

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

% *Judgment Reserved on: 02.7.2010*  
*Judgment Delivered on: 06.7.2010*

+ **RSA No.93-94/2006**

**1.M/S M.T.Z. INDUSTRIES LTD.**

**2.MR.RAGHUSUDON** .....Appellants  
Through: Mr.A.K.Singla, Sr. Adv. with  
Mr.J.K.Sharma, Advocate.

Versus

**MR. K.C. KHOSLA (DECEASED)**

**Through LRs.**

.....Respondent  
Through: Mr.Abhijat with Ms. Princy Ponnann,  
Advocate.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**INDERMEET KAUR, J.**

1. These are two second appeals filed by the appellants under Section 100 of the Code of Civil Procedure 1908. On 01.3.2007 the following substantial question of law was formulated by this court which reads as under:-

Whether the tenancy of the petitioner was validly terminated by efflux of time or by the notice under Section 106 of the TP Act?

2. Briefly stated the factual matrix of the case is as follows:-

- (i) Sh. K.C. Khosla had filed a suit for possession and mesne profits against defendant MTZ Industries Ltd. having its registered office at Bombay. Plaintiff had expired during the

pendency of the suit. His legal heirs were brought on record.

- (ii) Vide registered lease deed dated 29.8.1989 (Ex.P-2) the plaintiff had leased out property bearing No.-5/31, Safdarjung Development Area to the defendant at a monthly rental of Rs.4500/-. The lease was for a period of three years commencing from July 1989 to June 1992.
- (iii) In terms of the renewal clause contained in lease deed the lessee had exercised his rights to renew the lease which stood renewed up to 30.6.1995.
- (iv) Legal notice dated 12.5.1995 (Ex.P-5) was served upon the defendant by the plaintiff directing him to handover peaceful possession of the suit property on or before 30.6.1995 failing which he would be liable to pay mesne profit/damages @ Rs.2000/- per day.
- (v) Defendant did not accede to this request and continued to retain the possession of the suit property.
- (vi) Present suit was accordingly filed.

3. Trial court vide judgment dated 31.5.2004 decreed the suit of the plaintiff. Decree of possession and mesne profit was passed in his favour with a further direction to hold an enquiry under Order 20 Rule 12 CPC to determine the future mesne profits/damages payable by the defendant to the plaintiff.

4. The first appellate court vide its judgment dated 14.11.2005 endorsed the finding of the trial court. The appellate court had relied upon the mandate of Section 106 of Transfer of Property Act (hereinafter referred to as the T.P.Act) holding that vide Ex.P-5 the tenancy of the defendant had been validly and legally terminated

by the plaintiff. The further finding of the trial court that the tenancy had come to an end by efflux of time was also endorsed. On both counts the plaintiff was entitled to a decree of possession.

5. Before this court counsel for the appellants has urged that the orders of both the courts suffer from grave infirmity and a vital question of law has arisen before this court in as much as the tenancy of the plaintiff could have been terminated either by efflux of time or in the alternate by serving a valid legal notice under Section 106 of the T.P.Act and which submissions have not been appreciated by both the fact finding courts below in the correct perspective. It is submitted that admittedly a registered lease deed had been entered into between the parties which is Ex.P-2 and the term of the lease was for a period of three years commencing from July 1989 to the end of June 1992. Thereafter admittedly no written document was executed between the parties. The appellant had thus become a tenant on a month to month basis. The question of the lease having expired by efflux of time could not and did not arise. Appellant continued to remain in legal and lawful possession of the suit property as a monthly tenant. Attention has been drawn to para no.2 and 3 of the notice Ex.P-5. This notice Ex. P-5 was not a valid notice under Section 106 of the T.P.Act and had in fact fulfilled the requirements of a notice to quit under Section 111(h) of T.P.Act. It is submitted that the provisions of Section 53(A) of the said Act are attracted and where as in this case the appellant/tenant had in part performance of the contract retained the possession of the property and had thereafter in furtherance of the contract being paying rent regularly to the landlord, the question of the eviction of the appellant in these

circumstances could not and did not arise; he is adequately protected by the aforementioned statutory provision.

6. Arguments have been rebutted by the learned counsel for the respondent. It is submitted that in either eventuality i.e. whether the lease has been determined by efflux of time or whether the lease had expired by termination of the tenancy under Section 106 of the T.P.Act, the appellant/tenant has become an unlawful occupant and is liable to be evicted. The appellant is blowing hot and cold at the same time. In one breath his submission is that the tenancy expired in terms of the registered lease deed in June 1992 but was again renewed with the consent of the parties and remained in operation till 30.6.1995 and in these circumstances where the tenancy expires by efflux of time a notice to quit was not necessary. In the next breath the appellant has submitted that the appellant had become a tenant on a month to month basis after June 1992 as no written document had been admittedly executed between the parties thereafter. The appellant having thus become a tenant on a month to month basis, he could only be evicted by a valid legal notice complying with the requirements of Section 106 of the T.P.Act which Ex.P-5 has not adhered to. Counsel for the respondent has submitted that these contrary and conflicting submissions of the appellant has taken him nowhere; at the cost of repetition in either eventuality; whether lease stood determined by efflux of time or whether the appellant being a month to month tenant, his lease stood determined by the valid legal notice Ex.P-5 which had fulfilled the twin requirements of this statutory provision as has been endorsed by both the court below, he is liable to be evicted. It is submitted that the respondent/landlord has after

