

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

+ RSA No.188/2012

% **17th January, 2014**

HARBHAJAN SINGH Appellant
Through: Appellant in person.

VERSUS

MAHINDER SINGH@ MICY Respondent
Through: None.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one was present on behalf of the respondent on the first call. No one is present for the respondent even on the second call. Respondent was not even present on earlier dates of hearings being 24.9.2013, 27.9.2013, 7.11.2013, 5.12.2013, 11.12.2013 and 17.12.2013. I have therefore perused the record and am disposing of this appeal.

2. The challenge by means of this appeal is to the impugned judgment of the appellate court dated 24.9.2012 by which the appellate court set aside the judgment and decree of the trial court dated 25.8.2011. The trial court by

the judgment dated 25.8.2011 decreed the suit of the appellant/landlord under Order 12 Rule 6 CPC for possession against the respondent-tenant. The relevant observations of the trial court for decreeing the suit are contained in paras 5 to 9 of the judgment and which read as under:-

“5. The law is well settled in regard to the passing of the decree of possession in favour of the plaintiff. The plaintiff has to prove the three ingredients required for ejectment namely:

a) relationship of landlord and tenant,

b) rate of rent of above Rs. 3500/

c) service of notice of the termination of tenancy under Section 106 TPA.

6. In the present case, admittedly, the relationship of landlord and tenant has not been disputed between the parties. It is also not disputed by the parties that the rent of the suit property is Rs. 3,500/. In the present case the defendant has also not denied that he has received the legal notice dated 08.4.2010 issued by the plaintiff to the defendant however in the present case the defendant has stated that advance rent amount for six months was received by the plaintiff and the tenancy was extended . It will be relevant herein to have the relevant contents of para 6 of the W.S :

“ In reply to Para No. 6 of the plaint it is submitted that execution of the Rent Agreement is not denied but as the Plaintiff has further received the rent of six months in advance, no question arises of talking about the previous agreement as the defendant is permitted by the plaintiff to live in the suit premises on the advance payment of rent. ”

7. The defendant has stated that as the rent has received and no notice has been received after the receiving the rent for the period of the six months and the tenancy was not terminated there after and he continue to be tenant. However the contentions raised by the defendant does not appear to be tenable. Admittedly plaintiff has not admitted that the tenancy of the defendant was extended after issuance of notice.

8. It is also well settled that even if the rent is received by the plaintiff after the termination of the tenancy, it alone does not amount to waiver under Section 113 of the Transfer of Property Act. One has to see the conduct of the parties to arrive at the conclusion as to whether there is waiver or not. Reliance is also placed on the judgment of by *Hon'ble supreme Court reported as "Sarup Singh Gupta v. S. Jagdish Singh" in AIR 2006 SUPREME COURT 1734 wherein the court observed that:*

In the instant case, as we have noticed earlier, two notices to quit were given on 10th February, 1979 and 17th March, 1979. The suit was filed on June 2, 1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitute an act on the part of the landlord showing an intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constituted an act of the nature envisaged by section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit

unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.

9. In the present case, conduct of the plaintiff shows that he has nowhere assented to the defendant to continue in the suit property as a tenant. However even for the sake of arguments it is admitted that the tenancy was extended for the period of six months, the same was also came to an end, as the extended period of six months have elapsed. Moreover as alleged by the defendant the tenancy was extended for six months in which it was the tenancy for a specific period, then there was no need of issuance of any notice for terminating the tenancy and the tenancy stand terminated after that period. Thus the plaintiff has been able to satisfy of the ingredients of passing decree under Order XII Rule 6 CPC. Accordingly decree of possession in favour of plaintiff is passed. The defendant is directed to hand over the vacant, peaceful and physical possession of First Floor of the suit property bearing no. 335, Sant Garh, Gali No. 19, Shahpura, Tilak Nagar, New Delhi more specifically shown red in the site plan within one month of this order.

Decree sheet be prepared accordingly.”

3. Appellate court set aside this finding on the ground that there is a disputed question of fact as to whether giving of six months advance rent would amount to waiver of notice or creation of a tenancy for six months, and therefore it is to be held that there is no categorical admission for the suit to be decreed under Order 12 Rule 6 CPC.

4. In my opinion, the trial court has committed a clear error of law inasmuch as the only aspect which is stated by the respondent-defendant in his written statement is contained in para 6 and which is reproduced by the trial court in para 6 of its judgment. Respondent-defendant has said that the appellant-plaintiff has received six months' rent in advance however, it is not mentioned that that six months' rent was taken after service of the legal notice terminating the tenancy dated 8.4.2010 or it was before. If the amount of six months' rent is received prior to service of the notice, then, there is no defect in sending of notice because even if rent is paid in advance for six months' since there is no registered lease deed, tenancy remained a monthly tenancy, and which can be terminated by service of a notice under Section 106 of Transfer of Property Act, 1882. If the rent of six months' is taken after service of the legal notice, then, as held by the Supreme Court in the case of *Sarup Singh Gupta Vs. S. Jagdish Singh AIR 2006 SC 1734* which is referred to by the trial court in para 8 of its judgment, the amount which is received is towards use and occupation charges by the appellant-landlord and not towards rent and therefore there does not arise any question of waiver of notice by receiving rent. Therefore, looking at it from any view of the matter, there is no disputed question of fact which requires trial because relationship of landlord and tenant is admitted; the fact that the rent

is worth Rs.3500/- is not disputed and also that there is no question of legal notice being waived in the facts of the present case in view of the ratio of the Supreme Court in the case of *Sarup Singh Gupta (supra)* and that if the rent was received before service of notice, since the tenancy was only a monthly tenancy, the same could always have been terminated by a legal notice.

5. I may as a matter of abundant caution state that it has been held in the case of *M/s. Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr. (2011) 183 DLT 712* that taking the intendment of the legislature in amending Section 106 of the Transfer of Property Act to do away with technical defences qua the notices issued under Section 106, service of summons of the suit can always be treated as a notice terminating tenancy under Section 106 of the Transfer of Property Act. Para-7 of the said 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. Vs.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 CPC 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.”

An SLP against the said judgment being SLP No.15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

6. In view of the above, the impugned judgment dated 24.9.2012 is set aside and accordingly the judgment of the trial court dated 25.8.2011 decreeing the suit under Order 12 Rule 6 CPC is revived and will operate. Appeal is allowed and disposed of accordingly. Parties are left to bear their own costs.

JANUARY 17, 2014
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VALMIKI J. MEHTA, J.