

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Cross Objections No. 52 of 2000 in/and
Company Appeal No. 11 of 2000
Date of Decision: 16th March, 2016

State Bank of India through its Chief Manager. ..Appellant

versus

M/s S.B.Associates and another ..Respondents

**CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Vikas Chatrath, Advocate with
Mr. Parveen Kumar and Ms. Neeru Thakur, Advocates,
for the appellant.

Mr. Rahul Garg, Advocate, for respondent No.1-
M/s S.B.Associates.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE:

This is an appeal against the order and judgment of the learned Company Judge dated 08.02.2000 allowing the first respondent's application and directing the appellant to handover the vacant possession of the premises to the first respondent within two months.

2. The first respondent is the purchaser of an immovable property belonging to the 2nd respondent M/s Rubber Industries Pvt. Ltd., a company in liquidation. The property was brought to sale in Execution No.21-L of 1987 filed by the appellant. The execution application was taken out by the appellant in respect of a decree obtained by it for recovery of about Rs. 23 lacs in a mortgage suit filed by the appellant. After the first respondent purchased the property at the auction, it was handed over the possession of the property. However, the appellant refused to handover a

portion of the property claiming that it was in possession thereof as a tenant. Admittedly, the appellant at whose instance the property was brought to sale in execution proceedings did not disclose in the proclamation or otherwise and at any time prior to the sale that it claimed to be in possession of a part of the property as a tenant.

3. The question, therefore, is whether the first respondent is entitled to possession of the entire property including the portion in respect of which the appellant claims to be a tenant. The learned Judge held that the appellant is a tenant but held that it was estopped from setting up its claim as a tenant as it had failed to disclose its interest as such while bringing the property to sale in the execution proceedings. The appeal is against the latter finding. The first respondent has filed cross objections challenging the finding that the appellant is a tenant in respect of a portion of the property. We have dismissed the appeal and allowed the cross objections. In the result the first respondent succeeds in obtaining possession of the entire property.

4. The 2nd respondent i.e. the company in liquidation (hereinafter referred to as the company) availed financial facilities from the appellant to secure the repayment of which it mortgaged inter-alia the property which is the subject matter of these proceedings. The company having failed to pay its dues, the appellant filed a mortgage suit on 15.09.1980 for recovery of an amount of about Rs. 23 lacs. During the pendency of the suit the company was by an order dated 03.03.1987 directed to be wound up and the Official Liquidator of the company stood appointed as the liquidator. The Company Court, however, permitted the bank to continue the suit. The suit was, however, transferred to the file of the Company Court and was registered as Company Petition No. 29 of 1982. The suit was decreed. It is in execution of this decree that the appellant filed the said execution application.

5. In this execution application, the Court directed the mortgaged property to be sold. By an order dated 29.04.1988, the Executing Court directed warrant of sale of the mortgaged property to be issued returnable on 12.08.1988. The Official Liquidator was directed to assist in making the mortgaged property available for sale. The appellant was directed to publish an advertisement with regard to the sale of the mortgaged property in three newspapers at its costs. The learned Judge directed the proclamation for sale to be drawn at the office in accordance with the rules and sent to the Senior Sub Judge who was directed to fix the date of sale and to issue the proclamation. The appellant was directed to notify the date of sale so fixed in the advertisement to be given in the newspapers. Pursuant thereto, proclamation of sale of the property in this Court was issued.

6. It is of vital importance to note that in the proclamation there was not a whisper about the appellant's claim as a tenant in respect of a portion of the property. The proclamation merely stated that the right and interest of the company in the property will be put up for sale and sold to the highest bidder. It mentioned the details of the claim and the decree and the particulars of the mortgage deeds and the mortgaged properties. The proclamation also referred to the decree as having provided that the sale proceeds would be paid in Court and would be applied towards the payment of the decretal amount and other costs, charges and expenses as may be payable under Order 34 Rules 10 and 11 of the Code of Civil Procedure, 1908 and that the balance would be paid to the official liquidator.

