

\$~9

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

+ RFA 508/2012

% Judgment reserved on 20th February, 2013
Judgement delivered on 25th February, 2013

JAI BHAGWAN MITTAL Appellant
Through: Mr. Dinesh Gupta and Mr. Vikas
Mishra, Advs.
Versus

MEENA JAIN AND ANR. Respondents
Through: Mr. B.B. Gupta and Mr. Vijay Kr.
Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. On an application under Order 12 Rule 6 of the Code of Civil Procedure, 1908 (for short hereinafter referred to as “the Code”) filed by the respondents trial court, vide order dated 17th November, 2012, has passed a decree of possession against the appellant while keeping the proceedings in the suit alive with regard to determination of mesne profit.

2. Aggrieved by the decree of possession appellant has preferred this appeal.

3. Briefly stated, facts relevant for the disposal of the present appeal are that respondents filed a suit for possession in respect of property bearing no. A-6/1, Jhilmil Industrial Area, Shahdara, Delhi -110032 more particularly shown in red colour in site plan-Ex. PW1/1 (hereinafter referred to as “the suit property”). It was alleged in the plaint that appellant was inducted as a tenant in the suit property vide registered lease deed dated 5th May, 2006 on a monthly rent of ₹24,000/- excluding electricity, water and CEPT charges. Lease was for a period of three years. After expiry of lease by efflux of time appellant requested the respondents orally to extend the tenancy for a period of eight months to enable him to vacate the suit property by the end of December, 2009 on enhanced rent of ₹29,000/- per month. Respondents agreed to this arrangement. However, appellant did not vacate the suit property by the end of December, 2009 and continued to hold over the possession of suit property on month to month basis. Despite repeated requests of respondents to vacate. Thus, respondents through their lawyer sent a legal notice dated 14th September, 2010 on the appellant through registered A.D. post-Ex. 1/6 as well as

Under Postal Certificate (UPC)-Ex.1/4 whereby called upon the appellant to vacate and hand over the suit property within 15 days of receipt of the notice. Since possession was not handed over by the appellant, hence the suit.

4. In the written statement, appellant did not dispute the fact that he was put in possession of the suit property by virtue of registered lease deed dated 5th May, 2006. However, it was stated that lease was for “industrial/manufacturing purposes”, in terms of Clause 4 of lease deed. On expiry of lease period respondents orally extended the lease on enhanced rent, thus, became perpetual lessee from year to year basis in terms of Section 106 of the Transfer of Property Act, 1882 (for short hereinafter referred to as “the T.P. Act”), accordingly, six months notice was required to be served and legal notice dated 14th September, 2010 was thus, invalid, inasmuch as, the same was not even received by the appellant. Therefore, suit was liable to be dismissed. It was also the case of appellant that suit property was leased out by the Delhi Administration to M/s National Wire Netting Industries, accordingly, Govt. of NCT of Delhi was a necessary party and

since it was not impleaded, suit was bad for non-joinder of principal lessor. Respondents have executed the lease deed dated 5th May, 2006 in favour of the appellant in contravention of Clause 5 of Perpetual Lease dated 3rd June, 1971 executed by Delhi Administration in favour of M/s National Wire Netting Industries, thus, Govt. of NCT of Delhi had a right to re-enter in the suit property. Accordingly, respondents had no right to file the suit. Civil Court had no jurisdiction to entertain the suit since suit property was governed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

5. Respondents filed replication to the written statement wherein they denied the allegations levelled in the written statement and reiterated the averments made in the plaint.

6. Issues were framed on 25th May, 2011 which included issue of jurisdiction to the effect “whether suit property is governed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971?”

7. It is at the trial stage when respondents filed the application under Order 12 Rule 6 of the Code which has been disposed of by the order impugned in this appeal.

8. By placing reliance on *Atma Ram Properties Pvt. Ltd. vs. Pal Properties Pvt. Ltd. & Ors.* 2002 (62) DRJ 623 trial court has held that in order to succeed in a suit for possession plaintiff has to prove (a) that there is a relationship of landlord and tenant between the parties (b) tenancy in respect of the premises has come to an end either by efflux of time or by a valid notice sent by the plaintiff to defendants under Section 106 of the T.P. Act and duly served on the defendants and (c) the rent of the premises in question is more than ₹3,500/- per month. By placing reliance on *M/s Madan and Co. Vs. Wazir Jaivir Chand* AIR 1989 SC 630 and *Har Charan vs. Shiv Rani* AIR 1981 SC 1284, trial court has further held that notice sent through registered A.D. post to the addressee at the correct address is deemed to have been delivered to the addressee in view of Section 27 of the Indian Evidence Act, 1872. Respondents had placed on record postal receipts, inasmuch as, registered AD card had been received back which was sufficient to

