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

\+ **RFA No.40 /2010**

% **20th December, 2011**

SHRI RADHAKRISHAN TEMPLE TRUST MAITHAN, AGRA
..... Appellant
Through : Mr. R.M. Sinha, Advocate with Ms. Namita Sinha, Advocate.

versus

M/S. HINDCO ROTATRON PVT. LTD. & ORS. ..... Respondents
Through : Mr. Saurabh Upadhyay, Advocate for respondent No.1.
Mr. Rajesh Rattan, Advocate for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

1. An interesting issue arises for determination by this Court in this appeal. The issue is that: can a tenant whose tenancy is not protected by the Delhi Rent Control Act, 1958 urge that because of lack of termination of the monthly tenancy i.e. the monthly tenancy having not been terminated by a proper notice, the suit for possession filed by the landlord against the tenant is liable to be dismissed inasmuch as on the date of filing of the suit, the defendant/tenant was not an unauthorized occupant. Related to this

aspect is the aspect that if the lease is sought to be terminated by the landlo by serving of a notice terminating the tenancy during the pendency of the suit, should the suit be dismissed by that very fact i.e. the appellant/landlord/plaintiff should be directed to file a fresh suit because the issuance of the subsequent notice shows that the suit for possession was not validly instituted on the date it was filed inasmuch as on the date of filing of the suit the tenancy was not determined. In response to these issues, on behalf of the appellant/plaintiff/landlord it is argued that technicalities should not be allowed to prevail over substantive law i.e. keeping the object of Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the Act') in view; and more so after its recent amendment by Act 3 of 2003; and once the tenant otherwise has notice of 15 days to vacate the premises, the suit for possession ought not to be dismissed and the subsequent event of the tenancy being terminated during the pendency of the suit ought to be taken note of under Order 7 Rule 7 of Code of Civil Procedure, 1908 (CPC), keeping the requirement of substantial justice in mind.

2. The admitted facts between the parties are that the appellant is the owner/landlord of the premises comprising of first floor and mezzanine floor of the property bearing No.6/90, P Block, Connaught Circus, New

Delhi, of which the respondent No.1 is the tenant and the respondent Nos and 3 are the legal sub-tenants. It is also not in issue; inasmuch as it is admitted; that the suit premises fall outside the protection of Delhi of Rent Control Act, 1958 inasmuch as the premises were sublet to a subtenant who was paying rent in excess of ₹ 3,500/- per month. This is the legal position in Delhi by virtue of Division Bench judgment in the case of ***P.S. Jain Company Ltd. Vs. Atma Ram Properties Ltd. 1997 (65) DLT 308.*** The sole basis for dismissal of the suit by the trial Court is that since the tenancy was a monthly tenancy, and which tenancy was not terminated by means of a legal notice under Section 106 of the Act prior to the filing of the suit, the suit was not maintainable when filed. The trial Court has also observed that after filing of the suit i.e. during the pendency of the suit, a notice dated 10.12.1999 was sent by the appellant/plaintiff/landlord stating that the earlier notice dated 7.3.1994 was defective and the lease was terminated by means of the subsequent notice dated 10.12.1999, thus making the suit filed on the basis of the earlier notice dated 7.3.1994 incompetent.

This Court therefore is required to consider that if a suit for possession is filed without serving a notice under Section 106 of the Act, can such a suit be decreed. Also, to be examined is that what is the effect of a notice sent during the pendency of the suit by a landlord to a tenant terminating the

tenancy and admitting that the earlier notice terminating tenancy w defective.

3. As per Section 106 of the Act, a lease of an immovable property which is not for a manufacturing purpose, is a monthly tenancy, and the monthly tenancy can be terminated by service on the tenant of a notice of 15 days. Before the amendment to Section 106 of the Act by Act 3 of 2003 the notice had to terminate the tenancy on a date expiring with the tenancy month. In this avatar, in which Section 106 of the Act was prior to its being amended by Act 3 of 2003, hundreds nay thousands of suits filed between the landlord and tenant were contested on the technical ground that the legal notice did not terminate the tenancy from the end of the tenancy month. The language of Section 106 of the Act before its amendment provided therefore a fertile ground for the litigants and lawyers to contest suits on this technical ground that the tenancy was not validly terminated by means of a notice expiring with the end of tenancy month. After the decades of litigation based on such defences of suits not being maintainable as the notices were not valid notices under Section 106 of the Act as such notices did not terminate the tenancy with the expiry of the tenancy month, the Legislature thankfully became alive to this undesirable position of prevailing of technicalities over substantial justice, and therefore amended the Act by

