

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

% *Order delivered on: November 22, 2013*

+ **CM(M) 952/2013 & C.M. No.14389/2013**

SH SUSHIL ANSAL ..... Petitioner  
Through Mr.Awatar Singh, Adv. with  
Mr.Gurinder Pal Singh, Adv.

versus

SHRI CHARANJIT SINGH SOLE PROPRIETOR, CHARMIS  
ENTERPRISES ..... Respondent  
Through None

**CORAM:  
HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed order dated 26<sup>th</sup> August, 2013 passed by the learned Civil Judge in Civil Suit No. 227/2013.

2. Brief facts for the purpose of adjudication of the present matter are that the petitioner filed a suit against the respondent for ejection and recovery of arrears of rent as also damages for illegal use and occupation of the suit premises i.e. Mezzanine Floor, Sandhya Deep Building, 15, Community Centre, East of Kailash, New Delhi. It was stated in the suit that the respondent was under a tenancy of the petitioner at a monthly rent of ₹13,225/- excluding water and electricity consumption charges and the tenancy was on month to month basis.

3. Since the petitioner did not want to continue with the respondent as a tenant in the suit premises, he served a notice dated 24<sup>th</sup> January, 2012 under Section 106 of the Transfer of Property Act, terminating the said tenancy from the expiry of 17<sup>th</sup> March, 2012. It was stated in the termination notice that in case the respondent fails to comply with the said notice, the respondent shall be liable to pay damages for improper and illegal use and occupation of the suit premises at the rate of ₹1,00,000/- per month with effect from 18<sup>th</sup> March, 2012. Since the respondent failed to comply with the said notice, the petitioner filed the said suit against the respondent. It was further stated in the suit that the respondent has been in arrears of rent for a period from 1<sup>st</sup> March, 2012 to 17<sup>th</sup> March, 2012.

4. The respondent in his written statement averred that the suit was filed pre-maturely and that according to the agreement dated 24<sup>th</sup> December, 2004 entered into by the parties, the petitioner was a landlord under whom the respondent is a tenant since January, 2005 and that the tenancy was for a period of nine years, expiring on 30<sup>th</sup> December, 2013, which was also further extendable. It was stated that the petitioner had concealed the reply-notice dated 16<sup>th</sup> February, 2012 sent by the Advocate on behalf of the respondent. It was also stated that the initial rent for the suit premises was ₹10,000/- per month, which was increased to ₹13,225/- per month. It was averred that the respondent had paid ₹50,000/- towards security deposit to the petitioner.

5. In the course of proceedings, the petitioner filed an application under Order XII Rule 6 CPC stating therein that the respondent in his written statement had admitted the relationship of tenant -landlord between the

parties, the rate of last paid rent and receipt of the notice of termination, so the suit be decreed in favour of the petitioner.

6. In the reply to this application, the respondent contended that there was no express admissions made by him which could entitle the petitioner for a judgment.

7. Dismissing the said application of the petitioner the learned Trial Court observed as follows:

*“7. Perusal of the issues would show that there are various triable issues framed by the Ld. Predecessor. The first issue is whether there is any cause of action in favour of the plaintiff. the other issue is related to the arrears of rent. In the WS the defendant has contended that he had given security of Rs.50,000/- to the plaintiff. This fact is not mentioned in the plaint. Plaintiff had also claimed damages @ Rs.1,00,000/- per month. This fact also requires evidence. Further, the defendant has also contended that a lease agreement was entered into between the parties for a period of nine years in which the fact of security deposit of Rs.50,000/- is mentioned. The plaintiff has not mentioned this fact in his plaint, nor he has given any reply in his replication. It also requires evidence.*

*8. In the light of the discussion herein-above, I am of the considered opinion that there are various triable issues which require evidence before the suit can be disposed off. Issues have already framed. PW-1 has tendered his evidence by way of affidavit. He is partly cross examined. Therefore, I am of the considered opinion that evidence must be led by the parties before passing any judgment on the merits of the case. Hence, the application of the plaintiff is dismissed and disposed off accordingly.”*

8. Aggrieved thereof the petitioner filed the present petition on the ground mainly that the impugned order is erroneous in law, based on extraneous considerations and a result of non- application of judicial mind.

Despite of service of notice, no one appears on behalf of respondent. No reply was filed.

