Rule 6 of the Code of Civil Procedure can be passed on unambiguous, clear and un-conditional admissions and the written statement has to be read as a whole.

9. The learned counsel for the respondent in reply has submitted that the appellant has admitted the lease deed dated 7th November, 2008 between the parties as well as the payment of rent to the respondent. As such, the admission of relationship of landlord and tenant between the parties and the expiry of lease by efflux of time of 6th November, 2008 is unambiguous, clear and unconditional. It is further submitted that the notice of termination was sent by registered post to the registered office of the appellant at K-26, Connaught Place, New Delhi as well as at D-29, Okhla Industrial Area, Phase I, New Delhi. The notice sent to the appellant at the Connaught Place address was received back whereas the notice sent at the Okhla address was duly served. It is submitted that there is a legal presumption of service under Section 27 of the General Clauses Act, 1892 and Section 114(f) of the India Evidence Act, 1872, and, therefore, the denial of notice by the appellant is of no avail. The learned counsel for the respondent has submitted that the appellant's challenge to the

respondent's title is barred by Section 116 of the Indian Evidence Act, 1872.

10. The law with respect to the obligations of a tenant upon expiry of the period of the lease and termination of the monthly lease under Section 106 of the Transfer of Property Act are well settled. Before considering the rival contentions of the parties, this Court would like to refer to the provisions and judgments relevant to this case.

11. **Types of Leases of Immovable Properties**

The leases of immovable properties are of various types, namely, lease in perpetuity; lease for a fixed term; lease for a month-to-month term; and tenant at sufferance. The lease in perpetuity continues so long as the lessee continues to pay the rent and does not do any act entitling the lessor to forfeiture; a lease for a fixed term operates for fixed term whereas the monthly lease operates from month to month. The 'erstwhile' tenant whose term has expired but has not vacated is called a 'tenant at sufferance.' He comes into possession of the premises by a lawful grant but holds it wrongfully after termination of the term or expiry of the lease by efflux of time. A 'tenant at sufferance' is, therefore, one who wrongfully continues in possession after the extinction of his lawful term and has been described as the least and lowest interest which

can subsist in realty and is merely a legal fiction or device to avoid continuance in possession from operating as a trespass. A status of a 'tenant at sufferance' has been explained by the Supreme Court in **R.V. Bhupal Prasad v. State of Andhra Pradesh, AIR 1996 SC 140**. The Court held as under:-

"8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. **The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser.** In Mulla's Transfer of Property Act, (7th Edn.) at page 633, the position of tenancy at sufferance has been stated thus : **A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality.** It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus : The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee

holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.”

“13. In view of the settled position of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litigious possession. The appellant may remain in possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, though initially he had lawful entry.”

(Emphasis supplied)

12. **Determination of Lease**

Section 111 of the Transfer of Property Act, 1882 provides various modes of determination of lease which includes end by efflux of time [Section 111(a)], by notice of termination [Section 111(h)] and forfeiture in case the lessee renounces his character by setting up a title in a third person [Section 111(g)(2)]. Section 111(a), (g) and (h) of the Transfer of Property Act, 1882 are reproduced herein:

“Section 111. Determination of lease – A lease of immovable property determines -

(a) by efflux of the time limited thereby;

(b) to (f) xxx xxx xxx

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.”

13. **Duty of a Tenant under Section 108(q) read with Section 111 of Transfer of Property Act, 1882**

13.1 Under Section 108(q) of Transfer of Property Act, 1882, it is the statutory obligation of the lessee to restore the possession of the leased property to the lessor on determination of the lease. Section 108(q) of Transfer of Property Act, 1882 is reproduced hereunder:-

“Section 108. Rights and liabilities of lessor and lessee.— In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:-

A. – Rights and Liabilities of the Lessor.

(a) to (c) xxx xxx xxx

B. – Rights and Liabilities of the lessee.

(d) to (p) xxx xxx xxx

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.”

13.2 In **M/s. Raptakos Brett & Co. Ltd. v. Ganesh Property, AIR 1998 SC 3085**, the Supreme Court held that when a lease comes to an end by efflux of time, or by notice of termination, or if there be a breach and the lessee's rights are forfeited, the lessee becomes a tenant at sufferance, and it becomes the duty of the lessee under Section 108(q) of the Transfer of Property Act to restore possession to the lessor forthwith. The Supreme Court held as under:-

“22. ...Under law the erstwhile landlord is entitled to restoration of possession by enforcement of statutory obligation of the erstwhile tenant as statutorily imposed on him under Section 108(q) read with Section 111(a) of the Property Act...”

13.3. In **C. Albert Morris v. K. Chandrasekaran, (2006) 1 SCC 228**, the Supreme Court held as under:-

“26. ...Much argument was advanced on the receipt of the rent by the landlord after the cancellation of the lease. The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord, would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession...”

“32. ...We are, therefore, of the opinion that mere acceptance of rent by the landlord, the first respondent herein, from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession...”

(Emphasis supplied)

13.4. In **Delhi Jal Board v. Surendra P. Malik, 104 (2003)**

DLT 151 (DB), the Division Bench of this Court held as under:-

“12. It is no longer a grey area that where a tenancy had otherwise expired by efflux of time but the tenant continued in possession of the premises, mere acceptance of rent by the landlord could neither renew the tenancy nor create a new one. That is so because such subsequent occupation of premises was not in pursuance of any contract, express or implied between the parties...”

“13. ... In any case, this aspect does not assume any importance as no notice under Section 106 was required to be served on appellant due to the expiry of the Lease between the parties by efflux of time...”

(Emphasis supplied)

13.5. In **Usha Rani Jain v. Nirulas Corner House Private**

Limited, ILR (2005) II Delhi 349, this Court held as under:-

“17. Though a plea was taken in the written statement about non determination of the lease because no notice to quit as envisaged under Section 106 of the Transfer of Property Act has been served on the defendants before filing of the present suit, but this aspect was not pressed at the hearing. Even otherwise, it is a well settled proposition of law that when the term of the lease has expired by efflux of time, there is no need for a

landlord to determine the lease by serving quit notice...”

(Emphasis supplied)

13.6. In **Inmacs Limited v. Prema Sinha, 153 (2008) DLT**

311 (DB), the Division Bench of this Court held as under:-

“13. ...If a lease is evidence by a contract, as in the instant case, the duration of the lease would be as per the contract and at the expiry of the lease period as per contract the lease expires by efflux of time. **Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and since the lease expires under the contract by efflux of time, no notice of determination of the lease is required.**”

(Emphasis supplied)

13.7. In **Ashok Chopra v. Syndicate Bank, 169 (2010) DLT**

361, this Court held as under:-

“17. It is clear that the tenancy had come to an end by a efflux of time. Admittedly, there was no document executed between the parties renewing the lease. Tenancy having expired by efflux of time; no notice was required to terminate the lease; ...”

13.8 In **Pakistan International Airlines v. Abaskar**

Constructions Private Limited, MANU/DE/4394/2011, this

Court held as under:-

“21. Law is clear. If a lease is evidence by a contract in writing, as in the instant case, the duration of the lease would be as per the contract and at the expiry of the lease period, as per contract the lease expires by efflux of time. **Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and since the lease expires under the contract by efflux of time, no notice of determination of the lease is required.**

22. The mandate of Clause 'q' of Section 108 of the Transfer of Property Act 1882 is that on the expiry of the lease the lessee is bound to hand over possession of the leased premises to the lessor and therefore the lessor would be entitled to maintain an action to compel the lessees to abide by the mandate of Clause 'q' of Section 108 of the Transfer of Property Act 1882.

23. A person who enters upon the property of another without authority of law is a trespasser. It could be argued that the very next moment after the period of lease stands expired, the act of entering upon property by the tenant is an act of trespass. But law says 'No'. A lessee who continues in possession after expiry of the lease, without the consent of the lessor or without any agreement between the parties or in disagreement with the lessor, is treated in law as a tenant by sufferance. But where the lessor consents to the continued possession of the lessee qua the leased premises, a tenancy by holding over comes into operation by virtue of the provisions of Section 116 of the Transfer of Property Act 1882, which reads as under:-

"116. Effect of holding over - If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106."

24. The words 'accepts rent or otherwise assents to his continuing in possession' in Section 116 of the Transfer of Property Act contemplate that from the side of the lessee there should be an offer to take a new lease and on the side of the lessor there must

be a definite consent to the continuation of possession. In other words, there must be a bilateral contract. Such a bilateral contract could be express or implied.”

(Emphasis supplied)

14. **Termination of Lease under Section 106 of the Transfer of Property Act, 1882.**

14.1 A lease of an immovable property which is not for a manufacturing purpose is the monthly tenancy which can be terminated by a notice under Section 106 of the Transfer of Property Act, 1882. Section 106 was amended by Act 3 of 2003 and all technical defences to the notice of termination have been done away with meaning thereby a suit cannot be dismissed on the ground of invalidity of notice terminating the tenancy. Before the amendment of Section 106 by Act 3 of 2003, the notice had to terminate the tenancy on a date expiring with the tenancy month which provided a fertile ground to the tenants to contest the suits on a technical ground that the tenancy was not terminated by means of a notice expiring with the end of tenancy month. Notice of termination of lease under Section 106 of Transfer of Property Act, 1882 is required to be sent by post or to be tendered or delivered to the tenant if such tender or delivery is not practicable, to be affixed at a conspicuous part of the property. Section 106 of the Transfer of Properties Act, 1882 as amended by Act 3 of 2003 reads as under:-

“Section 106. Duration of certain leases in absence of written contract or local usage:-

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period of mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceedings is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.”

(Emphasis supplied)

14.2 Section 51 of the Companies Act, 1956

Section 51 of the Companies Act, 1956 provides the mode of service of document on a company. The Section

provides that the documents may be served on a company by sending to the company at the registered office by post under a certificate of posting or by registered post or by leaving at its registered office. Section 51 of the Companies Act, 1956 is reproduced hereunder:-

“Section 51. Service of documents on company - A document may be served on a company or an officer thereof by sending it to the company or officer at the registered office of the company by post under a certificate of posting or by registered post, or by leaving it at its registered office.”

14.3 In **Union Bank of India v. Sushila Goela and others, 2005 VIII AD (Delhi) 541**, the Division Bench of this Court held that the object of a notice under Section 106 of the Transfer of Property Act, 1872 is to inform the other party as to the intention of the person issuing the notice that he wants the premises back. Section 106 Transfer of Property Act, 1872 is not to be scrutinized by hair splitting precision. It is not a pleading but a mere communication of the intention to the recipient.

14.4 In **Capital Book House v. Interkraft Limited, 1999 (51) DRJ 245 (DB)**, the Division Bench of this Court while dealing with a similar notice held that the idea of a notice is only to communicate the intention of the owners and the object of the notice is to be give sufficient time to vacate.

Such notice is to be liberally construed. The Court further held that the real point in such cases was that the person on whom the notice is served should understand that his tenancy has been terminated and he should vacate at the end of the period of tenancy.