To reiterate, therefore, the proclamation did not mention a word about the appellant's alleged claim as a tenant in respect of a part of the property and it referred to the sale being governed by the provisions of the Code of Civil Procedure.

7. The property was thereafter auctioned by the Executing Court. The first respondent purchased the same on 12.09.1988 for a sum of Rs.16,50,000/-. The sale was confirmed by the Court on 03.11.1988 and on 08.02.1990 a certificate of sale was ordered to be issued to the first respondent. The sale certificate was thereafter issued on 26.08.1991. The first respondent filed Company Appeal No. 168 of 1991 which was disposed of with an order directing the official liquidator to deliver the possession of the property within three weeks from 31.10.1991.

8. The official liquidator, however, reported that the appellant was in possession of the premises and that the first respondent had, therefore, refused to take over the property. The first respondent, therefore, filed the said Company Application No. 104 of 1992 for an order directing the official liquidator to deliver the possession of the property or for an order directing the Sub Judge, Sonapat to execute the warrants of possession for delivery of possession of the property to the first respondent.

The appellant filed a written statement contending inter-alia that the first respondent was not entitled to vacant possession of the premises as it was in occupation therefore as a tenant. The appellant claimed that there existed a relationship of landlord and tenant between the first respondent and itself which would continue qua the first respondents upon their having purchased the property at the auction.

The first respondent filed a rejoinder inter-alia stating that in the mortgage suit the appellant had not mentioned the existence of the alleged tenancy. The company itself never mentioned the same either even in the statement of affairs filed by the former Directors in the winding up proceedings.

9. On 29.01.1993 the learned Company Judge dismissed the appellant's objections. The appeal against this order and judgment was also dismissed by the Division Bench. The appellant filed a petition for Special Leave to the Supreme Court. The Supreme Court set aside the judgment and remanded the matter. The judgment impugned in this appeal was passed upon remand.

10. On 05.11.1988 the learned Company Judge framed the following issues:-

1. Whether the Bank is in occupation of the part of the building as a tenant, if so to what effect? Onus to prove on objector.
2. Whether the objector bank is estopped from raising the plea of tenancy, as indicated in the pleadings of the parties? Onus on parties.
3. Relief.

11. The parties led oral and documentary evidence. The appellant examined four witnesses and the first respondent examined himself as the sole proprietor of the first respondent.

Re; Issue No.1

12. The learned Judge held that the property had been let by the company in liquidation to the appellant; that there was an intention to create demise in the property in favour of the appellant which was followed by receipt of rent. The learned Judge, therefore, answered issue No.1 in favour of the appellant.

13. Referring to the judgment of the Supreme Court in *Dr. H.S.Rikhy v. The New Delhi Municipal Committee AIR 1962 SC 554*, the learned Judge rightly held that mere payment of rent does not create a relationship of landlord and tenant and that the relationship of landlord and

tenant comes into existence only when there is an intention to create a demise in the property. The Supreme Court held as follows:-

“It was also contended that it was admitted by the respondent that rent was received and receipts for rent were granted by its agents. The use of the word 'rent' is, not conclusive of the matter. It may be used in the legal sense of recompense paid by the tenant to the landlord for the exclusive possession of premises occupied by him. It may also be used in the generic, sense, without importing the legal significance aforesaid, of compensation for use and occupation. 'Rent' in the legal sense can only be reserved on a demise of immovable property. Reference may be made in this connection to paragraphs II 93 and 11 94 of Halsbury's Laws of England (Third Edition, Vol. 23) at pages 536-537. Hence, the use of the term 'rent' cannot preclude the landlord from pleading that, there was no relationship of landlord and tenant. The -question must, therefore, depend upon whether or not there was a relationship of landlord and tenant in the sense that there was a transfer of interest by the landlord in favour of the tenant.

...emphasis supplied”.

14. The learned Judge firstly rejected the contention on behalf of the first respondent that there was no resolution passed by the company in liquidation creating a tenancy. The learned Judge accepted that the company would normally pass a resolution creating a tenancy but did not consider the absence of such a resolution as a factor in first respondent's favour observing that it was not possible at this stage to find out whether such a resolution had been passed or not as the company had been wound up.

