* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ R.F.A. NO.638 OF 2014

% Date of decision : 10th April, 2015

PRADEEP KHANNA ..... Appellant
Through: Ms. Vasudha Khanna, daughter of the appellant with appellant in person

versus

RENU KHETARPAL ..... Respondent
Through: Mr. Nitin Gupta and Mr. Chandra Nand Jha, Advocates with respondent in person

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant has challenged the decree for possession of flat bearing No.123, First Floor, Vasundhra Apartments, Sector 9, Rohini, Delhi (hereinafter referred to as the "suit property") passed by the learned Trial Court against the appellant under Order XII Rule 6 of the Code of Civil Procedure.

2. Vide registered rent agreement dated 26th September, 2007, the respondent let out the suit property to the appellant for a period of two years w.e.f. 1st October, 2007 to 30th September, 2009 at a monthly rent of Rs.8,500/-. The parties executed a separate agreement dated 26th September, 2007 whereby the appellant agreed to pay user charges of Rs.10,000/- per month for the fittings and fixtures. Clause 7 of the second agreement records that both the agreements shall run simultaneously and in case of

termination of either one, the other shall automatically stand terminated.

3. Vide notice dated 26th October, 2013, the respondent notified the appellant that after the expiry of the two years' period of lease under the lease agreement dated 26th September, 2007, the lease was orally renewed on month to month basis upon increase of rent and the last paid rent and hire charges for fittings and fixtures were Rs. 11,000/- and Rs.11,350/- per month respectively. The respondent notified the appellant that the rent has been paid upto March, 2012 and hire charges have been paid upto September, 2011. The respondent demanded Rs.2,20,000/- towards the arrears of rent from 01st April, 2012 upto 30th November, 2013 @ Rs.11,000/- per month and hire charges of Rs.2,95,100/- from 01st October, 2011 to 30th November, 2013 @ Rs.11,350/- per month along with the interest @ 18% per annum. The respondent also terminated the tenancy of the appellant w.e.f. 30th November, 2013 and called upon the appellant to hand over the vacant and peaceful possession of the suit property failing which the respondent shall claim damages for use and occupation of the suit property at the rate of the current market rent of Rs.35,000/- per month.

4. On 3rd January, 2014, the respondent instituted the suit for recovery of possession, recovery of Rs.6,17,234/- towards arrears of rent /hire charges and the future mesne profits @ Rs.35,000/- per month.

5. The appellant contested the suit by filing the written statement dated 29th April, 2014 in which he admitted the rent agreement as well as the agreement of fittings and fixtures both dated 26th September, 2007. The appellant further admitted that both the aforesaid agreements were for a period of two years. The appellant also admitted that initial rent of Rs.8,500/- per month and hire charges for fittings and fixtures of Rs.10,000/-

per month. The appellant further admitted that the rent was increased from Rs.8,500/- per month to Rs.11,000/- per month and hire charges were increased from Rs.10,000/- per month to Rs.11,350/- per month w.e.f. December, 2012. The appellant further pleaded that the respondent had orally assured the appellant to renew the lease for another five years. The appellant pleaded that he has paid the rent and hire charges upto March, 2012. The appellant claimed that he approached the respondent for repair work in the suit property in the year 2011 whereupon the respondent permitted him to carry on the same and adjust against the monthly rent. The appellant claimed that he spent Rs.7 lakh on the repair work and adjusted the same against the rent and hire charges. The appellant admitted the receipt of the termination notice dated 26th October, 2013 but denied the respondent's claim of rent and hire charges on the ground that appellant has lawfully adjusted the same against the repair work of Rs.7 lakh carried out by him.

6. On 27th May, 2014, the respondent filed an application under Order XII Rule 6 of the Code of Civil Procedure for decree of possession on the ground that the appellant has admitted the receipt of the termination notice dated 26th October, 2013. The appellant filed the reply to the above application on 2nd July, 2014. The appellant also filed an application under Order VII Rule 11 of the Code of Civil Procedure on the ground that the respondent had no cause of action for filing the suit against the appellant.

7. Vide order dated 11th July, 2014, the learned Trial Court allowed the respondent's application under Order XII Rule 6 of the Code of Civil Procedure and dismissed the appellant's application under Order VII Rules 11 of the Code of Civil Procedure. The learned Trial Court held that the relationship of landlord and tenant as well as the receipt of termination

notice dated 26th October, 2013 had been admitted by the appellant. The learned Trial Court observed that since the receipt of notice of termination has been admitted by the appellant in the written statement, the appellant's denial at the time of hearing was not valid. The learned Trial Court referred to and relied upon ***Jeevan Diesel* v. *Jasbir Singh Chadha*,** 182 (2011) DLT 402 in which the Supreme Court held that service of summons of a suit for possession by itself is sufficient notice to the tenant and, therefore, denial of notice by the tenant is of no consequence. The learned Trial Court also referred to and relied upon ***Asha Narang Spaak* v. *Hafco Brass USA*,** 2013 (137) DRJ 590 and ***Payal Vision Ltd.* v. *Radhika Choudhary***, (2012) 11 SCC 405.

8. This appeal was initially listed for admission on 08th January, 2015 when the appellant, after lengthy hearing, conceded not to press this appeal if reasonable time to vacate the subject property was given to him whereupon limited notice on this aspect was issued to the respondent.