15. **Presumption of service of notice of termination**

15.1 **Section 27 of General Clauses Act, 1897**

Section 27 of the General Clauses Act, 1897 provides that service of a notice shall be deemed to be effected by properly addressing, pre-paying and posting the notice by registered post. Section 27 of the General Clauses Act incorporates a **presumption of law**. A presumption of law with regard to service would arise when a notice to quit under Section 106 is sent by registered post. There is a clear distinction between the presumption that may arise under Section 114 of the Evidence Act and the one arise under Section 27 of the General Clause Act. The former is presumption of fact which the Court may, but is not bound to, raise whereas the latter incorporates a presumption of law and the Court has no option but to raise such a presumption if the conditions of the provision are satisfied. The Section reads as under:-

"Section 27. Meaning of Service by post - When any (Central Act) or Regulation made after the commencement of this Act authorises or requires any

document to be served by post, whether 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."

15.2 **Section 114(f) of Indian Evidence Act, 1872**

Section 114(f) of the Indian Evidence Act provides that upon being shown that a letter has been posted, the Court may draw a presumption that the letter was received by the addressee. Section 114 of the Evidence Act incorporates presumption of fact and provides that the Court may presume the existence of probable facts regard being had to the common course of natural events, human conduct and common sense in relation to the facts of the particular case. Section 114 of the Indian Evidence Act, 1872 covers a wide range of presumption of facts which can be used by the Courts in the course of administration of justice. According to illustration (f) to the Section, the Court may presume "that the common course of business has been followed in particular cases". Section 114 entitles a Court to presume that a common course of business was followed so that if it is proved a postal cover duly addressed was sent by registered A.D.

post, having regard to the common course of events, it would have been received by the addressee or if it is returned with the endorsement by the postal authorities that it was refused, that it was so tendered and refused. This would raise a presumption of fact. If however, it is shown at the same time that the common course was interrupted by an extraordinary situation, the presumption would not be available. It therefore, provides that in considering whether common course of business had been followed or not, the Court shall also have regard to such facts as are set out in relation to each of the illustrations. The fact relevant to illustration (f) runs thus:

"The question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances".

15.3 **Section 3 of the Commercial Documents Evidence Act, 1939**

Section 3 of the Commercial Documents Evidence Act, 1939 provides that the Court may presume any document mentioned in Part I and II of the Schedule to be genuine. Entry 19 of Part II of the Act mentions the receipt granted by the Postal and Telegraph Department. Section 3 and Entry 19 of Part II are reproduced hereunder:-

“Section 3. Presumption as to genuineness of documents:- For the purposes of the Indian Evidence Act, 1972 and notwithstanding anything contained therein, a Court – (a) shall presume, within the meaning of that Act, in relation to

documents included in Part I of the Schedule, and (b) may presume, within the meaning of that Act, in relation to documents included in Part II of the Schedule, – that any document purporting to be a document included in Part I or Part II of the Schedule, as the case may be, and to have been duly made by or under the appropriate authority, was so made and that the statements contained therein are accurate.”

“Entry 19. Receipt granted by the posts and Telegraph Department.”

15.4. In **Kali Ram v. State of Himachal Pradesh, (1973) 2 SCC 808**, the Supreme Court held that the illustrations mentioned in Section 114 of the Indian Evidence Act are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made and other presumptions of a similar kind in similar circumstances can be made under the Section itself. The Supreme Court held as under:-

“24 ...The Court may, of course, presume, as mentioned in Section 114 of the Indian Evidence Act, the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The illustrations mentioned in that Section, though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. **The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in similar circumstances can be made**

under the provisions of the Section itself.

Whether or not a presumption can be drawn under the Section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behavior is so complex that room must be left for play in the joints. It is not possible to formulate a series of exact propositions and con-flue human behavior within strait-jackets. The raw material here is far too complex to be susceptible of precise and exact propositions for exactness here is a fake."

(Emphasis supplied)

15.5. In **Tukaram Ganpat Pandare v. State of Maharashtra, (1974) 4 SCC 544**, the Supreme Court held that Section 114 of the Indian Evidence Act enables the Court to use common sense as a judicial tool to do justice. The Supreme Court held as under:-

"11. ...Section 114, Evidence Act, enables the Court to presume the existence of probable facts, regard being had to human conduct and the common course of events, and common sense being used as a judicial tool..."

15.6 In **Narayan Govind Gavate v. State of Maharashtra, (1977) 1 SCC 133**, the Supreme Court held that the function of presumptions under Section 114 of the Indian Evidence Act is to fill up the gap in evidence. The Supreme Court held as under:-

"21. ...Section 114 of the Evidence Act covers a wide range of presumptions of fact which can be used by Courts in the course of administration of justice to remove lacunae in the chain of direct evidence before it. It is, therefore, said that the function of a presumption often is to "fill a gap" in evidence.

15.7 In **Har Charan Singh v. Shiv Rani, AIR 1981 SC 1284**, the Supreme Court held that a presumption of service can be drawn under Section 27 of the General Clauses Act, 1897 and Section 114(f) of the Indian Evidence Act, 1872. The observations of the Supreme Court are reproduced hereunder:-

“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, pre-paying 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 arises a presumption of due service or proper service if the document sought to be served is sent by properly addressing, pre-paying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgement 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 pre-paying and properly addressing it the same has been received by the addressee. ...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.”

(Emphasis supplied)

15.8 In **M/s Madan and Co. v. Wazir Jaivir Chand, AIR 1989 SC 630**, the Supreme Court held that a notice sent by registered post is presumed to have been delivered to the addressee under Section 27 of the General Clauses Act. The observations of the Supreme Court are reproduced hereunder:-

“6. ...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... In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "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.”

(Emphasis supplied)

15.9 In **C.C. Alavi Haji v Palapetty Muhammed, (2007) 6 SCC 555**, the Supreme Court held that due service is presumed under Section 114(f) of the Indian Evidence Act and Section 27 of the General Clauses Act when a notice sent by registered post is returned with a postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station'. The observations of the Supreme Court are reproduced hereunder:-

“13. According to Section 114 of the Act, read with illustration (f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. **But the presumption that is raised under Section 27 of the G.C. Act is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption...**”

“14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post.... Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that **when a notice is sent by registered post and is returned with a postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', due service has to be presumed....**”

(Emphasis supplied)

15.10 In **M/s Interocean Shipping v. Lt. Col. Y.R. Puri, 45 (1991) DLT 221 (DB)**, the Division Bench of this Court held that a notice addressed to the defendant is properly served even if the A.D. card does not contain the signature of the addressee. The relevant findings of this Court are reproduced hereunder:-

“2. ...Coming to the question of notice terminating the tenancy we find that notice was properly addressed to the tenant at his address by registered A.D. post. A notice was also addressed to Capt. K.C. Saigal. Proprietor of the defendant, at his residential premises. There is no dispute that the addresses as given of the defendant were not correct. Mr. Rawal says acknowledgement card which was returned does not bear the signature of Capt. K.C. Saigal himself. The fact, however, remains that the notice was addressed at a proper address at the office of the defendant. **If somebody received the registered A.D. notice on behalf of the defendant, it cannot be said that the defendant has not been properly served....**”

(Emphasis supplied)

15.11 In **Rajiv Saluja v. M/s Bhartia Industries Limited, AIR 2003 Delhi 142**, this Court drew the presumption of service from the postal receipts and the certificate of the postal authorities. The observations of this Court in this regard are as under:-

“16. ...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.”

16. **Summons of the suit can be treated as notice under Section 106 of Transfer of Property Act, 1882.**

16.1 In **Nopany Investments (P) Ltd. v. Santokh Singh (HUF), 2008 (2) SCC 728**, the Supreme Court held that filing of suit is itself a notice to quit on the tenant and therefore, no notice to quit under Section 106 of the Transfer of Property Act is necessary to enable the landlord to get the decree of possession. The observations of the Supreme Court are reproduced hereunder:-

“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.”

16.2 In **Jeevan Diesels & Electricals Ltd. v. M/s Jasbir Singh Chadha (HUF), 182 (2011) DLT 402**, this Court held that even assuming that the notice of termination was not served, the tenancy shall stand terminated on filing of the suit.

The relevant portion of the judgment reads as under:-

“7. The second argument that the legal notice dated 15.7.2006 was not received by the Appellant, and consequently the tenancy cannot be said to have been validly terminated, is also an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows:

xxx

(ii) The Supreme Court in the case of **Nopany Investments (P) Ltd. v. Santokh Singh (HUF), 2008 (2) SCC 728** has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of **Nopany** (supra) I hold that **even assuming the notice terminating tenancy was not served upon the Appellant (though it has been served and as held by me above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.**

(iii) In the suits for rendition of accounts of a dissolved partnership at will and partition of HUF property, ordinarily it is required that a notice be given of dissolving the partnership at will or for severing the joint status before the filing of such suits because such suits proceed on the basis that the partnership is already dissolved or the joint status of an HUF stands severed by service of notices prior to the filing of such suits. However, it has been held in various judicial pronouncements that the service of summons in the suit will be taken as the receipt of notice of the dissolution of the partnership or severing of the joint status in case of

non service of appropriate notices and therefore the suits for dissolution of partnership and partition of HUF property cannot be dismissed on the technical ground that the partnership was not dissolved before filing of the suit or the joint status was not severed before filing a suit for partition of the HUF property by serving of appropriate notices. **In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice under Section 106 of the Transfer of Property Act. Once we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule 7 Code of Code of Civil Procedure can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice under Section 106 is to give 15 days to the tenant to make alternative arrangements.** In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also. In this regard, I am keeping **in view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003 and as per which Amendment no objection with regard to termination of tenancy is permitted on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat substantial justice and the suit for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.**

(iv) ...Once the summons in the suit alongwith documents were served upon the appellant/tenant, the appellant/tenant would obviously have received such notice. Even if we take this date when the appellant/tenant received a copy of the notice when served with the documents in the suit, once again, the period of 15 days has expired thereafter and keeping the legislative intendment of amended Section 106 in view, the appellant therefore cannot argue that the tenancy is not terminated and he did not get a period of 15 days to vacate the premises. I am in view of this position consequently entitled to take notice of subsequent events under Order 7 Rule 7 CPC, and taking notice of the subsequent events of the expiry of 15 days after receipt of a copy of the notice alongwith documents in the suit, I hold that the tenancy has been validly terminated, and as on date, the appellant/tenant has no right to stay in the premises and consequently the decree for possession was rightly passed by the trial Court.

8. Therefore, looking at it from any point i.e. the fact that legal notice terminating tenancy was in fact served, the suit plaint itself can be taken as a notice terminating tenancy or that the copy of the notice alongwith documents was duly served to the appellant/tenant way back in the year 2007, I hold that the tenancy of the appellant/tenant stands terminated and the appellant/tenant is liable to hand over possession of the tenanted premises."

