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

% *Judgment pronounced on: April 04, 2014*

\+ **CM(M) No.903/2012 & C.M. No.13850/2012 (for stay)**

PRANEETA SONI ..... Petitioner

Through Mr.Sandeep Sethi, Sr.Adv. with
Mr.Chetan Chawla, Adv.

versus

PANCHSHILA HOSPITALITY VENTURES LTD & ORS
..... Respondents

Through Mr.Arun Khosla, Adv. with
Ms.Shreeanka Kakkar, Adv.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By this judgment I shall dispose of the abovementioned petition along with pending application.

2. The petitioner Smt.Praneeta Soni has filed the present petition against four respondents, namely, Panchshila Hospitality Ventures Ltd. (respondent No.1), Narinder Jeet Singh Kanwar (respondent No.2), his wife Kavita Kanwar (respondent No.3) and his son Abhayjeet Kanwar (respondent No.4) who are defendants No.1 to 4 in suit proceedings. Mrs.Ranjit Charles Singh, who was impleaded as defendant No.5 in the suit proceedings died on 30th January, 2012. The application for seeking exemption from bringing on record her legal heirs was allowed and she was deleted from the array of the parties in the suit as defendant No.5 by order dated 4th June, 2012 passed by the learned Trial Court. Therefore she is not impleaded in the present petition and even otherwise she sold the suit property to petitioner before the

petitioner filed the suit for ejectment against the respondents, her heirs were not brought on the record by the petitioner.

3. The petitioner in this petition has challenged the order dated 1st February, 2012 passed by the learned Addl. District Judge in Suit No.263/2008 (re-numbered as 83/2012) whereby the application under Order 12 Rules 1 & 6 read with Section 151 CPC was dismissed, mainly, on the reasons that there is dispute as to whether the rent of the suit property is Rs.3000/- or Rs.3630/- and whether there was any service of notice which is denied by the respondents.

4. Brief facts are that the petitioner filed the suit for ejectment, recovery of arrears of rent and mesne profits against the five defendants as mentioned above before the learned Trial Court, with regard to the suit property i.e. property bearing No.S-45, Panchshila Park, New Delhi-110017, plot measuring 418 Sq. Meters (500 Sq. Yards), a residential house consisting of built-up ground floor and first floor premises, servant quarters, lawns including one garage block owned by Mr. Ranjit Charles Singh i.e. previous owner. The petitioner claimed ownership of the suit property since she had purchased the same from Mrs.Ranjit Charles Singh on 26th July, 2007 by virtue of registered sale deed.

5. It was stated in the plaint that one Panchshila Rubber Ltd. now known as Panchshila Hospitality Ventures Ltd. (respondent No.1) approached Mrs.Ranjit Charles Singh for taking the suit property on rent. The entire suit property was leased out by unregistered lease deed dated 1st April, 1989 to Panchshila Rubber Ltd. on a monthly rent of Rs.3,000/- for a period of three years. As per Clause 9 of the lease deed, the lessee was to use the suit property for residence of respondent No.2 Mr.Narinder Jeet Singh Kanwar

(in short name "N.J.Kanwar"), Managing Director of Panchshila Rubber Ltd. Respondent No.3 is the wife of respondent No.2. The respondent No.4 is son of respondents No.2 and 3. It was averred in the plaint that after the expiry of the term of the lease deed and in the absence of further lease deed, the tenancy of respondent No.1 became month-to-month.

6. Prior to filing of suit for ejectment by the petitioner, in October, 2001, previous owner Mrs.Ranjit Charles Singh filed an eviction petition against Panchshila Rubber Ltd. on the ground of personal bonafide requirement before the Rent Controller, Delhi, bearing No.E-150/2001 (re-numbered as E-73/2002) mainly on the ground that after the death of her husband, she continued to reside on the first floor of a factory premises in Mumbai. Being the owner of the suit property, she wanted to settle in Delhi being an old lady of about 80 years and suffering from various ailments, as one of her married daughters is living with family. After the service of the summons in the eviction proceedings, instead of original lessee M/s Panchshila Rubber Ltd., respondent No.1 M/s Panchshila Hospitality Ventures Ltd. filed an affidavit along with the application seeking leave to defend. It was pleaded in the affidavit that M/s Panchshila Rubber Ltd. is no longer in existence in view of change of name. The Rent Controller rejected the eviction petition on 3rd August, 2002 mainly on the ground of change of name to M/s Panchshila Hospitality Ventures Ltd. Leave was granted to the previous owner Mrs.Ranjit Charles Singh to file a fresh petition on the same cause of action against the proper party.

