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

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Date of decision: 22.04.2021

+ RSA 39/2021

M/S. NORTHERN INDIA CARRIERS Appellant

Through Mr. Rajeev Sharma &
Ms. Manpreet Kaur Bhasin,
Advocates

Versus

VINAY KUMAR & ANR. Respondents

Through None

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

Hearing has been conducted through Video Conferencing.

JYOTI SINGH, J. (Oral)

CM No. 13995/2021 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

CM No. 13993/2021

1. This is an application filed by the Appellant/Defendant No.1 seeking condonation of delay of 423 days in filing the appeal under Section 5 of the Limitation Act, 1963 read with Order XLI Rule 3(A) CPC.

2. The twofold grounds taken in the application for condonation of delay are that it took some time for the Appellant to change the counsel

and engage a new one as also that Ms. Tarvinderjit Kaur, the sole proprietor of Appellant was diagnosed with cancer and was undergoing treatment for the same. Her husband and son both underwent surgeries for the fracture of leg and jaw, respectively and due these multiple issues, which she was required to handle singly, counsel could not be engaged on time. Situation worsened on account of Pandemic Covid-19 and thus the delay is *bonafide* and for reasons beyond the control of the Appellant.

3. I have heard the learned counsels for the Appellant and examined the application.

4. Appellant has made out sufficient cause for condonation of delay in filing the present appeal and the averments are supported by medical documents. For the reasons stated in the application, delay of 423 days is condoned.

5. Application is accordingly allowed and disposed of.

RSA 39/2021 & CM APPL. 13992/2021(for stay)

1. Present regular second appeal has been filed for setting aside the order dated 01.10.2019 passed by the First Appellate Court, whereby the appeal of the Appellant herein preferred against the judgment and decree dated 22.05.2018 passed by the Trial Court decreeing the suit of the Respondent No.1/Plaintiff for possession, permanent injunction and damages/*mesne* profits, has been dismissed. Appellant was Defendant No.1 in the suit, Respondent No.1 herein was the Plaintiff and Respondent No. 2 was Defendant No.2 and are being referred to hereinafter by their litigating status in this Court.

2. Respondent No.1 filed a suit against Appellant pleading therein that Appellant had breached the terms and conditions of the Commission Agency Agreement (hereinafter referred to as '**the Agreement**') dated 14.05.1997. The suit property bearing No. 4008, Shivaji Road, Azad Market, Delhi-110006 was allotted to father of Respondent No.1, Late Mr. Jagdish Prasad, by DDA and was subsequently mutated in the name of the Respondent No.1. Appellant was authorized to carry out bookings and delivery of goods, as a commission agent under the Agreement, from the premises of the suit property. The Agreement was renewed from time to time *albeit* orally and Appellant had been sending Rs.6,000/- per month towards commission to the Respondent No.1 at his shop. However, from June, 2013, Appellant stopped paying the commission and it was learnt by the Respondent No.1 that Appellant had handed over possession of the suit property to Respondent No.2 without consent or even knowledge of Respondent No.1.

3. As per the case set out in the plaint, Appellant committed breach of the terms of the Agreement and thus Respondent No. 1 vide notice dated 20.07.2013 terminated the Agreement, calling upon the Appellant and Respondent No.2 to handover possession of the suit property, let out on license/commission basis. Respondent No.1 also demanded damages @ Rs.25,000/- per month and subsequently filed the present suit.

4. On being served with the summons, written statement was filed by the Appellant pleading that the legal heirs of late Sh. Jagdish Prasad misled the Appellant into believing that they had rights over the suit property. Notice issued by the DDA revealed that Respondent No.1 was

in unauthorized occupation of public land and in any event being a stranger to the Agreement had no locus to file the suit. DDA had directed Appellant to pay damages and he is dealing with the DDA in his own right. It was denied that Respondent No.1 had terminated the Agreement, vide notice dated 20.07.2013 or called upon the Appellant to remove Respondent No.2 from the suit property and handover peaceful vacant possession within 7 days. Liability to pay a sum of Rs. 25,000/- per month towards use and occupation charges was also denied. It was pleaded that no part of the suit property is in possession of Respondent No.2 and the allegations in the plaint are false. Dispute was also raised on the exact identification and description of the suit property.