(Emphasis supplied)

16.3 In **Rabinder Nath Saha v. Sushma Jain, 182 (2011) DLT 456**, this Court following the decision in **Jeevan Diesel** (supra) noted that the SLP against the judgment of Jeevan Diesel (supra) was dismissed by the Supreme Court on 7th July, 2011. The Court held as under:-

"2. The Appellate Court has dealt with this aspect in the following terms:

“The only dispute which the appellant has been raising in the appeal is that he has never admitted in the written statement with respect to service of notice upon him under Section 106, T.P. Act and the order of the learned Trial Court thereby presuming the service upon the appellant is bad in law. The learned Trial Court while appreciating that part has relied upon 1973 RLR 17 and 1997 III AD 989 coupled with presumption on the basis of UPC as well as affixation done on the suit property. A perusal of the report shows that the notice through registered post was sent by the respondent at the tenanted premises which is received back with the report of refusal. Legal notice issued to the appellant by UPC is not received back and there is no reply by the appellant with respect to the service of notice by way of affixation. In corresponding para i.e. para no.10 of the plaint, the appellant has simply denied the service of notice. He has also submitted that he was out of station during this period. The assertion of the appellant is too vague to be appreciated as the appellant has not mentioned anywhere as to where he has gone and when he came back and whether he observed any notice affixed on his premises or not. The learned Trial Court has relied upon judgment titled as *Nopany Investment (P) Ltd. v. Santokh Singh(HUF)*, (2008) 2 SCC 728 wherein the Hon'ble Supreme Court has *inter-alia* held that:-

“22. 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.”

The Court is of the considered opinion that law as relied upon by the learned Trial Court with

respect to presuming the service upon the appellant, does not suffer from any legal infirmity or illegality.”

3. I do not find any error in the reasoning of the Courts below in holding that the notice terminating tenancy can be said to have been served upon the appellant.

4. In any case, the arguments as raised by learned Counsel for the appellant has been dealt with by me and negated in the case of *M/s. Jeevan Diesels and Electricals Ltd. v. M/s. Jasbir Singh Chadha* (HUF) and Anr., RFA 179/2011 decided on 25.3.2011 in which I have held that the summons of the suit with which the plaint is accompanied, can also be treated as a notice under Section 106 of the Transfer of Property Act, 1882 read with Order 7 Rule 7, Code of Civil Procedure considering the intendment of Act 3 of 2003 by which Section 106 of the Transfer of Property Act, 1882 was amended to do away with the defence of the inadequacies in termination of tenancy, once otherwise a period of 15 days expires prior to filing of the suit. In the case of *M/s Jeevan Diesels & Electricals Ltd.* (supra), I have also held that along with the suit for possession, the copy of the notice terminating tenancy is filed and is also served upon the defendant/tenant/appellant and again the same can be said to be service under Section 106 of the Transfer of Property Act, 1882 read with Order 7 Rule 7, Code of Civil Procedure. An SLP against the said judgment being SLP No. 15740/2011 has been dismissed by the Supreme Court on 7.7.2011.”

16.4 In **Shri Radhakrishan Temple Trust Maithan, Agra v. M/s Hindco Rotatron Pvt. Ltd., (2012) II AD (Delhi) 429**, this Court again examined the scope of amendment to Section 106 of the Transfer of Property Act and held that a suit for

possession cannot be dismissed on the ground of invalidity of notice terminating tenancy because the tenant is only required to be given a reasonable time of 15 days to vacate the property. The findings of this Court are reproduced hereunder:-

“1. An interesting issue arises for determination by this Court in this appeal. The issue is that: can a tenant whose tenancy is not protected by the Delhi Rent Control Act, 1958 urge that because of lack of termination of the monthly tenancy i.e. the monthly tenancy having not been terminated by a proper notice, the suit for possession filed by the landlord against the tenant is liable to be dismissed inasmuch as on the date of filing of the suit, the defendant/tenant was not an unauthorized occupant. Related to this aspect is the aspect that if the lease is sought to be terminated by the landlord by serving of a notice terminating the tenancy during the pendency of the suit, should the suit be dismissed by that very fact i.e. the appellant/landlord/plaintiff should be directed to file a fresh suit because the issuance of the subsequent notice shows that the suit for possession was not validly instituted on the date it was filed inasmuch as on the date of filing of the suit the tenancy was not determined. In response to these issues, on behalf of the appellant/plaintiff/landlord it is argued that technicalities should not be allowed to prevail over substantive law i.e. keeping the object of Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as “the Act”) in view; and more so after its recent amendment by Act 3 of 2003; and once the tenant otherwise has notice of 15 days to vacate the premises, the suit for possession ought not to be dismissed and the subsequent event of the tenancy being terminated during the pendency of the suit ought to be taken note of under Order 7 Rule 7 of Code of Civil Procedure, 1908 (CPC), keeping the requirement of substantial justice in mind.

2. The admitted facts between the parties are that the appellant is the owner/landlord of the premises comprising of first floor and mezzanine floor of the property bearing No.6/90, P Block, Connaught Circus, New Delhi, of which the respondent No.1 is the tenant and the respondent Nos.2 and 3 are the legal sub-tenants. It is also not in issue; inasmuch as it is admitted; that the suit premises fall outside the protection of Delhi of Rent Control Act, 1958 inasmuch as the premises were sublet to a subtenant who was paying rent in excess of ₹3,500/- per month. This is the legal position in Delhi by virtue of Division Bench judgment in the case of *P.S. Jain Company Ltd. Vs. Atma Ram Properties Ltd.* 1997 (65) DLT 308. The sole basis for dismissal of the suit by the trial Court is that since the tenancy was a monthly tenancy, and which tenancy was not terminated by means of a legal notice under Section 106 of the Act prior to the filing of the suit, the suit was not maintainable when filed. The trial Court has also observed that after filing of the suit i.e. during the pendency of the suit, a notice dated 10.12.1999 was sent by the appellant/plaintiff/landlord stating that the earlier notice dated 7.3.1994 was defective and the lease was terminated by means of the subsequent notice dated 10.12.1999, thus making the suit filed on the basis of the earlier notice dated 7.3.1994 incompetent.

This Court therefore is required to consider that if a suit for possession is filed without serving a notice under Section 106 of the Act, can such a suit be decreed. Also, to be examined is that what is the effect of a notice sent during the pendency of the suit by a landlord to a tenant terminating the tenancy and admitting that the earlier notice terminating tenancy was defective.

3. As per Section 106 of the Act, a lease of an immovable property which is not for a manufacturing purpose, is a monthly tenancy, and the monthly tenancy can be terminated by service on the tenant of a notice of 15 days. Before the amendment to Section 106 of the Act by Act 3 of 2003 the notice had to terminate the tenancy on a

date expiring with the tenancy month. In this avatar, in which Section 106 of the Act was prior to its being amended by Act 3 of 2003, hundreds nay thousands of suits filed between the landlord and tenant were contested on the technical ground that the legal notice did not terminate the tenancy from the end of the tenancy month. The language of Section 106 of the Act before its amendment provided therefore a fertile ground for the litigants and lawyers to contest suits on this technical ground that the tenancy was not validly terminated by means of a notice expiring with the end of tenancy month. After the decades of litigation based on such defences of suits not being maintainable as the notices were not valid notices under Section 106 of the Act as such notices did not terminate the tenancy with the expiry of the tenancy month, the Legislature thankfully became alive to this undesirable position of prevailing of technicalities over substantial justice, and therefore amended the Act by The Transfer of Property (Amendment) Act, 2002.

4. The intention of the legislature in bringing about the amendment to Section 106 of the Act is very clear by virtue of subsection (3) in that all technical defences to the notice under Section 106 of the Act on the ground that the same was an invalid notice as the monthly tenancy was not terminated by a notice ending with the tenancy month, were done away with as long as a 15 day notice period was given to the tenant to vacate the premises. Suits for possession thus could not be dismissed on the ground of invalidity of the notice terminating the tenancy. Obviously, this amendment was in accordance with real intention and spirit of Section 106 of the Act whereby the tenant was only required to be given a reasonable time to vacate the property. The legislature considers this reasonable time to be of 15 days. Therefore, every tenant by virtue of amended Section 106 of the Act is put to notice that in case the landlord is legally entitled to ask the tenant to vacate the premises, the tenant shall

vacate the premises as long as the tenant has a 15 days notice period to vacate the tenanted premises. That the legislative intention for not delaying the suits for possession filed by landlords can be further noticed from the fact that the amended Section 106 was also to apply to all pending litigations.

5. It is keeping the aforesaid legislative intent behind the amended Section 106 of the Act that one has to decide defences that suits filed by the landlord against the tenant for eviction from the tenanted premises ought or ought not to be dismissed because of lack of notice/valid notice terminating the tenancy before filing of the suit for possession. Of course, wherever a tenant has a proper registered lease deed for a fixed period with respect to the tenanted premises such a tenancy cannot be terminated by means of a notice under Section 106 of the Act and the tenant would have a right to continue to stay in the premises for the fixed period of lease, depending of course on the other terms of the lease deed.

6. Ordinarily, a suit has to be decided on the basis of a cause of action which exists on the date when the suit is filed. However, this technical rule has been whittled down by a catena of judgments of the Supreme Court whereby the Supreme Court has said that Courts are always empowered to take notice of subsequent events under Order 7 Rule 7 CPC to shorten the litigation. In fact, the provision of Order 7 Rule 7 CPC has been extensively applied by the Supreme Court in litigations between the landlord and the tenant under different Rent Control Acts, more so in petitions pertaining to eviction on the ground of bonafide necessity. The Supreme Court has repeatedly held that the object of taking notice of subsequent events is to shorten the litigation and to do substantive justice. This principle of taking notice of subsequent events is a well settled principle and I therefore need not burden this judgment with the innumerable judgments of the Supreme Court on this aspect. Of course, it has to be kept in mind that where there

are disputed questions of facts pertaining to subsequent events, such disputed questions of facts ordinarily will require trial, however, where the subsequent events bring out an admitted or categorical position they can be used to pass appropriate orders on the basis of such admitted subsequent events/facts.

7. So far as the facts of the present case are concerned, the same show that it is apposite that this Court applies the principle of Order 7 Rule 7 CPC in view of the admitted facts, and more particularly keeping in mind the intention of legislature in amending Section 106 of the Act by Act 3 of 2003. Once we keep the legislative intention in focus that a tenant who has no right to stay in the tenanted premises, because there is no registered lease for a fixed period entitling the tenant to stay in the premises, once a 15 days notice period is given to the tenant to vacate the premises, the conclusion that the suit for possession must not be dismissed but decreed, falls in place.