9. I have heard learned Counsels for the parties and perused the record. Order 12 Rule 6 CPC reads as under:

“Judgment on admissions - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

10. A bare perusal of Order 12 Rule 6 CPC re-produced above makes it clear that the emphasis is on admission of relevant facts. If the relevant facts have been admitted, the mere fact that the respondent has tried to put their own interpretation to those facts with a view to defeat the claim of the petitioner would not be a sufficient ground to decline relief under Order 12 Rule 6 CPC.

11. In the present case following facts and circumstances emerge from the pleadings of the parties :

- (1) there exists relationship of land lord and tenant between the parties;
- (2) notice of termination under Section 106 of TP Act has been duly served;
- (3) the rate of rent exceeded Rs. 3500/-p.m. when the notice under Section 106 of Transfer of Property Act was served.

12. All the three conditions in the present case are satisfied, the finding of the trial court in the application filed by the petitioners are totally contrary to law and cannot be sustained as the learned Trial Court has not considered the fact that the respondent has admitted the receipt of notice of termination and the rate of rent is more than ₹3500/-. The relationship of landlord tenant is also not denied by the respondent. It is settled law that where a claim is admitted, the Court has jurisdiction to pass a decree on admitted claim without leading any evidence in this regard.

13. There is also no force in the submission of the respondent that the tenancy would not become month to month after the receipt of notice of termination in the presence of lease deed of nine years and the same would be expiring on 30<sup>th</sup> December, 2013 and thus prior to the said expiry, filing of suit for possession is not maintainable and the petitioner is guilty of concealment of factum of lease deed. It is the admitted position between the parties that the lease agreement was dated 24<sup>th</sup> December, 2004. As per one of clauses, the tenancy was for nine years, however the respondent has not denied the fact that the said lease agreement is an unregistered document, so the advantage of the clause of the period of nine years cannot be derived by the respondent in case of an unregistered lease deed in view of the settled law. The tenancy would become month to month basis on the service of notice of termination. In the present case, admittedly the notice dated 13<sup>th</sup> February, 2012 for termination was sent to the respondent. Thus, after the expiry of stipulated period, the suit for possession was maintainable.

14. The receipt of legal notice under Section 106 of the Transfer of Property Act is not denied by the respondent therefore, tenancy in the premises would be a month to month after duly served upon the notice, thus, it stood terminated. Even otherwise now as per settled law, the said

objection has lost its value in view of settled law on this aspect. See the following decisions :

- i) The Supreme Court in the case of *Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)*, 2008 (2) SCC 728 held that the filing of the eviction suit under general law itself was notice to quit upon the respondents and thus even as per the alleged claim of the respondent No.2 of a separate tenancy, the same being a month to month tenancy, the same stood terminated on the filing of the suit and service of summons, plaint and documents thereof upon him.
- ii) In *Usha Rani Jain v. Nirulas Corner House Private Limited*, ILR (2005) II Delhi 349, this Court held as under:-

“17. Though a plea was taken in the written statement about non determination of the lease because no notice to quit as envisaged under Section 106 of the Transfer of Property Act has been served on the defendants before filing of the present suit, but this aspect was not pressed at the hearing. Even otherwise, **it is a well settled proposition of law that when the term of the lease has expired by efflux of time, there is no need for a landlord to determine the lease by serving quit notice.**”

15. In the absence of a contractual period of tenancy, the defendant as per the law is to continue in possession of the premises but only as month to month tenant. The tenancy is terminable by the lessor on the service of notice. Admittedly, in the present case, notice was served upon the defendant by the plaintiff, the receipt of which is not disputed by the defendant. Thus, I am of the view that the trial in the matter is not required as the parties are not at issue on any question of law or act to be determined further. The provisions of Order XII Rule 6 CPC are therefore applicable.