15. We are unable to agree with these findings. We do not see how the company having been wound up it was not possible to find out if a resolution creating a tenancy had been passed or not. The record of the company was with the liquidator. It was for the appellant to have inspected

the record and produced the resolution if any. Secondly, the appellant did not even make an attempt to ascertain whether such a resolution had been passed or not. No efforts were made in this regard. The appellant did not even call upon the Official Liquidator to produce such a resolution.

The onus was upon the appellant to establish the tenancy. The first respondent could not be expected to establish the negative. The appellant having failed to produce the resolution and having failed to even attempt to ascertain whether such a resolution was passed is liable to have an adverse inference drawn against its contention that it is a tenant of the property. In the circumstances, the absence of a resolution by the company in liquidation to create a tenancy and absence of any attempt by the appellant to produce such a resolution are factors that must be held in favour of the first respondent. They are factors that militate against the appellant's case that it is the tenant of the property.

16. Equally, if not more important, the appellant has not even produced any resolution by its Board of Directors or any of its authorized representative to accept a tenancy of the premises.

17. The learned Judge thereafter relied upon the correspondence between the appellant and the company-respondent No.2 for coming to the conclusion that there was a demise of the property by the company in favour of the appellant and that there existed a relationship of landlord and tenant between them. Needless to add that the first respondent was not a party to this correspondence. The correspondence relied upon is as follows:-

- A) The Company's Managing Director addressed a letter to the appellant stating that the construction of a room had reached the roof level and that it had stopped work for want of funds and would commence the same after release of the first running

payment as per its request contained in its letter dated 22.09.1971.

- (B) By a letter dated 15.11.1971 the company asked the appellant to make an application to the Haryana State Electricity Board for a connection.
- (C) By a letter dated 19.01.1974 addressed to the appellant, the Chairman of the company stated that the appellant had not replied to its letter and that from its silence in the matter it was assumed that the appellant had no objection to and had agreed to the 'increased rent of Rs. 1250/- per month'. The letter further stated that henceforth the company would be charging from the 'appellant monthly rent of Rs.1250/- per month' w.e.f. 01.02.1974. The letter concluded by requesting the appellant to pay the company 'increased rent' w.e.f. 01.02.1974.
- (D) The learned Judge noted that there was internal correspondence of the bank in which its Regional Manager wrote to a Branch Manager that it cannot accede to the demand of increased rent.
- (E) By a letter dated 03.03.1975 addressed to the appellant, the Chairman of the company stated that the appellant would be required to pay an amount of Rs. 100/- on account of electricity consumption "in addition to the personal monthly rent of Rs. 850/- for the banks premises constructed/provided by us". The letter further stated that this had been agreed upon to settle the issue of "rental enhancement".
- (F) Lastly the learned Judge referred to a letter addressed by the company to the appellant stating inter-alia that since it had "rented" the building, there had been no enhancement of rent;

that as per the prevailing rent in the locality, the rent in respect of the said premises comes to Rs. 5,500/- per month and the appellant was accordingly requested to enhance the rent for the building.

18. Based on this correspondence, the learned Judge concluded that the property had been let by the company to the appellant and that there was an intention to create demise in the property which was followed by a receipt of rent. Based on this correspondence, the learned Judge answered issue No.1 in favour of the appellant.

19. We are unable to agree with this conclusion. Firstly, the correspondence merely refers to the payment of rent. It has no reference to the creation of a tenancy or of the intention of either of the parties to create a relationship of landlord and tenant between themselves. As held by the Supreme Court in *Dr. H.S.Rikhy's case* (supra), the use of the word 'rent' is, not conclusive of the matter; that the term 'rent' may be used in the legal sense of recompense paid by the landlord to the tenant for the exclusive possession of premises occupied by him; that it may also be used in the generic sense, without importing the legal significance of the landlord and the tenant; the 'rent' in the legal sense can only be reserved on a demise of immovable property and that the use of the term 'rent' cannot precluded the landlord from pleading that there was no relationship of landlord and tenant and that the question depends upon whether there was a relationship of landlord and tenant.