9. On 29th January, 2015, the respondent agreed to provide 6-8 months time to the appellant upon clearing the arrears of rent and payment of future damages for use and occupation of the suit property, which was not acceptable to the appellant, who sought at least two years' time to vacate the suit property, which was not acceptable to the respondent and, therefore, the matter was listed for final hearing on 24th February, 2015.

10. On 24th February, 2015, the appellant appeared in person at the time of hearing and sought permission that his daughter be permitted to make submissions which was allowed. The first objection raised at the time of the hearing was that the respondent has placed forged rent agreement on record. It was next urged that the legal notice dated 26th October, 2013 is not valid

because the tenancy has been terminated due to non-payment of the rent whereas the appellant has spent Rs.7 lakh on the repair work and after adjusting the same, the rent stands paid upto December, 2014. It was further submitted that the notice of termination was not valid under Section 106 of the Transfer of Property Act. The appellant referred to and relied upon ***Vijay Syal* v. *State of Punjab & Ors*.** (2003) 9 SCC 401, ***T. Arivandandam* v. *T.V. Satyapal,*** 1978 SCR (1) 742, ***K.K. Velusamy* v. *N. Palanisamy*** (2011) 11 SCC 275, ***Bhuneshwar Prasad* v. *United Commercial Bank*** (2000) 7 SCC 232, ***Manish* v. *Shanti Devi***, 2014 (4) RLW 2967(Raj) and ***State Bank of India* v. *Midland Industries*** AIR 1988 Delhi 153.

11. Learned counsel for the respondent in reply urged that the appellant has raised contradictory pleas before this Court. Learned counsel has referred to paras 1, 2 and 4 of the written statement in which the appellant has categorically admitted the registered rent agreement dated 26th September, 2007 in respect of which the appellant has now raised a new plea that the said rent agreement was forged and fabricated. Learned counsel further referred to the admission of receipt of the notice of termination dated 26th October, 2013 in paras 26 of the written statement. Learned counsel referred to and relied upon ***Payal Vision*** (supra)**,** ***Asha Narang*** (supra) and ***Sky Land International Pvt. Ltd.*** (2012) 191 DLT 594.

Findings

12. The relationship of landlord and tenant is admitted by the appellant in his written statement before the Trial Court. Paras 1, 2 and 4 of the written statement containing the appellant's admissions are reproduced hereunder: -

> *"1. The civil suit for recovery of possession in question is filed for the premises flat no. 123, Vasundhra*

Apartment, Sector 9, Rohini, Delhi-10085 which was let out by Mrs. Renu Khetarpal ***vide registered rent agreement dated 26th September 2007 at a monthly rental of Rs.8500****.*

2. It is pertinent to mention that with said registered agreement another agreement which is not registered was also executed on the same day i.e. 26th September 2007 for fitting and fixture at a monthly rental of Rs.10,000.

It is further submitted that both agreements were executed for two years and they expired on 25th September 2009.

xxx xxx xxx

4. It is submitted that the rent was paid by respondent to land lady and same was accepted by the land lady even after expiry of the said agreement. It is further submitted that no contention or dispute arose for about 3 years even though there was no written agreement existed."

(Emphasis supplied)

13. The appellant has raised a frivolous objection that rent agreement dated 26th September, 2007 placed on record by the respondent is forged whereas the appellant has clearly admitted the rent agreement placed on record by the respondent before the Trial Court in the written statement. The appellant cannot be permitted to withdraw the admissions made in the written statement.

14. The respondent terminated the appellant's lease by a notice dated 26th October, 2013. The notice of the termination was sent by the respondent to the appellant by registered AD post as well as courier. The original postal receipt, courier receipt as well as acknowledgement card containing the signature dated 28th October, 2013 of the appellant are on record of the Trial

Court. The receipt of the notice is admitted by the appellant in para 26 of the written statement which is reproduced hereunder:

> *"26. It is also submitted that the land lady has served two legal notices to the tenant first in October 2012 which carried defamatory remarks for the tenant and other notice was served in October 2013. In both these notices served there are discrepancies with regard to the status of increased rent."*

15. There is no merit in appellant's objection to the validity of the notice of termination dated 26th October, 2013. The termination notice dated 26th October, 2013 is clear and unambiguous. Relevant portion of the termination notice is reproduced hereunder: -

> *"5. That in view of your contumacious and deliberate defaults as aforesaid, my client hereby terminates your tenancy with effect from the expiry of 30th November, 2013. Please note that you shall be thereafter no more tenant in respect of the aforesaid premises and your possession thereof shall be illegal and unauthorised. In the event of your failure to vacate the premises as demanded in this notice, my client shall claim from you compensation for unauthorized use and occupation at the rate of Rs.35,000/- per month, which is the current rate of rent of similar or nearly similar premises in the locality.*
>
> *In view of the above you are hereby called upon:*
>
> xxx xxx xxx
>
> *ii. to also vacate and hand over peaceful and vacant possession of the aforementioned premises being Flat No.123, First floor, Vasundhra Apartments, Sector-9, Delhi-110085 on expiry of 30th November, 2013."*