5. In the written statement filed by Respondent No. 2, his stand was that Appellant was in exclusive possession of the suit property and Respondent No.2 was only using the address for reference purpose. In replication, Respondent No.1 denied the contents of written statements and reiterated the averments in the plaint.

6. Following issues were framed by the learned Trial Court on 12.08.2014:-

“1. Whether the plaintiff is entitled to decree for possession as prayed for? OPP

2. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP

3. Whether the plaintiff is entitled for mesne profits/damages @ Rs.25,000/- per month along with interest @ 15% per annum as prayed for? OPP

4. Whether the suit of plaintiff is bad for non joinder and misjoinder of necessary parties? OPD

5. Whether the plaintiff has cause of action in the present suit or not? OPD

6. Relief”

7. Respondent No.1 examined himself as PW-1 and Sh. Ram Kishan, LDC, Damage Section, DDA, who was a summoned witness as PW-2. Ex.PW-1/1(colly), being copies of notices under Section 7(3) of Public Premises Act issued by the DDA and PW-1/2 being a payment receipt, were confirmed to be correct as per him and he relied on DDA records in that context. To rebut the case of Respondent No. 1, Appellant examined Mr. Gurkirpal Singh as DW-1, who relied on Ex. DW-1/1, the site plan of the suit property and DW-1/2 the photographs of the suit property. DW-2 Sh. Kamal Dhingra tendered evidence by way of affidavit, Ex. DW-2/A.

8. Learned Trial Court decided Issues No.1 and 2 jointly, the onus to prove these Issues being on Respondent No.1. To decide the question whether the relationship between Respondent No.1 and the Appellant was that of a licensee/commission agent or not, Trial Court examined the nature of the documents on record as well as provisions of Section 52 of the Indian Easement Act, 1882. Finally learned Trial Court concluded that (a) Ex. PW-1/5, the Agreement was a license and not a lease and was proved by Respondent No. 1; (b) the Agreement was executed between Mr. Rajesh Kumar, one of the legal heirs of late Mr. Jagdish Prasad and the Appellant and stood terminated on 20.07.2013; (c) Appellant allowed the suit property to be used for purposes of business of Respondent No.2, which was a breach of the terms of the Agreement; (d) on account of

breach, the Agreement was terminated vide notice dated 20.07.2013, Ex. PW-1/6 and the license came to an end on the said date and (e) in view of the testimony of PW-2 that the suit property was in the name of Respondent No. 1, being one of the legal heirs of Sh. Jagdish Prasad, he could validly terminate the license. Thus Issues No.1 and 2 were decided in favour of Respondent No. 1.

9. Issue No. 3 was with respect to entitlement of Respondent No.1 to *mesne* profits/damages @ Rs.25,000/- per month along with interest @ 15% per annum and the onus was on Respondent No. 1. Trial Court held (a) the Agreement was terminated vide legal notice dated 20.07.2013 but Appellant and Respondent No.2 failed to handover peaceful and vacant possession of the suit property even after receipt of the said notice; (b) possession of Appellant and Respondent No. 2 became wrongful against Respondent No. 1; (c) Respondent No. 1 has not been able to prove that the suit premises could fetch rent of Rs. 25,000/- per month, if let out or similar properties in the area were fetching the said rent; (d) Respondent No. 1 has not led any evidence to support the claim of *mesne* profits @ Rs. 25,000/- per month or that Appellant was sending commission @ Rs. 6,000/- per month and (e) the Agreement disclosed an amount of Rs.4,840/- as minimum fixed amount towards commission. Accordingly Trial Court awarded *mesne* profits @ Rs.4,840/- per month with interest @ 6% per annum.

10. Trial Court thus decreed the suit directing the Appellant and Respondent No. 2 to handover peaceful and vacant possession of the suit premises to Respondent No.1, within 3 months from the date of the

judgment along with *mesne* profits, as aforementioned and also restrained the Appellant and Respondent No.2 and their agents from creating third party rights or interest in the suit property.