7. On 11th August, 2002, Mr.N.J.Kanwar (respondent No.2 herein) through Advocates served a notice upon the Mrs.Ranjit Charles Singh seeking specific performance in respect of the suit property on the basis of

an oral agreement to sell between him and her. In the said notice, it was stated that she entered into an agreement to sell with him in respect of the suit property for a sale consideration of Rs.50 lac, as she in her letter dated 29th August, 1998 admitted the receipt of the token earnest money of Rs.200/- by a bank draft. Pursuant to the said agreement to sell and by letter dated 10th September, 1998, respondent No.2 informed her that in pursuance of agreement to sell, she would not seek any eviction in case she was paid total sum of Rs.50 lac in installments. It was alleged in the letter that respondent No.2 has tendered further sum of Rs.95,000/- through messenger in Mumbai to her by way of an advance and he would also be willing to pay the balance sale consideration. It was stated that in case no reply is received on her behalf within 30 days from the receipt of the notice to execute and register the sale deed against receipt of the balance sale consideration of Rs.49,04,800/-, the respondent No.2 would be constrained to take recourse to all necessary legal remedies for the specific performance of the said agreement to sell.

8. The said notice was vehemently denied by Mrs.Ranjit Charles Singh who sent the reply through her Advocate on 9th September, 2002 wherein she denied the fact of having entered into any agreement whatsoever with the respondent No.2. It was stated by her that the referred letter dated 29th August, 1998 by the respondent No.2 does not mention any reference of agreement to sell. She has not received any alleged letter dated 10th September, 1998 from respondent No.2. No amount i.e. Rs.95,000/- whatsoever mentioned by respondent No.2 is received by her against the suit property. It was rather alleged by her that the occupation of the new Company i.e. respondent No.1 is totally unauthorized. The respondent No.2

was never a tenant in any part of the suit property. He was never permitted to possess the property either on behalf of respondent No.1 or under the alleged agreement to sell. The fact of the changing the name of the Company came to her notice for the first time when the eviction petition was filed by her. She had never let out the suit property to respondent No.1 nor accepted the said Company as a tenant. She only let out the suit property to the Company known as M/s Panchshila Rubber Ltd. with effect from 1st April, 1989 for three years for the purpose of residence of Mr.N.J.Kanwar who was the Managing Director of the said Company at that time.

9. After about a week, Mrs.Ranjit Charles Singh through her Advocate issued notice dated 18th September, 2002 to respondent No.1 under Sections 6A & 8 of the Delhi Rent Control Act, 1958 (hereinafter referred to as the "DRC Act") for increase of rent. It was stated in the said notice that an eviction petition under Section 14(1)(d) read with Section 25-B of the Act was filed in the Court of Ms.Nivedita Anil Sharma, Addl. Rent Controller, Delhi who by her order dated 3rd August, 2002 held that M/s Panchshila Hospitality Ventures Ltd. is a tenant in the suit property. Therefore, the demand was made to increase the rent by 10% after 30 days from the receipt of the said notice of enhancement and the rent of the suit property thereafter would be Rs.3300/- per month exclusive of water, electricity and maintenance charges, etc.

9.1 Respondent No.1 sent the reply dated 20th September, 2002 to the said notice wherein it admitted the demand raised in the notice for increase in rent by 10% with effect from 1st October, 2002. Two cheques in the sum of Rs.9,000/- each covering the rental arrears from April to September, 2002 along with two more cheques in the sum of Rs.1650/- as rent for the month

of October, 2002, aggregating the sum of Rs.3300/- were sent to Mrs.Ranjit Charles Singh.