16. The appellant has pleaded that he has spent Rs.7 lakh on repair work

in the suit property and has lawfully adjusted the same against the rent/hire charges. However, there is no written consent of the respondent permitting the tenant to carry out the repairs. That apart, the appellant has not given any notice to the respondent either to request the respondent to carry out the repairs with the particulars of the repairs required or to seek his permission to carry out. The appellant has also not given particulars of the repairs carried out and period during when the repairs were carried out. The appellant has also not placed on record the documents relating to the expenditure on repairs. Under clauses 6 and 12 of the rent agreement, the minor repairs have to be carried out by the appellant and major repairs is the responsibility of the respondent. The appellant has not even pleaded whether repairs were minor or major. If the repairs were major, the rent agreement does not permit the appellant to carry out the repairs. On the other hand, if the repairs were minor, the appellant has to carry out on his own cost. In that view of the matter, the right of the appellant to claim the expenses on repairs from the respondent appears to be doubtful. The appellant has also not filed a counter claim to seek recovery of the expenditure on repairs from the respondent in the suit. Be that as it may, since the respondent's prayer with respect to the arrears of rent and mesne profits is still pending adjudication before the Trial Court, the appellant's defence with respect to the Rs.7 lakh alleged to have been spent by him shall be considered by the learned Trial Court at the appropriate stage. However, the decree for possession cannot be denied to the respondent on the appellant's plea that there are no arrears of rent/hire charges.

17. The appellant has referred to and relied upon ***Vijay Syal*** (supra) in which the Supreme Court observed that serious action should be taken

against the litigants who make false statements, conceal the material facts and mislead the Court. This judgment does not support the appellant, inasmuch, as the appellant has made false statements. The appellant, despite clear admission of the rent agreement dated 26th September, 2007 in the written statement, urged at the time of hearing that the rent agreement was forged although no such plea was raised before the Trial Court. Even before the Trial Court, the appellant urged at the time of hearing that the termination notice dated 26th October, 2013 was not received by him despite clear admission of the receipt of the notice in the written statement.

18. The appellant has next relied on ***T. Arivandandam*** (supra) in which the Supreme Court held that manifestly vexatious and meritless suit which does not disclose a clear right to sue, should be rejected at the very threshold under Order VII Rule 11 of the Code of Civil Procedure. This judgment also does not help the appellant, inasmuch, as the respondent admittedly is the owner of the suit property and has validly terminated the appellant's lease. The respondent, therefore, has clear cause of action to sue the appellant and therefore, the appellant's application under Order 7 Rule 11 of the Code of Civil Procedure has been rightly dismissed by the learned Trial Court. On the other hand, the appellant, who has admitted the relationship of landlord and tenant as well as termination notice, has raised frivolous defence to somehow delay and defeat the justice.

19. The appellant has next relied on ***K.K. Velusamy*** (supra) in which the Trial Court dismissed two applications, one under Section 151 of the Code of Civil Procedure to re-open the evidence and the other under Order XVIII Rule 17 of the Code of Civil Procedure for recalling the witnesses for further cross-examination. The Supreme Court upheld the dismissal of the

application under Order XVIII Rule 17 of the Code of Civil Procedure. However, the Supreme Court set aside the order passed on the second application under Section 151 of the Code of Civil Procedure and remanded the matter back to the learned Trial Court for fresh consideration in accordance with law. This judgment does not support the appellant in any manner.

20. The appellant has next referred to and relied upon ***Bhuneshwar Prasad*** (supra) in which the landlord continued to accept the increased rent from the tenant after the expiry of the lease which was held to create lease from month to month under Section 116 of the Transfer of Property Act. This judgment also does not help the appellant, in any manner, as the appellant has admittedly not paid any rent to the respondent after the termination of the notice dated 26th October, 2013 and there is no such defence either raised or available to the appellant.

21. The appellant has relied upon ***Manish*** (supra) in which the landlord accepted the rent after determination of lease and the notice of termination of 30 days was held to be invalid as the lease was for a manufacturing purpose for which six months' more notice was mandatory. This judgment also does not help the appellant, inasmuch, as the appellant has neither paid any rent after the termination notice nor the appellant's lease was for manufacturing purpose.

22. The appellant has next relied upon ***State Bank of India*** (supra) in which this Court held that Order XII Rule 6 CPC would apply in case of clear unequivocal, unambiguous and unconditional admissions of the appellant. This judgment also does not help the appellant, inasmuch, as the appellant's admission with respect to the relationship of landlord and tenant

as well as termination notice in the written statement are clear and unambiguous.

23. This case is squarely covered by the principles laid down by the Supreme Court in ***Payal Vision*** (supra), ***Asha Narang*** (supra) and by this Court in ***Sky Land International Pvt. Ltd.*** (supra).

24. In ***Payal Vision*** (supra), the Supreme Court held that in a suit for a recovery of possession the landlord is required to establish the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy. The relevant portion of the said judgment is reproduced hereunder:

> *"7. 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 12 Rule 6 CPC…*
>
> *8. The above sufficiently empowers the court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the court under Order 12 Rule 6 CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact*

situation....”

25. In ***Asha Narang*** (supra), the Supreme Court reiterated the principles laid down in *Payal Vision* (supra). The Supreme Court further held that if the relationship of tenant and landlord and termination are admitted by the tenant, the decree for possession cannot be denied on the ground that the tenant claims to have spent money on the renovation. Relevant portion of the said judgment is reproduced hereunder:

> *“7. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the Plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the Code of Civil Procedure and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case....*
>
> xxx xxx xxx
>
> *9. Thus, while determining the issue whether the plaintiffs are entitled to a judgment on the basis of facts admitted in the written statement, the issue whether the defendants have spent money on the renovation or that the notice was defective which has not been explained as to how, have no relevance. Thus, the plaintiffs are entitled to a decree of possession on the basis of the admissions in the written statement.”*

26. In **Sky Land International Pvt. Ltd.** (supra), this Court discussed judgments of the Supreme Court under Order XII Rule 6 of the Code of Civil Procedure. Relevant portion of is reproduced hereunder: -

> ***“19. <u>Decree on Admissions under Order XII Rule 6 of the Code</u>***

of Civil Procedure

19.1 Order XII Rule 6(1) of the Code of Civil Procedure is reproduced hereunder:-

"ORDER XII
ADMISSIONS

***Rule 6. 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."*

*19.2 In **Maria Margarida Sequeria Fernandes*** **v.** ***Erasmo Jack de Sequeria,** the Supreme Court held that the person resisting a claim for recovery of possession or claiming a right to continue in possession has to establish that he has such a right. The observations of the Supreme Court are as under:-*

> *"66. A title suit for possession has two parts - first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.*
>
> *67. In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and **it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and***

documents to support his claim in order to continue in possession."