The Transfer of Property (Amendment) Act, 2002. Since this is a very sho

Act, I would seek to reproduce in its entirety as under:-

"THE TRNASFER OF PROPERTY (AMENDEMNT) ACT, 2002

[31st December, 2002]

(3 of 2003)

An act further to amend the Transfer of Property Act, 1882.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

1. Short title.- This Act may be called the Transfer of Property (Amendment) Act, 2002.

2. Substitution of new section for section 106.-For section 106 of the Transfer of Property Act, 1882 (4 of 18882) (hereinafter referred to as the principal Act), the following section shall be substituted, namely:-

"106. The Duration of certain leases in absence of written contract or local usage.-

(1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period of mentioned in sub-section (1) shall commence from the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceedings is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not

practicable) affixed to a conspicuous part of the property."

3. Transitory provisions.- The provisions of section 106 of the principal Act, as amended by section 2, shall apply to-

(a) all notices in pursuance of which any suit or proceedings is pending at the commencement of this Act; and

(b) all notices which have been issued before the commencement of this Act but where no suit or proceeding has been filed before such commencement."

4. The intention of the legislature in bringing about the amendment to Section 106 of the Act is very clear by virtue of sub-section (3) in that all technical defences to the notice under Section 106 of the Act on the ground that the same was an invalid notice as the monthly tenancy was not terminated by a notice ending with the tenancy month, were done away with as long as a 15 day notice period was given to the tenant to vacate the premises. Suits for possession thus could not be dismissed on the ground of invalidity of the notice terminating the tenancy. Obviously, this amendment was in accordance with real intention and spirit of Section 106 of the Act whereby the tenant was only required to be given a reasonable time to vacate the property. The legislature considers this reasonable time to be of 15 days. Therefore, every tenant by virtue of amended Section 106 of the Act is put to notice that in case the landlord is legally entitled to ask the tenant to vacate the premises, the tenant shall vacate the premises as long as the tenant has a 15 days notice period to vacate the tenanted premises. That

the legislative intention for not delaying the suits for possession filed by landlords can be further noticed from the fact that the amended Section 106 was also to apply to all pending litigations.

5. It is keeping the aforesaid legislative intent behind the amended Section 106 of the Act that one has to decide defences that suits filed by the landlord against the tenant for eviction from the tenanted premises ought or ought not to be dismissed because of lack of notice/valid notice terminating the tenancy before filing of the suit for possession. Of course, wherever a tenant has a proper registered lease deed for a fixed period with respect to the tenanted premises such a tenancy cannot be terminated by means of a notice under Section 106 of the Act and the tenant would have a right to continue to stay in the premises for the fixed period of lease, depending of course on the other terms of the lease deed.

6. Ordinarily, a suit has to be decided on the basis of a cause of action which exists on the date when the suit is filed. However, this technical rule has been whittled down by a catena of judgments of the Supreme Court whereby the Supreme Court has said that Courts are always empowered to take notice of subsequent events under Order 7 Rule 7 CPC to shorten the litigation. In fact, the provision of Order 7 Rule 7 CPC has been extensively applied by the Supreme Court in litigations between the landlord

and the tenant under different Rent Control Acts, more so in petitio pertaining to eviction on the ground of bonafide necessity. The Supreme Court has repeatedly held that the object of taking notice of subsequent events is to shorten the litigation and to do substantive justice. This principle of taking notice of subsequent events is a well settled principle and I therefore need not burden this judgment with the innumerable judgments of the Supreme Court on this aspect. Of course, it has to be kept in mind that where there are disputed questions of facts pertaining to subsequent events, such disputed questions of facts ordinarily will require trial, however, where the subsequent events bring out an admitted or categorical position they can be used to pass appropriate orders on the basis of such admitted subsequent events/facts.

7. So far as the facts of the present case are concerned, the same show that it is apposite that this Court applies the principle of Order 7 Rule 7 CPC in view of the admitted facts, and more particularly keeping in mind the intention of legislature in amending Section 106 of the Act by Act 3 of 2003. Once we keep the legislative intention in focus that a tenant who has no right to stay in the tenanted premises, because there is no registered lease for a fixed period entitling the tenant to stay in the premises, once a 15 days notice period is given to the tenant to vacate the premises, the conclusion