30.6.1995 not accepted any rent from the appellant and the rent cheques issued by him have not been encashed. Attention has been drawn to para no.3 of the plaint filed before the Civil Judge as also corresponding para in the written statement and the defence set up by the defendant. It is submitted that the plaintiff has categorically averred that the lease had stood determined by efflux of time on 30.6.1995 but by way of abundant precaution a notice had also been served upon the tenant asking him to vacate the suit property. The defendant in the corresponding para of the written statement has nowhere challenged the veracity of the said legal notice; his only defence being that it was one Raghusudon who was a tenant in the suit property; no defect or illegality has been pointed out in Ex.P-5. Attention has also been drawn to the grounds taken in the first appeal filed before learned District Judge as also the grounds of appeal and the substantial question of law formulated in the present appeal. It is submitted that the argument of the appellant resorting to the provisions Section 53A of the T.P.Act has been taken up in this appeal for the first time at the time of oral arguments and does not find mention in any earlier proceeding. Even otherwise no such protection is available to the defendant. The provisions of Section 53A serves as a protection to a tenant only for the purpose of holding that he cannot be ranked as a trespasser and cannot be thrown out without due process of law. No further advantage can accrue to such a tenant who is at best even as per his own showing only a tenant at sufferance.

7. Counsel for the respondent has placed reliance upon 98(2002) DLT 720 *Rajiv Saluja Vs. M/s Bhartia Industries Limited*

& Anr. wherein in similar circumstances where the tenancy stood terminated by efflux of time but by way of abundant precaution the plaintiff had also served a notice of termination under Section 106 of the T.P.Act which had admittedly resulted in the suit of the plaintiff being decreed in his favour. Reliance has also been placed on AIR 1972 SC 819 Bhawanji Lakhamshi & Ors. Vs. Himatlal Jamnadas Dani & Ors. wherein a distinction has been drawn by the Apex Court between the continuance in possession of a tenant after the determination of the term with the consent of the landlord and a tenant doing so without his consent; the former being described as a tenant at sufferance and the latter a tenant holding over or a tenant at will. It is submitted that the appellant/tenant has become a tenant holding over/a tenant at will as the landlord had not consented to his continuance in the suit property after the lease period had expired. This is evident from the fact that the rent cheques tendered by the tenant had not been encashed by the landlord.

8. Reliance has also been placed upon 88(2000) DLT 186 Singer India Ltd. Vs. Amita Gupta. In this case the provisions of Section 53A of T.P.Act had been expounded by the court in the context of the determination of a lease where a similar defence as in the instant case had been set up by the tenant seeking the protective shield of the said statutory provision. In this case the parties had entered into a registered lease deed dated 1.9.1985 for a period of three years. In terms of the lease agreement after the expiry of every three years by enhancing the rent by 15% appellant had a right to renew the lease for another three years. In accordance with the contract between the parties the lease between the

parties was further renewed by paying the enhanced rent of 15% and in this way the period of tenancy stood extended up to 31.8.1994. On 17.8.1994 appellant requested the respondent to renew the lease for another period of three years commencing from 1.9.1994 and this enhanced rent continued to be paid by tenant to the landlord who accepted the same. It was submitted that by virtue of Section 53A of T.P.Act due to this part performance of the contract, the term of tenancy of the tenancy had got extended by another three years i.e. upto 31.8.1997. In these circumstances the question which arose for determination by the court was whether the notice dated 9.12.1994 under Section 106 of the T.P.Act served by the landlord upon the tenant was a valid legal notice or the tenant had become a tenant in perpetuity and was entitled to the protective shield of Section 53A of the T.P.Act. In that case the tenant had also relied upon the provisions of Section 49 of the Registration Act to support his submission that a document even if is unregistered can be looked into for a collateral purpose.

9. This submission was considered by the Division Bench of this Court who repelled the same. The ratio of the aforementioned judgment squarely applies to the instant case. The protection sought by the tenant under Section 53A of the T.P.Act is only to the extent that he can justify his possession i.e he is not a trespasser; this salutary provision will not enable the tenant to press into service the terms of a document which is unregistered though required by law to be registered. This would be illegal in terms of the harmonious construction to be accorded to the provisions of Section 53A and 107 of the T.P.Act.