9.2 On 10th October, 2002, reply was sent on behalf of Mrs.Ranjit Charles Singh to the communication dated 20th September, 2002 and it was specifically communicated that Mr.N.J.Kanwar i.e. respondent No.2 has got nothing to do with the tenancy of the suit property and remittance towards rent was supposed to be on behalf of respondent No.2 and by no one else and compliance has to be done strictly as per the notice dated 18th September, 2002 and remittance towards the rent of the suit property should be by the tenant only and no one else.

10. Mrs.Ranjit Charles Singh on 23rd September, 2002 filed a fresh eviction petition being Eviction Petition No.125/2002 (re-numbered as E-212/07/02) in view of the liberty granted to her in the earlier eviction petition filed on the ground of personal bonafide requirement against respondent No.1 and against M/s Panchshila Rubber Ltd.

11. Two separate leave to defend applications were filed on 3rd March, 2003; one by respondent No.1, M/s Panchshila Hospitality Ventures Ltd. and second by respondent No.2, Mr.N.J.Kanwar who also sought his impleadment in the eviction petition as a tenant in his individual capacity. During the pendency of the eviction petition, two separate applications were filed by respondents No.1 & 2 herein to deposit the rent with the Controller from April, 2002 to September, 2002 wherein they raised the plea of two separate tenancies for one-half undivided portions of the suit property in favour of respondents No.1 & 2. The said applications for deposit of rent were dismissed by the Addl. Rent Controller on 18th July, 2003 by holding that the tenancy was one and respondent No.2 Mr.N.J.Kanwar was not a

tenant. Against the said order, both respondents No.1 & 2 filed appeals being RCA No.624/2003 & RCA No.613/2003 respectively. Both the appeals were dismissed by Sh.G.P.Thareja, Addl. Rent Control Tribunal, Delhi by order dated 1st September, 2003. Aggrieved by the said order, the respondents No.1 & 2 challenged the same in this Court by filing of two petitions being CM(M) No.783/2003 (filed by Mr.N.J.Kanwar) and CM(M) No.811/2003 (filed by M/s Panchshila Hospitality Ventures Ltd.). Both the petitions were dismissed by this Court vide order dated 20th July, 2004.

11.1 By order dated 6th February, 2004, the application for leave to defend filed by respondent No.1 was allowed by the learned Addl. Rent Controller. However, the application filed by respondent No.2 Mr.N.J.Kanwar for impleadment as a tenant and to contest the eviction proceedings was rejected.

11.2 Against the said order rejecting the prayer of impleadment as tenant of respondent No.2, respondent No.2 filed petition being CM(M) No.853/2004 before this Court. The same was also dismissed by order dated 13th March, 2006. Similarly, the revision petition being RC. Rev. No.21/2006 filed by Mrs.Ranjit Charles Singh against the order granting leave to defend to respondent No.1 was also dismissed so as the Special Leave Petition on 28th April, 2006.

12. After the expiry of three years, another notice was issued by Mrs.Ranjit Charles Singh on 6th March, 2006 served upon respondent No.1 under Section 6A of the Act for enhancement of rent from Rs.3300/- to Rs.3630/- per month, stating that after expiry of 30 days from the receipt of the said notice, the rent stood enhanced to Rs.3630/- per month.

13. On 26th July, 2007, the petitioner had purchased the suit property from Mrs.Ranjit Charles Singh vide sale deed who on the basis of the said title has claimed the ownership of the suit property. The petitioner in addition to notice issued by her predecessor Mrs.Ranjit Charles Singh dated 6th March, 2006 issued a fresh notice dated 15th November, 2007 for enhancement of rent to Rs.3630/- per month through counsel exercising the statutory rights. The said notice was issued to all respondents and their counsel who is appearing on behalf of respondent No.1. No reply was received from respondent No.1. However a letter was received from respondents by the petitioner wherein it was alleged that the tenancy has been split in favour of respondents No.1 & 2 by the previous owner orally.