11. Appellant challenged the said judgment and decree before the First Appellate Court in RCA No. 21/2018 (121/2018), which was dismissed, vide judgment dated 01.10.2019. The First Appellate Court agreed with the contention of the Appellant that the Trial Court had erroneously treated the Agreement to be a license and held that it was in fact a lease, on the ground that Respondent No.1's brother while entering into the Agreement, had parted with the possession of the property and Appellant was in exclusive possession.

12. Court held that the since the Agreement was unregistered, tenancy was a month-to-month tenancy, terminable by 15 days notice and reliance was placed on the judgments of this Court in Ram Kumar Das vs. Jagdish Chandra **AIR 1952 SC 23**; and Deluxe Dentelles Pvt. Ltd. & Anr. vs. Ishpin der Kochhar, **2015 SCC OnLine Del 14507**. Contention of the Appellant that notice of termination was not received by him, was not accepted by the First Appellate Court, based on a presumption that arises in favour of a sender of a notice by the Regd. AD, under Section 27 of the General Clauses Act as well as the law laid down by this Court in Jeevan Diesels & Electricals Ltd. vs. Jasbir Singh Chadha (HUF) & Anr. **(2011) 183 DLT 712**, wherein it has been held that service of summons in a suit would be valid service for purpose of terminating the tenancy.

13. First Appellate Court held that the Appellant could not establish that it came in possession otherwise than under the present Agreement

and DW-1 admitted that the property was never allotted to the Appellant. Appellant could not prove its title or interest in the suit property, save and except, of a tenant, First Appellate Court held that Respondent No.1 was entitled to decree of possession and permanent injunction.

14. On the issue of cause of action in favour of Respondent No.1, First Appellate Court held that while Respondent No.1 was not a signatory to the Agreement, but in the body of the Agreement, it was recorded that Sh. Rajesh Kumar was entering into the Agreement as a legal heir and for on behalf of all other legal heirs of deceased Jagdish Prasad and thus, being a co-owner Respondent No.1, was entitled to file a suit against the tenant for eviction of the suit property.

15. Assailing the judgments of both the Courts, learned counsel for the Appellant contend (a) the relationship between the parties was under a business contract and not of landlord and tenant. There was profit-sharing of 1% in all transport carriage orders, taken and executed by the Appellant, to be shared with predecessor-in-interest of Respondent No. 1 with minimum amount being Rs. 4,840/- per month; (b) business contract was renewable at the option of the Appellant and clearly in the Agreement nomenclatures such as landlord, licensor etc were missing; (c) both Courts below have erred in holding that there was a breach of the terms of the Tenancy/License Agreement; (d) Title of Respondent No.1 was under a cloud and as no relief of declaration was sought by Respondent No. 1, suit for injunction simplicitor was not maintainable and ought to have been dismissed; (e) alleged notice of termination was

never served on the Appellant and thus no cause of action arose in favour of Respondent No.1.

16. I have heard learned the counsels for the Appellant and examined their contentions.

17. There is force in the contention of the Appellant that the Agreement between the parties Ex. PW-1/5 was a lease and the Trial Court has erred in treating the same to be a license. However, it needs to be noticed that the First Appellate Court has already rendered a finding that the Agreement is a lease and the finding of the Trial Court to this extent is erroneous. Thus this argument need not detain this Court any further. Learned counsel for the Appellant emphasizes that once the Agreement is treated as a lease, the judgment and decree passed by the Trial Court based on a contrary finding, deserves to be quashed. However, in the opinion of this Court, this finding has no bearing on the controversy between the parties, one way or the other.

18. The facts that emerge from the pleadings and the judgments impugned herein are that Respondent No.1 filed a suit for possession, permanent injunction and damages/mesne profits based on the Agreement dated 14.05.1997 whereby, Appellant was authorized as a commission agent to carry out booking of goods and their delivery from the suit property. As per Respondent No.1, when Appellant stopped paying the commission from June, 2013 and handed over possession of the suit property to Respondent No.2, without the consent and knowledge of the Respondent No.1, there was a breach and thus Respondent No.1

terminated the Agreement and called upon the Appellant and Respondent No.2 to handover possession and pay damages/mesne profits.