Therefore, even if the notice by which tenancy is terminated prior to the filing of the suit is held to be invalid, then, in my opinion, service of summons of the suit for eviction of the tenant showing the categorical intention of the landlord asking the tenant to vacate the tenanted premises can be taken as a notice under Section 106 of the Act read with Order 7 Rule 7 CPC. Of course, one consequence will be that if the tenancy was terminated prior to the filing of the suit validly, the liability towards the mesne profits would begin from such earlier date by which the tenancy was terminated, but where the Court takes termination of tenancy by means of service of summons in the suit or on the basis of any other subsequent act/event then the only consequence could be that though the suit for possession will have to be decreed because the tenant has 15 days notice to vacate the premises, however, mesne profits could be said to be payable from the date from which it is held that the tenancy stands terminated by means of requisite knowledge to the

tenant to vacate the premises having received a notice period of 15 days.”

(Emphasis supplied)

17. Estoppel of the tenant under Section 116 of the Indian Evidence Act, 1872

17.1 Under Section 116 of the Indian Evidence Act, the Lessee is estopped from denying the title of the transferee landlord. Section 116 of the Indian Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the title of the landlord meaning thereby that so long as the tenant has not surrendered the possession, he cannot dispute the title of the landlord. Howsoever, defective the title of the landlord may be, a tenant is not permitted to dispute the same unless he has surrendered the possession of his landlord. It is based upon the salutary principle of law and justice that a tenant who could not have got the possession but for his contract of tenancy admitting the right of the landlord, cannot be allowed to dispute the title of his landlord after taking undue advantage of the possession that he got from the landlord. Of course, he can deny his title after he gives up the possession having thus restored the *status quo ante*.

17.2 Section 116 of the Indian Evidence Act is reproduced hereinunder:-

“Section 116. Estoppel of tenant; and of licensee of person in possession.- No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

17.3 In **Shri Ram Pasricha v. Jagannath, AIR 1976 SC 2335**, the Supreme Court held that in a suit for eviction, the tenant is estopped from questioning the title of landlord. The Supreme Court held as under:-

“15. ...The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant, the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such.”

17.4 In **D. Satyanarayana v. P. Jagadish, AIR 1987 SC 2192**, the Supreme Court held as under:-

“3. ...Section 116 of the Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property. Possession and permission being established, estoppel would bind the tenant during the continuance of the tenancy and until he surrenders his possession. The words

‘during the continuance of the tenancy’ have been interpreted to mean during the continuance of the possession that was received under the tenancy in question, and the Courts have repeatedly laid down that estoppel operates even after the termination of the tenancy so that a tenant who had been let into possession, however, defective it may be, so long as he has not openly surrendered possession, cannot dispute the title of the landlord at the commencement of the tenancy...”

“4. The rule of estoppel embodied under Section 116 of the Evidence Act is that, a tenant who has been let into possession cannot deny his landlord’s title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord...”

(Emphasis supplied)

17.5 In **Vashu Deo v. Balkishan, (2002) 1 SCR 171**, the Supreme Court summed up the law as to estoppel of tenant as under:

“6. ...Section 116 of the Evidence Act, which codifies the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy, a title to such immovable property. The rule of estoppel so enacted has three main features : (i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy; (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord; and (iii) Section 116 of the Evidence Act is not the whole law of estoppel between the landlord and tenant. The principles emerging from Section 116 can be extended in their application and also suitably adapted to suit the requirement of an

individual case... the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by a paramount title-holder..."

17.6 In **MEC India Pvt. Ltd. v. Lt. Col. Inder Maira, 80 (1999) DLT 679**, this Court held as under:-

"41. ...the doctrine of tenant estoppel, which continues to operate even after the termination of the tenancy, debars a tenant who had been let into possession by a landlord, from disputing the latter's title or pleading adverse possession, without first openly and actually surrendering possession of the tenanted premises and restoring them to the landlord."

18. **Forfeiture of lease under Section 111(g)(2) of the Transfer of Property Act.**

18.1 Section 111(g)(2) of the Transfer of Property Act provides that the lease shall determine upon the Lessee renouncing his character by setting up a title in a third person. The effect of such a disclaimer is that it brings to an end the relationship of landlord and tenant and such a tenant is liable to be evicted forthwith.

18.2 In **Sheela v. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375**, the Supreme Court held as under:-

"12. ...Section 116 of the Evidence Act embodies therein a rule of estoppel. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such

immovable property. This estoppel so long as it binds the tenant excludes the tenant from raising a plea disputing the title of his landlord at the commencement of the tenancy. It flows as a corollary therefrom that the proof of landlord-tenant relationship tantamounts during the continuance of tenancy to proof of ownership of landlord over the tenancy premises at the beginning of the tenancy so far as the tenant is concerned. It is significant to note that on the phraseology of Section 116 of the Evidence Act the rule of estoppel applies so long as the tenancy is not terminated and the rule estops the tenant from laying challenge to the ownership of the landlord at the commencement of the tenancy. But the rule of estoppel as incorporated in Section 116 is not exhaustive and it may be extended or suitably modified in its application to other situations as well, retaining the basic feature of the rule. **Clause (g) of Section 111 of the Transfer of Property Act, insofar as relevant for our purpose, provides that a lease of immovable property determines by forfeiture in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself. This provision contemplates two fact situations which entail the lessee having renounced his character as such and they are: (i) when the lessee sets up a title in a third person, or (ii) when he claims title in himself. In either case, the tenant has disputed and denied the title of his landlord because a title in third person or title in himself cannot co-exist with the title in the landlord."**

"14. Denial of landlord's title or disclaimer of tenancy, is it an act injurious to interest of landlord? How does this rule operate and what makes it offensive? Evans and Smith state in *the Law of Landlord and Tenant* (4th Edn., 1993, at p.89) that it is an implied condition of every lease, fixed-term or periodic and formal or informal, that the tenant is not expressly or impliedly to deny the landlord's title or prejudice it by any acts which are inconsistent with the existence of a tenancy. Disclaimer of the landlord's title is analogous to

repudiation of a contract. The rule is of feudal origin; the courts are not anxious to extend it and so any breach of this condition must be clear and unambiguous. Hill and Redman in *Law of Landlord and Tenant* (17th Edn., para 382, at pp. 445-446) dealing with "acts which prejudice lessor's title" state that there is implied in every lease a condition that the lessee shall not do anything that may prejudice the title of the lessor; and that if this is done the lessor may re-enter for breach of this implied condition. Thus, it is a cause of forfeiture if the lessee denies the title of the lessor by alleging that the title of the landlord is in himself or another; or if he assists a stranger to set up an adverse title or delivers the premises to him in order to enable him to set up a title..."

(Emphasis supplied)

18.3 In **S. Makhan Singh v. Amarjeet Bali, 154 (2008)**

DLT 211, this Court held as under:-

"5. ...Section 111(g) of Transfer of Property Act provides that a lease of immovable properties come to an end by forfeiture in case of lessee renouncing his character as such by setting up a title in a third person or claiming title in himself. Thus, once a lease stands forfeited by operation of law, the person in occupation of the premises cannot take benefit of the legal tenancy. This provision under Section 111(g) is based on public policy and the principle of estoppel. A person who takes premises on rent from landlord is estopped from challenging his title or right to let out the premises. If he does so he does at his own peril and law does not recognize such a person as legal tenant in the premises..."

(Emphasis supplied)

18.4 In **Bhagirothi Mohanty v. Kasinath Das, 1996 AIHC**

4918, the Orissa High Court held as under:-

"8. Section 116 of the Evidence Act envisages that a tenant is stopped to deny the landlord's title.

This doctrine is based on equitable principle inasmuch as once one enters into the premises as a tenant and continues to possess in that capacity, he cannot be heard to deny the lessor's title. If he does so, then Section 111(g) of the Transfer of Property Act comes into play. As provided therein, the lessee's right to the lease-hold property is forfeited by happening of certain events, one of such events being disclaimer or denial of the lessor's title. The 'disclaim' as the word imports, necessarily means renouncement by the party of his character as a tenant either by setting up title by another or by claimant title in himself. **The principle embodied in Section 111(g) is based on the principle of justice, equity and good conscience. So a tenant having lawfully entered into lease-hold premises, if denies landlord's title, his position in relation to the lease-hold land is as a trespasser. In such situation, one of the co-owners can maintain a suit for eviction against him..."**

(Emphasis supplied)

19. **Decree on Admissions under Order XII Rule 6 of the Code of Civil Procedure**

19.1 Order XII Rule 6(1) of the Code of Civil Procedure is reproduced hereunder:-

**"ORDER XII
ADMISSIONS**

Rule 6. Judgment on admissions- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions."

19.2 In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, 2012 (3) SCALE 550**, the Supreme Court

held that the person resisting a claim for recovery of possession or claiming a right to continue in possession has to establish that he has such a right. The observations of the Supreme Court are as under:-

“66. A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and **it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.”**

(Emphasis supplied)

19.3 In **Surjit Sachdev v. Kazakhstan Investment Services Private Limited, 66 (1997) DLT 54 (DB)**, the Division Bench of this Court held as under:-

“16. A bare reading of Rule 6 would suggest that Court either on the application of any party or on its own motion and without waiting for determination of any other question between the parties proceed

to give judgment as it may think fit having regard to the admission...”

“17. ...The factors which deserve to be taken into consideration in order to enable the Court to pass a decree in plaintiff's favor as regards possession in such like suit. are: (a) existence of relationship of Lesser and lessee or entry in possession of the suit property by defendant as a tenant; and (b) determination of such relation in any of the contingency, as envisaged in Section 111 of the Transfer of Property Act. One of the modes stated therein is by efflux of time limited by the lease. Only on unequivocal admission of the above two factors will entitle the plaintiff to a decree on admission. Admission need not be made expressly in the pleadings. Even on constructive admissions Court can proceed to pass a decree in plaintiff's favour.

18. Defendants in this case have not disputed the entry of defendant No. 1 in possession on the suit property on the basis of registered lease deed dated 24.2.1994...”

21. Even assuming that such a communication (letter dated 18.1.1995) was received by the plaintiff, there is nothing on record even to drawn an inference that the plaintiff ever agreed for extension. Otherwise also defendant No. 1 being a lessee could not under the terms of lease seek extension of the lease. ...Accepting the plaintiff's stand that taking the plea of defendant as regards renewal of lease to have been duly accepted by the plaintiff that period of lease of the property stood extended for another period of one year on same terms, even in that case the period of such extended lease expired on 14.1.1996.

19.4 MEC India Pvt. Ltd. v. Lt. Col. Inder Maira and Ors., 80 (1999) DLT 679:-

“47. A suit for ejectment is different from a Title Suit for Possession against a trespasser. The former postulates no dispute about the Lessor - lessee relationship. The dispute here is generally only on two counts. One, about assent to continuation in the

case of lease for a fixed term which had expired by efflux of time, or in the case of a tenancy from month-to-month, about the valid termination thereof. In case the lessee claims a right of renewal under a clause therefore, he must bring a separate suit for specific performance of the renewal clause within the limitation prescribed for such a suit. ...”

