

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

% *Order Reserved on: July 26, 2013*
Order Pronounced on: August 06, 2013

+ **C.R.P. No.21/2012 & C.M. No.2628/2012**

CHITTRAROOPA PALIT Petitioner
Through Ms.Ritu Sobti, Adv.

versus

GLOBAL HEALTH PVT LTD & ANR Respondents
Through Ms. Shyel Trehan, Advocate with
Mr.Arjun Singh Puri, Adv. for R-1.
Mr.Shailendra Bhardwaj, Adv. with
Ms.Aroma S. Bhardwaj, Adv. for
R-2.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has assailed the order dated 7th January, 2012 passed by the Addl. District Judge whereby the petitioner's application under Order XII, Rule 6 read with Section 151 CPC was dismissed.
2. Brief facts of the matter are that the petitioner filed a suit for possession, recovery and future mesne profits against the respondents in respect of premises, i.e. M-6, Ground Floor, Greater Kailash-II, New Delhi-110048 (hereinafter called as the "Suit Property") against two respondents namely Global Health Pvt. Ltd./respondent No.1 and Dr. Deepak Kapoor/respondent No.2.

3. The petitioner is the owner of the suit property. She let out the same to respondent No.1 vide an unregistered lease agreement dated 1st June, 2007 for a period of 19 months with effect from 1st June, 2007 at a monthly rent of ₹25,000/- for the personal residence of the employee of respondent No.1, i.e. Mr.Deepak Kapoor who was arrayed as respondent No.2.
4. By a renewal unregistered lease deed dated 30th December, 2008, the said lease of respondent No.1 was renewed for a further period of 24 months for the period with effect from 1st January, 2009 to 31st December, 2010 at a monthly rent of ₹28,750/-.
5. It was agreed that the lease deed would automatically come to an end upon the cessation of respondent No.2's employment with respondent No.1. As agreed between the petitioner and respondent No.1, the rent was increased to ₹33,062/- per month with effect from 1st April, 2010.
6. On 26th August, 2010 the petitioner issued a notice to respondent No.1 to vacate the premises by 31st December, 2010.
7. The respondent No.2 left the employment of respondent No.1 in 1st week of December, 2010.
8. The petitioner again sent and served legal notice dated 21st January, 2011 upon both the respondents by registered A.D. Post, UPC and courier stating that the lease expired on 31st December, 2010 by earlier notice dated 26th August, 2010. It was also pointed out in the said notice itself that without prejudice and as an abundant caution, the respondent No.2 was also being served with the said notice, so that in case respondent No.2 claims any tenancy right (which fact was denied)

then the said notice may be deemed to be taken as a notice of termination of alleged tenancy of respondent No.2 as well.

9. As per the petitioner, the respondent No.2 refused to accept the said notice and accordingly the petitioner yet again sent and served a fresh legal notice dated 31st January, 2011 to both the respondents thereby reiterating that the lease expired by the efflux of time on the expiry of 31st December, 2010 and in alternative vide the said notice itself gave 15 days notice of termination under Section 106 of the Transfer of Property Act. As an abundant caution, respondent No.2 was also served with the said notice clearly mentioning therein that in case the respondent No.2 claims any tenancy right the same shall also stand terminated vide the said notice. The said notice was served on the front door thereof on 1st February, 2011.

10. The respondent No.2 filed a suit claiming to be a tenant in the suit property after termination of his employment and seeking injunction from being dispossessed without due process of law.

11. The petitioner filed her written statement denying the same and on the statement of the petitioner that the petitioner shall not dispossess the respondent No.2 without the process of law, the said suit was dismissed as withdrawn.

12. The respondent No.1 vide its letter dated 8th February, 2011 replied to the aforesaid legal notice of termination dated 31st January, 2011, as also sent a letter dated 8th February, 2011 to respondent No.2 that the lease automatically gets terminated on respondent No.2 ceasing to be in employment of respondent No.1.

13. By letter dated 8th February, 2011 the respondent No.1 further asked respondent No.2 to immediately handover the vacant peaceful possession of the premises to the petitioner.

14. The respondent No.1 filed its written statement admitting as under :

- i) That the respondent No.1 was inducted as a tenant vide unregistered lease agreement dated 1st October, 2007 at a monthly rent of ₹25000/-; for a period of 19 months which lease expired on 31st December, 2008; the lease was further renewed vide renewal lease deed dated 30th December, 2008 for a period of 24 months which period of lease also expired on the expiry of 31st December, 2010. It was also admitted that the last paid monthly rent was ₹33,062/- per month.
- ii) The respondent No.1 further admitted the receipt of notices dated 26th August, 2010, that is Annexure-B above, legal notice dated 21st January, 2011, that is Annexure-C above, and notice of termination of tenancy dated 31st January, 2011.
- iii) The respondent No.2 ceased to be in employment of respondent No.1 on 8th December, 2010 and thus, the tenancy of respondent No.1 stood terminated on 8th December, 2010.

15. The respondent No.2 filed his written statement admitting therein that the lease of respondent No.1 was for the residence of its employee till the period ending December, 2010 and further the same was automatically terminable on the respondent No.2 ceasing the employment of respondent No.1. But it was claimed that since inception of the tenancy of respondent No.1, the respondent No.2 incurred substantial

amount for repair and construction of the suit premises and after his cessation from the employment of respondent No.1 the petitioner permitted the respondent No.2 to continue in the suit premises as a tenant, in his personal capacity by paying the agreed rent to the plaintiff.

