

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

+ RSA No. 269/2013

%

9th January, 2014

SH. PANKAJ KUMAR

..... Appellant

Through: None

VERSUS

SH. HUKAM CHAND

..... 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 appears for the plaintiff in spite of the matter having been called out for the second time. It is 12.30 P.M. I have gone through the record and, therefore, am proceeding to dispose of the matter.

2. This regular second appeal is filed impugning the judgment of the Appellate Court dated 9.9.2013. The Appellate Court by the judgment dated 9.9.2013 dismissed the appeal of the appellant therein and who is also the appellant before this Court and upheld the judgment and decree of the trial court dated 7.7.2010 decreeing the suit of the respondent/plaintiff for recovery of possession, arrears of rent, mesne profits etc. Disputes in the

present case are disputes between the appellant-tenant and the respondent-landlord.

3. In Delhi, a suit for possession and mesne profits can be filed by a landlord before a civil court on the landlord succeeding in establishing three requirements i.e (i) there is a relationship of landlord and tenant between the parties; (ii) the rate of rent is more than Rs. 3500/- per month; and (iii) tenancy of the tenant has been terminated as per Section 106 of the Transfer of Property Act, 1882.

4. The judgment of the Appellate Court shows that though the appellant/defendant disputed the factum of tenancy in his name and claimed that the tenancy was in the name of his firm, the Appellate Court has rightly disbelieved the stand of the appellant because the respondent-plaintiff proved as exhibited document Ex.PW1/2 to show that the rate of rent is Rs. 3750/- per month. Also, the Appellate Court has rightly relied upon the fact that the appellant-defendant had earlier filed a suit in the civil court for permanent injunction wherein no case was laid out by the present appellant that he was not a tenant but the tenant was his firm. To the aforesaid findings of the Courts below I must add that even if the firm of the appellant is the tenant I do not find any pleading of the appellant stating that his firm is partnership firm with specified other persons, and therefore, the firm

which the appellant talks of would only be a sole proprietorship concern and consequently suit was very much maintainable against the appellant-defendant because there is no difference in the entity or identity between a sole proprietor and the firm of the sole proprietor.

5. So far as the dispute with respect to the tenancy having or having not been terminated is concerned, trial court has relied upon the judgment of this Court in the case of *Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr. (2011) 183 DLT 712* wherein it has been held in para 7 of the judgment that even service of summons in the suit can be treated as a notice under Section 106 of the Transfer of Property Act, 1882. Para 7 of the judgment in the case of *M/s. Jeevan Diesels and Electricals Limited (supra)* is relevant 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 and the judgment of **Jeevan**

Diesels and Electricals Limited (supra) has thereafter been followed in hundreds of other cases by different courts in Delhi.

6. In view of the above, no substantial question of law arises for this appeal to be entertained under Section 100 CPC. The appeal is, therefore, dismissed, leaving the parties to bear their own costs.

JANUARY 09, 2014
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VALMIKI J. MEHTA, J