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

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Judgment delivered on: 21.10.2019

+ C.R.P. 159/2019 & CM APPL.33870/2019

INDIAN BANK

..... Petitioner

versus

B D AGGARWAL & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr.Milind Garg, Adv.

For the Respondent: None.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 30.01.2019 whereby the application of the petitioner under Order VII Rule 11 CPC has been dismissed.

2. Subject Suit was filed by the respondent for recovery of possession, mesne profits, damages and injunction. Case set up by the respondent is that the respondents were the owners of the subject property having purchased the same from his erstwhile owner. As per the respondents, the petitioner bank was a tenant under the erstwhile owner and after the purchase of the property, the erstwhile owner

informed the bank about the sale and requested the bank to attorn to the respondent.

3. It is contended that initially the subject premises was let out by its erstwhile owner for a period of five years commencing from 01.06.2009 and ending on 31.05.2014. It is contended that the lease expired by efflux of time and even a letter was issued by the bank informing the erstwhile owner that they were in the process of fixing an alternative premises for their branch and would continue in the existing premises as shifting to alternative premises would take three to four months.

4. It is contended that since the petitioner bank failed to vacate the premises, subject suit for ejectment and mesne profits was filed *inter alia* claiming use and occupation charges with effect from 01.08.2014 at the then alleged rate of rent of Rs.5,05,660/-.

5. Subject application under Order VII Rule 11 CPC was filed by the petitioner contending that the petitioner was a tenant holding over and after the expiry of the term of tenancy as provided by the lease deed dated 08.02.2010, petitioner bank became a month to month tenant and tenancy could be terminated only by a statutory notice under Section 106 of the Transfer of Property Act and as no notice had been given, the Suit was without any cause of action.

6. The Trial Court has noticed that the admitted case of the parties

is that the term stipulated by the lease deed dated 08.02.2010 had neither been extended nor renewed and admittedly as per the terms of the lease the stipulated period was five years, the period expired by efflux of time.

7. Trial Court has further held that since the tenancy expired by efflux of time, petitioner was a tenant at sufferance and continued to hold on to the premises till the premises were vacated by the petitioner and accordingly the respondent was permitted to claim damages for use and occupation at the market rate.

8. It is an admitted position that petitioner has surrendered the possession of the tenancy premises in March, 2018. The Trial Court has noticed the fact that since respondent had continued to prosecute the suit shows that respondent had not accepted the petitioner as a tenant and has neither withdrawn nor abandoned the relief of damages after receiving possession.

9. While considering an application under Order VII Rule 11 CPC, the Court has to accept the plaint with a demur. The defence or stand taken by the defendant in the written statement is not to be considered.

10. In the plaint, the respondent has very categorically set up a case that the petitioner bank was liable to hand over the possession of the Suit property after the term of the lease expired by efflux of time and

since they have not done so, they were liable to pay damages for use and occupation at the then prevailing rate of rent.

11. Filing of a Suit for ejectment amounts to a notice of termination of tenancy. The Supreme Court of India in *Nopany Investments (P) Ltd. versus Santokh Singh (HUF)* (2008) 2 SCC 728, has held that filing of an eviction suit under general law itself is a notice to quit on the tenant.

12. After termination of tenancy, a tenant who continues in possession would be liable to pay use and occupation charges/mesne profits, from the date of termination till he vacates the property. Accordingly, claim for damages would be maintainable even without issuance of a notice terminating tenancy.

13. Perusal of the plaint clearly shows that the plaint does disclose a cause of action. I find no infirmity in the view taken by the Trial Court in dismissing the application of the petitioner under Order VII Rule 11 CPC.

14. I find no merit in the petition. Petition is accordingly dismissed.

SANJEEV SACHDEVA, J

OCTOBER 21, 2019

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