14. In May, 2008, the petitioner filed the suit for ejectment, recovery of arrears of rent and mesne profits before the District Judge, Delhi. It was alleged in the plaint that since respondent No.1 was occupying the suit property unauthorisedly after the expiry of the lease deed, its tenancy has become month-to-month. The rent after the increase is about Rs.3630/- per month. As the ownership of the suit property vests with the petitioner and in the absence of grant of fresh lease deed by a registered instrument, respondent No.1 who is continuous in possession of the suit property, has no legal status of the tenant. Despite of serving the legal notice dated 4th February, 2008 to respondent No.1 to quit which was also issued to respondents No.2 to 4 as well as to Kriti Kreations, Sh.Naresh Gupta (Company Secretary) and M/s Sanjay Bhatia & Associates (Chartered Accountants) of respondent No.1-Company and their Advocate, the petitioner was left with no option but to file the suit for ejectment.

14.1 It was averred in the plaint that petitioner had an apprehension that in order to avoid ejectment, the respondents would avoid the receipt of notice to quit, therefore, copy of it was sent on 7th February, 2008 to respondents No.1 to 4 in an inland letter card form. Also a copy of the notice to quit dated 4th February, 2008 was again sent in an inland letter card form on 9th February, 2008 to respondent No.1 and again on 11th February, 2008 to respondent No.1 and respondent No.2. No reply to the said notice was received.

14.2 It was stated by the petitioner that since no reply to the notice to quit was received after the expiry of the period specified in the notice, the tenancy stood terminated on 29th February, 2008. As respondent No.1 failed to vacate the suit property and continues to remain in possession of the same, the status of respondent No.1 with effect from 1st March, 2008 was that of a tenant at sufferance and of unauthorized possessee. The petitioner is entitled to recover the actual possession.

14.3 It was also stated in the plaint that Mrs.Ranjit Charles Singh was impleaded as defendant No.5 in the suit as a former owner of the suit property. She was impleaded as a party so that if any controversy regarding her conduct, notices or alleged sale by her to the petitioner is raised by respondent/defendant No.1, then she can explain the same. Otherwise, no relief was sought against Mrs.Ranjit Charles Singh.

15. In the written statement, various defences were taken by respondents No.1 & 2. The application under Order VII Rule 11 CPC filed by respondent No.2 was dismissed by order dated 24th August, 2008. In the said order, it was also observed that the plea of respondents cannot be disposed of without recording of evidence.

16. The respondents No.1 & 2 on 4th August, 2008 also filed two separate suits in the Court of District Judge, Delhi against Mrs.Ranjit Charles Singh and Mrs.Praneeta Soni – petitioner in the abovementioned matter, being Civil Suit Nos.504/2008 & 505/2008 seeking for specific performance of the oral agreement to lease between Mr.N.J.Kanwar respondent No.2 and Mrs.Ranjit Charles Singh in respect of the suit property.

17. During the pendency of the suit, the petitioner filed the application under Order XII Rules 1 & 6 CPC mainly on the reason that the relationship between the petitioner and respondent No.1 as landlord and tenant cannot be denied by respondent No.1. The rent is more than Rs.3500/- per month. In the absence of subsisting lease deed and service of notice, the petitioner is entitled for a decree for ejectment under Order XII Rule 6 CPC against respondents No.1 to 4 and to ask for inquiry under Order XX Rule 12 CPC into the mesne profits claimed by the petitioner.

18. The application filed by the petitioner under Order XII Rule 6 CPC was strongly opposed by the respondents before the learned Trial Court and before this Court mainly on the grounds that the petitioner has concealed from this Court the trial Court's order dated 24th August, 2008 disposing of the respondents' application under Order VII Rule 11 CPC with the observation that the question of the monthly rental is a matter of trial. Therefore, the prayer cannot be allowed.

It was also alleged in the reply that the suit itself is not maintainable as the prevalent rent is below Rs.3,500/- per month and the same is barred under Section 50 of the Act. The only remedy that lies with the petitioner is to take the protection under the Act. It is also submitted that once the Court in the prior proceedings under Order VII Rule 11 CPC had held that the

question of the suit being barred cannot be decided without recording of evidence in respect of the prevalent rent, the same finding will operate as resjudicata in the petitioner's application under Order XII Rule 6 CPC and the petitioner cannot press for judgment on admission till such time as trial in that regard has taken place in view of the respondents' unambiguous and unequivocal stand that the suit is barred under the Act.