that the suit for possession must not be dismissed but decreed, falls in plac Therefore, even if the notice by which tenancy is terminated prior to the filing of the suit is held to be invalid, then, in my opinion, service of summons of the suit for eviction of the tenant showing the categorical intention of the landlord asking the tenant to vacate the tenanted premises can be taken as a notice under Section 106 of the Act read with Order 7 Rule 7 CPC. Of course, one consequence will be that if the tenancy was terminated prior to the filing of the suit validly, the liability towards the mesne profits would begin from such earlier date by which the tenancy was terminated, but where the Court takes termination of tenancy by means of service of summons in the suit or on the basis of any other subsequent act/event then the only consequence could be that though the suit for possession will have to be decreed because the tenant has 15 days notice to vacate the premises, however, mesne profits could be said to be payable from the date from which it is held that the tenancy stands terminated by means of requisite knowledge to the tenant to vacate the premises having received a notice period of 15 days.

8. The Supreme Court in the case of ***Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), 2008 (2) SCC 728*** has held that a monthly tenancy can be said to be determined on a filing of a suit for possession by

the landlord. The relevant observations of the Supreme Court are contain

in para 22 of the judgment in ***Nopany's*** case and which reads as under:-

> "22. In the present case, after serving a notice under Section 6-A read with Section 8 of the Act, the protection of the tenant under the Act automatically ceased to exist as the rent of the tenanted premises exceeded ₹ 3500 and the bar of Section 3(c) came into play. At the risk of repetition, since, in the present case, the increase of rent by 10% on the rent agreed upon between the appellant and the respondent brought the suit premises out of the purview of the Act in view of Section 3(c) of the Act, it was not necessary to take leave of the Rent Controller and the suit, as noted hereinabove, could be filed by the landlord under the general law. The landlord was only required to serve a notice on the tenant expressing his intention to make such increase. When the eviction petition was pending before the Additional Rent Controller and the order passed by him under Section 15 of the Act directing the appellant to deposit rent at the rate of ₹ 3500 was also subsisting, the notice dated 9-1-1992 was sent by the respondent to the appellant intimating him that he wished to increase the rent by 10 per cent. Subsequent to this notice, another notice dated 31-3-1992 was sent by the respondent intimating the appellant that by virtue of the notice dated 9-1-1992 and in view of Section 6-A of the Act, the rent stood enhanced by 10per cent i.e. from ₹ 3500 to ₹ 3850. It is an admitted position that the tenancy of the appellant was terminated by a further notice dated 16-7-1992/17-7-1992. Subsequent to this, Eviction Petition No.432 of 1984 was withdrawn by the respondent on 20-8-1992 and the suit for eviction, out of which the present appeal has arisen, was filed on 6.2.1993. That being the factual position, it cannot at all be said that the suit could not be filed without the leave of the Additional Rent Controller when, admittedly, at the time of filing of the said suit, the eviction petition before the Additional Rent Controller had already been withdrawn nor can it be said that the notice of increase of rent and termination of tenancy could not be given simultaneously, when, in fact, the notice dated 16-7-1992/17-7-1992 was also a notice to quit and the notice intending increase of rent in terms of Section 6-A of the Act was earlier in date than the

notice dated 16-7-1992/17-7-1992. In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this Court in *V. Dhanapal Chettair v. Yesodai Ammal."* (underlining added)

9. Recently in the judgment reported as ***M/s. Jeevan Diesels & Electricals Ltd. Vs. M/s. Jasbir Singh Chadha (HUF) & Anr. 2011 (182) DLT 402,*** and against which S.L.P. No.15740/2011 has been dismissed on 7.7.2011, I had an occasion to consider a very similar issue. Though in that case on facts it was not that no notice whatsoever was served terminating tenancy prior to filing of suit and also in that case there was no issue of a notice given during the pendency of the suit revoking an earlier notice, however the ratio of that case applies in the present case also. Para 7 of that judgment reads as under:-

"7. 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. Vs. 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."

10. Accordingly, in my opinion, the impugned judgment and decree requires to be set aside by decreeing the suit for possession filed by the appellant/plaintiff for the suit premises/tenanted premises.

11. Learned counsel for the respondents argued the following five points before this Court:

(i) The entire cause of action in the suit, whether we refer to the paras earlier to the cause of action para, or the cause of action para itself show that the suit was filed on the basis of tenancy having come to an end by efflux of time, and therefore the suit now cannot be converted into a suit for possession/eviction on a new basis of terminating the tenancy under Section 106 of the Act.

(ii) Though the original lease deed dated 22.1.1985 was a registered lease deed for a period of three years, however, that registered lease deed was never extended by a subsequent registered lease deed, and therefore the tenancy between the parties continued to be a monthly tenancy which had necessarily to be terminated by a legal notice under Section 106 of the Act, and which having not been done, the suit for possession has to fail.