show that notice was duly served upon the appellant. It was further held that even otherwise filing of eviction suit under the General Law itself is a notice to quit on the tenant in view of the law laid down by Supreme Court in Nopany Investments (P) Ltd. vs. Santosh Singh (HUF) 146 (2008) DLT 217 (SC), Sky Land International Pvt. Limited vs. Kavita P. Lalwani 191(2012) Delhi Law Times 594 and Jeevan Diesels and Electricals Ltd. versus Jasbir Singh Chadha (HUF) and Anr. 182 (2011) DLT 402. As regards landlord-tenant relationship, it was held that the same was admitted, inasmuch as, rent of the suit property being more than ₹3,500/- per month was also an admitted fact. Trial court also returned a finding that appellant being tenant had no right to challenge the title of respondents in view of Section 116 of the Indian Evidence Act. Reliance was placed on Shri Ram Pasricha vs. Jagannath air 1976 SC 2335, D. Satyanarayan vs P. Jagdish AIR 1987 SC 2192 and Vashu Deo vs. Balakrishnam I (2002) SLT 184 (2002). It was further held that if any violation of perpetual lease deed dated 3rd June, 1971-Ex.PW1/D-1 is committed by the respondents it was for the Delhi Administration to take action

against the respondents and appellant had nothing to do with the same.

9. In *Atma Ram* (supra), this Court has held that in order to succeed in the suit for possession, the plaintiff has to prove following ingredients:-

1. That there is a relationship of landlord and tenant between the parties.
2. Tenancy in respect of the premises has come to an end either by efflux of time or by a valid notice sent by the plaintiff to defendants under section 106 of the Transfer of Property Act and duly served on the defendants.
3. The rent of the premises in question is more than ₹3,500/- per month and therefore, there is no protection of the provisions of Delhi Rent Control Act available to the tenants.

10. In *Sky Land International* (supra), a Single Judge of this Court considered catena of judgments rendered by Apex Court and the High Courts and has culled out the principles to be followed while dealing with the suits for ejectment in the following manner:-

“26. From the analysis of the above decisions and 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 an 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.”

11. Learned counsel for the appellant has vehemently contended that issues having been framed in the suit, inasmuch as, evidence of the parties was under way, thus, no judgment on admission could have been passed under Order 12 Rule 6 of the Code and trial court ought to have continued with the trial and recorded findings on the contentious issues. According to him, no unequivocal and unambiguous admission of fact was made in the written statement, thus, no judgment on admissions could have been passed. He has further contended that even if any admission is made in the pleadings or otherwise by a party no judgment on admission can be passed if it results in injustice to opposite party. Reliance has been placed on *Yahoo Properties Pvt. Ltd. vs. Bhai Manjit Singh & Anr.* 2013 (133) DRJ 495 and *Manish Commercial Ltd. vs. N. R. Dongre & Anr.* AIR 2000 Delhi 176. I do not find any force in this contention of the learned counsel. *Yahoo Properties (supra)* is in

the context of different facts. In the said case seven years after framing of issues an application under Order 14 Rule 2(2)(b) CPC was filed for framing of a preliminary issue and in this context learned Single Judge has held that Court was not inclined to exercise the discretion in favour of framing any preliminary issue after a long gap of seven years from the date of framing of issues more so when the matter had almost reached at the final stage. The facts involved in N.R. Dongre (supra) are also different. In the said case, Court was of the view that if a judgment on admission is passed, the same would work injustice to the defendant, however, in this case appellant has failed to point out that judgment on admission passed against him has resulted in any injustice to him. Lease expired by efflux of time in the month of May, 2009. Lease was not extended in terms of Clause 3 of the lease deed which envisaged “That on expiry of the above-said three years agreed lease period this lease may be renewed by the parties for a period of further two years or such agreed terms/period on the mutually agreed terms and conditions in writing. It is hereby agreed that at the time of such renewal/extension the monthly rent shall be

increased at least 15% on the last monthly rent paid”. It is an admitted fact that no written lease agreement has been executed nor was got registered after the lease deed dated 5th May, 2006. After respondents terminated the lease, thus, appellant had no right to continue to occupy the suit property.

