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

% *Judgment Reserved on : January 08, 2015*
Judgment Delivered on : February 02, 2015

\+ **RFA (OS) 55/2014**

DELUXE DENTELLES PVT. LTD. & ANR. .....Appellants
Represented by: Mr.C.A.Sundram, Sr.Advocate instructed by Ms.Divvya Kesaar and Mr.Mannmohit K.Puri, Advocates

versus

SMT. ISHPINDER KOCHHAR .....Respondent
Represented by: Mr.Sumit Bansal, Advocate with Mr.Ateev Mathur and Ms.Jagriti Ahuja, Advocates

FAO (OS) 117/2014

DELUXE DENTELLES PVT. LTD. & ANR. .....Appellants
Represented by: Mr.C.A.Sundram, Sr.Advocate instructed by Ms.Divya Kesar and Mr.Manmohit K.Puri, Advocates

versus

SMT. ISHPINDER KOCHHAR .....Respondent
Represented by: Mr.Sumit Bansal, Advocate with Mr.Ateev Mathur and Ms.Jagriti Ahuja, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Appellants were the defendants and the respondent was the plaintiff before the learned Single Judge. We shall be referring to the parties by their nomenclature before the learned Single Judge.

2. Shorn of unnecessary details, relevant facts for the purpose of adjudicating the regular first appeal against the impugned judgment and decree dated January 24, 2014 which has been challenged in RFA (OS) No.55/2014, and the order dated February 18, 2014 passed in Execution Petition No.56/2014 whereunder the learned Single Judge has directed execution of the decree dated January 24, 2014 with a direction that police aid shall be given to the bailiff to execute the decree, which order has been challenged in FAO (OS) No.117/2014, are that the plaintiff had filed a suit for possession and damages for unauthorized use and occupation in respect of 45% of the eastern part of the ground floor of property bearing Municipal No.10, Jor Bagh, New Delhi (herein after referred to as the 'Suit Premises'). The first appellant : Deluxe Dentelles (P) Ltd. was impleaded as defendant No.1 and Ms.Adarsh Gill the Managing Director of defendant No.1 was impleaded as defendant No.2.

3. In the plaint it was, inter-alia, pleaded that the plaintiff is the owner of the suit property, the erstwhile owner whereof was Ms.Neeta Mehra who under an unregistered lease agreement dated November 21, 1996 let out the suit property to defendant No.1 for a period of 11 years and 11 months with the initial rent in sum of ₹2,650/- per month which was to be enhanced by 10% every three years and that so computing the rent i.e. increasing the same by 10% every three years rent in advance for the entire duration in sum of ₹3,73,340/- was paid to Ms.Neeta Mehra and tax at source in sum of ₹65,884/- was deducted, meaning thereby to the credit of Ms.Neeta Mehra rent payable for the entire duration of the lease was paid. In other words the enhanced rent in sum of ₹3,527/- per month

stood paid for the lease period post November 17, 2008. It was pleaded that since the lease-deed dated November 21, 1999 was not registered, the tenancy had to be treated in law as one from month to month, determinable by a notice giving 15 days to the tenant to vacate. Vide registered sale-deed dated August 14, 2000 the plaintiff purchased the property at Jor Bagh from Ms.Neeta Mehra and thus became the lawful owner of the suit property. Vide notice dated May 03, 2010, the plaintiff determined the tenancy and since possession was not delivered, the continued retention of the suit premises was illegal and therefore the plaintiff was entitled to seek ejectment of the defendants from the suit property as also claim damages for unauthorized use and occupation.

4. Since a decree on admission has been passed by the learned Single Judge qua the claim for ejectment in the suit, we need to note paragraph 3 of the plaint. It reads as under:-

> *"3. That the said Agreement of Lease was to commence w.e.f. 18.11.1999 and was to expire on 28.02.2011. The Defendants have paid the entire rent of the lease period of 11 years and 11 months amounting to ₹4,39,224/-. It may be noted that an amount of ₹3,73,340/- was paid after deducting the TDS of ₹65,884/- to the erstwhile owner at the time of executing lease-deed dated 21.11.1999. It is submitted that in terms of the said Agreement of Lease, initially the rent was fixed at ₹2,650/- per month. It was also agreed that the rent would be enhanced by 10% after every three years. Accordingly the rentals were enhanced in terms of the following schedule:*

S.No.	***Date***		***Rent***
1.	*17.11.2002*	*:*	*2,915/-*
2.	*17.11.2005*	*:*	*3,207/-*
3.	*17.11.2008*	*:*	*3,527/-*

The following calculation be also noted:

Rent Amount	*Period*	*Amount*
₹2650/-	*36 Months*	*₹95,400/-*
₹2915/-	*36 Months*	*₹1,04,940/-*
₹3207/-	*36 Months*	*₹1,15,452/-*
₹3527/-	*35 Months*	*₹1,23,445/-*
	Total	*₹4,39,237/-*
	Less TDS	*₹65,884/-*
	Net Total	*₹3,73,353/-*

It is important to note that the advance rent which was paid based upon the above calculation. It may be noted that if the amount of ₹4,39,224/- is bifurcated for 11 years and 11 months, then it would certainly be in accordance with the calculation of rent provided by the Plaintiff in the preceding paragraphs, after enhancing the rent at the rate of 10% after every 3 years. It may further be noted that there is an insignificant difference of ₹13/- in this calculation.