16. The Trial Court ought to have followed the said judgments while passing the impugned order because the learned Trial Court failed to appreciate the findings of this Court in the following cases :

a) *ASSOCHAM Vs. Y.N. Bhargava*, 185 (2011) DLT 296 wherein it has been held that as follows :

“5. A resume of the aforesaid facts show that:

(i) There is No. dispute that there is a relationship of landlord and tenant between the parties. I am saying that there is No. dispute because in the notice terminating the tenancy, it is specifically stated by the Respondent/Plaintiff that the Appellant herein is a tenant, and this was not denied by the Appellant in the reply dated 30.8.2007. In fact, a reference to the parawise reply given with respect to paras 1 and 2 of the notice shows that the Appellant/Defendant specifically states that the Appellant "took on lease" the subject property from the Plaintiff. Even in the application under Order 12 Rule 6 Code of Civil Procedure the factum of the Appellant having taken the premises on lease and the premises being on rent with the Appellant/Defendant is not disputed, and what was only alleged was that the rent which was payable was not a monthly rent but annual rent.

(ii) The lease deed between the parties dated 10.7.1995 is an un-registered lease deed. Section 49 of the Indian Registration Act, 1908 bars this Court from looking into the terms and conditions of an un-registered lease deed. Once the lease deed is un-registered, the tenancy in law would be a monthly tenancy. Once the lease deed is not registered, the period stated therein viz the lease being of 27 years plus 7 years will also not come into operation and the tenancy would be a month-to-month tenancy under Section 107 of the Transfer of Property Act, 1882. As per Section 106 of the Transfer of Property Act, 1882, unless there is a contract to the contrary, a lease (except a lease for manufacturing or agricultural purposes) is a month-to-month lease. The language of Section 106(1) of the Transfer of Property Act, 1882 being "in the absence of a contract... to the contrary..." indicates that there can be a contract to the contrary, however such a contract would have to be a legal contract, i.e. if a contractual period contained in the lease deed is of the period of more than a year, then,

the lease deed can only be looked into if the same is registered since the registration is mandatory in terms of Section 17(1)(b), 17(1)(d) of the Indian Registration Act, 1908 and Section 107 of the Transfer of Property Act, 1882.

(iii) The monthly rate of rent for the premises was Rs. 58,338.33 per month as contended by the Respondent/Plaintiff, whereas the Appellant/Defendant contended that the rent was an annual rent of Rs. 7 lacs per year. Since the lease is a month-to-month lease and the monthly rent is more than Rs. 3,500/- per month, the suit premises have No. protection of the Delhi Rent Control Act, 1958.

(iv) The legal notice terminating tenancy was in fact duly served and replied too by the Appellant. One part of the notice talks of breach of terms and conditions of lease, however, the last para of the notice clearly specifies that the notice is sent under Section 107 of the Transfer of Property Act, 1882.

6. Accordingly, there is a relationship of landlord and tenant between the parties, the rate of rent is more than Rs. 3,500/- per month taking the tenancy is outside the protection of Delhi Rent Control Act 1958, the tenancy is a month-to-month tenancy since there is No. contract to the contrary as required by Section 106(1) of the Transfer of Property Act, 1882 and that the tenancy was terminated by a legal notice sent under Section 106 of the Transfer of Property Act. These admissions thus clearly justify passing of a decree in the suit for possession under Order 12 Rule 6 Code of Civil Procedure.”

b) ***Rakesh Basra Vs. Satsagar Gupta***, 186 (2012) DLT 129 wherein it has been held that as follows :

“15. Therefore, in the present case, as appearing to us, there is a clear admission on behalf of the defendant that there existed a relationship of landlord and tenants, the rent is Rs. 13000/-. As such on these admitted facts, there are no other options in the matter but to allow the present application.

16. In the case of M/s. Emirates Vs. DLF Universal Ltd.; 169 (2010) DLT 604, it was held that in the absence of a contractual period of tenancy, the defendant as per the law is to continue in

possession of the premises but only as month to month tenant. The tenancy is terminable by the lessor on the service of notice. Admittedly, in the present case, notice was served upon the defendant by the plaintiff, the receipt of which is not disputed by the defendant.

17. Thus, I am of the view that the trial in the matter is not required as the parties are not at issue on any question of law or act to be determined further. The provisions of Order XII Rule 6 CPC are therefore applicable. The Court is empowered to pronounce the judgment under the said provision besides the provision of Order XV of the CPC.