(Emphasis supplied)

19.3 In **Surjit Sachdev** **v.** ***Kazakhstan Investment Services Private Limited,*** 66 (1997) DLT 54 (DB), *the Division Bench of this Court held as under:-*

> *"16. A bare reading of Rule 6 would suggest that Court either on the application of any party or on its own motion and without waiting for determination of any other question between the parties proceed to give judgment as it may think fit having regard to the admission..."*
>
> *"17. ...The factors which deserve to be taken into consideration in order to enable the Court to pass a decree in plaintiff's favor as regards possession in such like suit. are: (a) existence of relationship of Lesser and lessee or entry in possession of the suit property by defendant as a tenant; and (b) determination of such relation in any of the contingency, as envisaged in Section 111 of the Transfer of Property Act. One of the modes stated therein is by efflux of time limited by the lease. Only on unequivocal admission of the above two factors will entitle the plaintiff to a decree on admission. Admission need not be made expressly in the pleadings. Even on constructive admissions Court can proceed to pass a decree in plaintiff's favour.*
>
> *18. Defendants in this case have not disputed the entry of defendant No. 1 in possession on the suit property on the basis of registered lease deed dated 24.2.1994..."*
>
> *21. Even assuming that such a communication (letter dated 18.1.1995) was received by the plaintiff, there is nothing on record even to drawn an inference that the plaintiff ever agreed for extension. Otherwise also defendant No. 1 being a lessee could not under the terms of lease seek extension of the lease. ...Accepting the plaintiff's stand that taking the plea of defendant as regards renewal of lease to have been duly accepted by the*

plaintiff that period of lease of the property stood extended for another period of one year on same terms, even in that case the period of such extended lease expired on 14.1.1996.

19.4 ***MEC India Pvt. Ltd.*** **v.** ***Lt. Col. Inder Maira and Ors.,*** 80 (1999) DLT 679:-

"47. A suit for ejectment is different from a Title Suit for Possession against a trespasser. The former postulates no dispute about the Lessor - lessee relationship. The dispute here is generally only on two counts. One, about assent to continuation in the case of lease for a fixed term which had expired by efflux of time, or in the case of a tenancy from month-to-month, about the valid termination thereof. In case the lessee claims a right of renewal under a clause therefore, he must bring a separate suit for specific performance of the renewal clause within the limitation prescribed for such a suit. …"

"48. …The cause of action in the two is different. In a suit for possession it is the factum of ownership and the cause of action is a trespass on a particular day by dispossession of the owner. In a suit for ejectment, ordinarily there is no question of title. ***The tenant is estopped from denying the landlord's title and the cause of action is basically the termination on a particular day of the tenancy*** *and the question is only about the form of the tenancy beyond that date -- one at sufferance or one from month-to-month.*

49. To put it differently, in the former case there is no dispute either about title or about the permissive nature of occupation whereas in the latter case the dispute is about title and there is no question of the possession being permissive. Here it is hostile. Even otherwise, a plea or a defense as a tenant is a pleading of a permissive title. It carries with it an admission that someone else, be it the plaintiff or be it another, is the one carrying a superior title and in whom vests the reversionary rights known in common parlance as ownership…"

"50. ***In a suit for ejectment, all that the Court is required to examine is whether on a calendar date representing the expiration of a particular tenancy month, the***

> ***defendant-tenant's status became one of a 'tenant at sufferance' or it continued as one 'from month-to-month.' There is really nothing else to be tried in such a suit. A suit of this variety could in most cases be decided at the first hearing itself either on the pleadings and documents as was done by a Division Bench of this Court in Surjit Sachdeva v. Kazakhstan Investment Services Pvt. Ltd., 66 (1997) DLT 54 (DB), or, if need be, by examining the parties under Order X of the Code…"***
>
> *(Emphasis supplied)*

19.5 In **Jindal Dyechem Industries Pvt. Ltd. v. Pahwa International Pvt. Ltd.,** (2010) ILR 1 Delhi 245, *this Court held that a notice dispatched to the defendant by registered post is presumed to be served under Section 27 of the General Clauses Act and a denial of the said notice by the defendant has no value. This Court passed a decree for possession under Order XII Rule 6 of the Code of Civil Procedure. The findings of this Court are reproduced hereunder:-*

> *"8. …The only fact, which is disputed by the defendant, is about the service of termination Notice.*
>
> *9. The moot question which arises for consideration in this application is whether notice dated 09.10.2007 would amount to be served upon the defendant/non applicants or not?*
>
> *10. Learned Counsel of the defendant has denied the service of notice of termination of tenancy, it is contended by the defendant that the AD card that has been produced by the plaintiff does not bear any signature of the receiver. Further with respect to the notice dated 27.07.2007, no AD card has been filed by the plaintiff. Ld. Counsel has further contended that in terms of Section 27 of the General Clauses Act, 1897 the presumption of service by registered post is a rebuttable presumption. To support his contention he has relied upon the judgment of Tele Tube Electronics Ltd. v. Delhi Sales Tax, 2002 (101) DLT 337 (D.B) and Ram Murthi v. Bhola Nath,1982 (22) DLT 426 and further contended that the defendant has discharged the initial burden of proof by denying the receipt of the*

notice in its written statement, accompanied by an affidavit, the burden to prove the valid service and the receipt of notice now shifts on the plaintiff, which can only be discharged by leading evidence in this regard.