4. That as would be seen from the above schedule the rentals for the demised premises w.e.f. 17.11.2008 stood enhanced to ₹3,527/- per month. It is submitted that the said Agreement of Lease dated 21.11.1999 was an unregistered document and, therefore, the tenancy of the Defendants in respect of the Demised Premises was on a month-to-month basis. After 17.11.2008, the Demised Premises stood governed by the provisions of Transfer of Property Act, 1882. It is submitted that in terms of Section 106 of the Transfer of Property Act, 1882, the tenancy of the Defendants is determinable by giving 15 days notice."

5. The defendants admitted in the written statement filed that defendant No.1 was inducted as a tenant in the suit premises by Neeta

Mehra at a monthly rent of ₹2,650/-. With respect to the plea in the plaint that rent was increased by 10% every three years in terms of the unregistered lease-deed dated November 21, 1991 and that so increasing the rent every three years, entire rent for the duration of the lease of 11 years and 11 months was paid, it was pleaded in the written statement that the rent was never increased from ₹2,650/- per month, for the reason, in law, the landlord was required to give notice to the tenant of her intention to increase the rent in view of the provisions of Section 6A and Section 8 of Delhi Rent Control Act, 1958, which notice to increase the rent was never given by the plaintiff or Neeta Mehra to the defendant No.1. It was pleaded that being an unregistered document, the lease-deed dated November 21, 2011 and/or its clauses, including the clause relating to increase of rent, cannot be looked into. Admitting that ₹4,39,224/- was paid to Neeta Mehra : ₹3,73,340/- by cheque and ₹65,884/-, deducted as TDS and deposited with the Income Tax Authorities and certificate to said effect given to Neeta Mehra, it was explained that the advance rent was for a period of approximate 14 years, calculating the rent at ₹2,650/- per month. It was pleaded that the tenancy was not one from month to month but was for a duration of 14 years for which rent in sum of ₹4,39,224/- was paid in advance. It was further pleaded that the defendants paid ₹19,95,523/- as Pagri and the defendants had spent ₹25,00,000/- towards renovation and repair of the suit property. It was pleaded that under the lease-deed dated November 21, 1999 the defendant had an option to have the lease renewed for another duration of 11 years. It was pleaded that the suit was barred under Section 50 of the Delhi Rent Control Act, 1958 for the reason the rent of the suit premises was less than ₹3,500/- per month. Receipt of the legal notice dated May 03, 2010 was admitted and so was the response given thereto.

6. Being relevant, we note the reply given by the defendants to paragraphs 3 and 4 of the plaint, in paragraphs 3 and 4 of the written statement. The same reads as under:-

> *"3. With reference to paragraph 3, various averments are based on alleged lease agreement, are denied. It is submitted that the alleged lease agreement has neither any legal or factual consequences. It is submitted that allusion to the alleged lease agreement is without merit and cannot form the basis of the Plaintiff's case. The table given stating the alleged rents and enhancements are without any basis and cannot be countenanced inasmuch as they purport to depict exaggerated rent amounts which have no legal or factual basis. In point of fact, payments made by the answering Defendant for use and occupation as tenant were the following for the purposes stated hereinbelow:*
>
> *a. ₹19,95,523/- paid towards security deposit/Pagdi;*
>
> *b. ₹2,650/- paid in lump sum as monthly rent for a period of approximately 14 Years totaling, ₹4,39,224/-*
>
> *4. The contents of paragraph No 4 of plaint are wrong and hence denied. It is denied that the rentals of suit premises stood enhanced to ₹3,527/- per month w.e.f. 17.11.2008. It is further denied that after 17.11.2008, the suit premises stood governed by the provisions of the Transfer of Property Act, 1882. The answering Defendant continues to be statutory tenant in the facts and circumstances as mentioned hereinabove. The rent continues to be ₹2,650/- per month as no demand was made by the erstwhile owner/landlord to raise the rent after three years as enjoined in the Delhi Rent Control Act. Without prejudice to the submissions above, it is submitted that in any case, the tenancy could not have been determined when the rent has been paid for more than the alleged duration of tenancy."*

7. It would be useful to note, in a tabular form, the documents relied upon by the plaintiff and the defendants, and such of which have been admitted by the other. The same would be as under:-

S. No.	*Description of document*	*Party who filed document*	*Whether admitted or denied by opposite party*
1.	*Ex.P1: Lease-deed dated November 21, 1999*	*Plaintiff*	*Admitted subject to pleading and clarification*
2.	*Ex.P2: Legal notice dated May 03, 2010 issued by plaintiff*	*Plaintiff*	*Receipt admitted. Contents denied.*
3.	*Ex.P3: Reply dated June 30, 2010 given by defendants to legal notice dated May 03, 2010 issued by plaintiff*	*Plaintiff*	*Admitted.*
4.	*Ex.P4: Letter dated December 09, 2010 written by defendant No.1 to plaintiff calling upon him to renew the lease for another period of eleven years upon the same terms as contained in the lease-deed November 21, 2011.*	*Plaintiff*	*Admitted subject to clarification.*
5.	*Reply dated January 18, 2011 given by plaintiff to the letter dated December 09, 2010 written by defendant No.1. (There is no exhibit mark on this document).*	*Plaintiff*	*Denied.*
6.	*Copy of ledger book of*	*Defendant No.1*	---

	defendant No.1 for the period from April 01, 1999 to March 31, 2000. (There is no exhibit mark on this document).		