16. As already mentioned earlier, the respondent No.1 admits the termination of its tenancy on the expiry of 31st December, 2010 vide notice dated 26th August, 2010, alternatively on cessation of the employment of respondent No.2 on 8th December, 2010 and further in alternative on receipt of legal notice dated 21st January, 2011 and 31st January, 2011 under Section 106 of the Transfer of Property Act. Even as per the case of respondent No.2, his alleged tenancy in the premises would be a month to month tenancy which admittedly as per legal notice dated 21st January, 2011 and 31st January, 2011 duly served upon him, also stood terminated as an abundant caution and in alternative.

17. The Supreme Court in the case of ***Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)***, 2008 (2) SCC 728 held that the filing of the eviction suit under general law itself was notice to quit upon the respondents and thus even as per the alleged claim of the respondent No.2 of a separate tenancy, the same being a month to month tenancy, the same stood terminated on the filing of the suit and service of summons, plaint and documents thereof upon him.

18. As rightly held by esteemed brother J.R. Midha, J. in the case of ***Sky Land International Pvt. Ltd. Vs. Kavita P. Lalwani***, 191 (2012) DLT 594 wherein the court has dealt with similar aspect of issue in great details in para 26.7 to 26.12 and 26.17 which read as under :

“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 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-infinitem 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 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 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 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.

26.17 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.”

19. The Hon’ble Judge in para 13.1 to 13.7 of the abovementioned judgment has discussed various judgments on this aspect. The same are :

“13.1 In *M/s. Raptakos Brett & Co. Ltd. v. Ganesh Property*, VII (1998) SLT 472 = IV (1998) CLT 11 (SC) = 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...”.

13.2. In *C. Albert Morris v. K. Chandrasekaran*, VIII (2005) SLT 247 = (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)

13.3. 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)

13.4. 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)

13.5. 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)

13.6. 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....”

13.7 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.**”

20. Recently in the judgment reported as *M/s. Jeevan Diesels & Electricals Ltd. Vs. M/s. Jasbir Singh Chadha (HUF) & Anr.*, 2011 (182) DLT 402 and against which S.L.P. No.15740/2011 has been dismissed on 7th July, 2011, a very similar issue was considered. Though in that case the facts were different from the present case, however the ratio of that case applies in the present case also. Para 7 of that 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:

- (i) The Respondents/Plaintiffs appeared in the trial Court and exhibited the notice terminating tenancy dated 15.7.2006 as Ex.PW1/3 and with respect to which the registered receipt,

UPC and AD card were exhibited as Ex.PW1/4 to Ex.PW1/6. The notice admittedly was sent to the correct address and which aspect was not disputed before the trial Court. Once the Respondents/Plaintiffs led evidence and duly proved the service of legal notice, the Appellant/Defendant was bound to lead rebuttal evidence to show that the notice was not served although the same was posted to the correct address. Admittedly, the Appellant/Defendant led no evidence in the trial Court. In fact, even leading of evidence in rebuttal by the Appellant would not have ordinarily helped the Appellant as the notice was sent to the correct address. In my opinion, therefore, the trial Court was justified in arriving at a finding that the legal notice dated 15.7.2006 was duly served upon the Appellant resulting in termination of the tenancy.

- (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 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) Another reason for rejecting the argument that the tenancy would not be terminated by the legal notice Ex.PW1/3 is that the Respondents/Plaintiffs admittedly filed a copy of this notice alongwith the suit way back in the year 2007. 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.”

21. The court below is not correct by not appreciating that the respondent No.1 had admittedly taken the premises on lease for the residence of its employee, that is, respondent No.2 herein, which lease expired on the expiry of 31st December, 2010. It was not appreciated that the respondent No.1 in view of the admitted facts that the tenancy had been terminated on the expiry of 31st December, 2010 as admittedly notified vide letter dated 26th August, 2010; alternatively on cessation of employment of respondent No.2 and further in alternative on receipt of notice dated 21st January, 2011 and 31st January, 2011, the suit was liable to be decreed on the said admissions thereby granting the relief of decree of possession in favour of the petitioner. Even as per the best case/defence of respondent No.2 whereby he claimed himself to be a tenant after cessation of his employment with respondent No.1, the said tenancy, though not admitted, was also terminated as an abundant caution; vide the legal notices dated 21st January, 2011 and 31st January, 2011 which were admittedly received by the respondent No.2.

22. Accordingly, there was no plea and/or defence of the respondents which required any evidence to be led, in so far as the decree for possession was concerned. Thus, the learned subordinate Court erred in not passing a judgment/decreed in terms of Order 12 Rule 6 CPC thereby granting a decree of possession in favour of the petitioner herein and against the respondents. The findings are totally contrary to facts and law and despite of clear additions made by the respondents, still the application under Order 12 Rule 6 CPC has been dismissed without any valid reason.

23. Therefore, the impugned order is set aside in view of reason given above thereby allowing the application under Order 12 Rule 6 of Code of Civil Procedure of the petitioner herein in the said suit and consequently grant a decree of possession in favour of the petitioner herein and against the respondents.

24. The respondent No.2 is directed to handover possession of suit property bearing No.M-6, Ground Floor, Greater Kailash-II, New Delhi to the petitioner within six months from today. The enquiry with regard to prayer of mesne profit is to be conducted only against the respondent No.2 in view of accepting the liabilities by him and which was recorded in the order dated 26th July, 2013. Parties in this regard shall appear before the trial court on 9th September, 2013.

25. The present petition is accordingly allowed. Pending application also stands disposed of as no further orders are required to be passed.

(MANMOHAN SINGH)
JUDGE

AUGUST 06, 2013