20. Nothing was brought on record to indicate the creation of a tenancy. The evidence does not even indicate when the tenancy came into

existence. Nor are there are any particulars or details about the creation of a tenancy.

21. The appellant examined four witnesses. PW1 was the Manager of the branch which was established on 27.12.1971. He identified the signatures on the Account Opening Form of the company. He deposed that the appellant was paying Rs.850/- per month. He, however, does not mention the nature of the payment. In other words, he did not depose that the amount of Rs.850/- per month was paid as rent. In his cross examination he stated that he had seen a proposal of settlement of rent between the bank and the company but admitted that he had not sanctioned the rent and that he had not seen the lease deed. He also admitted that he did not know the terms and conditions of the lease except as to the rent. He was unable to give any particulars in respect thereof. He confirmed that he did not recollect the terms and conditions.

22. This witness's evidence, therefore, does not establish the tenancy. He did not even suggest that any lease deed had been executed to his knowledge. He fairly admitted that he did not know the terms and conditions of the lease. His reference to the rent was only on the basis of the letter which he stated was signed in his presence.

23. PW2 served the bank. He identified certain signatures on the letters. He, however, knew nothing of any lease. He did not even suggest that he knew anything about the existence of the lease or the relationship of landlord and tenant. He merely identified the signatures on the correspondence. His evidence, therefore, cannot possibly establish the existence of a tenancy.

24. PW3 was a Daftri-cum-Record Keeper with the appellant. He merely stated that he had seen the documentary evidence. His evidence goes

no further then. Understandably this witness was not cross-examined further. He did not even purport to suggest that there was any tenancy.

25. PW4 was the Chief Manager of the appellant. He merely made a bald assertion in his examination-in-chief that the appellant is the tenant and the rent was deposited in the account of the company and was not deposited in the first respondent's account. He admitted that he had worked in the branch. Apart from denying the case put to him that the bank was not a tenant, his evidence was silent as to the creation of a tenancy. Nor did he produce any evidence throwing any light upon the existence of the tenancy.

26. The appellant, therefore, failed to produce any evidence oral or documentary that established the creation of tenancy. The appellant did not even produce its own resolution creating a tenancy. Mere payment of amount every month and describing it as rent is not sufficient to create a tenancy. The burden was on the appellant to establish tenancy which it failed to discharge.

27. On the other hand, the surrounding circumstances support the first respondent's case that the appellant was not a tenant of the premises. Firstly, as we have already mentioned, there is no resolution of either the appellant or of the company in liquidation agreeing to the creation of a tenancy. Further, there is no evidence indicating any attempt on the part of the appellant to ascertain whether there was any such resolution. It is reasonable, therefore, to presume that there was no resolution. We will presume that passing of a resolution by the board of the appellant and of the company was not mandatory for the creation of a tenancy. However, the absence of such a resolution is a factor that militates against the creation of tenancy. Moreover, there was no agreement creating tenancy. This by itself may not militate against the existence of a tenancy. However, considered in

addition to the other facts and circumstances, it is a factor that belies the existence of the tenancy.

28. There is an even more important fact that militates against the appellant's case of it being a tenant. The appellant never mentioned in the course of proceedings that it was a tenant. It never even referred to the tenancy. It is only when the first respondent after purchasing the property sought possession of the premises that the appellant for the first time contended that it was a tenant. We will for the present ignore the first respondent's contention that the appellant is not entitled to raise a defence of tenancy in view thereof. However, the appellant not having referred to the tenancy at all material times indicate as a matter of fact that its possession of the premises was not as a tenant thereof. This is not a case where the appellant filed the execution proceedings and brought the property to sale in execution of a decree and where a third party claimed to be a tenant in respect thereof. This is a case where the appellant being the mortgagee conducted the entire proceedings leading to the sale of the property including the preparation of the proclamation of the sale and never once during the course of these proceedings contended that it was the tenant of the premises. Whether it was estopped from raising a case of tenancy or not is a separate matter. This conduct indicates and in any event justifiably raises the presumption that the appellant was not a tenant of the premises. It is reasonable to presume that if the appellant was a tenant of the premises it would have said so at the first instance or in any event at least at some stage especially in the proclamation of sale. It having not done so indicates that it was not a tenant.