8. The relevant recital and the terms of the unregistered lease-deed dated November 21, 1999, which is an admitted document and has been exhibited as Ex.P-1 read as under:-

"LEASE AGREEMENT

AND WHEREAS, the Lessee has approached the Lessor to take on Lease approximately 45% of the "Eastern Part" of the ground floor only of the property, comprising the Eastern Shop, an office block, a mezzanine over the office block, a toilet, courtyard at the back and front verandah with a display window. The shop being bound on West by the Western Shop on the same plot and on the East by Plot and Shop No.11. The courtyard at the back being bound in the North by the driveway leading the stairs to the residential apartments above the shop and in the South by the back courtyard of the Western Shop on Plot No.11. (The described "Eastern Part" of the said property shall hereinafter be referred to as the "Demised Premises"). A plan of the demised premises is annexed herewith as Annexure A.

AND WHEREAS, lessee has offered to substantially renovate and improve the premises in consideration of tenancy rights for the tenure as agreed upon and mentioned hereafter.

<u>NOW THIS LEASE AGREEMENT WITNESSETH AS UNDER:</u>

1. That the tenure for Lease is 11 years and 11 months (eleven years and eleven months) commencing 18th day of November 1999 (nineteen hundred ninety nine) and ending 28th day of February 2011 (two thousand eleven). The lease may be *renewed for another period of eleven years at the option of the lessee upon the same terms.*

2. *That the Lessee shall pay to the Lessor a monthly rent of ₹2650 (Two thousand six hundred and fifty only). Provided always that the rent payable by the lessee to the lessor shall be enhanced/escalated by 10% (ten percent) after every three years. The rent for eleven years eleven months with such increase is computed at ₹3,73,340/- and is paid by cheque dated _____ bearing no._______ drawn on ________ and the lessor acknowledges receipt."*

9. The defendants have, as would be apparent from the document listed at serial No.6 in the table made by us in the one but preceding paragraph of our decision, filed a copy of the ledger book maintained by defendant No.1 for the period from April 01, 1999 to March 31, 2000. It reads:-

"21/11/99 00219 To State Bank of Saurashtra-301551
Paid: Neeta Mehra by chq no 488017 dt 21/11/99
Narr: Advance rent for 11 yrs 11 months @ 2650 pm with 10% hike every 3 yrs

23/01/00 00176 To State Bank of Saurashtra-301551
Paid: NEETA MEHRA by chq no 488099 dt 23/01/00
Narr: token advance rent for shop situated at 10 Jor Bagh Mkt N.Dlh.

02/02/00 00202 To State Bank of Saurashtra-301551
Paid: Neeta Mehra by chq no 499404 dt 02/02/00
Narr: Advance rent for 11 yrs 11 months @ 2650 pm with 10% hike every 3 yrs"

10. In the plaint a reference has been made to a legal notice dated May 03, 2010 issued by the plaintiff determining the lease on the plea taken in the legal notice that in law the tenancy was required to be treated as one from month to month, which fact has not been denied in the written statement filed by the defendants as also to the fact that the defendants

replied to the legal notice on June 30, 2010. The document i.e. the reply, has been filed by the plaintiff as a relied upon document and has been admitted by the defendants, and as per serial No.3 of the tabulation in paragraph 7 above, has been exhibited as Ex.P-3. Relevant parts whereof read as under:-

> *"2. The true and correct facts are that my client was inducted as a tenant in premises No at 10, Jor Bagh, New Delhi-110003 on 18th November, 1999 and continues to be so at a monthly rent of ₹2,650/- (Rupees Two Thousand Six Hundred Fifty only).*
>
> *3. That at the time my client was inducted into the premises, it was in a dilapidated condition and in order to make it habitable it required considerable investment. As my client's Landlady Mrs.Neeta Mehra was not in a financial condition to spend any amount on renovation and no one else was willing to invest substantial amount on renovation, she taking advantage of the fact that my client was in a desperate need of a shop and as no other suitable premises were available in the vicinity imposed unreasonable and arbitrary conditions. My client's landlady taking undue advantage of the situation included unreasonable conditions in the rent agreement that were neither legal nor binding upon my client. Since my client was in desperate need of a place, she agreed to invest substantial amounts on the condition that the lease would be for a longer period. Not only my client invested substantial amount on renovation but in addition she was also made to pay the entire rent in advance, even for the part period to be covered by the renewals. The terms were further in contravention of the provisions of the Delhi Rent Control Act, 1958. You are well aware that provisions of the said Act will prevail notwithstanding any agreement to the contrary.*
>
> *4. Under these unfavorable conditions, my client was persuaded to invest a substantial amount on such renovation that was required to make it habitable and in usable condition. My client was thus forced to sign on an agreement that was neither legal nor lawful and was made to part with huge amounts that were to be adjusted against future rent.*

5. In order to make the shop presentable, the amount to be invested by my client would not be recovered within the contractual period of tenancy taking into account reasonable returns on the investment made by my client. It was thus stipulated that initially the contractual tenancy would be for a period of eleven years and 11 months and it further specifically stipulated that said contractual tenancy would be renewed for further a period of ***11 years and 11 months*** *on the same terms and conditions at the option of my client.*

6. That my client has paid ₹4,39,224/- (Rupees Four Lakhs Thirty Nine Thousand Two Hundred Twenty Four only) towards rent which after deduction of TDS comes to ₹3,73,340/- (Rupees Three Lakhs Seventy Three Thousand Three Hundred Forty only) the amount that was paid to my client's landlady, which is for more than 13 years and 9 months at a monthly rent of ₹2,650/- (Rupees Two Thousand Six Hundred Fifty only) keeping in view the fact that escalation clause is against the statutes. In that view of the matter my client continues to be the contractual tenant beyond July, 2012 and thereafter at its option or a further period of eleven years.