“48. ...The cause of action in the two is different. In a suit for possession it is the factum of ownership and the cause of action is a trespass on a particular day by dispossession of the owner. In a suit for ejectment, ordinarily there is no question of title. **The tenant is estopped from denying the landlord's title and the cause of action is basically the termination on a particular day of the tenancy** and the question is only about the form of the tenancy beyond that date -- one at sufferance or one from month-to-month.

49. To put it differently, in the former case there is no dispute either about title or about the permissive nature of occupation whereas in the latter case the dispute is about title and there is no question of the possession being permissive. Here it is hostile. Even otherwise, a plea or a defense as a tenant is a pleading of a permissive title. It carries with it an admission that someone else, be it the plaintiff or be it another, is the one carrying a superior title and in whom vests the reversionary rights known in common parlance as ownership...”

“50. **In a suit for ejectment, all that the Court is required to examine is whether on a calendar date representing the expiration of a particular tenancy month, the defendant-tenant's status became one of a 'tenant at sufferance' or it continued as one 'from month-to-month.'** There is really nothing else to be tried in such a suit. A suit of this variety could in most cases be decided at the first hearing itself either on the pleadings and documents as was done by a Division Bench of this Court in *Surjit Sachdeva v. Kazakhstan Investment Services Pvt. Ltd.*, 66 (1997) DLT

54 (DB), or, if need be, by examining the parties under Order X of the Code...”

(Emphasis supplied)

19.5 In **Jindal Dychem Industries Pvt. Ltd. v. Pahwa International Pvt. Ltd., 2009 (113) DRJ 214**, this Court held that a notice dispatched to the defendant by registered post is presumed to be served under Section 27 of the General Clauses Act and a denial of the said notice by the defendant has no value. This Court passed a decree for possession under Order XII Rule 6 of the Code of Civil Procedure. The findings of this Court are reproduced hereunder:-

“8. ...The only fact, which is disputed by the defendant, is about the service of termination Notice.

9. The moot question which arises for consideration in this application is whether notice dated 09.10.2007 would amount to be served upon the defendant/non applicants or not?

10. Learned Counsel of the defendant has denied the service of notice of termination of tenancy, it is contended by the defendant that the AD card that has been produced by the plaintiff does not bear any signature of the receiver. Further with respect to the notice dated 27.07.2007, no AD card has been filed by the plaintiff. Ld. Counsel has further contended that in terms of Section 27 of the General Clauses Act, 1897 the presumption of service by registered post is a rebuttable presumption. To support his contention he has relied upon the judgment of *Tele Tube Electronics Ltd. v. Delhi Sales Tax*, 2002 (101) DLT 337 (D.B) and *Ram Murthi v. Bhola Nath*, 1982 (22) DLT 426 and further contended that the defendant has discharged the initial burden of proof by denying

the receipt of the notice in its written statement, accompanied by an affidavit, the burden to prove the valid service and the receipt of notice now shifts on the plaintiff, which can only be discharged by leading evidence in this regard.

11. In support of proof of service of Notice of termination of tenancy plaintiff has placed on record the copy of notice dated 09.10.2007, original postal receipt in respect of the notice dated 09.10.07, original AD, Copy of the letter dated 24.10.07, original postal receipts in respect of the above letter. I have perused the record and found that all the documents placed on record are bearing correct address of the defendant.

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..."**

"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...”

(Emphasis supplied)

19.6 In **Bhupinder Singh v. Hill Elliott & Co. Ltd., 2011 I AD (Delhi) 309**, this Court passed a decree for possession under Order XII Rule 6 of the Code of Civil Procedure on the basis of a notice of termination and the certificate of postal authorities that the letter was delivered to the tenant. This Court held the material to be sufficient to draw a presumption of proper service under Section 27 of the General Clauses Act, 1897. The findings of this Court are reproduced hereunder:-

“20. So far as issuance of the notice requiring vacant possession of the premises is concerned, the plaintiff has placed on record, a copy of the legal notice, as well as a certificate of the postal authorities, stating that the said letter had been delivered to Hill Elliot. **These materials are sufficient for the Court to draw an inference of proper service, based on Section 27 of the General Clauses Act, 1897, and the judgment of the Supreme Court, in K. Bhaskaran v. Sankaran Vaidhyan Balan, 1999 (7) SCC 510...**”

(Emphasis supplied)

The appeal against the aforesaid judgment was dismissed by the Division Bench of this Court. The Division Bench in appeal titled **Hill Elliott & Co. Ltd., v. Bhupinder Singh, 2011 (121) DRJ 438 (DB)**, held that the dishonest litigant cannot be permitted to delay the judgment on the ground that

he would show during the trial that he had not received the notice. The relevant findings of the Division Bench are reproduced hereunder:-

“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. ...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.”

“17. In the absence of specific denial, we find no merit in the contention raised on behalf of Hill Elliott that the presumption being rebuttable opportunity should have been given to the

Appellant to prove that the notice has not been served.

18. The purpose of the enactment of provision of Order 12 Rule 6 CPC is to give the plaintiff a right to speedy judgment. The thrust of amendment is that in an appropriate case a party on the admission of the other party can press for judgment as a matter of legal right. If in a case like the present one, a dishonest litigant is permitted to delay the judgment on the ground that he would show during the trial that he had not received the notice, the very purpose of the amendment in the provision would be frustrated."

(Emphasis supplied)

20. False Claims and Defenses

20.1 In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria**, (supra), the Supreme Court held that false claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. The Supreme Court held as under:-

"False claims and false defences

84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent."

20.2 In **Dalip Singh v. State of U.P., (2010) 2 SCC 114**, the Supreme Court observed that a new creed of litigants have

cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

“1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

(Emphasis supplied)

20.3 In **Satyender Singh v. Gulab Singh, MANU/DE/1047/2012**, the Division Bench of this Court following **Dalip Singh v. State of U.P.** (supra) observed that

the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause. The observations of this Court are as under:-

"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. **In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.** Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."

(Emphasis supplied)

20.4 In **State Bank of Patiala v. Chander Mohan Jain, 1996 RLR 404**, the Division Bench of this Court observed that it has become quite common for tenants whose tenancies have been terminated to continue occupation as trespassers and drive the landlords to file suit for eviction and profits with a view to see how far the patience of the landlords may last. The observation of this Court is reproduced hereunder:-

“24. It has become quite common for tenants, whose tenancies have been terminated validly, to continue occupation as trespassers, drive the landlords to file suits for eviction and profits with a view to see how far the patience of the landlords may last or how far the landlords or their legal representatives could fight the tenants- particularly if the tenant had stopped payment of admitted rents. It is rather unfortunate that even public sector bodies like the appellant are taking such postures and driving landlords from pillar to post...”

(Emphasis supplied)

21. **Continuation of Possession upon Payment of Market Rent**

21.1 In **Mohammad Ahmad v. Atma Ram Chauhan, (2011) 7 SCC 755**, the Supreme Court observed that the motivation of the tenant to litigate with the landlord is that he doesn't want to pay the prevalent market rate of rent to the landlord and continues to pay the rent fixed years ago. The observation of the Supreme Court is as under:-

“1. One half of the lis between landlord and tenant would not reach courts, if tenant agrees to pay the present prevalent market rate of rent of the tenanted premises to the landlord. In that case landlord would also be satisfied that he is getting adequate, just and proper return on the property. But the trend in the litigation between landlord and tenant shows otherwise. Tenant is happy in paying the meager amount of rent fixed years ago and landlord continues to find out various grounds under the Rent Acts, to evict him somehow or the other...”

21.2 In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria** (supra), the Supreme Court held that inherent interest to continue frivolous litigation by unscrupulous litigants would be reduced to a large extent, if continuation of possession is permitted upon payment of market rent. The Supreme Court held as under:-

“Mesne Profits

90. Experience has shown that all kinds of pleadings are introduced and even false and fabricated documents are filed in civil cases because there is an inherent profit in continuation of possession. In a large number of cases, honest litigants suffer and dishonest litigants get undue benefit by grant or refusal of an injunction because the Courts do not critically examine pleadings and documents on record. **In case while granting or refusing injunction, the Court properly considers pleadings and documents and takes the pragmatic view and grants appropriate mesne profit, then the inherent interest to continue frivolous litigation by unscrupulous litigants would be reduced to a large extent.**

91. **The Court while granting injunction should broadly take into consideration the prevailing market rentals in the locality for similar premises. Based on that, the Court should fix adhoc amount which the person continuing in possession must pay** and on such payment, the Plaintiff may withdraw after furnishing an undertaking and also making it clear that should the Court pass any order for reimbursement, it will be a charge upon the property.

92. The Court can also direct payment of a particular amount and for a differential, direct furnishing of a security by the person who wishes

to continue in possession. **If such amount, as may be fixed by the Court, is not paid as security, the Court may remove the person and appoint a receiver of the property or strike out the claim or defence. This is a very important exercise for balancing equities. Courts must carry out this exercise with extreme care and caution while keeping pragmatic realities in mind and make a proper order of granting mesne profit. This is the requirement of equity and justice."**

(Emphasis supplied)

21.3 In **Trilochan Singh v. Daya Shankar & Others, 174**

(2010) DLT 266, this Court held as under:-

"48. Every party is expected to comply with the law and the contract that he has entered into and his failure to do so and his causing unnecessary litigation should mean a penalty and not a benefit for him. Our Courts are overloaded because it is widely believed that to force the other party to start litigation will in the end be beneficial for the wrong-doer.

49. To tackle Court delays, the motivation for raising disputes and delaying litigation must be removed. A party who makes a claim or raises a dispute before a Court must know that whenever the case is decided, and if it is decided against him, not only all benefits that he may have received in the meantime will have to be paid back, but all losses of the other party will also have to be compensated. Unless all losses and deprivations of the successful party have been fully compensated for, the Court fails in its task of doing justice. **If Courts pass orders directing payment of realistic costs and compensation that sufficiently make up for the losses of the other, the motivation behind raising of disputes will be removed and the Courts will be freed of a lot of frivolous litigation.**

50. Keeping in view this state of affairs and the prevalent general impression, it will be a useful

approach if the Court, when deciding a matter, considers what all orders ought to be passed so as to do complete justice and ensure that the party which has lost, does not get away without having to compensate the other for the deprivation it caused to it by raising the dispute.”

(Emphasis supplied)

22. **Restitution**

22.1 In **Indian Council for Enviro and Legal Action v. Union of India, (2011) 8 SCC 161**, the Supreme Court explained the concept of restitution. The Court held that it is the bounden duty and obligation of the Court to neutralize any unjust, enrichment and undeserved gain made by any party by invoking the jurisdiction of the Court. A person in a wrongful possession should not only be removed as early as possible but be compelled to pay for wrongful use of the premises, fine, penalty as well as cost. The findings of the Supreme Court in this regard are as under:-

“149. It is settled principle of law that no one can take advantage of his own wrong. Unless courts disgorge all benefits that a party availed by obstruction or delays or non-compliance, there will always be incentive for non-compliance, and parties are ingenious enough to come up with all kinds of pleas and other tactics to achieve their end because they know that in the end the benefit will remain with them.”