19. The Agreement Ex. PW-1/5 is an admitted document *albeit* admittedly unregistered and thus as rightly held by both Courts, tenancy shall be deemed to be 'month-to-month', terminable by 15 days' notice. This proposition of law emerges from a reading of the judgment of this Court in Deluxe Dentelles Pvt. Ltd. (supra), relevant paras of which are as follows:-

“28. 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.)

29. 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 23Ram Kumar Das v. Jagdish Chandra Deo 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. 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.

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 201.C. 715. A similar view seems to have been taken also in Mati-lal 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 Wore 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. 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 view finds support from a number of reported cases (Vide Debendra Nath v. Syama Prasanna, 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)

30. 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 v. 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.”

31. 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.

20. Insofar as the argument of the Appellant that notice terminating the Agreement was not received by the Appellant, is concerned, both Courts have held that even assuming that the notice was not received, service of summons in the suit is to be treated as valid service of the notice of termination and the reasoning based on the judgment of this Court in Jeevan Diesels & Electricals Ltd. (supra), cannot be faulted. Relevant paras of the judgment are as under:-

“11. The second argument that the legal notice dated 15.7.2006 was not received by the appellant, and consequently the tenancy cannot be said to have been validly terminated, is also

an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows:-

(i) The respondents/plaintiffs appeared in the trial Court and exhibited the notice terminating tenancy dated 15.7.2006 as Ex.PW1/3 and with respect to which the registered receipt, UPC and AD card were exhibited as Ex.PW1/4 to Ex.PW1/6. The notice admittedly was sent to the correct address and which aspect was not disputed before the trial Court. Once the respondents/plaintiffs led evidence and duly proved the service of legal notice, the appellant/defendant was bound to lead rebuttal evidence to show that the notice was not served although the same was posted to the correct address. Admittedly, the appellant/defendant led no evidence in the trial Court. In fact, even leading of evidence in rebuttal by the appellant would not have ordinarily helped the appellant as the notice was sent to the correct address. In my opinion, therefore, the trial Court was justified in arriving at a finding that the legal notice dated 15.7.2006 was duly served upon the appellant resulting in termination of the tenancy.

(ii) The Supreme Court in the case of Nopany Investments (P)Ltd. v. Santokh Singh (HUF), (2008) 2 SCC 728 has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of Nopany (supra) I hold that even assuming the notice terminating tenancy was not served upon the appellant (though it has been served and as held by me above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.

(iii) In the suits for rendition of accounts of a dissolved partnership at will and partition of HUF property, ordinarily it is required that a notice be given of dissolving the partnership at will or for severing the joint status before the filing of such suits because such suits proceed on the basis that the partnership is

already dissolved or the joint status of an HUF stands severed by service of notices prior to the filing of such suits. However, it has been held in various judicial pronouncements that the service of summons in the suit will be taken as the receipt of notice of the dissolution of the partnership or severing of the joint status in case of non service of appropriate notices and therefore the suits for dissolution of partnership and partition of HUF property cannot be dismissed on the technical ground that the partnership was not dissolved before filing of the suit or the joint status was not severed before filing a suit for partition of the HUF property by serving of appropriate notices. In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice under Section 106 of the Transfer of Property Act. Once we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule 7 CPC can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice under Section 106 is to give 15 days to the tenant to make alternative arrangements. In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also. In this regard, I am keeping in view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003 and as per which Amendment no objection with regard to termination of tenancy is permitted on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention

of Legislature is therefore clear that technical objections should not be permitted to defeat substantial justice and the suit for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

(iv) Another reason for rejecting the argument that the tenancy would not be terminated by the legal notice Ex.PW1/3 is that the respondents/plaintiffs admittedly filed a copy of this notice alongwith the suit way back in the year 2007. Once the summons in the suit alongwith documents were served upon the appellant/tenant, the appellant/tenant would obviously have received such notice. Even if we take this date when the appellant/tenant received a copy of the notice when served with the documents in the suit, once again, the period of 15 days has expired thereafter and keeping the legislative intendment of amended Section 106 in view, the appellant therefore cannot argue that the tenancy is not terminated and he did not get a period of 15 days to vacate the premises. I am in view of this position consequently entitled to take notice of subsequent events under Order 7 Rule 7 CPC, and taking notice of the subsequent events of the expiry of 15 days after receipt of a copy of the notice alongwith documents in the suit, I hold that the tenancy has been validly terminated, and as on date, the appellant/tenant has no right to stay in the premises and consequently the decree for possession was rightly passed by the trial Court.