7. That provision in the agreement that the rent payable by the lessee to the lessor shall be enhanced/escalated by 10% after every three years, not having followed in terms of Section 8 of the Act, is not legal and valid. Hence my client continues to be the contractual tenant @ 2,650/- per month as of now. Unless the procedure prescribed in Section 8 of the act, which is mandatory in nature, is followed and rent increased accordingly, there is no deemed enhancement of rent and therefore, my client still continues to be contractual tenant."

11. The plaintiff filed an application under Order XII Rule 6 of the Code of Civil Procedure praying for a decree on admission essentially on the ground that the written statement filed by the defendants shows that the defendants had admitted that the defendant No.1 was inducted as a tenant in the suit premises by Neeta Mehra (erstwhile owner of the suit premises) by virtue of unregistered lease-deed dated November 21, 1999

and the receipt of legal notice dated May 03, 2010 issued by the plaintiff terminating the tenancy of the defendant No.1. Reliance was also placed upon the ledger account filed by the defendant. In a nut shell it was pleaded that the lease-deed Ex.P-1 being an unregistered document, in law, the tenancy had to be treated as one from month to month and stood determined by the legal notice Ex.P-2, receipt whereof was acknowledged by Ex.P-3. It was pleaded that cumulatively read, the admission of the defendants would be that the rent of the property stood enhanced to ₹3,527/- per month with effect from November 17, 2008 and hence the property was outside the purview of the Delhi Rent Control Act, 1958. To put it simply, the decree was sought on the basis that where a tenancy is validly determined and relationship of landlord and tenant is admitted, and in Delhi, since tenancies where monthly rent payable is up to ₹3,500/- alone are protected by the Delhi Rent Control Act, 1958, since the tenancy in question was admitted to be at a rent of ₹3,527/- per month with effect from November 17, 2008, no triable issue would arise in law because the defendants cannot rely upon the term of the unregistered Ex.P-1 of a right in their favour to have the lease renewed for a further duration of 11 years.

12. The defendants opposed the application on the ground that the averments made by the defendants in their written statement raise triable issues and in view thereof the plaintiff is not entitled to a decree on admission.

13. Vide impugned judgment and decree dated January 24, 2014, the learned Single Judge has allowed the application filed by the plaintiff under Order XII Rule 6 of the Code of Civil Procedure and has decreed the suit in so far as ejectment of the appellants was prayed for. Decree for possession has been passed in favour of the plaintiff.

14. Briefly stated the reasons are as under:-

a) The defendants have admitted the execution of the lease-deed dated November 21, 1999.

b) The defendants have admitted the receipt of the legal notice dated May 03, 2010 issued by the plaintiff terminating the tenancy of the defendant No.1 in the suit premises.

c) The defendants have admitted that the defendant No.1 was inducted as a tenant in the suit premises on November 18, 1999 at a monthly rent of ₹2,650/- in the reply dated June 30, 2010 given by them to the legal notice dated May 03, 2010 issued by the plaintiff.

d) The defendants have admitted that the defendant No.1 had paid a sum of ₹4,39,224/- towards (advance) rent of the suit premises.

e) The defendants have not specifically denied the calculations given by the plaintiff in paragraph 3 of his plaint to show that the sum of ₹4,39,224/- was paid by the defendant No.1 to Neeta Mehra (erstwhile owner of the suit property) towards (advance) rent of the suit premises for a period of eleven years and eleven months which included the rent increased after every three years. The denial by the defendants to the averments relating to calculation of rent of suit premises in paragraph 3 of the plaint is evasive and does not answer the point of substance in said averments.

f) The defendants have admitted the existence of escalation clause (10% increase in rent of suit premises after every three years) in the unregistered lease-deed dated November 21, 1999 in certain entries made in the ledger book of the defendant No.1 and reply dated June 30, 2010 given by them to the legal notice dated May 03, 2010 issued by the plaintiff.

g) Section 6A and Section 8 of Delhi Rent Control Act, 1958 relied upon by the defendants to contend that the rent of suit premises was never enhanced and remained ₹2,650/- per month throughout the tenancy have no application in the present case in view of fact that the lease-deed executed between the parties itself provided for increase of rent after every three years and law enunciated by this Court and the Allahabad High Court in the decisions reported as ILR (2010) III Delhi 766 *CONSEP India Pvt. Ltd. vs. CEPCO Industries Pvt. Ltd.* and AIR 1953 All 316 *Lallan Parsad vs. Sharda Parsad* respectively would apply.

h) The net effect of conclusions drawn in paragraphs (d) to (g) noted above is that the defendants have admitted that the defendant No.1 had paid a sum of ₹4,39,224/- to Neeta Mehra (erstwhile owner of the suit property) towards (advance) rent of the suit premises for a period of eleven years and eleven months which included the rent increased after every three years. As a necessary corollary thereof, the rent of the suit premises got enhanced to ₹3,527/- per month with effect from November 17, 2008 and the suit premises came out of the purview of Delhi Rent Control Act, 1958.