“162. We may add that restitution and unjust enrichment, along with an overlap, have to be viewed with reference to the two stages i.e. pre-suit and post-suit. In the former case, it becomes a substantive law (or common law) right that the court will consider; but in the latter case, when the parties

are before the court and any act/omission, or simply passage of time, results in deprivation of one, or unjust enrichment of the other, the jurisdiction of the court to levelise and do justice is independent and must be readily wielded, otherwise it will be allowing the court's own process, along with time delay, to do injustice.

163. For this second stage (post-suit), the need for restitution in relation to court proceedings, gives full jurisdiction to the court, to pass appropriate orders that levelise. Only the court has to levelise and not go further into the realm of penalty which will be a separate area for consideration altogether.”

“191. In consonance with the principles of equity, justice and good conscience Judges should ensure that the legal process is not abused by the litigants in any manner. The court should never permit a litigant to perpetuate illegality by abusing the legal process. It is the bounden duty of the court to ensure that dishonesty and any attempt to abuse the legal process must be effectively curbed and the court must ensure that there is no wrongful, unauthorised or unjust gain for anyone by the abuse of the process of the court. One way to curb this tendency is to impose realistic costs, which the respondent or the defendant has in fact incurred in order to defend himself in the legal proceedings. The courts would be fully justified even imposing punitive costs where legal process has been abused. No one should be permitted to use the judicial process for earning undeserved gains or unjust profits. The court must effectively discourage fraudulent, unscrupulous and dishonest litigation.

192. The court's constant endeavour must be to ensure that everyone gets just and fair treatment. The court while rendering justice must adopt a pragmatic approach and in appropriate cases realistic costs and compensation be ordered in order to discourage dishonest litigation. The object and true meaning of the concept of restitution cannot be achieved or accomplished unless the courts adopt a pragmatic approach in dealing with the cases.”

“197. The other aspect which has been dealt with in great detail is to neutralise any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view:

(1) It is the bounden duty and obligation of the court to neutralise any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

(2) When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.

(3) Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the court.

(4) A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

(5) No litigant can derive benefit from the mere pendency of a case in a court of law.

(6) A party cannot be allowed to take any benefit of his own wrongs.

(7) Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

(8) The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts.”

22.2 In **A. Shanmugam v. Ariya Kshatriya Rajakula**

Vamsathu Madalaya Nandhavana Paripalanai Sangam,

MANU/SC/0336/2012, the Supreme Court held as under:-

“RESTITUTION AND MESNE PROFITS

34. Experience reveals that a large number of cases are filed on false claims or evasive pleas are introduced by the defendant to cause delay in the administration of justice and this can be sufficiently taken care of if the Courts adopt realistic approach granting restitution. This Court in the case of ***Ramrameshwari Devi v. Nirmala Devi***, (2011) 8 SCC 249 (of which one of us, Bhandari, J. was the author of the judgment) in paragraph 52 (C, D and G) of the judgment dealt with the aspect of imposition of actual or realistic costs which are equally relevant for this case...”

“35. Unless wrongdoers are denied profit or undue benefit from frivolous litigations, it would be difficult to control frivolous and uncalled for litigations...We need to decide cases while keeping pragmatic realities in view. We have to ensure that unscrupulous litigant is not permitted to derive any benefit by abusing the judicial process.”

“37. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite sometime, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.

38. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, on later stage, but once discovered, it is the duty of the Court to take appropriate remedial and preventive

steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

39. Now, when we revert to the facts of this case it becomes quite evident that the appellant is guilty of suppressing material facts and introducing false pleas and irrelevant documents. The appellant has also clouded the entire case with pleas which have nothing to do with the main controversy involved in the case."

23. **Imposition of Costs**

23.1 In **Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249**, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

"45. 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."

"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 and B

xxx

xxx

xxx

“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.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.”

E and F xxx xxx xxx

“G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.”

“54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

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.”

(Emphasis supplied)

23.2 In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria** (supra) the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences as under:-

“85. This Court in a recent judgment in Ramrameshwari Devi and Ors. (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. 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 time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases 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.”

(Emphasis supplied)

23.3 In **Padmawati v. Harijan Sewak Sangh, 154 (2008)**

DLT 411, this Court imposed costs of ₹15.1 lakhs and noted as under:

“6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.”

“7. ... The petitioners are, therefore, liable to pay costs which is equivalent to the average market rent of 292 months to the Respondent No. 1 and which comes to Rs.14,60,000 apart from litigation expenses and Counsel’s fee throughout which is assessed at Rs. 50,000/-. The petition is hereby dismissed with costs of Rs.15,10,000/- to be recovered from the petitioners jointly and severally. If any amount has been paid towards user charges, the same shall be adjustable.”

“9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is

dragged as long as possible. Even if these litigants ultimately lose the case, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

(Emphasis supplied)

23.4 In **Punjab National Bank v. Virender Prakash, MANU/DE/0620/2012**, this Court ruled that penal costs should be imposed on dishonest tenants who illegally continue to occupy the tenanted premises by raising a frivolous defence. This Court imposed costs of ₹2,00,000/- on the bank which was upheld by the Supreme Court. The relevant findings of this Court are reproduced hereunder:-

“1. ...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”

“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 Ram Rameshwari Devi and Others (supra)....”

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."

(Emphasis supplied)

The Supreme Court has dismissed the SLP against the aforesaid judgment. The Supreme Court passed the following order:-

"On hearing Mr. Dhruv Mehta, Senior Advocate appearing for the petitioner, and on going through the judgment of the High Court, we find ourselves in complete agreement with the view taken by the High Court. We are also satisfied that that High Court was quite justified in imposing the heavy cost against the petitioner bank.

The special leave petition is, accordingly dismissed."

24. **Truth should be the guiding star in the entire legal process**

24.1 In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria (Dead) through LRs. (*supra*)**, the Supreme Court held that truth should be a guiding star in entire legal process. The observations of the Supreme Court are reproduced hereunder:-

"Truth as guiding star in judicial process

31. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies. **The truth should be the guiding star in the entire judicial process.**

32. **Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth.** That is their mandate, obligation and bounden duty.

33. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.

34. In ***Mohanlal Shamji Soni v. Union of India***, 1991 Supp (1) SCC 271, this Court observed that in such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.

35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

36. In ***Ritesh Tewari v. State of U.P.***, (2010) 10 SCC 677 this Court reproduced often quoted quotation which reads as under:

“Every trial is voyage of discovery in which truth is the quest”

37. This Court observed that the power is to be exercised with an object to subserve the cause of justice and public interest and for getting the evidence in aid of a just decision and to uphold the truth.

38. Lord Denning, in the case of ***Jones v. National Coal Board***, (1957) 2 QB 55 has observed that:

“In the system of trial that we evolved in this country, the Judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of the society at large, as happens, we believe, in some foreign countries.”

39. Certainly, the above, is not true of the Indian Judicial system. A judge in the Indian System has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of discovery in which truth is the quest". In order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

40. Lord Denning further observed in the said case of ***Jones*** (supra) that "'It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth...."

41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimized.

42. In civil cases, adherence to Section 30 Code of Civil Procedure would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges. Section 30 Code of Civil Procedure reads as under:

30. Power to order discovery and the like. - Subject to such conditions and limitations as may be prescribed, the Court

may, at any time either of its own motion or on the application of any party, -

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit

43. "**Satyameva Jayate**" (Literally: "Truth Stands Invincible") is a mantra from the ancient scripture Mundaka Upanishad. Upon independence of India, it was adopted as the national motto of India. It is inscribed in Devanagari script at the base of the national emblem. The meaning of full mantra is as follows:

"Truth alone triumphs; not falsehood. Through truth the divine path is spread out by which the sages whose desires have been completely fulfilled, reach where that supreme treasure of Truth resides.

44. Malimath Committee on Judicial Reforms heavily relied on the fact that in discovering truth, the judges of all Courts need to play an active role. The Committee observed thus:

2.2... "In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral judge. The judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The State discharges the obligation

to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society doubt and gives the benefit of doubt to the accused. It is the parties that determine the scope of dispute and decide largely, autonomously and in a selective manner on the evidence that they decide to present to the court. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out. The judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court....”

2.15 “The Adversarial System lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the Inquisitorial System. When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judges do not bother if relevant evidence is not produced and plays a passive role as he has no duty to search for truth....”

2.16.9. “Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. **Truth is the very soul of justice. Therefore truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth.** It is of

seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth."

45. In ***Chandra Shashi v. Anil Kumar Verma***, (1995) 1 SCC 421, to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

46. Truth has been foundation of other judicial systems, such as, the United States of America, the United Kingdom and other countries.

47. In ***James v. Giles et al. v. State of Maryland***, (386 U.S. 66, 87, S. Ct. 793), the US Supreme Court, in ruling on the conduct of prosecution in suppressing evidence favourable to the Defendants and use of perjured testimony held that such rules existed for a purpose as a necessary component of the search for truth and justice that judges, like prosecutors must undertake. It further held that the State's obligation under the Due Process Clause "is not to convict, but to see that so far as possible, truth emerges."

48. The obligation to pursue truth has been carried to extremes. Thus, in ***United States v. J. Lee Havens***, 446 U.S. 620, 100 St.Ct. 1912, it was held that the government may use illegally obtained evidence to impeach a defendant's fraudulent statements during cross-examination for the purpose of seeking justice, for the purpose of "arriving at the truth, which is a fundamental goal of our legal system".

49. Justice Cardozo in his widely read and appreciated book "The Nature of the Judicial Process" discusses the role of the judges. The relevant part is reproduced as under:

"There has been a certain lack of candour,"
"in much of the discussion of the theme [of judges' humanity], or rather perhaps in the refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations."
"I do not doubt the grandeur of conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do."

50. Aharon Barak, President of Israeli Supreme Court from 1995 to 2006 takes the position that:

"For issues in which stability is actually more important than the substance of the solution - and there are many such case - I will join the majority, without restating my dissent each time. Only when my dissenting opinion reflects an issue that is central for me - that goes to the core of my role as a judge - will I not capitulate, and will I continue to restate my dissenting opinion: "Truth or stability - truth is preferable".

"On the contrary, public confidence means ruling according to the law and according to the judge's conscience, whatever the attitude of the public may be. Public confidence means giving expression to history, not to hysteria. Public confidence is ensured by the recognition that the judge is doing justice within the framework of the law and its provisions. Judges must act - inside and outside the court - in a manner that preserves public confidence in them. They must understand that judging is not

merely a job but a way of life. It is a way of life that does not include the pursuit of material wealth or publicity; it is a way of life based on spiritual wealth; it is a way of life that includes an objective and impartial search for truth.”

51. In the administration of justice, judges and lawyers play equal roles. Like judges, lawyers also must ensure that truth triumphs in the administration of justice.

52. Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.”