11. In support of proof of service of Notice of termination of tenancy plaintiff has placed on record the copy of notice dated 09.10.2007, original postal receipt in respect of the notice dated 09.10.07, original AD, Copy of the letter dated 24.10.07, original postal receipts in respect of the above letter. I have perused the record and found that all the documents placed on record are bearing correct address of the defendant.

12. In view of the record placed by the plaintiff and in light of the fact that the notice was dispatched to the defendant's correct address through registered post and the AD card was also received back from the defendant, the denial in respect of the said notice by the defendant has no value. The rebuttal in this case, does not go beyond a bald and interested denial of service of the notice by the defendant, which does not displace the onus to rebut the presumption of service. I am unable to accept the arguments advanced by the defendant before this court that by merely saying the AD card bears somebody else's signature, they have discharged the initial burden to rebut the presumption.

13. In my considered view all the requirement of Order XII Rule VI C.P.C are satisfied, as far as the factum of landlord and the tenant relationship; and the factum of amount of rent is above Rs. 3,500/- both is undisputedly admitted by the defendant and ***in view of the documents placed on record by the plaintiff, the denial of service of termination of notice is sham and false denial, it was observed by this court that such kind of bald denial should be ignored in such kind of circumstances…***

14. In any case, the ***documentary evidence assembled by the plaintiff is sufficient to raise a strong presumption***

of section 27 of General Clauses Act that notice had been properly served by the applicant…"

(Emphasis supplied)

19.6 In ***Bhupinder Singh*** **v.** ***Hill Elliott & Co. Ltd.***, 2011 I AD (Delhi) 309*, this Court passed a decree for possession under Order XII Rule 6 of the Code of Civil Procedure on the basis of a notice of termination and the certificate of postal authorities that the letter was delivered to the tenant. This Court held the material to be sufficient to draw a presumption of proper service under Section 27 of the General Clauses Act, 1897. The findings of this Court are reproduced hereunder:-*

> *"20. So far as issuance of the notice requiring vacant possession of the premises is concerned, the plaintiff has placed on record, a copy of the legal notice, as well as a certificate of the postal authorities, stating that the said letter had been delivered to Hill Elliot.* ***These materials are sufficient for the Court to draw an inference of proper service, based on Section 27 of the General Clauses Act, 1897, and the judgment of the Supreme Court, in K. Bhaskaran v. Sankaran Vaidhyan Balan,*** **1999 (7) SCC 510…*"***

(Emphasis supplied)

The appeal against the aforesaid judgment was dismissed by the Division Bench of this Court. The Division Bench in appeal titled ***Hill Elliott & Co. Ltd.,*** **v.** ***Bhupinder Singh***, 2011 (121) DRJ 438 (DB)*, held that the dishonest litigant cannot be permitted to delay the judgment on the ground that he would show during the trial that he had not received the notice. The relevant findings of the Division Bench are reproduced hereunder:-*

> *"15. Coming to the presumption of service of notice dated 09.08.2008, the notice was sent to Hill Elliott by registered AD post, speed AD post, UPC and by courier service. It was specifically pleaded that the Hill Elliott had refused to accept the notice sent by the courier service whereas a confirmation was given by the Postal Authorities regarding delivery of the notice (article through postal receipt No. 4527 and 4528 dated 9.8.2008) on 12.08.2008. ...There is no dispute about the proposition of law that the presumption of service of notice under Section 27 of the*

General Clauses Act is a rebuttable presumption. However, the facts of each case have to be seen to reach the conclusion whether any rebuttal is forthcoming from the party who is deemed to have been served. We have already referred to hereinbefore as to how the notice terminating the tenancy was sent to Hill Elliott. A perusal of the relevant paragraphs of the written statement filed by Hill Elliott would show that it had simply denied the receipt/service of notice. The circumstances under which the notice dated 9.08.2008 was not received by Hill Elliott were not stated either in para 7 of the Preliminary Objections of the written statement or in reply to Para 5 of the Plaint. Hill Elliott has not stated that the premises during the period the notice is purported to have been served were lying locked; that no responsible person of Hill Elliott was present in the premises during this time or there was any other reason by which the normal course of business of service of notice was prevented. Thus, the denial of service of notice shall be treated as a vague denial and thus deemed to have been admitted."

xxx xxx xxx

"17. In the absence of specific denial, we find no merit in the contention raised on behalf of Hill Elliott that the presumption being rebuttable opportunity should have been given to the Appellant to prove that the notice has not been served.