15. Arguing the appeal learned counsel for the appellant made three broad submissions as under:-

A The first argument advanced was that the learned Single Judge committed an illegality in passing the decree on admission for the reason no admission has been made by the defendants which would warrant or justify the grant of decree on admission to the plaintiff. It is settled law that the Courts should pass decree on admission '*wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed'*. In the instant case, no such admission was made by the defendants making it impossible for the party to succeed in the suit. On the contrary, the averments made by the defendants in their written statement raise triable issues and serious question(s) of law disentitling the plaintiff to a decree on admission.

B Second contention urged was that in the written statement filed it was specifically pleaded that rent @ ₹2,650/- per month was paid for a period of 14 years and the case of the plaintiff that the rent paid was for 11 years and 11 months and was inclusive of the same being increased by 10% every year was denied, and under the circumstances a triable issue arose and it cannot be said that any admission was made warranting a decree on an admission. With respect to the copy of the ledger book of defendant No.1 for the period April 01, 1999 till March 31, 2000, the entries therein were inchoate and could be explained at the trial; the same could not be treated as an admission made.

C. The third argument advanced was that Ex.P-1 being an unregistered document could not be relied upon by the plaintiff for the term therein that rent would be increased by 10% every three years.

16. The legislative provision relating to a judgment or a decree on admission, Order XII Rule 6 of the Code of Civil Procedure reads as under:-

> *"6. **Judgment on Admission** – (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, 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, makes such order or gives such judgment as it may think fit, having regard to such admissions.*
>
> *(2) Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."*

17. The purpose of the Rule is self-evident; to curtail the agony of parties and not subject them to the torture of a trial. The word '*otherwise*' after the expression '*made either in the pleading or'* occurring in sub-rule (1) of Order XII of Rule 6 of the Code of Civil Procedure cannot be overlooked. To put it pithily, the Rule is expansive and would warrant its application if an admission is discernible, as long as it is unequivocal, unqualified and unambiguous, in any writing of a party; be it a pleading, a letter, a communication, an internal document such as a Statement of Account or a Balance Sheet, etc. for which the decision of the Supreme Court reported as (2010) 4 SCC 753 *Karam Kapahi & Ors vs. Lal Chand Public Charitable Trust & Anr)* would be an authority for the point noted.

18. It is settled law that in Delhi, in a suit for ejectment, only three issues arise for consideration:

(a) Whether there exists a landlord-tenant relationship between the parties?

(b) Whether the tenancy has expired by efflux of time or stands determined by a valid notice to quit or the tenant has otherwise forfeited the right under the lease agreement? and

(c) Since Delhi Rent Control Act 1958 prohibits ejectment of a tenant paying rent up to ₹3,500/- per month save and except by an order passed by a Rent Controller on the grounds specified under Section 14 of the Delhi Rent Control Act 1958, whether the rent of the leased premises is more than ₹3,500/- per month.

19. Section 106 of Transfer of Property Act, 1882 prescribes duration of certain leases in absence of written contract or local usage. Sub-section (1) thereof reads as under:-

> *"**106. Duration of certain leases in absence of written contract or local usage** – (1) In the absence of a contract or*

local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee, by fifteen days' notice."

20. Section 107 of Transfer of Property Act, 1882 prescribes how leases are made and reads as under:-

*"**107. Leases how made.** – A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.*

All other leases of immovable property may be made either by a registered instrument or by agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement by delivery of possession."

21. A lease granted for any purpose, be it residential, commercial, manufacturing or agricultural, can be made only by a registered instrument if duration of the lease is for the period stated in the first paragraph of Section 107 of the Transfer of Property Act, 1882. But, a lease for the same purpose(s) of a lesser duration can be made, under the second paragraph, either by a registered instrument or by an oral agreement accompanied by delivery of possession.

22. If one looks to Section 106 of the Transfer of Property Act it becomes evident that the classification of leases is according to their purpose. Section 106 classifies leases of immovable property for agricultural and manufacturing purposes in one class and all other leases in different class.

23. Sub-section 1 of Section 106 is a deeming provision as per which, in the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year. Thus, where the parties have themselves indicated the duration of the lease relatable to agricultural or manufacturing purposes, sub-section 1 of Section 106 of the Transfer of Property Act would be redundant. This is evident from the fact that sub-section 1 of Section 106 operates only *"in the absence of a contract.....to the contrary"*.

24. Pertaining to leases, excluding leases for agricultural or manufacturing purposes, the legal fiction created in the second paragraph of sub-section 1 of Section 106 is to deem the leases to be from month to month. Of course, this deeming provision would also be '*in the absence of a contract....to the contrary'*.

25. In the present case, the defendants have admitted the jural relationship of landlord and tenant between the plaintiff and defendant No.1. As per both plaintiff and defendants, the defendant No.1 was inducted as a tenant in the suit premises by virtue of unregistered lease-deed dated November 21, 1999 for a period of eleven years and eleven months.