18. Therefore, I allow the plaintiff's application under Order 12 Rule 6 CPC and a preliminary decree is passed in relation to vacation of defendant and delivery of possession of the suit premises.”

c) ***Delhi Jal Board Vs. Surendra P. Malik***, 104 (2003) DLT 151 DB wherein it has been held that as follows :

“11. There is hardly any scope for doubt that admission of this fact arises in the suit both from pleadings and otherwise. It is the admitted position that relationship of a landlord and tenant existed between the parties which had come about through the execution of Lease Deed dated 30.7.65 which was for a fixed term of two years and expired by efflux of time on 30.3.1967 and by virtue whereof Appellate entered and occupied the premises.....

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13. Even otherwise notice under Section 106 TPA was sent to Appellant by registered AD which was returned to respondent. The Trial Court has raised a presumption of service of this notice against the appellant in the facts and circumstances of the case and in our view rightly. The only objection raised in this regard is that the envelope containing the notice did not carry the full address of Appellant. All this including the plea about non-service of notice under Section 478 DMC Act represent appellant's attempts to catch at straws and to close eyes to the reality. In any case, this aspect does not assume any importance as no notice under Section 106 was required to be served on appellant due to the expiry of the Lease between the

parties by efflux of time, nor was notice under Section 478 of DMC Act relevant in the circumstances.

14. Could it, Therefore, be said in this scenario that objections raised by the Appellant were such which touched the root of the matter or that the discretion exercised by Trial Court to enter the judgment under Order 12 Rule 6 was improper.

15. The answer to this has to be in the negative. Because Trial court had rightly proceeded on the admissions of fact arising in the suit which left no scope for doubt that tenancy had expired by efflux of time. There was nothing to suggest that the Lease had continued thereafter or any new tenancy was created between the parties to warrant its termination by service of notice under Section 106 TPA. The other issue related to notice under Section 478 DMC Act was also answered rightly. The court was, Therefore, within its competence and justified to render the judgment on the admissions of fact that tenancy had expired by efflux of time and to leave aside the other issues even though these may have been determinable. There was also nothing wrong in its doing so though the suit was at evidence stage because it could enter such judgment at any stage of the suit in the mutual interest of both parties. It is also not that if objections taken by Appellant were entertained, it would have altered the result or the course of the suit anyway.”

d) ***Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India***, (2000) 7 SCC 120 wherein it has been held that as follows :

“In the objects and reasons set out while amending the said rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.” We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear

admission of facts in the face of which, it is impossible for the party making such admission to succeed.”

e) ***M/s. Payal Vision Ltd. Vs. Radhika Choudhary***, JT 2012 (9) SC 214 wherein it has been held that as follows :

“In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the Plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord Under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the Code of Civil Procedure.”

f) ***K.B. Saha & Sons Private Limited Vs. Development Consultant Limited***, (2008) 8 SCC 564 wherein it has been held that as follows :

“From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in Immovable property of the value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a

document for the purpose of proving an important clause would not be using it as a collateral purpose.”

17. The learned Trial Court also ignored the cardinal principal of law that any unregistered document which requires mandatory registration under Section 17 of the Registration Act cannot be looked into by the Court and the said document is inadmissible in evidence as per the provisions of Section 49 of the Registration Act.

18. The learned Trial Court did not appreciate the fact that respondent's reliance on an unregistered lease deed is of no consequence and even if opportunity is afforded to respondent to lead evidence, he shall not be able to prove such a document.

19. In view of the settled provisions of law on this aspect, I am of the view that the petitioner is entitled for the decree of possession in respect of the suit premises in their favour against the respondent. The trial Court has wrongly given its finding despite of the settled law on this aspect. In fact, the application under Order XII, Rule 6 CPC to the extent of prayer for grant of decree of possession ought to have been allowed. The impugned order is accordingly set aside. The application filed by the petitioner under Order XII, Rule 6 CPC is accordingly allowed. Thus, a decree for possession is passed in favour of the petitioner and against the respondent, in respect of the suit premises i.e. Mezzanine Floor, Sandhya Deep Building, 15, Community Centre, East of Kailash, New Delhi.

20. However, the operation of the present judgment and decree in respect of possession would become operative w.e.f. 31<sup>st</sup> December, 2013.

21. As regards damages/mesne profit for occupation, learned trial Court will hold inquiry under Order 20, CPC and pass appropriate orders.

22. Accordingly, parties are directed to appear before learned trial Court on 10<sup>th</sup> February, 2014.

23. No costs.

**(MANMOHAN SINGH)**  
**JUDGE**

**NOVEMBER 22, 2013**