12. Therefore, looking at it from any point i.e. the fact that legal notice terminating tenancy was in fact served, the suit plaint itself can be taken as a notice terminating tenancy or that the copy of the notice alongwith documents was duly served to the appellant/tenant way back in the year 2007, I hold that the tenancy of the appellant/tenant stands terminated and the appellant/tenant is liable to hand over possession of the tenanted premises.”

21. Respondent No.1 had filed the suit premised on the Agreement Ex.PW-1/5, which he was able to prove in evidence. Appellant was unable to prove in what capacity he came into the possession of the suit property, other than under the present Agreement. In cross-examination, DW-1 admitted that the property was never allotted to the Appellant and he had neither paid municipal taxes with respect to the said property nor ever applied with DDA for allotment. Respondent No. 1 on the other hand, proved the tenancy and the termination notice and the suit, in the opinion of this Court, was rightly decreed in the favour of the Respondent No.1. It is a settled law that in a suit for possession, a landlord is only required to prove (i) relationship of landlord and tenant. (ii) tenancy is not a protected tenancy under the Delhi Rent Control Act, 1958. (iii) there is no registered subsisting lease agreement. (iv) tenancy has been terminated as per Section 106 of the Transfer of Property Act and the tenant has failed to hand over possession. These principles have been crystallized in several judgements from time to time.

22. As far as the locus of Respondent No.1 to file the suit is concerned, while it is undisputed that the Respondent No.1 was not a signatory to the Agreement, but as rightly noted by both the Courts, in the body of the Agreement, it was clearly recorded that Sh. Rajesh Kumar was entering into the Agreement as a legal heir and for and on behalf of all other legal heirs of deceased Jagdish Prasad. That the Respondent No.1 was one of the legal heirs of Jagdish Prasad was never a point in dispute between the parties. Law permits a co-owner to bring a suit against a tenant or licensee for eviction of an immovable property as long as all the

co-owners agree to eject the tenant. This has been so held in M/s India Umbrella Manufacturing Co. & Ors. vs. Bhagabandie Agarwalla (Dead) Through LRs, (2004) 3 SCC 178, as under:-

“6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha v. Jagannath [(1976) 4 SCC 184] and Dhannalal v. Kalawatibai [(2002) 6 SCC 16] , SCC para 25.) This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.”

23. The next argument of the Appellant is that since the title of the Respondent No. 1 was under a cloud, it was incumbent upon Respondent No. 1 to seek a declaration *qua* his title and a suit for injunction simplicitor was not maintainable in law. The proposition of law argued by the Appellant cannot be debated. Law in this respect is no longer *res-integra* and counsel for the Appellant has rightly relied on the judgment of the Supreme Court in Anathula Sudhakar vs. P. Buchi Reddy, (2008) 4

SCC 594. First Appellate Court, decided the issue on the touchstone of doctrine of estoppel and held that Appellant was estopped from challenging the title of Respondent No.1 in view of Section 116 of the Indian Evidence Act and the judgment in Anathula Sudhakar (supra) was not applicable.

24. Section 116 of the Indian Evidence Act deals with estoppel against tenants or licencees or lessees in possession and falls in the category of estoppel by contract. The principle embodied in Section 116 of the Indian Evidence Act prevents a tenant, in occupation of the demised premises, from denying the title of the landlord, who let him into possession. In Re: Stringer's Estate, LR. Ch. 9, **Jessel-M.R.**, explained the spirit and rationale underlying the doctrine of estoppel, as under :-

“Where a man having no title obtains possession of land under a demise by a man in possession who assumes to give him a title as tenant, he cannot deny his landlord's title. This is perfectly intelligible doctrine. He took possession under a contract to pay rent so long as he held possession under the landlord, and to give it up at the end of the term to the landlord, and having taken it in that way he is not allowed to say that the man whose title he admits and under whose title he took possession has not a title. That is a well-established doctrine. That is estoppel by contract.”