10. Applying the ratio of the aforementioned judgment, it is thus clear that after June 1992 i.e. from 1.7.1992 the appellant had become a tenant on a month to month basis as the subsequent renewal from July 1992 up to 30<sup>th</sup> June 1995 was not by way of a registered instrument and in violation and hit by Section 107 of the T.P. Act as also Section 49 of the Indian Registration Act. The appellant after 1.7.1992 had become a tenant on a month to month basis.

11. It is a well settled proposition of law that absence of a registered lease the tenancy at best can be regarded as from month to month. The appellant having become a tenant on a month to month basis after 1.7.1992, the only manner in which he could be evicted from the suit property was by serving upon him a valid legal notice under Section 106 of the T.P. Act. Ex.P-5 dated 12.5.1995 has, thus, to be construed in this background; does it fulfill the twin requirements of a valid legal notice as required under Section 106 of the Transfer of Property Act? Does Ex.P5 give a minimum 15 days time to the tenant to vacate the lease hold premises and did the period expire with the end of the tenancy month?

12. Ex.P-5 has been scrutinized. Para nos.2 and 3 of the said document interalia reads as follows:-

“2.That a duly registered lease deed dated 29.8.1989 was executed in this regard. The lease was renewed for further period of three years from 1<sup>st</sup> July, 1992 to 30<sup>th</sup> June, 1995. The said period of three years is expiring on the 30 June, 1995 and as such you are liable to vacate the premises with the expiry of 30<sup>th</sup> June, 1995.

3.That although the lease period would expire with the efflux of time on the 30<sup>th</sup> June, 1995, I by means of this notice by way of abundant caution terminate your tenancy with the expiry of 30<sup>th</sup> June, 1995. In case you consider the last day of your tenancy month to be different, than your lease shall stand terminated with the expiry of the said last day of the tenancy month which shall fall one month hence after the receipt of this notice.



You are called upon to vacate the premises accordingly.”

13. The intention of the landlord to determine the lease is clear and unambiguous from a plain reading of this document. It clearly states that the tenancy of the tenant is terminated with the expiry of 30.6.1995 and in case the last day of the tenancy month is to be treated differently the lease shall stand terminated with the expiry of the said last day of the tenancy month which shall be within one month after the receipt of this notice. A clear period of 15 days to vacate the property has been categorically stated in Ex.P-5. This notice had been addressed by the advocate of the landlord to the tenant company at both its addresses i.e. at Bombay and New Delhi. As already aforementioned there is no challenge by the defendant in his written statement to the legal requirements of such a notice; no defect or lacuna has been pointed out. The only plea taken by the defendant was that the notice was served upon Raghusudon and not upon the company. This has been negated by both the fact finding courts below and has been amply proved by the evidence. The registered A.D. Card received back raises the presumption of service of the notice upon the defendant. Non-service of such notice has also not been pleaded before this court.

14. In AIR 1977 SC 1120 Bhagabandas Agarwalla Vs. Bhagwandas Kanu & Ors. It has been held by Supreme Court that a notice to quit ought not to be construed in a hypertechnical manner nor must its interpretation be affected by pedagogic pendantism or over refined subtlety but in a common sense way. No particular form is necessary for a notice under Section 106 of the T.P.Act. The notice must, on its plain reading, bring out the intention of the lessor to terminate the lease and this intention

must be unambiguous. This is amply borne out from a reading of para no.2 and 3 of Ex.P-5. The rebuttal arguments of the learned counsel for the appellant that ordinary rules of construction should be applied in interpreting an instrument is an undisputed proposition; by applying this ordinary rule of construction to the document Ex.P-5 the intention of the lessor to terminate the tenancy of the lessee on the expiry of the period on 30.6.1995 giving him a clear 15 day period to vacate the property is clear, categorical and apparent on the face of the instrument.

15. In 47(1992) DLT 317 (DB) State Bank of India Vs. Ashok Kumar Gupta & Anr. , a judgment relied upon by learned counsel for the appellant on the construction of Ex.P-5 the court had observed that the notice under Section 106 of the T.P.Act must be read in the context of the each particular case having regard to the situation of the parties to whom it was addressed. The oft quoted observation of the Judicial Committee in AIR 1918 P.C. 102 Harihar Banerji Vs. Ramsashi Roy case is noteworthy in this context;

“..... that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; that the test of their sufficiency is not what they would mean to stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants, presumably conversant with all these facts and circumstances; and, further that they are to be construed, not with a desire to find faults in them which would render them defective, but to be construed ut res magis valeat quam pereat.”

16. In the context of the aforementioned facts of the present case as also the provisions of law, this court is left with little choice but to uphold the finding of both the courts below. The appellant has become a tenant on a month to month basis after 30.6.1992; his tenancy was validly and legally terminated by the notice Ex.P-5 dated 12.5.1995 under Section 106 of the

Transfer of Property Act.

17. The substantial question of law is answered accordingly.

Appeals are without any merit. They are dismissed.

**INDERMEET KAUR, J.**

**JULY 06, 2010**

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