29. Even if any of the above factors by themselves do not militate against the appellant's case of tenancy, taken together, they certainly do.

Thus the mere fact that the appellant was in possession of the property and that the first respondent was aware of the same does not establish that there was a relationship of landlord and tenant between the appellant and the company.

30. We will assume that the aforesaid correspondence contains admissions on behalf of the company that there was a relationship of landlord and tenant between the appellant and the company in view of the reference of demand and the payment of rent by the appellant to the company. We will assume that these admissions in the correspondence in the absence of any evidence to the contrary would justify the presumption of a relationship of landlord and tenant between the appellant and the company. Even assuming that these admissions are admissible against the first respondent auction purchaser, it would make no difference in the facts and circumstances of this case for in view of what we have held, the presumption has been adequately rebutted by the evidence to the contrary.

31. There is an aspect which arises in issue No.2 which infact comes to the assistance of the first respondent-auction purchasers as regards issue No.1 as well. We mentioned earlier that the appellant never disclosed its claim of tenancy in respect of the premises. Most important, the appellant failed to disclose the same even in the proceedings relating to the execution of decree No. 21/L/97 taken out by it. Rules 13 and 66 of Order 21 of the Code of Civil Procedure read as under:-

“13. Application for attachment of immovable property to contain certain particulars:-

Where an application is made for the attachment of any immovable;; property belonging to a judgment-debtor, it shall contain at the foot-

(a) a description of such property sufficient to identify the same and, in case such property can be

identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such" property to the best of the belief of the applicant, and so far as he has been able to ascertain the' same.

66. Proclamation of sales by public auction:- (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible,

(a) the property to be sold [or, where a part of the property would be sufficient to satisfy the decree, such part]

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any encumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property:

[Provided that where notice of the date for setting the terms of the "proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.]

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and

verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, 'the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.'

32. Sub rule (2) of rule 66 requires the proclamation to be drawn up after notice to the decree-holder i.e. the appellant and the judgment-debtor i.e. respondent No.2. We will for the present ignore clause (c) of sub rule (2) of rule 66 which requires the proclamation to specify any encumbrance to which the property is liable. In doing so we will assume that a tenancy is not an encumbrance within the meaning of that term in clause (c). There, can, however, be no doubt that the proclamation ought to have specified fairly and accurately the tenancy in view of Order 21 Rule 66 (2) (e) which requires every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property to be specified. Clause (e) is of the widest amplitude and everything which affects the value of the property must be specified/disclosed. It can hardly be suggested that the value of a property is not affected by a tenancy created in respect thereof. The value of a property with a sitting tenant can never be the same as its value without a tenant. It is axiomatic, therefore, that clause (e) of Rule 66 (2) requires a proclamation to specify a tenancy in respect of a property to be sold in auction. Any Court would consider a tenancy to be a material thing/aspect for a purchaser to know in order to judge the value of

the property to be sold in auction. We will assume that the clause requires a proclamation to specify only things that affect the monetary value of the property and not any special value in respect thereof. In the present case that would make no difference. A tenancy substantially affects the monetary value of any property.

33. There is yet another fact that belies the appellant's case that it is a tenant of the property. It is the fact that the property was put to sale and was sold without accounting for the tenancy. There is nothing to indicate that the property was sold at a price which took into consideration the value of the tenancy. The burden is upon the appellant to establish the tenancy. The appellant also alleges that the first respondent was aware of the tenancy as the first respondent was aware of the appellant's possession in respect of the premises. One of the important factors or indications to establish the tenancy is the value of the property. The appellant could have adduced evidence to establish that the first respondent purchased the property at the auction at a substantially lower price on account of the tenancy. The appellant has not produced any evidence to this effect. Nor is there anything on record which even suggests that the appellant purchased the property at a lower price after discounting the value on account of the tenancy. The proclamation not having specified the tenancy it is reasonable to assume that the property was valued without taking into account the effect of the tenancy on its price.