26. The case (defence) set up by the defendants is that notwithstanding the fact that the lease-deed dated November 21, 1999 executed between the parties is an unregistered document, the tenancy of defendant No.1

was not from month to month but for a period of eleven years and eleven months with an option to the defendant No.1 to renew the lease by another period of eleven years inasmuch as the defendant No.1 had paid rent in advance to Ms.Neeta Mehra, erstwhile owner of the suit premises for a period of fourteen years approximately at the time when it was inducted in the suit premises.

27. Now, the question which has arisen for consideration in the present case is this: Whether tenancy of immovable property for any purpose other than agricultural or manufacturing created by an unregistered instrument would be deemed to be '*month to month*' tenancy even where the tenant has paid annual/yearly rent to the landlord (or more than the yearly rent, as in the present case.)

28. The answer to the above question is to be found in a three-Judge Bench decision of the Supreme Court reported as AIR 1952 SC 23 Ram Kumar Das vs. Jagdish Chandra Deo & Anr. The facts of said case were that the landlord had not executed a registered instrument for lease of land in favor of tenant. The tenancy created was neither for agricultural or manufacturing purpose. On two occasions, the tenant had tendered annual rent to the landlord. The landlord had terminated the tenancy by giving 15 days notice in terms of second paragraph of Section 106 of Transfer of Property Act by treating the tenancy as from month to month. The question which had arisen before the Supreme Court was whether the tenancy was a monthly tenancy as treated by the landlord or a yearly tenancy since the tenant had paid annual rent to the landlord. It was argued on behalf of the tenant that in view of the fact that rent paid by the tenant was annual rent it can be inferred that that the intention of the parties was certainly not to create monthly tenancy but yearly tenancy, which argument was negatived by the Court in the following terms:-

"....It is conceded that in the case before us the tenancy was not for manufacturing or agricultural purposes. The object was to enable the lessee to build structures upon the land. In these circumstances, it could be regarded as a tenancy from month to month, unless there was a contract to the contrary. The question now is, whether there was a contract to the contrary in the present case? Mr. Setalvad relies very strongly upon the fact that the rent paid here was an annual rent and he argues that from this fact it can fairly be inferred that the agreement between that parties was certainly not to create a monthly tenancy. It is not disputed that the contract to the contrary, as contemplated by section 106 of the Transfer of Property Act, need not be an express contract; it maybe implied, but it certainly should be a valid contract. If it is no contract in law, the section will be operative and regulate the duration of the lease. It has no doubt been recognised in several cases that the mode in which a rent is expressed to be payable affords a presumption that the tenancy is of a character corresponding thereto. Consequently, when the rent reserved is an annual rent, the presumption would arise that the tenancy was an annual tenancy unless there is something to rebut the presumption. <u>But the difficulty in applying this rule to the present case arises from the fact that a tenancy from year to year or reserving a yearly rent can be made only by registered instrument, as laid down section 107 of the Transfer of Property Act (Vide Debendra Nath v. Syama Prasanna, 11 C.W.N. 1124, 1126 37. The in Kabuliyat in the case before us is undoubtedly a registered instrument but ex concessis it is not an operative document at all and cannot consequently fulfill the requirements of section 107 of the Transfer of Property Act</u>.

14. This position in fact is not seriously controverted by Mr. Setalvad; but what he argues is that a lease for one year certain might fairly be inferred from the payment of annual rent, and a stipulation like that would not come within the mischief of section 107 of the Transfer of Property Act. His contention is that the payment of an annual rent, as was made in the present case, is totally inconsistent with a monthly lease. We are not unmindful of the fact that in certain reported cases, such inference has been drawn. On such case has been referred to by Mr. Justice Reuben in his judgment(Aziz Ahmad v. Alauddin

Ahmad, A.I.R. 1933 Pat. 485, where reliance was placed upon an earlier decision of the Calcutta High Court(Md. Moosa v. Jaganund 20 I.C. 715. A similar view seems to have been taken also in Matilal v. Darjeeling Municipality 17 C.L.J. 167.

15. But one serious objection to this view seems to be that this would amount to making a new contract for the parties. The parties here certainly did not intend to create a lease for one year. The lease was intended to create a lease for one year, but as the intention was not expressed in the proper legal form, it could not be given effect to. It is one thing to say that in the absence of a valid agreement, the rights of the parties would be regulated by law in the same manner as if no agreement existed at all; it is quite another thing to substitute a new agreement for the parties which is palpably contradicted by the admitted facts of the case.

16. It would be pertinent to point out in this connection that in the Second Appeal preferred by the plaintiff against the dismissal of his earlier suit by the lower appellate court, the High Court definitely held that the defendant's tenancy was one from month to month under section 106, Transfer of Property Act, and the only question left was whether payment to the Receiver amounted to payment to the plaintiff himself. In this suit the defendant admitted in his written statement that payment to the Receiver had the same effect as payment to the plaintiff, and the trial judge took the same view as was taken by the High Court on the previous occasion, that by payment too and acceptance of rent by the Receiver, the defendant become a monthly tenant under section 106, Transfer of Property Act. In his appeal before the District Judge which was the last court of facts, the only ground upon which the defendant sought to challenge this finding of the trial judge was that the Receiver was an unauthorised person because of the decision of the Judicial Committee which set aside his appointment and consequently acceptance of rent by such person could not create a monthly tenancy. This shows that it was not the case of the defendant at any stage of this suit that because one year's rent was paid a tenancy for one year was brought into existence. <u>We think, therefore, that on the facts of this case it would be quite proper to hold that the tenancy of the defendant was one from month to month since its inception in 1924. This</u>

view finds support from a number of reported cases (Vide Debendra Nath v. Syama Prasanna, MANU/WB/10278/906: 11 C.W.N. 1124; Sheikh Akloo v. Emaman, I.L.R. 44 Cal. 403, and in all these cases the rent payable was a yearly rental. On this finding no other question would arise and as the validity of the notice has not been questioned before us, the plaintiff would be entitled to a decree in his favour. The appeal thus fails and is dismissed with costs." ***(Emphasis Supplied)***