“72. The Court will examine the pleadings for specificity as also the supporting material for sufficiency and then pass appropriate orders.

73. Discovery and production of documents and answers to interrogatories, together with an approach of considering what in ordinary course of human affairs is more likely to have been the probability, will prevent many a false claims or defences from sailing beyond the stage for issues.

74. If the pleadings do not give sufficient details, they will not raise an issue, and the Court can reject the claim or pass a decree on admission.

75. On vague pleadings, no issue arises. Only when he so establishes, does the question of framing an issue arise. Framing of issues is an extremely important stage in a civil trial. Judges are expected to carefully examine the pleadings and documents before framing of issues in a given case.

76. In pleadings, whenever a person claims right to continue in possession of another property, it becomes necessary for him to plead with specificity about who was the owner, on what date did he enter into possession, in what capacity and in what

manner did he conduct his relationship with the owner over the years till the date of suit. He must also give details on what basis he is claiming a right to continue in possession. Until the pleadings raise a sufficient case, they will not constitute sufficient claim of defence.”

(Emphasis supplied)

24.2 In **A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam**

(supra), the Supreme Court held as under:-

“ENTIRE JOURNEY OF A JUDGE IS TO DISCERN THE TRUTH”

24. The entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system. This Court in **Dalip Singh v. State of U.P. and Ors.** (2010) 2 SCC 114 observed that truth constitutes an integral part of the justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system.”

“26. As stated in the preceding paragraphs, the pleadings are foundation of litigation but experience reveals that sufficient attention is not paid to the pleadings and documents by the judicial officers before dealing with the case. It is the bounden duty and obligation of the parties to investigate and satisfy themselves as to the correctness and the authenticity of the matter pleaded.

27. The pleadings must set-forth sufficient factual details to the extent that it reduces the ability to put forward a false or exaggerated claim or defence. The pleadings must inspire confidence and credibility. If false averments, evasive denials

or false denials are introduced, then the Court must carefully look into it while deciding a case and insist that those who approach the Court must approach it with clean hands.”

“FALSE AND IRRELEVANT PLEAS:

41. The appellant is also guilty of introducing untenable pleas. The plea of adverse possession which has no foundation or basis in the facts and circumstances of the case was introduced to gain undue benefit. The Court must be cautious in granting relief to a party guilty of deliberately introducing irrelevant and untenable pleas responsible for creating unnecessary confusion by introducing such documents and pleas. These factors must be taken into consideration while granting relief and/or imposing the costs.”

The Supreme Court laid down the following principles:-

“42. On the facts of the present case, following principles emerge:

1. It is the bounden duty of the Court to uphold the truth and do justice.
2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.
3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.
4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth

and no one should be permitted to pollute the stream of justice.

5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.

6. Watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, Courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.

7. The watchman, caretaker or agent holds the property of the principal only on behalf the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.

8. The protection of the Court can be granted or extended to the person who has valid subsisting rent agreement, lease agreement or licence agreement in his favour.”

25. **Sections 165 of Indian Evidence Act, 1872**

25.1 Section 165 of the Indian Evidence Act empowers the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to

look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant facts.

25.2 Section 165 of the Indian Evidence Act, 1872 reads as under:

“Section 165. Judge’s power to put questions or order production. - The Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted.”

25.3 The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and

the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

25.4 The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

25.5 The scope of Section 165 of the Indian Evidence Act has been discussed by the Supreme Court and High Courts in **Ramchander v. State of Haryana, (1981) 3 SCC 191; Ritesh Tewari v. State of Uttar Pradesh, (2010) 10 SCC 677; Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158; State of Rajasthan v. Ani, AIR 1997 SC 1023; Mohanlal Shamji Soni v. Union of India, 1991 Supp. (1) SCC 271; Jamatraj Kewalji Govani v. State of**

Maharashtra, AIR 1968 SC 178; Jai Prakash v. National Insurance Company, (2010) 2 SCC 607; Somari Devi v. Ragwar Singh, III (2010) ACC 147; and Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy, 1972 CriLJ 1485.

26. Summary of the principles of law

From the analysis of the above decisions and the provisions with which we are concerned, the following principles emerge:-

26.1 Upon expiry of the term of the lease or on termination of the monthly lease by a notice to quit, the lessee must vacate the property on his own and not wait for the lessor to bring a suit where he can raise all kinds of contests in order to profit from Court delays.

26.2 Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and no notice of determination of the lease is required. Mere acceptance of rent by the landlord from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession.

26.3 Notice of termination of lease under Section 106 of the Transfer of Property Act sent by registered post to the tenant is deemed to be served under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act, 1872.

26.4 The object of the termination notice under Section 106 of

the Transfer of Property Act is to communicate the intention of the landlord that he wants the premises back and to give 15 days' time to vacate. Such notice is not a pleading but a mere communication of the intention of the recipient. Such notice is to be liberally construed as the tenant's only right is to get notice of 15 days to vacate. The tenant is under a statutory obligation to vacate the subject property on the expiry of 15 days of the notice.

26.5 A suit for ejectment is different from a title suit for possession against a trespasser. In a suit for possession against a trespasser, title can be in dispute but in a suit for ejectment against an erstwhile tenant, ordinarily there is no dispute of title as the tenant is estopped from denying the landlord's title under Section 116 of the Indian Evidence Act. The dispute is generally on two counts; one, about the assent to continue after the expiry of the fixed term lease by efflux of time and second, about the valid termination in case of monthly lease. The tenant resisting the claim for possession has to plead with sufficiently detailed pleadings, particulars and documents why he must not be ejected and what right he has to continue in possession. There is really nothing else to be tried in such a suit. A suit of this nature can ordinarily be decided on first hearing itself either on the pleadings and the documents or, if need be, by examining the parties under Order X of the Code of Civil Procedure or Section 165 of the Indian Evidence Act.

26.6 A suit for ejectment of a lessee is not a type of a case where by forging a postal receipt and falsely claiming the issue of the notice to quit, the plaintiff would gain any particular advantage for he could have always served a notice and filed a

suit three weeks later. On the other hand, by serving a self-serving denial, the defendant seeks to get an advantage of dragging the proceedings and continuing to enjoy the property without having to pay the current market rent. Having regard to the common course of natural events, human conduct and probabilities, if a notice which can be issued and served again without loss of opportunity, the probability that a person would file a fake proof of sending is nil. On the other hand, if a notice is of a type which had to be served prior to an event that has already occurred, and by its very nature cannot be remedied by a fresh notice, there may be a possibility of it being faked such as a notice exercising the option to renew lease before its expiry. In that case, the Court will look at it differently.

26.7 The pleadings are the foundation of litigation and must set-forth sufficient factual details. Experience has shown that all kinds of pleadings are introduced and even false and fabricated documents are filed in civil cases because there is an inherent profit in continuation of possession. In a suit for ejectment, it is necessary for the defendant to plead specifically as to the basis on which he is claiming a right to continue in possession. A defendant has to show a subsisting right to continue as a lessee. No issue arises on vague pleadings. A vague denial of the receipt of a notice to quit is not sufficient to raise an issue. To rebut the presumption of service of a notice to quit, the defendant has to plead material particulars in the written statement such as where after receiving the plaint and the documents, the defendant has checked-up with the Post-Office and has obtained a certificate that the postal receipt filed by the plaintiff was forged and was not issued by the concerned Post Office.

26.8 A self-serving denial by the defendant and more so in these types of cases, cannot hold back the Court from exercising its jurisdiction to decree a suit under Order XII Rule 6 of the Code of Civil Procedure. Raising a plea of non-receipt of notice to quit and seeking an issue on it is obviously to drag on the litigation and keep on holding to the suit property without having to pay the current market rentals, is not sufficient to raise an issue and, therefore, liable to be rejected.

26.9 If such a plea of denial of notice is treated as sufficient to non-suit the plaintiff, the plaintiff will have to serve a fresh notice to quit and then bring a fresh suit where again the defendant would deny the receipt of notice to seek an issue and trial. The process would go on repeating itself with another notice, in fact, repeat *ad-infinitum* and in this manner, the defendant will be able to effectively stay indefinitely till the plaintiff settles with him for a price. The Court cannot remain a silent spectator and allow the abuse of process of law. The eyes of the Courts are wide enough to see the truth and do justice so that the faith of the people in the institution of Courts is not lost.

26.10 In view of the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003, no objection with regard to termination of tenancy is permitted on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of the Legislature is therefore clear that technical objections should not be permitted to defeat the decree for possession of tenanted

premises once the tenant has a period of 15 days for vacating the tenanted premises.

26.11 A suit for possession cannot be dismissed on the ground of invalidity of notice of termination because the tenant is only entitled to a reasonable time of 15 days to vacate the property. Therefore, even if the notice of termination is held to be invalid, service of summons of the suit for possession can be taken as notice under Section 106 of the Transfer of Property Act read with Order VII Rule 7 of the Code of Civil Procedure but in that event the landlord would be entitled to mesne profits after the expiry of 15 days from the date of the receipt of summons and not from the date of notice of termination.

26.12 The purpose of Order XII Rule 6 CPC is to give the plaintiff a right to speedy judgment. The thrust of amendment of Order XII Rule 6 is that in an appropriate case a party on the admission of the other party can press for judgment as a matter of legal right. If a dishonest litigant is permitted to delay the judgment on the ground that he would show during the trial that he had not received the notice, the very purpose of the amendment would be frustrated.

26.13 Under Section 116 of the Indian Evidence Act, the lessee is estopped from denying the title of the transferee landlord. Section 116 of the Indian Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the title of the landlord meaning thereby that so long as the tenant has not surrendered the possession, he cannot dispute the title of the landlord. Howsoever, defective the title of the landlord may

be, a tenant is not permitted to dispute the same unless he has surrendered the possession of his landlord.

26.14 A lease of a immovable property is determined by forfeiture in case the lessee renounces his character by setting up a title in a third person. The effect of such a disclaimer is that it brings to an end the relationship of landlord and tenant and such a tenant cannot continue in possession. Section 111(g)(2) of Transfer of Property Act, 1882 is based on public policy and the principle of estoppel.

26.15 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. It has become quite common for the tenants whose tenancy has been terminated to continue the occupation to drive the landlords to file suits for possession and mesne profits and thereafter raise false claims and defences to continue the possession of the premises. The motivation of the tenant to litigate with the landlord is that he wants to continue the occupation on payment of rent fixed years ago. The continuation of possession in such cases should therefore be permitted upon payment of market rent. In that case, inherent intent of the unscrupulous tenant to continue frivolous litigation would be reduced to a large extent.

26.16 In all proceedings relating to possession of an immovable property against an erstwhile tenant, the Court should broadly take into consideration the prevailing market rentals in the locality for similar premises and fix adhoc amount which the person continuing in possession must pay or

deposit as security. If such amount, as may be fixed by the Court, is not paid or deposited as security, the Court may remove the person and appoint a receiver of the property or strike out the claim or defence. This is a very important exercise for balancing equities. The Courts must carry out this exercise with extreme care and caution while keeping pragmatic realities in mind. This is the requirement of equity and justice.

