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

% *Date of Decision: November 18, 2016*

+ **RSA 343/2016**

VIJAY PAL SINGH

..... Appellant

Through: Mr.Yogesh Kumar Sikri, Advocate
with appellant in person.

versus

BHARAT BHUSHAN GULATI

..... Respondent

Through: Mr.Arvind Kumar Gupta &
Mr.Abhishek Goyal, Advocates.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

CAV 980/2016

Counsel as above appears for the respondent/caveator and thus the caveat stands discharged.

CM No.42781/2016

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RSA No.343/2016

1. The instant Regular Second Appeal under Section 100 of the Code of Civil Procedure has been filed by the appellant challenging the judgment and decree dated 09.08.2016 passed by learned First Appellate Court in RCA No.8909/2016 upholding the judgment and decree dated 17.10.2016 passed by the learned Trial Court in Civil Suit No.83039/2016.

2. Civil Suit No.83039/2016 (Old No.298/2015) was filed by the respondent/plaintiff Bharat Bhushan Gulati claiming himself to be the owner of property No.129/8, Krishna Nagar, Safdarjung Enclave, New Delhi-110029. The appellant/defendant, who is an Advocate, was occupying the rear portion of the said property (as shown red in the site plan annexed with the plaint) as tenant for a period of eleven months on monthly rent of ₹10,500/-. The tenancy was oral.
3. The appellant/defendant failed to vacate the tenanted premises on expiry of period of tenancy and threatened the landlord that being an Advocate, he (appellant/defendant) knew how to mould the law and continued staying in the property.
4. It is admitted case of the parties that before filing the civil suit seeking possession and recovery of rent and mesne profits, the landlord/respondent did not serve any notice under Section 106 of Transfer of Property Act, 1882.
5. The learned Trial Court passed a decree for possession invoking its power under Order XII Rule 6 of the Code of Civil Procedure in view of the settled legal position in Nopany Investments (P) Ltd. vs. Santokh Singh (HUF) 146 (2008) Delhi Law Times 217 (SC). The contention of the appellant before the First Appellate Court was that since no notice under Section 106 of Transfer of Property Act has been served by the landlord before filing the suit for possession, the decree for possession is liable to be set aside in view of the decision of the Hon'ble Supreme Court in V.Dhanapal Chettiar vs. Yesodai Ammal (1979) 4 SCC 214.
6. Feeling aggrieved, the appellant/defendant filed first appeal bearing RCA No.8909/2016 questioning the legality of the order passed by the

learned Trial Court granting decree of possession in respect of the portion in his tenancy.

7. The appellant/defendant has questioned the legality of the impugned order passed by the First Appellate Court contending that in V.Dhanapal Chettiar vs. Yesodai Ammal (Supra) it has been held that tenancy from month to month can be terminated only after giving fifteen days notice under Section 106 of Transfer of Property Act, 1882. Since no notice was served by the respondent/landlord, the impugned order being illegal is liable to be set aside. While dismissing the appeal, the above contention has been discussed and negated by the First Appellate Court observing that even if it is not proved that a legal notice was served prior to filing of the suit, service of summons of the suit can be taken as a notice under Section 106 of the TP Act. It was held that Court should take a pragmatic view in view of the legislative intendment as demonstrated by Act 3 of 2003, amending Section 106 of the Act.

8. In the Regular Second Appeal also the appellant/defendant has raised the same objection and relied upon the same set of judicial pronouncements as referred before the First Appellate Court.

9. The appellant/defendant submits that the substantial question of law arising in this case is whether without serving any notice under Section 106 of Transfer of Property Act, 1882 the landlord can file a suit for possession.

10. After the amendment by Amending Act No.104 of 1976 a second appeal can be filed only if a substantial question of law is involved in the case. The memorandum of appeal must precisely state the substantial question of law involved and the High Court is obliged to satisfy itself regarding the existence of such question.

11. In the decision reported as Sir Chunilal V.Mehta & Sons Ltd. vs. Century Spinning and Manufacturing Co. Ltd. the test for determining whether a substantial question of law has been raised in the case and it was held as under:-

‘The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views, If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absorbed the question would not be a substantial question of law.’

12. The question raised in this appeal on the basis of two decisions of the Supreme Court in V.Dhanapal Chettiar vs. Yesodai Ammal (Supra) which was followed in Nopany Investments (P) Ltd. vs. Santokh Singh (HUF) (Supra) has been dealt with by the Co-ordinate Bench of this Court in the decision reported as Sh.Ram Kumar vs. Sh.S.K.Gulati 203 (2013) DLT 588 as under:-

‘5. The counsel for the appellant/defendant has argued that the respondent/plaintiff is not entitled to a decree for ejectment because (i) the respondent/plaintiff is not the owner of shop No. 103-B supra in the tenancy of the appellant/defendant; (ii) the respondent/plaintiff is not the landlord of the shop in the tenancy of the appellant/defendant; and, (iii) the tenancy of the appellant/defendant has not been determined.