29. Most significantly, following dictum of law laid down by the Calcutta High Court in the decision reported as 2 C.W.N. 1124 *Debendra Nath vs. Syama Prasanna* was approved by the Supreme Court in *Ram Kumar*'s case (supra):-

> *"Then assuming that this case is governed by the Transfer of Property Act I should like to notice the argument that because an annual rent was mentioned the tenancy must be taken to be a yearly one. The lease was not for agricultural or manufacturing purposes and Therefore must, in the absence of a contract to the contrary, be deemed to be a tenancy from month to month. It is said here that there was such a contract, for a yearly tenancy is to be implied from the mention of an annual rent. But when section 106 speaks of a contract I think it means a valid contract. But in the present case there is no such contract and under section 107 a lease such as is argued, for in this appeal can only be created by a registered instrument and there is none here. The notice was therefore sufficient so far as the tenancy is concerned."* ***(Emphasis Supplied)***

30. In view of afore-noted authoritative pronouncement of law laid down by Supreme Court in *Ram Kumar*'s case (supra), the answer to the question posed above is: tenancy of immovable property for any purpose other than agricultural or manufacturing created by an unregistered instrument would be deemed to be '*month to month*' tenancy even where the tenant has paid annual/yearly rent to the landlord.

31. As a necessary corollary thereof, the tenancy of defendant No.1 in suit premises is deemed to be '*month to month*' tenancy which could be terminated by giving 15 days notice. (<u>We again note here that the defendant No.1 has admitted the receipt of legal notice dated May 03, 2010 issued by the plaintiff terminating the tenancy of defendant No.1).</u>

32. The matter can also be looked from another angle.

33. Section 49 of Registration Act, 1908 prescribes that a document which is compulsorily registrable, if not registered, will not affect the immovable property comprised therein in any manner. It will also not be received as evidence of any transaction affecting such property, except for two limited purposes. First is as evidence of a contract in a suit for specific performance. Second is as evidence of any collateral transaction which by itself is not required to be effected by registered instrument. A collateral transaction is a transaction not affecting the immovable property, but a transaction which is incidentally connected with that transaction.

34. <u>Where a lease-deed is for a term exceeding one year and is unregistered, the terms of such a deed cannot be relied upon to claim or enforce any right under or in respect of such lease in view of Section 49 of Registration Act, 1908</u>. It can only be relied upon for the limited purposes of showing that the possession of the lessee is lawful or as evidence of some collateral transaction. (See the decision of Supreme Court reported as (2011) 4 SCC 66 <u>*SMS Tea Estates Pvt. Ltd. vs Chandmari Tea Company Pvt. Ltd.)*</u>

35. Section 35 of Stamp Act provides that instruments not duly stamped is inadmissible in evidence and cannot be acted upon. The relevant portion of said Section is extracted below:-

> *"35. **Instruments not duly stamped inadmissible in evidence, etc –** No instrument chargeable with duty shall be admitted in evidence for any purposes by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*
>
> *Provided that –*
>
> *(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion."*

36. Having regard to Section 35 of Stamp Act, unless the stamp duty and penalty due in respect of the instrument is paid, the instrument cannot be admitted in evidence and court cannot act upon the instrument. Section 35 of Stamp Act is distinct and different from Section 49 of Registration Act in regard to an unregistered document. Section 35 of Stamp Act does not contain a proviso as appended to Section 49 of Registration Act enabling the instrument to be used to establish a collateral transaction.

37. In the instant case, the lease-deed dated November 21, 1999 is an unstamped and unregistered instrument. In view of prescriptions contained in Section 35 of Stamp Act and Section 49 of Registration Act, the lease-deed dated November 21, 1999 is inadmissible in evidence and the defendant No.1 cannot rely upon the terms of said lease to claim or enforce right of renewal contained in the said lease.

38. Neither can the plaintiff rely upon the lease-deed in question for purposes of rent being enhanced by 10% each year.

39. With respect to reliance upon the lease-deed in question, we find that the plaintiff as well as the defendants are taking mutually destructive pleas to their own case. The plaintiff asserts that the defendant cannot rely upon the lease-deed for enforcement of the clause contained therein which gives the defendant an option to have the lease renewed for a further term of 11 years on the ground that the document is not registered, but would rely upon the lease-deed for the term contained therein that rent would be increased by 10% every three years. Per contra, the defendants would rely upon the lease-deed pertaining to the clause of renewal of the term of the lease for a period of 11 years but would deny the right to the plaintiff to rely upon its term of the rent to be increased by 10% every three years.