18. ***The purpose of the enactment of provision of Order 12 Rule 6 CPC is to give the plaintiff a right to speedy judgment. The thrust of amendment is that in an appropriate case a party on the admission of the other party can press for judgment as a matter of legal right. If in a case like the present one, a dishonest litigant is permitted to delay the judgment on the ground that he would show during the trial that he had not received the notice, the very purpose of the amendment in the provision would be frustrated."***

(Emphasis supplied)

20. ***<u>False Claims and Defenses</u>***

20.1 In ***Maria Margarida Sequeria Fernandes*** **v.** ***Erasmo Jack de Sequeria,*** *(supra), the Supreme Court held that false claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. The Supreme Court held as under:-*

"False claims and false defences

> *84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent."*

20.2 In **Dalip Singh v. *State of U.P.***, (2010) 2 SCC 114, *the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-*

> *"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.*

> *2.* ***In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."***
>
> *(Emphasis supplied)*

20.3 In ***Satyender Singh* v. *Gulab Singh****,* 2012 (129) DRJ 128, *the Division Bench of this Court following* **Dalip Singh v. *State of U.P.*** *(supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause. The observations of this Court are as under:-*

> *"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries.* ***In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.*** *Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."*
>
> *(Emphasis supplied)*

20.4 In ***State Bank of Patiala* v. *Chander Mohan Jain****,* 1996 RLR 404, *the Division Bench of this Court observed that it has become quite common for tenants whose tenancies have been*

terminated to continue occupation as trespassers and drive the landlords to file suit for eviction and profits with a view to see how far the patience of the landlords may last. The observation of this Court is reproduced hereunder:-

> *"24. .... **It has become quite common for tenants, whose tenancies have been terminated validly, to continue occupation as trespassers, drive the landlords to file suits for eviction and profits with a view to see how far the patience of the landlords may last or how far the landlords or their legal representatives could fight** the tenants-particularly if the tenant had stopped payment of admitted rents. It is rather unfortunate that even public sector bodies like the appellant are taking such postures and driving landlords from pillar to post..."*
>
> *(Emphasis supplied)*

xxx xxx xxx

23. ***<u>Imposition of Costs</u>***

23.1 In **Ramrameshwari Devi v. Nirmala Devi**, (2011) 8 SCC 249, *the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-*

> *"45. ....We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.*
>
> xxx xxx xxx
>
> *52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps*

are taken by the trial courts while dealing with the civil trials.

A and B xxx xxx xxx

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

E and F xxx xxx xxx

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. *The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.*

56. On consideration of totality of the facts and

circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation."

(Emphasis supplied)

23.2 In ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*** *(supra) the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences as under:-*

> *"85. This Court in a recent judgment in Ramrameshwari Devi and Ors. (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties.* ***In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.****"*

(Emphasis supplied)

23.3 In ***Padmawati v. Harijan Sewak Sangh****,* 154 (2008) DLT 411, *this Court imposed costs of Rs.15.1 lakhs and noted as under:*

> *"6. The case at hand shows that frivolous defences and*

frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

7. ... The petitioners are, therefore, liable to pay costs which is equivalent to the average market rent of 292 months to the Respondent No. 1 and which comes to Rs.14,60,000 apart from litigation expenses and Counsel's fee throughout which is assessed at Rs. 50,000/-. The petition is hereby dismissed with costs of Rs.15,10,000/- to be recovered from the petitioners jointly and severally. If any amount has been paid towards user charges, the same shall be adjustable.

xxx xxx xxx

9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary

costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

(Emphasis supplied)

23.4 In **Punjab National Bank v. Virender Prakash,** 188 (2012) DLT 48, *this Court ruled that penal costs should be imposed on dishonest tenants who illegally continue to occupy the tenanted premises by raising a frivolous defence. This Court imposed costs of Rs.2,00,000/- on the bank which was upheld by the Supreme Court. The relevant findings of this Court are reproduced hereunder:-*

"1. ***…Certain tenants, in this country, consider it an inherent right not to vacate the premises even after either expiry of tenancy period by efflux of time or after their tenancy is terminated by means of a notice under Section 106 of Transfer of Property Act, 1882. All such tenants, including the present appellant-bank, feel that they ought to vacate the tenanted premises only when the Courts pass a decree for possession against them. Considering the facts of the case, it is high time that a strict message is sent to those tenants who illegally continue to occupy the tenanted premises by raising frivolous defences only and only to continue in possession of the tenanted premises. Such incorrigible tenants should be appropriately burdened with penal costs ….***

xxx xxx xxx

7. Now, the issue is with respect to costs. I have already given a preface at the very beginning of this judgment. This preface, is a preface which was necessary inasmuch as ***there is a flood of litigation unnecessarily burdening the Courts only because obdurate tenants refuse to vacate the tenanted premises even after their tenancy period expires by efflux of time or the monthly tenancy has been brought to an end by service of a notice under Section 106 of Transfer of Property Act, 1882****. In the present case, the tenant is not a poor or a middle class person, but is a bank with huge resources and hence can contest litigation to the hilt. It is therefore necessary that I strictly apply the ratio of the Supreme Court judgment in the case of Ram Rameshwari Devi and Others (supra)….”* ***Dishonest and unnecessary litigations are a huge strain on the judicial system which is asked to spend unnecessary time for such litigation.***

8. ***In view of the gross conduct of the appellant in the present case, I dismiss the appeal with costs of `2 lacs.*** *Since the respondents are not represented, costs be deposited in the account of Registrar General of this Court maintained in UCO Bank, Delhi High Court Branch for being utilized towards juvenile justice, surely a just cause. Costs be deposited within a period of four weeks from today. Obviously, the costs may be peanuts for a huge organization such as the appellant-bank but I hope the spirit of the costs will be understood by the appellant-bank as also all other tenants who refuse to vacate the premises although they have overstayed their welcome in the tenanted premises.”*

(Emphasis supplied)

The Supreme Court has dismissed the SLP against the aforesaid judgment. The Supreme Court passed the following order:-

“On hearing Mr. Dhruv Mehta, Senior Advocate appearing for the petitioner, and on going through the judgment of the High Court, we find ourselves in complete

agreement with the view taken by the High Court. We are also satisfied that that High Court was quite justified in imposing the heavy cost against the petitioner bank.