19. Prior to disposal of petitioner's application under Order XII Rule 6 CPC, Mrs.Ranjit Charles Singh filed an application under Section 151 CPC before the learned Trial Court where the suit for ejectment was filed. Along with the application, she also filed her affidavit dated 11th August, 2011. In her affidavit, she deposed that she had never compromised or settled any litigation with the respondents. The allegation about any settlement in May, 2007 or any other date is false. She has already sold the suit property to the petitioner on 26th July, 2007 as she did not pursue the litigation any further in view of harassment and trouble she had suffered at the hands of respondent No.2 and it is because she could no longer take the strain of litigation, therefore, she sold the suit property to the petitioner. She admitted in the affidavit that two letters dated 11th November, 2007 were received from respondents No.1 & 2 sometime in the latter-half of 2007 and she gave her reply thereto dated 5th December, 2007. It was stated that from the beginning of November, 2007, respondents No.1 & 2 had been sending her cheques which she refused to accept as the suit property had been sold by her prior thereto. She had not received any money from respondents No.1 & 2 in the year 2007 or prior thereto and there was no oral agreement dated 25th May, 2007 as claimed by the respondents. It was mentioned in the

affidavit that respondent No.2 never met her on 25th May, 2007 in Mumbai or anywhere else. In fact, she had not seen him for the last many years.

20. She also filed written statement to the plaint by way of her second affidavit dated 29th December, 2011 wherein she deposed that her Advocate Bakshi Siri Rang Singh served a second notice dated 6th March, 2006 for increase of rent from Rs.3300/- per month to Rs.3630/- per month. Along with the affidavit, she placed on record the postal receipts No.4886 & 4887 dated March, 2006 of Tis Hazari Post Office and also the copies of registered A.D. Cards. The deceased Smt.Ranjit Charles Singh attached the copy of the registered post letter dated 5th December, 2007 addressed to respondents No.1 & 2 in reply to the letter dated 11th November, 2007 enclosing therewith two cheques for the sum of Rs.10,500/- each towards rent allegedly sent by respondents No.1 & 2. In the said letter, she specifically mentioned that the contents of both the letters sent by respondents No.1 & 2 were false. She did not meet respondent No.2 in May, 2007 nor any agreement was arrived with him. The said two cheques were cancelled and returned alongwith letter dated 5th December, 2007. Photocopies of the cancelled cheques were also filed along with her affidavit. She passed away on 30th January, 2012. The petitioner's application for exemption to implead her legal heirs was allowed by order dated 4th June, 2012 and she was deleted from the array of parties as defendant No.5 being formal party in the suit.

21. As mentioned earlier, the petitioner's application under Order XII Rules 1 & 6 CPC was however dismissed by the impugned order dated 1st February, 2012, mainly on the reason that there is dispute as to whether the rent is Rs.3,000/- or Rs.3630/- and whether there was any service of notice

as alleged by the petitioner and denied by the respondents. The learned Trial Court was of the opinion that the suit of the petitioner/plaintiff cannot be decreed under Order XII Rule 6 CPC. The present petition has been filed against the said order.

22. In view of death of Mrs.Ranjit Charles Singh on 30th January, 2012, the respondents No.1 & 2 in their suits for specific performance filed applications under Order 22 Rule 4(4) read with Section 151 CPC seeking exemption from necessity of substituting the legal representatives of deceased Mrs.Ranjit Charles Singh by stating that though she neither entered appearance despite of service of summons nor filed her written statement and was proceeded ex-parte, however, the application was being filed with abundant caution. The name of legal heirs survived were given in the application.

23. The said applications were disposed of by the learned Civil Judge by the common order dated 26th September, 2012 in the two suits filed by respondent Nos.1 and 2 for specific performance of lease agreement mainly on the reasons that clarity with regard to the veracity of this document and the status of the suit property would emerge if the LRs of previous owner are brought on record. The respondent Nos.1 and 2 could not be exempted from the necessity of substituting the legal heirs of Mrs. Ranjit Charles Singh and the LRs of deceased are required to be brought on record for the purpose of proper and complete adjudication of the two suits i.e. suit no. 504/08 and suit no. 505/08.