40. The document in question cannot be relied upon by either party to enforce the term favourable to it.

41. But as noted above, an admission can be contained in any document of the parties and in the instant case, the admission of the defendant is to be found in clear terms in the entries made in the ledger book of the defendant No.1 for the period from April 01, 1999 to March 31, 2000 and the reply dated June 30, 2010 given by the defendants to the legal notice dated March 03, 2010 issued by the plaintiff that it was agreed between the defendant No.1 and Ms.Neeta Mehra, erstwhile owner of the suit premises, that the rent of the suit premises would be increased by 10% after every three years and that said agreement was acted upon by the parties. The ledger entries clearly record that vide cheque No.488017 dated November 21, 1999 drawn on State Bank of Saurashtra and another cheque No.499404 dated February 02, 2000 advance rent was paid to Neeta Mehra for 11 years and 11 months; rent being @ ₹2,650/- per month as enhanced by 10% every three years.

Further, it has rightly been held by the learned Single Judge that the averments/calculations made by the plaintiff that the rent of the suit premises was being increased by 10% after every three years and rent of the suit premises was lastly increased to ₹3,527/- per month with effect from November 17, 2008 have not been specifically denied by the defendants and that the evasive reply would be required to be treated as a deemed admission.

42. In view of above discussion, following conclusions emerge:-

(a) The defendants have admitted that defendant No.1 was inducted as a tenant in the suit premises by Ms.Neeta Mehra, erstwhile owner of the suit premises.

(b) The tenancy of defendant No.1 in the suit premises was deemed to be '*month to month*' tenancy.

(c) The plaintiff had validly terminated the tenancy of defendant No.1 in the suit premises by legal notice dated May 03, 2010, receipt of which legal notice has been admitted by the defendant No.1.

(d) The defendants have admitted that it was agreed between the parties (defendant No.1 and erstwhile owner of the suit premises) that the rent of the suit premises would be increased by 10% after every three years, which agreement was acted upon by the parties.

(e) The defendants have admitted that the rent of the suit premises was lastly increased to ₹3,527/- per month with effect from November 17, 2008.

(f) The defence set up by the defendants that the tenancy of defendant No.1 in the suit premises was not month to month but for a period of eleven years and eleven months with an option to the defendant No.1 to renew the lease by another period of eleven years is devoid of any merit.

43. The inevitable result of above (6) conclusions is that the plaintiff is entitled to a decree on admission of possession in respect of the suit premises.

44. It is settled law that where the defence taken by a defendant is devoid of merit or of a kind which is not recognized by law, a decree on admission would follow. (See the decision of a Division Bench of this Court reported as 193 (2012) DLT 613 *Universal Finance Traders Ltd. vs. Lunar Diamonds Ltd & Ors).*

45. In this regard, it would be most apposite to note the following observations made by a Single Judge of this Court in the decision reported as 2000 (54) DRJ 654 *Ved Prakash & Anr vs. M/s Marudhar Services Ltd & Anr*:-

> *"It would be pedantic an approach to maintain that an admission can only be considered to have been made where a particular party specifically agrees to the correctness of a statement made in pleadings by the opposite party. The admission must be drawn from the totality of the circumstances of the case; the Court is not powerless to review the entire defense presented in the written statement. It is only in those instances where, from other attendant facts the Court is of the view that despite the existence of admission triable issue have arisen, that its discretion should be exercised. There would be no justified for the exercise of 'discretionary powers' where no triable issues have arisen."* ***(Emphasis Supplied)***

46. The plea of the defendants that the defendant No.1 paid ₹19,95,523/- as pagri and spent ₹25,00,000/- towards renovation and repair of the suit premises is not a relevant fact having a bearing on the issue between the parties and no trial would be warranted on said assertion of fact because if a tenant spends money to repair the tenanted premises to suit his need and for which the landlord gives a permission, this would be a term of the tenancy and no more. Likewise if apart from

monthly rent payable each month or in advance, some other money is paid by the tenant to the landlord, that would be again a matter of a bargain between the two, having no impact on the status of the relationship being that of a landlord and tenant. If at all it would have any bearing, it would be on the rent payable and this would be, in the instant case in favour of the landlord who could plead that the initial lump sum payment was towards capitalizing a part of the rent payable and thus while determining the monthly rent payable, the actual rent should be determined keeping in view the element thereof which was capitalized. And in the instant case that would take the rent further higher than ₹3,572/- per month with effect from November 17, 2008. It is trite that at a trial, evidence can be led of relevant facts which are made relevant under the Indian Evidence Act and of no others. This is the mandate of Section 5 of the Indian Evidence Act, 1972 which proclaims that '*Evidence may be given in any suit or proceedings of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no other*'.

47. The impugned judgment dated January 24, 2014 passed by the learned Single Judge granting decree on admission of possession in respect of suit premises is affirmed.

48. Since the regular first appeal is being dismissed nothing survives for consideration in FAO (OS) No.117/2014 for the reason the decree which has been affirmed by us has already been executed and no issue arises in respect of the execution for being considered in the appeal.

49. RFA (OS) 55/2014 and FAO (OS) 117/2014 are accordingly dismissed. Since keys of the suit premises have been directed in FAO (OS) No.117/2014 to be deposited in this Court, we direct the Registry to return the key to the respondent/plaintiff.

50. Parties shall bear their own costs in the appeal.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 02, 2015
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