

(Equivalent Citation:- 1999(2) AD(Delhi) 826, 1999(50) DRJ 324, 1999(2) AD(Delhi) 826)

78 (1999) DELHI LAW TIMES 761

DELHI HIGH COURT

M.S.A. Siddiqui, J.

RADHAKRISHAN TEMPLE TRUST—Plaintiff

versus

M/S. HINDCO ROTATRON PVT. LTD. & ORS.—Defendants

I.A. 1927/97 in S. No. 512 of 1996—Decided in March, 1999

(i) Civil Procedure Code, 1908—Order 12 Rule 6—Judgment on Admissions—Transfer of Property Act, 1882—Sections 106, 111—Duration of Certain Leases in Absence of Written Contract—Determination of Lease—Doctrine of Constructive Admission : Not Applicable: Termination of Tenancy by Notice: Denial of Service of Notice—Plaintiff brought suit for ejection on ground that contract of lease expired by efflux of time—Counsel for plaintiff abandoned said plea—On the contrary he attempted to set up case of termination of tenancy by notice to quit—Plaintiff nowhere pleaded that he sent notice to defendant No. 1 determining tenancy as required by Section 106, T.P. Act—Assuming letter dated 7.3.94 to be notice, defendant No. 1 has denied service of said notice in written statement—Doctrine of constructive admission cannot be pressed into service—Plaintiff not entitled to judgment on admissions.

Held: It has to be borne in mind that lease of immovable property represents a contract between the lessor and lessee. If the contract of tenancy is to be put to an end it has to be determined by one of the modes prescribed by Section 111 of the Transfer of Property Act (hereinafter called the Act, If the lease is a lease for a definite term, it expires by efflux of time by reason of Section 111(a) of the Act. There is, therefore, no question of giving a notice to quit under Section 106 of the Act to such a lessee who continued in possession after the determination of lease, *i.e.*, after the contract came to an end under the indenture of lease. If the contract of tenancy once came to an end, there is no question of terminating the contract again by a fresh notice under Section 106 of the Act.

(Para 5)

Held further: Assuming for the sake of arguments that the letter dated 7.3.1994 can be treated as a notice under Section 106 of the Act, the question which arises for determination is whether the notice was duly served on the defendant No. 1 and if so, whether it is in conformity with the requirements of Section 106 of the Act. In the written statement, the defendant No. 1 has denied service of the said notice. In this view of the matter, it would not be appropriate at this stage of the suit to comment on the validity of the said notice.

(Para 6)

Held further: the defendant No.1 has denied service of the letter dated 7.3.1994 and that being so the doctrine of constructive admission cannot be pressed into service to record a finding in favour of the plaintiff regarding service of the said letter on the defendant No.1. Consequently, the plaintiff is not entitled to a judgment on admissions.

[\(Para 7\)](#)

(ii) Transfer of Property Act, 1882—Sections 106, 111(a)—Lease: Expiry by Efflux of Time: Notice not Required—If lease is a lease for a definite term, it expires by efflux of time by reason of Section 111(a), T.P. Act—No question of giving notice to quit under Section 106 of the Act to lessee who continued in possession after determination of lease—If contract of tenancy once came to an end, there is no question of terminating contract again by fresh notice under Section 106 of the Act.

Held: It is significant to mention that the tenor of the plaint shows that the plaintiff brought the present suit for ejectment on the ground that the contract of lease dated 22.1.1985 had expired by efflux of time. Surprisingly, Learned Counsel for the plaintiff has abandoned the aforesaid plea during the course of arguments. On the contrary, he has attempted to set up a case of termination of tenancy by the notice to quit dated 7.3.1994. Plaintiff has nowhere pleaded in the alternative that he had sent a notice dated 7.3.1994 to the defendant No.1 determining the tenancy as required by Section 106 of the Act.

[\(Para 5\)](#)

Result: Application dismissed.

Cases referred:

1. AIR 1986 SC 1509. (*Followed*)

[\[Para 4\]](#)

2. [66 \(1997\) DLT 54 \(DB\)](#) = 1997 (11) AD 518. (*Referred*)

[\[Para 7\]](#)

Counsel for the Parties:

For the Plaintiff: **Mr. R.M. Sinha**, Advocate.

For the Defendant No. 1: **Mr. Rajiv Nayyar, Sr. Adv. with Mr. Rahul Gupta and Mr. Rohit Madan**, Advocates.

For the Defendant Nos. 2 & 3: **Mr. S.K. Kaul**, Advocate