12. Appellant was occupying the suit property as a tenant pursuant to a registered lease deed dated 5th May, 2006. Terms of lease deed does not indicate that tenancy was from year to year. Tenancy was not extended in writing. Appellant continued to occupy the suit property by paying enhanced monthly rent. Thus, tenancy will not be governed by Section 106 of the T.P. Act which envisages that tenancy for manufacturing purpose, in absence of any contract will be from year to year, accordingly, six months was not required to be given. It also cannot be said that appellant became perpetual tenant after the lease period in terms of lease deed expired more so when option in terms of Clause 3 was not exercised by the parties. Tenancy stands terminated by serving legal notice dated 14th September, 2010 under Section 106 of the T.P. Act. Even if contention of appellant, for the sake of argument,

regarding non-service of notice is accepted same would not extend any benefit to appellant as the service of summons in suit itself would amount to notice to quit, in terms of Nopany Investments, Jeevan Diesels and Sky Land International (supra). Decree has been passed after more than six months of such service.

13. Order 12 Rule 6 of the Code envisages that where the admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage 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. The object of Order 12 Rule 6 of the Code is to enable the party to obtain a speedy judgment at least to the extent of the relief to which, according to the admissions of fact by defendant, the plaintiff is entitled to. The whole object of incorporating the procedure of Order 12 Rule 6 CPC is to grant a quick relief to commercial litigants whenever the Court finds any legally enforceable admission, the Court will help the litigants to get quick relief.

Merely because issues have been framed in the case is no ground for rejecting an application under Order 12 Rule 6 for passing judgment on such admissions. In *Parivar Seva Sansthan vs. Veena Kalra* AIR 2000 Delhi 349 a Division Bench of this Court has held that the use of the expression “any stage” in the said rule itself shows that the legislature’s intent is to give it widest possible meaning. Thus merely because issues are framed cannot by itself deter the Court to pass the judgment on admission under Order 12 Rule 6 CPC. In *Uttam Singh Duggal & Co. Ltd. versus United Bank of India & Others* (2000) 7 SCC 120, in the context of Order 12 Rule 6 of the Code, Supreme Court has held thus “the object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of

which it is impossible for the party making such admission to succeed.”

14. Learned counsel for the appellant has next contended that issue of jurisdiction framed by the trial court was crucial as jurisdiction of trial court itself was under challenge and a finding ought to have been returned on this before venturing on to decide the application under Order 12 Rule 6 CPC. I do not find any force in this contention of the learned counsel. It is hard to fathom as to how this issue arises in the facts of this case or was at all framed. Respondent is admittedly landlord in respect of the suit property and is not a state or public undertaking or any govt. company etc. to which Public Premises (Eviction of Unauthorised Occupants) Act applies. It is only the premises belonging to Government and its companies etc. fall within the ambit and scope of the said Act and not that of private persons. Accordingly, this issue is irrelevant to the lis involved in this case and has rightly not been taken into consideration by trial court at the time of deciding application under Order 12 Rule 6 CPC.

15. During the course of hearing learned counsels for the parties have not raised any other point nor have pressed any other ground.

16. In the instant case, relationship of landlord and tenant is admitted, inasmuch as, rent being above Rs.3,500/- is also an admitted fact. As regards notice under Section 106 of the T.P. Act is concerned, the same has been duly served. It is not in dispute that notice was sent through registered A.D. post and UPC at the correct address, inasmuch as, certificate issued by the postal department regarding delivery was also placed on record, inasmuch as, AD card was also received back. In *M/s Medan and Co. Versus Wazir Jaivir Chand* AIR 1989 SC 630, Apex Court has held as under :-

“All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgment 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 u/Sec. 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 words “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.”

17. Similar is the view expressed in *Har Charan* (supra) in the context of Section 27 of the General Clauses Act, 1897 and Section 114(f) of the Indian Evidence Act, 1872. In the said case Supreme Court has held as under:-

“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 acknowledgment 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 documents 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.”

18. Even otherwise, plea regarding non service of notice is immaterial in view of the law laid down in Nopany Investments, Jeevan Diesels and Sky Land International (supra). Shri Ram Pistons & Rings Ltd. versus M/s C.B. Agarwal HUF & Ors. ILR (2009) III Delhi 249, reliance whereupon has been placed by the appellant’s counsel is in the context of different facts and is not applicable to this case.

19. For the foregoing reasons, appeal is dismissed with cost of ₹25,000/- (Rupees Twenty Five Thousand Only) payable to the respondents.

A.K. PATHAK, J.

FEBRUARY 25, 2013

ga