The special leave petition is, accordingly dismissed."

27. In ***Sky Land International Pvt. Ltd.*** (supra), this Court after discussing the relevant judgments, summarized the principles of law which are reproduced hereunder:

*"26. **<u>Summary of the principles of law</u>***

From the analysis of the above decisions and the provisions with which we are concerned, the following principles emerge:-

26.1 Upon expiry of the term of the lease or on termination of the monthly lease by a notice to quit, the lessee must vacate the property on his own and not wait for the lessor to bring a suit where he can raise all kinds of contests in order to profit from Court delays.

26.2 Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and no notice of determination of the lease is required. Mere acceptance of rent by the landlord from the tenant in possession after the lease has been determined either by efflux of time or by notice to quit would not create a tenancy so as to confer on the erstwhile tenant the status of a tenant or a right to be in possession.

26.3 Notice of termination of lease under Section 106 of the Transfer of Property Act sent by registered post to the tenant is deemed to be served under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act, 1872.

26.4 The object of the termination notice under Section 106 of the Transfer of Property Act is to communicate the intention of the landlord that he wants the premises back and to give 15 days' time to vacate. Such notice is not a pleading but a mere communication of the intention of the recipient. Such notice is to be liberally construed as the tenant's only right is to get notice of 15 days to vacate. The tenant is under a statutory obligation

to vacate the subject property on the expiry of 15 days of the notice.

26.5 ***A suit for ejectment is different from a title suit for possession against a trespasser. In a suit for possession against a trespasser, title can be in dispute but in a suit for ejectment against an erstwhile tenant, ordinarily there is no dispute of title as the tenant is estopped from denying the landlord's title under Section 116 of the Indian Evidence Act. The dispute is generally on two counts; one, about the assent to continue after the expiry of the fixed term lease by efflux of time and second, about the valid termination in case of monthly lease. The tenant resisting the claim for possession has to plead with sufficiently detailed pleadings, particulars and documents why he must not be ejected and what right he has to continue in possession. There is really nothing else to be tried in such a suit. A suit of this nature can ordinarily be decided on first hearing itself either on the pleadings and the documents or, if need be, by examining the parties under Order X of the Code of Civil Procedure or Section 165 of the Indian Evidence Act.***

26.6 ***A suit for ejectment of a lessee is not a type of a case where by forging a postal receipt and falsely claiming the issue of the notice to quit, the plaintiff would gain any particular advantage for he could have always served a notice and filed a suit three weeks later. On the other hand, by serving a self-serving denial, the defendant seeks to get an advantage of dragging the proceedings and continuing to enjoy the property without having to pay the current market rent. Having regard to the common course of natural events, human conduct and probabilities, if a notice which can be issued and served again without loss of opportunity, the probability that a person would file a fake proof of sending is nil. On the other hand, if a notice is of a type which had to be served prior to an event that has already occurred, and by its very nature cannot be remedied by a fresh notice, there may be a possibility of it being faked such as a notice exercising the option to renew lease before its expiry. In that case, the Court will look at it differently.***

26.7 ***The pleadings are the foundation of litigation and must set-forth sufficient factual details. Experience has shown that all kinds of pleadings are introduced and even false and fabricated***

documents are filed in civil cases because there is an inherent profit in continuation of possession. In a suit for ejectment, it is necessary for the defendant to plead specifically as to the basis on which he is claiming a right to continue in possession. A defendant has to show a subsisting right to continue as a lessee. No issue arises on vague pleadings. A vague denial of the receipt of a notice to quit is not sufficient to raise an issue. To rebut the presumption of service of a notice to quit, the defendant has to plead material particulars in the written statement such as where after receiving the plaint and the documents, the defendant has checked-up with the Post-Office and has obtained a certificate that the postal receipt filed by the plaintiff was forged and was not issued by the concerned Post Office.

26.8 A self-serving denial by the defendant and more so in these types of cases, cannot hold back the Court from exercising its jurisdiction to decree a suit under Order XII Rule 6 of the Code of Civil Procedure. Raising a plea of non-receipt of notice to quit and seeking an issue on it is obviously to drag on the litigation and keep on holding to the suit property without having to pay the current market rentals, is not sufficient to raise an issue and, therefore, liable to be rejected.

26.9 If such a plea of denial of notice is treated as sufficient to non-suit the plaintiff, the plaintiff will have serve a fresh notice to quit and then bring a fresh suit where again the defendant would deny the receipt of notice to seek an issue and trial. The process would go on repeating itself with another notice, in fact, repeat ad-infinitum and in this manner, the defendant will be able to effectively stay indefinitely till the plaintiff settles with him for a price. The Court cannot remain a silent spectator and allow the abuse of process of law. The eyes of the Courts are wide enough to see the truth and do justice so that the faith of the people in the institution of Courts is not lost.