24. The respondent Nos.1 and 2 filed two petitions being CM(M) No.1161/2012 filed by Mr.N.J.Kanwar and CM(M) No.1182/2012 filed by M/s Panchshila Hospitality Ventures Ltd. against the dismissal of said

applications under Order XXII Rule 4(4) CPC, praying to set-aside the order dated 26th September, 2012 by exempting them to bring the legal representatives of the deceased in view of the statement made in their applications by them. Both the parties also made their respective submissions in their two petitions. Separate orders are being passed on merit about the validity of the impugned orders therein.

25. In view of above said facts and circumstances, both sides have addressed their submissions in the present petition. They have also filed their written submissions.

26. Mr.Sandeep Sethi, learned Senior counsel with Mr.Chetan Chalwa, Advocate, appears on behalf of petitioner. Mr.Arun Khosla, Advocate with Ms.Shreeanka Kakkar, Advocate, appears on behalf of the respondents.

27. The submissions of Mr.Sethi are outlined as under:

(i) The impugned order dated 1st February, 2012 passed by learned Additional District Judge, while dismissing the application under Order XII Rule 1 & 6 of CPC, in the suit filed by his client for ejectment is against the fact and law applicable as according to him there is no dispute about the rent of the suit property in view of two notices under Section 6A of the Act issued after the gap of three years. The rent stood enhanced at Rs.3630/-. The said notices were duly served upon the respondent. First notice was duly acknowledged by respondents No.1 & 2 who agreed to enhance the rent under Section 6A of the Act. Thus, question of denying about the service of second notice on behalf of the respondent does not arise when the notices were sent at the proper and correct address. According to him, the learned Trial Court failed to correctly appreciate the provisions of

Section 27 of the General Clauses Act, 1897 and Section 114(e) of the Indian Evidence Act, 1872 and the decisions referred by him.

According to him, the learned Trial Court did not notice the affidavit dated 11th August, 2011 sent by Mrs.Ranjit Charles Singh who refuted the letters dated 5th December, 2007 and 8th July, 2008. The learned Trial Court incorrectly read Mrs.Ranjit Charles Singh's evidence by way of affidavit filed in the eviction petition of 2002 in which she did not say that rent was Rs.3000/-. Even otherwise, once the notice is served under Section 6A of the Act, any admission made by the owner or tenant has no consequence. The findings of the learned Trial Court are contrary to law laid down by the Supreme Court and this Court.

(ii) The second submission of Mr.Sethi is that the learned Trial Court failed to appreciate that the tenancy in the present case was admitted. The receipt of the notice for enhancement of rent cannot be denied by respondents No.1 & 2 in view of presence of evidence for serving parties at the correct address available on record; the plea of fresh grant of two tenancies orally was no plea in view of specific denial on behalf of Mrs.Ranjit Charles Singh in her letter dated 8th July, 2008 to respondents No.1 and 2 wherein she specifically informed them that the cheques sent by them with regard to split tenancy are not acceptable to her and those had been cancelled and she warned them that the cheques should not be sent to her in future. It was also informed by her to the respondents No.1 and 2 that she has already sold the suit property to the petitioner and they may deal with her directly. It was also clarified by her in her letter dated 8th July, 2008 that the initial rent of the property was Rs.3000/-. Later on it was

enhanced as per law and why two separate cheques were being sent to her by the respondent No.2. His submission is that in view thereof, there is no ambiguity in any manner whatsoever since under the operation of law, the rent after the interval of three years stood enhanced under Section 6A of the Act. Therefore, the flimsy plea raised by the respondents is without any substance.

(iii) Mr.Sethi, learned Senior counsel argued that similar is the position of notice issued under Section 106 of the Transfer of Property Act with regard to the termination of the tenancy by the petitioner. His submission is that the petitioner has rightly terminated the tenancy. The said notice was sent not only to respondent No.1 but all other respondents at the correct addresses in order to avoid any objection or confusion in future. A mere denial of receipt of notice to quit is not sufficient to rebut the presumption of service of notice to quit which is a self serving denial by the respondents and which plea has no meaning in the eyes of law. The learned Trial Court was not correct in not exercising its jurisdiction to decree the suit under Order XII Rule 6 CPC without understanding the judgments rendered by the Supreme Court and this Court.