34. Even assuming that the first respondent was aware of the appellant's use and occupation of the premises it would make no difference. It is not necessary that a party possesses or occupies a property only as a tenant. The possession and occupation may also be on the basis of a licence including a gratuitous licence. If it is a bare licence it can be terminated at

any time. It is not the appellant's case that it occupied the premises under an irrevocable licence. The possession or occupation could also be as a mortgagee such as in the case of usufructuary mortgage. Thus, mere use and occupation of the premises by the appellant does not justify a conclusion that the first respondent was aware that the appellant's occupation of the premises was as a tenant.

35. The necessity of specifying the tenancy in view of Order 21 Rule 66 (2) (e) of the Code of Civil Procedure is so obvious that it would occur to anyone especially a party such as the appellant who has the benefit of legal advice. We would not assume *mala fides* on the appellant's part. If the necessity to specify the tenancy is obvious and if we are not to assume *mala fides* on the part of the appellant bank, it would follow that had the appellant actually been a tenant of the property it would have disclosed the same. That it did not do so is a strong indication that it was not a tenant.

36. If on the other hand we are not to assume *bona fides* in favour of the appellant it would follow that the appellant deliberately withheld the fact of tenancy and that brings us to issue No.2.

37. In the circumstances, the decision of the learned Judge on issue No.1 is over-ruled. Issue no.1 is answered in favour of the first respondent and against the appellant.

Re; Issue No.2

38. All that we said while dealing with issue No.1 must be reiterated while considering issue No.2.

39. The submission that the proclamation under sub rule (2) of Order 21 Rule 66 is to be drawn up by the Court and not by the decree-holder and, therefore, the decree-holder such as the appellant cannot be held

responsible for anything stated or omitted to be stated therein is not well founded. Sub rule (2) of Rule 66 cannot be read in isolation. It must be read inter-alia with sub rule (3) of Rule 66. It requires the application for an order for sale to be accompanied by a statement signed and verified in the manner prescribed 'so far as they are known and can be ascertained by the person making the verification' the matters required by sub rule (2) to be specified in the proclamation. We have already held that the tenancy is a matter that was required by clause (e) of sub rule (2) to be specified in proclamation. The application for an order of sale was made by the appellant. It was mandatory, therefore, for the appellant who verified the application to specify the same in the statement signed and verified under sub rule (3). The appellant failed to comply with this mandatory requirement.

40. Whether the appellant failed to mention the tenancy deliberately or inadvertently makes no difference. The appellant thereby by its own act and deed led the first respondent to believe that it did not possess any tenancy rights in respect of the property. The learned Judge, therefore, rightly held that the appellant is estopped from contending to the contrary. The first respondent or any auction purchaser would not be able to plead an estoppel against a third party who or which is not responsible for any incorrect statement or a failure to mention the relevant fact in the execution proceedings. The estoppel can certainly be pleaded against the decree holder who fails deliberately or otherwise to mention/disclose the right that it claims to have in respect of the property to be sold in execution.

41. In these circumstances, it is not necessary to consider the provisions of Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973. It was relied upon on behalf of the appellant to contend that a

tenant cannot be evicted in execution of a decree. On behalf of the respondents it is, however, contended that the Act does not apply.

42. We are, therefore, entirely in agreement with the learned Judge that the appellant is estopped from setting up its claim as a tenant.

43. The appeal is, therefore, dismissed and the cross objections are allowed. Both the issues are answered in favour of the first respondent. This order and judgment is stayed up to and including 31.05.2016 to enable the appellant to challenge this judgment. The interim orders shall continue till then.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

16.03.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	√Yes	No.
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