26.17 In the last 40 years, a new creed of litigants have cropped up who do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the Courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

26.18 False claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

26.19 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. Such tenants feel that they ought to vacate the tenanted premises only when the Courts pass a decree for possession against them. The tenants who illegally continue to occupy the tenanted premises by raising frivolous defences should be appropriately burdened with penal costs.

26.20 Dishonest and unnecessary litigations are a huge strain on the judicial system. The Courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.

26.21 Truth should be the guiding star in the entire judicial process and it must be the endeavour of the court to ascertain the truth in every matter. Truth is the foundation of justice. Section 165 casts a duty on the Judge to discover truth to do complete justice and empowers him to summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. The Judge has to play an active role to discover the truth. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and, to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. The Court can also invoke Section 30 of the Code of Civil Procedure to ascertain the truth.

26.22 Unless the Courts 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 the Courts' scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases. It becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that the dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.

26.23 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. The cost should be equal to the benefits derived by the litigants, and the harm and deprivation suffered by the rightful person so as to check the frivolous litigations and prevent the people from reaping a rich harvest of illegal acts through Court. The costs imposed by the Courts must be the real costs equal to the deprivation suffered by the rightful person and also considering how long they have compelled the other side to contest and defend the litigation in various courts. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The parties raise fanciful claims and contests because the Courts are reluctant to order prosecution.

27. **Findings**

Applying the aforesaid principles of law to the facts of the present case, the findings of this Court are as under:-

27.1 There is an unambiguous, clear and unconditional admission of the appellant with respect to the relationship of the landlord and tenant between the parties as well as the expiry of term of the registered lease deed dated 7th November, 2006 on 6th November, 2008. In the written statement before the learned Trial Court, the appellant has admitted the registered lease deed dated 7th November, 2006 between the parties, which expired on 6th November, 2008. The appellant has also admitted payment of rent of the suit property to the respondent. The appellant has further pleaded that in November 2008, the appellant requested the respondent for a further lease of two years. There is no renewal clause in the lease deed.

27.2 The appellant has denied the receipt of the notice of termination dated 20th June, 2009 which was dispatched by registered post to the correct addresses of the appellant at Connaught Place as well as Okhla Industrial Area by registered post. The notice sent to the registered office was received back with the remarks "left" whereas the notice sent at the Okhla was duly served. The original postal receipts and acknowledgment card as well as the returned envelope placed on record bears the correct addresses of the appellant. The Department of Posts has also certified the delivery of notice on the appellant on 22nd June, 2009. The aforesaid original documents placed on record by the respondent raise a presumption of service under Section 27 of the General

Clauses Act, 1897 and Section 114(f) of the Indian Evidence Act, 1872 read with Section 51 of the Companies Act, 1956 and Section 3 of the Commercial Documents Evidence Act, 1939. The vague denial of notice of termination is not sufficient to raise an issue. Far from being plausible plea, it is incredible and misconceived. The appellant does not say in its pleading supported by affidavit that after receiving the complaint and the document, he checked up with the post office and they told him that no such letter was posted or the postal receipt filed by the respondent is forged and fabricated. Self serving denial by the defendant and more so in this type of case, cannot hold back the Court from exercising its jurisdiction to decree the suit under Order XII Rule 6 of the Code of Civil Procedure.

27.3 Even assuming that the notice of termination was not served upon the appellant, though there is legal presumption of since as held above, the tenancy stood terminated on the filing of the suit in terms of the judgments of the Supreme Court in **Nopany Investments (P) Ltd. v. Santokh Singh (HUF)** (*supra*) and of this Court in **Jeevan Diesels & Electricals Ltd. v. M/s Jasbir Singh Chadha (HUF)** (*supra*), **Rabinder Nath Saha v. Sushma Jain** (*supra*) and **Shri Radhakrishan Temple Trust Maithan, Agra v. M/s Hindco Rotatron Pvt. Ltd.**, (*supra*) in this regard.

27.4 There are no pleadings as to the defendant's right to continue in the suit property. The defendant claiming the right to continue in possession has to plead with sufficient details on what basis he is claiming right to continue in possession. Until pleadings raised a sufficient case, it will not constitute sufficient claim of defence. On vague pleadings, no issue arises. The pleadings have to be read and construed keeping

in view the overall facts and circumstances of the particular case in a pragmatic manner. Raising a plea of non-receipt of notice to quit and seeking an issue on it is obviously to drag on the litigation and to keep on holding to the suit premises. It is not that the defendant has offered to deposit in Court the correct market rent of the suit property.

27.5 The appellant's plea disputing the title of the respondent is barred by Section 116 of the Indian Evidence Act. The appellant is estopped from disputing the title of a landlord so long as he is in possession. As such, the objection of the appellant as to the title of the respondent cannot be looked into.

27.6 The appellant's lease also stands forfeited under Section 111(g)(2) of the Transfer of Property Act, 1882 on account of renunciation of his character by setting up a title in a third person. The effect of renunciation is to bring an end to the relationship of landlord and tenant and the appellant has made itself liable to be evicted on this ground as well.

27.7 Even if the appellant's claim for renewal of lease for a period of two years in 2008 is taken into consideration, the said period of two years has also expired as back as on 6th November, 2010.

27.8 There is no merit in the appellant's plea that the other co-owners have not given the notice of termination. Admittedly, the appellant has taken the suit property from the respondent alone and, therefore, the notice of termination by the respondent is legal and valid.

27.9 The appellant's plea that the respondent cannot recover the possession because of the *status quo* order in Suit No.941/2002 between the respondent and other co-owners is misconceived. Vide order dated 18th March, 2003, this Court in Suit No.941/2002 has restrained the respondent from letting out of the suit property to a new tenant after the appellant vacates the same but there is no restraint on the respondent receiving back the possession. Even otherwise, the *status quo* order between the respondent and a third party cannot be interpreted to mean that the respondent cannot receive back the possession from her erstwhile tenant.

27.10 In order to discover the truth to do complete justice, this Court in exercise of its power under Section 165 of the Indian Evidence Act, examined the Managing Director of the appellant on oath under Section 165 of the Indian Evidence Act, 1872 on 12th October, 2011. The Managing Director on oath admitted that the appellant took the suit property on lease for a period of two years from the respondent and the lease was renewed for a period of two years in 2004 and again in 2006. The lease deed dated 7th November, 2006 is a registered document and the said lease expired on 6th November, 2008. The deponent further admitted that the appellant has no right to stay in the suit property. The statement of the Managing Director is reproduced hereunder:

**"MR. RAMESH KUMAR SUNEJA, MANAGING
DIRECTOR OF M/S SKY LAN INTERNATIONAL
PRIVATE LIMITED, RESIDENT OF 59A, LANE C-5,
SAINIK FARMS, NEW DELHI-110062 (ON SA)**

I am the Managing Director of M/s Sky Land International Private limited. M/s Sky Land International Private limited took the ground floor of property bearing No.R-719, New Rajendra Nagar, New

Delhi on lease for a period of two years from Ms. Kavita P. Lalwani. Thereafter the lease was renewed for a period of two years in 2004. On the expiry of the renewed lease, a fresh lease deed dated 7th November, 2006 was executed by the respondent in favour of the appellant for a further period of two years from 7th November, 2006 to 6th November, 2008. The lease deed dated 7th November, 2006 was registered before the Sub-Registrar. There is no renewal clause in the registered lease deed dated 7th November, 2006. The lease expired on 6th November, 2008.

I have no right to stay in this property as the lease deed dated 7th November, 2006 has expired on 6th November, 2008. However, I have been repeatedly requesting the respondent to renew the lease but the respondent has not renewed. However, the respondent orally told me that till the time she is fighting with her relatives, the appellant can stay in the suit property."

(Emphasis supplied)

27.11 This Court is satisfied that admissions of the appellant are sufficient to pass a decree of possession against the appellant under Order XII Rule 6 of the Code of Civil Procedure inasmuch as the relationship of landlord and defendant is admitted, the term of the registered lease has expired as back as on 6th November, 2008 and with respect to the notice of termination dated 20th June, 2009, there is a legal presumption under Section 27 of the General Clauses Act, 1897 and Section 114(f) of the Indian Evidence Act, 1872 read with Section 51 of the Companies Act, 1956 and Section 3 of the Commercial Documents Evidence Act, 1939. Consequently, the appellant has no right to stay in the suit property and the decree of possession has been rightly passed by the Trial Court.

27.12 This case, therefore, warrants imposition of costs on the appellant in terms of the judgments of the Supreme Court in

Ramrameshwari Devi v. Nirmala Devi (supra) and **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria** (supra) and of this Court in **Punjab National Bank v. Virender Prakash** (supra) and **Padmawati v. Harijan Sewak Sangh** (supra). The appellant is a dishonest litigant, who has raised the frivolous pleas with the hope that the appellant can, with the Court delays, drag the case for years and the other side would succumb to buy peace. If the other side does not so settle in the end, they are hardly compensated and remains a loser. The appellant's lease expired by efflux of time on 6th November, 2008 and the appellant was under statutory obligation under Section 108 (q) of the Transfer of Property Act to restore the possession of the suit property to the respondent on 6th November, 2008. However, the appellant failed in its statutory obligation and continued the possession, whereupon the respondent sent a notice of termination to the appellant on 20th June, 2009. The appellant again failed in his obligation to restore the possession upon termination of the tenancy and compelled the respondent to file the suit for possession. The summons of the suit were served on appellant on 17th December, 2009 but despite that the appellant did not think it proper to surrender the possession and raised all possible frivolous defences to contest the suit including the impermissible plea of denying the title of the landlord, which also amounts to forfeiture under Section 111(g)(2) of the Transfer of Property Act. The Trial Court passed the decree against the appellant on 17th August, 2010 but still the appellant was not ready to surrender and filed this appeal raising frivolous grounds. In this manner, the appellant has succeeded in illegally retaining the possession of the suit property for more than three-and-a-half years.

28. False claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases.

29. It is the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs of all these years long litigation. Imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of filing false cases.

30. **Conclusion**

On consideration of totality of the facts and circumstances of this case, I do not find any infirmity in the well reasoned impugned judgment. The appellant has misused the process of law by raising a false claim. The appellant has no respect for truth and has made false statements on oath. The appellant has shamelessly resorted to

falsehood and has attempted to pollute the pure fountain of justice with tainted hands and, therefore, the appellant is not entitled to any relief. This case is squarely covered by the above mentioned judgments and warrants prosecution as well as imposition of penal costs on the appellant. However, considering that the Courts are already overburdened, directing prosecution of the appellant would further burden the system. This appeal is consequently dismissed with costs of ₹2,00,000/- on the appellant. The cost be paid by the appellant to the respondent within four weeks.

MAY 25, 2012
aj/Dev

J.R. MIDHA, J