

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

+ **RSA No.179/2013**

% **9th January , 2014**

SHRI SOURABH AGARWAL Appellant
Through: Mr. Varinder Kumar Sharma,
Advocate.

VERSUS

SH. MEGH RAJ MANSHARAMANI Respondent
Through: Mr. Pramod Jalan, Advocate.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the concurrent judgments of the Courts below; of the trial Court dated 8.10.2012 and the appellate Court dated 31.7.2013; by which the suit for possession filed by the respondent/plaintiff was decreed under Order 12 Rule 6 CPC.

2. In Delhi, in order to maintain the suit for possession in a civil court against the tenant, it is necessary that the following facts must exist:-

(i) There is a relationship of landlord and tenant between the parties;

(ii) The rate of rent of the premises is more than Rs.3,500/- per month;
and

(iii) The tenancy of the tenant has either expired by efflux of time or stands duly terminated by a notice under Section 106 of the Transfer of Property Act, 1882.

3. In the present case, there is no dispute as to the relationship of the landlord and tenant between the parties and also that the rate of rent of the premises is more than Rs.3,500/- per month. Both these admissions are specifically contained in paragraph 2 of the reply on merits and para 12 of the preliminary objections of the written-statement of the appellant-defendant. In fact, these aspects are also not disputed before me and dispute is only raised with respect to lack of termination of tenancy, and that once there is a disputed question of fact with respect to termination of tenancy, the suit it is argued could not have been decreed under Order 12 Rule 6 CPC. In support of this argument on behalf of the appellant, reliance is placed upon the judgment of the Supreme Court in the case of ***Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr.*** (2010) 6 SCC 601 which holds that admissions must be clear and

unambiguous before the same are relied upon for the purpose of Order 12 Rule 6 CPC.

4. The argument urged on behalf of the appellant is misconceived and now the legal position so far as this Court is concerned, is as per the judgment of this Court in the case of the same name being ***M/s. Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr. (2011) 183 DLT 712*** and which judgment holds that after the amendment of Section 106 of the Transfer of Property Act, 1882 by the legislature to do away with the technical defences of service of notice, even service of summons in the suit can be treated as a notice under Section 106 of the Transfer of Property Act, 1882. This judgment also holds that alongwith suit documents are filed which will include the legal notice terminating tenancy and again therefore on receipt of such documents including the legal notice terminating tenancy there is termination of tenancy. This discussion is contained in para 7 of the judgment in the case of ***M/s. Jeevan Diesels and Electricals Limited (supra)*** and the same 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.

5. The legal position enunciated in the case of *M/s. Jeevan Diesels and Electricals Limited (supra)* has thereafter been consistently followed in hundreds of other cases decided by the Courts in Delhi. The judgment in the case of *M/s. Jeevan Diesels and Electricals Limited (supra)* has also been followed in various other judgments even of this Court. Therefore, in my opinion, there is no disputed question of fact with respect to termination of tenancy which requires trial and thus the ratio of the Supreme Court judgment relied upon by the appellant will not apply in the facts of the present case.

I may, at this stage, also refer to the fact that the respondent/plaintiff in the application under Order 12 Rule 6 CPC in para 2 specifically took up a stand that the legal notice terminating tenancy dated 19.4.2005 served by the respondent/plaintiff upon the appellant/defendant was replied to by the appellant/defendant by his reply dated 8.5.2005. In reply to this paragraph in the reply filed by the appellant/defendant it is stated that “regarding legal

notice etc everything will be decided in trial” and which in my opinion is no denial as per Order 8 Rule 5 CPC to the factum of serving of the legal notice as also reply being given to the said legal notice terminating tenancy. As per the judgment of the Supreme Court in the case of *Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India (2000) 7 SCC 120* even the pleadings of the application under Order 12 Rule 6 CPC can be taken as pleadings for the purpose of passing a judgment on admissions.

6. This matter was in fact called out on 6.1.2014 when the counsel for the appellant was not available and therefore adjournment was sought. Appellant on the query of the Court wanted to put quietus to the disputes by taking time to vacate the premises. However, after the order was typed, appellant did not sign the order as he stated that after talking with his counsel he has been asked not to sign the order. This order dated 6.1.2014 reads as under:-

“1.This matter was passed over. At the second call, appellant who is appearing in person, states that appellant will be satisfied in case the appellant is given time till 31.5.2014 to vacate the suit premises and which long time is sought because the appellant states that his daughter is studying in 8th Class.

2. Accordingly, the appeal is dismissed giving time to the appellant to vacate the suit premises on or before the 31.5.2014. I note that the issue of mesne profits is a subject matter of trial and decision before the Trial court.

3. Let the appellant file an undertaking within a period of one week from today to vacate the suit premises on or before 31.5.2014 and also to pay monthly charges at the last admitted rate by the 15th day of every month till the premises

are vacated, and on such undertaking being filed and the admitted amount of monthly charges being paid, appellant will be entitled to stay in the suit premises namely P-29, Second Floor, N.D.S.E, Part-2, New Delhi till 31.5.2014. Appellant will sign the present order. In case there are any arrears, the respondent will be entitled to bring it to the notice of the trial court which will pass appropriate orders.

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4. The appellant who had to sign the order has informed the Court Master that he will not sign the order. It is clear that the appellant is playing the game of hide and seek with the Court and I do not think that the request for adjournment is justified because actually the appellant is a tenant whose tenancy has been terminated and law in this regard is now well settled by the judgment of this Court in the case of *M/s. Jeevan Diesels & Electricals Ltd. v. M/s. Jasbir Singh Chadha (HUF) & Anr. 2011 (183) DLT 712*. An SLP against the said judgment being SLP No.15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

5. However, in the interest of justice, list this matter on 9th January, 2014.”

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7. In view of the above, it is quite clear that the appellant is abusing the process of law. It is time that Courts sent out a very strong message with respect to unnecessary delaying tactics in litigation as also of unnecessary litigations clogging the Courts on account of false and frivolous defences. The present appeal filed by the appellant is one such frivolous litigation.

8. Accordingly, this appeal is dismissed with costs of Rs.50,000/-.

I am empowered to impose costs in terms of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*

I may note that the Supreme Court in the judgment in the case of *Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249* has held that it is high time that in frivolous litigations, exemplary and actual costs be imposed. Costs be paid within a period of four weeks from today.

JANUARY 09, 2014
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VALMIKI J. MEHTA, J.