26.10 In view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003, 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 the decree for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

26.11 A suit for possession cannot be dismissed on the ground of invalidity of notice of termination because the tenant is only entitled to a reasonable time of 15 days to vacate the property. Therefore, even if the notice of termination is held to be invalid, service of summons of the suit for possession can be taken as notice under Section 106 of the Transfer of Property Act read with Order VII Rule 7 of the Code of Civil Procedure but in that event the landlord would be entitled to mesne profits after the expiry of 15 days from the date of the receipt of summons and not from the date of notice of termination.

26.12 The purpose of Order XII Rule 6 CPC is to give the plaintiff a right to speedy judgment. The thrust of amendment of Order XII Rule 6 is that in an appropriate case a party on the admission of the other party can press for judgment as a matter of legal right. If a dishonest litigant is permitted to delay the judgment on the ground that he would show during the trial that he had not received the notice, the very purpose of the amendment would be frustrated.

26.13 Under Section 116 of the Indian Evidence Act, the lessee is estopped from denying the title of the transferee landlord. Section 116 of the Indian Evidence Act provides that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the title of the landlord meaning thereby that so long as the tenant has not surrendered the possession, he cannot dispute the title of the landlord. Howsoever, defective the title of the landlord may be, a tenant is not permitted to dispute the same unless he has surrendered the possession of his landlord.

26.14 A lease of a immovable property is determined by forfeiture in case the lessee renounces his character by setting up a title in a third person. The effect of such a disclaimer is that it brings to an end the relationship of landlord and tenant and such a tenant cannot continue in possession. Section 111(g)(2) of Transfer of Property Act, 1882 is based on public

policy and the principle of estoppel.

26.15 There is a flood of litigation unnecessarily burdening the Courts only because obdurate tenants refuse to vacate the tenanted premises even after their tenancy period expires by efflux of time or the monthly tenancy has been brought to an end by service of a notice under Section 106 of Transfer of Property Act, 1882. It has become quite common for the tenants whose tenancy has been terminated to continue the occupation to drive the landlords to file suits for possession and mesne profits and thereafter raise false claims and defences to continue the possession of the premises. The motivation of the tenant to litigate with the landlord is that he wants to continue the occupation on payment of rent fixed years ago. The continuation of possession in such cases should therefore be permitted upon payment of market rent. In that case, inherent intent of the unscrupulous tenant to continue frivolous litigation would be reduced to a large extent.

26.16 In all proceedings relating to possession of an immovable property against an erstwhile tenant, the Court should broadly take into consideration the prevailing market rentals in the locality for similar premises and fix adhoc amount which the person continuing in possession must pay or deposit as security. If such amount, as may be fixed by the Court, is not paid or deposited as security, the Court may remove the person and appoint a receiver of the property or strike out the claim or defence. This is a very important exercise for balancing equities. The Courts must carry out this exercise with extreme care and caution while keeping pragmatic realities in mind. This is the requirement of equity and justice.

26.17 In the last 40 years, a new creed of litigants have cropped up who do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the Courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

26.18 False claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

26.19 Certain tenants, in this country, consider it an inherent right not to vacate the premises even after either expiry of tenancy period by efflux of time or after their tenancy is terminated by means of a notice under Section 106 of Transfer of Property Act, 1882. Such tenants feel that they ought to vacate the tenanted premises only when the Courts pass a decree for possession against them. The tenants who illegally continue to occupy the tenanted premises by raising frivolous defences should be appropriately burdened with penal costs.

26.20 Dishonest and unnecessary litigations are a huge strain on the judicial system. The Courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.

26.21 Truth should be the guiding star in the entire judicial process and it must be the endeavour of the court to ascertain the truth in every matter. Truth is the foundation of justice. Section 165 casts a duty on the Judge to discover truth to do complete justice and empowers him to summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. The Judge has to play an active role to discover the truth. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and, to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. The Court can also invoke Section 30 of the Code of Civil Procedure to ascertain the truth.

26.22 Unless the Courts ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the Courts' scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases. It becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that the dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.

26.23 Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. The cost should be equal to the benefits derived by the litigants, and the harm and deprivation suffered by the rightful person so as to check the frivolous litigations and prevent the people from reaping a rich harvest of illegal acts through Court. The costs imposed by the Courts must be the real costs equal to the deprivation suffered by the rightful person and also considering how long they have compelled the other side to contest and defend the litigation in various courts. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The parties raise fanciful claims and contests because the Courts are reluctant to order prosecution."

Conclusion

28. On careful consideration of the rival contentions of the parties and applying the well settled principles of law, this Court is of the view that there is a clear admission of relationship of landlord and tenant between the

parties as well as the termination of tenancy by a valid notice dated 26th October, 2013 and, therefore, the respondent is entitled to the decree for possession of the suit property under Order XII Rule 6 of the Code of Civil Procedure. There is no infirmity in the impugned decree for possession passed by the learned Trial Court. This appeal is abuse of the process of law and warrants imposition of costs.

29. There is no merit whatsoever in this appeal, which is hereby dismissed with costs of Rs.50,000/-. However, considering that the appellant did not have the assistance of a counsel and appears to have been misguided with respect to the correct position of law, the costs imposed be refunded if the appellant deposits the costs within 10 days before the Execution Court along with an undertaking to handover the vacant and peaceful possession of the suit property to the respondent by 31st May, 2015. In that event, the Execution Court shall record the undertaking of the appellant and defer the execution of the decree till 31st May, 2015 and upon the appellant handing over of the vacant and peaceful possession of the suit property to the respondent on or before 31st May, 2015, the Execution Court shall refund the costs of Rs.50,000/- to the appellant.

J.R. MIDHA, J

APRIL 10, 2015
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