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

+ RSA 185/2016 and C.M. Nos.25850-51/2016

GYAN KUMAR GUPTA

..... Appellant

Through: Ms. Aishwarya Rao, Advocate and  
Mr. Sumit Jain, Advocate with  
appellant in person.

versus

RAJNI BINJOLA

..... Respondent

Through

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

**ORDER**

% **22.07.2016**

1. This appeal was argued at length. The challenge by this Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is to the concurrent judgments of the courts below decreeing the suit of the respondent/plaintiff under Order XII Rule 6 CPC with respect to the relief of possession. On the aspect of mesne profits, trial is continuing before the trial court. Relationship of landlord and tenant is admitted as the appellant/defendant admits having paid rent to the respondent/plaintiff. In the written statement though denying rent to be Rs.3,800/- per month it is not stated what is the rate of rent and today counsel for the appellant/defendant

states that rent was Rs.4,000/- per month. Once rent is more than Rs.4,000/- per month, premises are outside the protection of the Delhi Rent Control Act, 1958. So far as the issue of termination of tenancy is concerned, now it is well settled law in Delhi that even if there is no legal notice served prior to filing of the suit, summons in the suit can be taken as a notice terminating tenancy vide *Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha (HUF) & Anr. 2011 (183) DLT 712*.

2. I may note that there is no registered lease deed in favour of the appellant/defendant with respect to the suit property entitling the appellant/defendant to continue in the same for a particular fixed period.

3. At the stage of dictation of the judgment for dismissing the appeal, learned counsel for the appellant on instructions from the appellant states that appellant/defendant does not press the appeal on merits but appellant/defendant only wants time of nine months to vacate the suit premises and in the meanwhile appellant/tenant will pay the agreed rent of the suit premises and in case any higher rate of use and occupation charges are awarded with respect to mesne profits on which aspect trial is going on, then, such higher rate would be paid subject of course to any legal

challenge available to the appellant/defendant with respect to rate of mesne profits. I may note that I am not observing on merits with respect to rate of mesne profits to be awarded by the trial court.

4. Accordingly, while disposing of this appeal as not pressed, appellant is granted time to vacate the suit premises on or before 30.4.2017 subject to the appellant clearing any arrears of admitted rent besides electricity and water charges and also continuing to pay the month by month admitted rent as also electricity and water charges with respect to the suit premises and filing an affidavit in this Court within two weeks in terms of the present order undertaking to comply with the terms of the present order granting time to the appellant/defendant to vacate the suit premises.

5. Appeal is accordingly disposed of in terms of aforesaid observations.

**VALMIKI J. MEHTA, J**

**JULY 22, 2016**  
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