(iii) The suit is barred by time because the same was filed in the

year 1996 although the period under the registered lease deed expired on 23.1.1988.

(iv) The appellant/landlord admitted that the earlier notice terminating tenancy dated 7.3.1994 was defective in terms of its notice dated 10.12.1999, subsequently served during the pendency of the suit, and therefore the suit was defective on the date on which it was filed because as on the date of filing of the suit, the respondents/defendants were not unauthorized occupants and the unauthorized occupation commenced only w.e.f. 1.2.2000, the date from which the legal notice dated 10.12.1999 was to operate.

(v) The lease between the parties dated 22.1.1985 was a perpetual lease by virtue of Clause 3 thereof and as per which clause the respondents/defendants/tenants become perpetual tenants on rent being increased by 15% after every 10 years.

12. I am unable to agree with any of the points and arguments as raised on behalf of the respondents/defendants. The first, second and fourth arguments are taken by me together. Each of these arguments basically pertains to the fact that as on the date of filing of the suit the tenancy of the tenant must be terminated by a valid legal notice under Section 106 of the Act, and since admittedly in the facts of the present case, the suit is only

based on the cause of action of possession on account of tenancy having expired after efflux of time, therefore the suit must fail. This argument I have already dealt with and answered in the earlier part of my judgment by referring to the amended Section 106 of the Act, the legislative intendment in amending Section 106 of the Act, the unnecessary litigations which the Courts were burdened with on account of technical defences of invalid notices and provision of Order 7 Rule 7 CPC. Also the Supreme Court in ***Nopany's*** case has held that no notice to quit was necessary under Section 106 of the Act in order to enable the landlord to get a decree for eviction against a tenant. Therefore, accepting all the arguments on facts as urged by the respondents/defendants that there was no valid notice terminating the tenancy under Section 106 of the Act prior to filing of the suit, I still hold that the suit for possession cannot be defeated merely because there is no valid termination of tenancy prior to the filing of the suit inasmuch as service of summons in the suit can be taken as a notice terminating tenancy. Of course, the advantage of this to the respondents/defendants/tenants may be that mesne profits will be payable from the date on which the tenancy can be said to be validly terminated, however this issue is immaterial in the present case as the counsel for the appellant does not dispute that he takes the tenancy to be terminated w.e.f. 1.2.2000 by virtue of notice 10.12.1999,

and appellant only claims admitted rent as mesne profits from 1.2.2000 onl. Therefore, I hold that w.e.f. 1.2.2000 the respondents/defendants/tenants became unauthorized occupants in the premises liable to hand over possession inasmuch as surely a 15 days notice period has been admittedly given for vacating the tenanted premises, -after all today in December 2011 surely a few hundred periods of 15 days has expired.

13. So far as the argument that the suit for possession is barred by time inasmuch as the lease expired in the year 1988 and the suit was filed in the year 1996, the said argument is also totally without any substance inasmuch as firstly the period for filing of a suit for possession is not three years but 12 years under Article 65 of the Limitation Act, 1963. Not only is the period of limitation 12 years, the period of limitation only begins when a title adverse to the appellant/landlord/plaintiff is claimed and till date admittedly there is no plea or any stand that possession of the respondents/defendants is adverse to that of the appellant/plaintiff/landlord/owner. Therefore once the respondents/defendants admit that they are tenants, I fail to understand as to how it can be said that the suit is barred by time.

14. The final argument which was raised on behalf of the respondents/defendants/tenants was that the lease deed dated 22.1.1985

created a perpetual lease between the parties. Firstly, I must say that th argument is set at naught by the respondents' own argument that the tenancy of the suit premises after the expiry of period of three years of the registered lease deed dated 22.1.1985 was a monthly tenancy. Once the respondents take up a plea that tenancy was a monthly tenancy, I really fail to understand that how it can be argued that the lease is in fact a perpetual lease. Let me now, for the sake of arguments, however assume this argument that the lease is a perpetual lease was open to the respondents/defendants/tenants to take, and therefore let us deal with it. In order to appreciate this argument, one will have to refer to clause 3 of the lease deed dated 22.1.1985 entered into between the parties and which reads as under:-

> "That the LESSEE may have the option to get the lease renewed for a further period of 3 years and again for another three years but the lessee shall have to give a notice in writing to the LESSOR for exercising its option to get the lease renewed at least 15 days prior to expiry of the period of lease. In case the LESSEE exercise his option for renewal of the lease and the LESSOR agreed that lease shall be renewed by the LESSOR on the same terms and conditions which are mentioned herein. It is however agreed by and between the parties that the rent of the premises shall be increased by 15% after every 10 years."