6. Even though the aspect of termination of tenancy ordinarily ought to be discussed after the aspect of existence of relationship of landlord-tenant but considering the way the argument thereon has turned, I am taking up the aspect of determination of tenancy first.

7. The counsel for the appellant/defendant has argued that the Addl. District Judge has on the aspect of determination of tenancy relied on *Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha* MANU/DE/1277/2011 : (HUF) 2011 (183) DLT 712 laying down that service of summons of the suit is sufficient service of the notice upon the defendant of the landlord not wanting to continue with the defendant as a tenant.

8. Upon attention of the counsel for the appellant/defendant being invited to the fact that *Jeevan Diesels & Electricals Ltd. supra* is based on the judgment of the Supreme Court in *Nopany Investments (P) Ltd. Vs. Santokh Singh* (HUF) MANU/SC/8184/2007 : (2008) 2 SCC 728, also followed by the Division Bench of this Court in *Sri Ram Pistons & Rings Ltd. Vs. C.B. Agarwal* HUF MANU/DE/2381/2008, the counsel for the appellant/defendant though not controverting the said position contends that *Nopany Investments (P) Ltd.* is a judgment of a two Judge Bench of the Hon'ble Supreme Court and though has noticed the earlier judgment of the seven Judge Bench of the Supreme Court in *V. Dhanapal Chettiar Vs. Yesodai Ammal* MANU/SC/0505/1979 : (1979) 4 SCC 214 but in so far as holds so is contrary to *V. Dhanapal Chettiar*. Attention is invited to paras 5 & 6 of *V. Dhanapal Chettiar* to contend that the same lays down that until and unless the lease is determined, the lessee is entitled to continue in possession. It is argued that the law as laid down in *Nopany Investments (P) Ltd.* to the effect that no determination of tenancy prior to the institution of the suit is necessary, is contrary to the judgment of the Constitution Bench in *V. Dhanapal Chettiar* and this Court should follow *V. Dhanapal Chettiar* and not *Nopany Investments (P) Ltd.* Else, it is not disputed that Supreme Court in *Nopany Investments (P) Ltd.* has held that filing of an eviction suit under the general law itself is a notice to quit on the tenant and that no notice to quit under Section 106 of the

Transfer of Property Act, 1882 was necessary in order to enable the respondent in that case to get a decree for eviction against the appellant.

9. The question, for determination of which a Bench of seven Judges was constituted in V. Dhanapal Chettiar, was whether in order to get a decree of eviction against a tenant under any State Rent Control Act it was necessary to give a notice under Section 106 of the Transfer of Property Act. The said question was answered by holding that no notice to quit under Section 106 of the Transfer of Property Act was necessary to enable the landlord to get an order of eviction under the State Rent Control Act. While holding so, the Supreme Court observed:-

‘that the action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or decree for eviction; until then, under the extended definition of the word ‘tenant’ under the various State Rent Acts the tenant continues to be a tenant even though the contractual tenancy has been determined by giving a valid notice under Section 106 of the Transfer of Property Act The giving of the notice, therefore, is a mere surplusage and unlike the law under the Transfer of Property Act it does not entitle the landlord to evict the tenant’

10. It would thus be seen the question, whether filing of an eviction suit under the general law itself is a notice to quit on the tenant, as answered in affirmative in Nopany Investments (P) Ltd. did not arise for consideration in V. Dhanapal Chettiar. It is a settled principle of law that a judgment is a precedent on what is for decision therein and what it decides and not on what can be inferred therefrom. (See Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. MANU/SC/1092/2002 : (2003) 2 SCC 111, Bharat Forge Co.

Ltd. Vs. Uttam Manohar Nakate MANU/SC/0043/2005 : (2005) 2 SCC 489 and Inderpreet Singh Kahlon Vs. State of Punjab MANU/SC/2433/2006 : AIR 2006 SC 2571)

11. I am therefore unable to find any case of inconsistency in the two judgments, as is argued.'

13. In the case Nopany Investments (P) Ltd. vs. Santokh Singh (HUF) (Supra) the question for determination before the Supreme Court was whether filing of an eviction suit under the general law itself is a notice to quit under Section 106 of Transfer of Property Act, 1882 on the tenant and it was answered in affirmative.

14. Since the question of law claimed to be substantial question of law by the appellant arising in this appeal, already stands answered, in view of the settled legal position this appeal needs to be dismissed as not giving rise to any substantial question of law.

15. The Regular Second Appeal is dismissed.

16. No costs.

CM No.42779 & 42780 of 2016

Dismissed as infructuous.

PRATIBHA RANI, J.

NOVEMBER 18, 2016/ 'st'