25. The principle that a tenant in possession of the property cannot contest the title of the landlord was reiterated by a three-Judge Bench of the Supreme Court in Sri Ram Pasricha vs. Jagannath and Ors., (1976) 4 **SCC 184** and the relevant paras are as under :-

“13. It is strenuously submitted by Mr Tarkunde that unless the landlord is also the absolute owner of the premises, he cannot

evict the tenant under Section 13(1)(f). Landlord means landlords under the appropriate General Clauses Act and, therefore, since there are other co-sharers the plaintiff alone could not file the suit for eviction.

14. There are two reasons for our not being able to accept the above submission. Firstly, the plea pertains to the domain of the frame of the suit as if the suit is bad for nonjoinder of other plaintiffs. Such a plea should have been raised, for what it is worth, at the earliest opportunity. It was not done. Secondly, the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord under Section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-owners as such.”

26. In this context, this Court refers to a judgment in the case of Vinay Eknath Lad vs. Chiu Mao Chen, (2019) 20 SCC 182 wherein, the Supreme Court held that in a landlord-tenant suit, the landlord is not required to prove his title in the subject property, unlike in a title suit. The Supreme Court held that it is not the law that in a landlord-tenant suit, the landlord cannot be called upon at all to prove his ownership of the premises, but onus is not on him to establish perfect title of the suit property. The principle of estoppel bars a tenant from questioning the title of the landlord as incorporated in Section 116 of the Indian Evidence Act. The only exception to the said doctrine is where the tenant is validly attorned to the paramount title holder of the property or where the plaintiff / landlord had, during the intervening period lost his title to the

property. The present is not a case where the Appellant claims that the property vested in anyone else who could be described as a paramount title holder or that there was extinction of the title of Respondent No.1.

27. This Court has carefully perused the written statement filed by the Appellant. It is not the case of the Appellant that he was the owner of the suit property or that he had taken the same on lease or licence from any third party. Both Courts have therefore, in my view, rightly held that the Appellant came into possession of the suit property only pursuant to the Commission Agency Agreement and there is not a whisper in the written statement as to in what other capacity Appellant came into possession and started occupying the suit property. The equity doctrine of estoppel clearly applies to the present case and the Appellant cannot contend that Respondent No.1 had no title to the suit property. In this view, Respondent No.1 was not required to seek a relief of declaration of ownership and the judgment in Anathula Sudhakar (supra) will not be of any avail to the Appellant.

28. A Regular Second Appeal only lies on a substantial question of law as is evident from reading of the provisions of Section 100 CPC. The Constitution Bench of the Supreme Court in its landmark judgment in Sir Chunilal vs. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd., **AIR 1962 SC 1314** enunciated the principles for deciding what a substantial question of law is and the relevant para is as follows :-

“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 absurd the question would not be a substantial question of law.”

29. Relying on the said judgment, the Supreme Court in Hero Vinoth vs. Seshammal, (2006) 5 SCC 545 held as follows :-

“21. The phrase “substantial question of law”, as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying “question of law”, means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with-technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. Ram Ditta [(1927-28) 55 IA 235 : AIR 1928 PC 172] the phrase substantial question of law as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju [AIR 1951 Mad

969 : (1951) 2 Mad LJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314], SCR p. 557)

“When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.”

30. Recently, the Supreme Court in Nazir Mohamed vs. J. Kamala and Ors., **2020 SCC OnLine SC 676** reaffirmed the principles as follows :-

“33. To be a question of law “involved in the case”, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from Santosh Hazari v. Purushottam Tiwari⁴.

36. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in Ramchandra v. Ramalingam⁵. An entirely new point,

raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.

37. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases

where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

31. In Veerayee Ammal vs. Seenii Ammal, (2002) 1 SCC 134, the Supreme Court held that merely because on appreciation of evidence, another view is possible, it would not clothe the High Court to assume jurisdiction by terming an issue of fact as a substantial question of law.

32. Applying the parameters, none of the questions raised by the Appellant herein can be termed as substantial questions of law and thus, no interference is called for in the impugned judgments.

33. The appeal has no merits and is accordingly dismissed, alongwith pending application. No orders as to costs.

JYOTI SINGH, J

APRIL 22, 2021

Yo/yg