15. A reference to the aforesaid clause leaves no manner of doubt that lease was not a perpetual lease. The lease was a lease deed for a fixed period of three years with two options of three years each and even for

which there would have been valid tenancy for subsequent fixed perio only if there was a registered lease deed for the said options of three years each. Admittedly, after the execution of the first registered lease deed dated 22.1.1985, no other registered lease deed between the parties was executed. Merely because there is a line at the end of para 3 that the rent will be increased by 15% after every 10 years, cannot mean that automatically the lease will become a perpetual lease. It has been held by the Supreme Court in the case of ***Hardesh Ores (P) Ltd. Vs. Hede & Company 2007 (5) SCC 614*** that merely because there is an option entitling an extension of lease period, the same would not automatically mean that the tenant would become a tenant for the fresh period of the option, and it is necessary that a proper registered lease deed, for the fresh/new period for which the option is sought to be exercised, is entered into between the parties. I may note that requirement of a simple option being exercised cannot be taken as a registered lease deed, is in view of Sections 107 of the Act read with Section 17(1)(b) and (d) of the Registration Act, 1908 whereby all leases in excess of a period of twelve months have necessarily to be only by means of a registered instrument. If I accept the argument urged on behalf of the respondents/defendants/tenants it would mean violation of statutory provisions of Section 107 of the Act and Section 17(1)(b) and (d) of the

Registration Act, 1908. There cannot be estoppel against statute where t statute in public interest requires that lease deed for a period of every 12 months has to be by means of a registered instrument. There are various reasons why the lease for a period in excess of 12 months has to be registered failing which the same will not be looked into. One, of course, is the aspect of the Government losing out on revenue with respect to stamp duty which has to be fixed with respect to lease deed for a period in excess of 12 months. Second is that a registered lease deed becomes a document in public domain available before the sub-Registrar and anyone who is interested either in purchasing the property or dealing with the property or has any other concern with the property can easily look at the registered document and come to know the status or occupation of the person in possession of the property. If the lease deed is not registered lease deed, then, it is not possible to look at the document by which the relationship is created between the person in occupation and the original owner of the property.

Lastly, on this aspect I may note that counsel for the appellant has brought to the notice of this Court that this plea of the lease being perpetual lease was in fact given up by the respondents/defendants/tenants before the trial Court, and so recorded in para 44 of the impugned judgment.

16. The learned counsel for the respondents has relied upon t judgment of the Supreme Court in the case of ***Shipping Corporation of India Ltd. Vs. Machado Brothers and Others AIR 2004 SCC 2093*** to canvass the proposition that a suit must be dismissed as infructuous once it is found that the suit was not maintainable on the date on which it is filed. It is also argued relying on this judgment that once there is subsequent notice given during the pendency of the suit, the earlier notice stands withdrawn and therefore the suit has to be dismissed as infructuous.

In my opinion, the judgment of the Supreme Court in case of ***Shipping Corporation of India(supra)*** is distinguishable on facts because the facts in the present case are different inasmuch as the said judgment was not dealing with the amended position of the provision of Section 106 brought about by the amendment. The said judgment dealt with the facts of that particular case when the amended Section 106 was not in consideration before the Hon'ble Supreme Court. I may note, and as already stated above, counsel for the appellant/plaintiff/tenant has already submitted that the lease will be taken as terminated only w.e.f. 1.2.2000 and from which date the mesne profits will become payable. In fact, in my opinion, the judgment which is cited by the counsel for the respondents goes against the respondents inasmuch as the Supreme Court states that subsequent events

which transpire during the pendency of the suit can be taken note of by t Court so as to dispose of the suit. If that be the ratio of the Supreme Court judgment, I am in fact also taking note of subsequent events, of course not to dismiss the suit as infructuous, but to decree the suit, in view of legislative intendment enunciated by the amended Section 106 of the Act.

17. In view of the above, the appeal is accepted. Impugned judgment dated 9.11.2009 is set aside. Suit of the appellant/plaintiff for possession with respect to the first floor and mezzanine floor of the property bearing No.6/90, P Block, Connaught Circus, New Delhi will stand decreed. The appellant/plaintiff will be entitled to mesne profits being the admitted rate of rent from 1.2.2000 till the time the respondents hand over vacant physical possession of the suit premises to the appellant/plaintiff/landlord. Parties are left to bear their own costs. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

DECEMBER 20, 2011
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