His submission is that the object of raising the plea for non-receipt of notice to quit was deliberate and it was done by the respondents to drag on the litigation and keep on holding the suit property and assuming that the notice dated 4th February, 2008 was not served upon the respondent No.1, the service of summons of the suit for ejectment accompanying copy of notice to quit, had the effect of termination of tenancy in view of the settled proposition of law. He referred to the various judgments in this regard.

(iv) Mr.Sethi submitted that following are the real facts involved in the matter which cannot be disputed by the respondents, thus the impugned order is liable to be set aside:

(a) The premises was let out by Mrs.Ranjit Charles Singh (petitioner's predecessor-in-interest) to respondent No.1 in terms of lease deed dated 1st April, 1989 @ Rs.3000/- per month.

(b) The rent was paid for many years by cheques of respondent No.1.

(c) There was a notice for escalation dated 18th September, 2002 of rent from Rs.3000/- to Rs.3,300/-, the receipt of which is not denied by the respondent No.1.

(d) The plea of two tenancies for Rs.1650/- each raised by respondents No.1 and 2 was rejected by the Additional Rent Controller by order dated 18th July, 2003 and by this Court by order dated 20th July, 2004.

(e) The application of the respondent No.2 for impleadment as tenant and to contest the eviction proceedings was rejected. The tenancy was held to be single in favour of the respondent No.1. The CM(M) No.853/2004 filed by the respondent No.2 against the said finding was also dismissed by this Court on 13th March, 2006.

(f) The suit property is a single unit leased to respondent No.1 under lease deed dated 1st April, 1989 which provides that the lessee shall use the suit property for residence of Mr.N.J. Kanwar/respondent No.2, its Managing Director only.

(g) The respondent No.1 is a family held company with no outsiders.

(h) The suit property is occupied by the respondent No.2. The respondents No.3 and 4 are wife and son of respondent No.2.

(i) Without prejudice, enhancement notice dated 15th November, 2007 and notice to quit dated 4th February, 2008 were sent to the respondents at the correct address.

(j) There was a single tenancy of the single unit of the suit property which originated on 1st April, 1989.

(v) Mr.Sethi also argued that another frivolous plea raised by the respondents with regard to the oral settlement on 25th May, 2007 to end litigation and grant two tenancies of Rs.1500/- per month each is bogus in order to further harass the previous owner who had never in her life admitted the fact of splitting the tenancy, any compromise or readiness to sell the suit property orally or by any written documents. The other plea of non-receipt of notices dated 6th March, 2006 and 15th November, 2007 for enhancement and non-receipt of the notice to quit dated 4th February, 2008 is false to the knowledge of the respondents in view of the valid evidence available on record. Mr.Sethi has referred the affidavit of previous owner Mrs.Ranjit Charles Singh dated 11th August, 2011 where specific denial was made on her behalf and written statement by way of affidavit on 29th December, 2011 in the suit for ejectment filed by the petitioner as well as an affidavit filed by her dated 9th November, 2006 as evidence in the eviction petition filed by her (which was later on dismissed in default).

Mr.Sethi argued that the notice of enhancement of rent and notice of termination of the lease under Section 106 of the Transfer of

Property Act sent by registered post are deemed to have been served in view of Section 27 of the General Clauses Act, 1897 and Section 114(e) of Indian Evidence Act, 1872 and the object of enhancement of rent under Section 6A of the Act as well as termination notice under Section 106 of the Transfer of Property Act is to communicate the intention of the landlord that he wants to exercise a discretion under the said provision for enhancement of rent as well as termination of the tenancy. Such notice is to be liberally construed. A self-serving denial by the respondents would always be there in order to take advantage for dragging the proceedings and to continue enjoying the property by raising the vague denial which is usual practice in the suit filed by the landlord against the tenant for possession/ejectment.

His submission is that the application under these circumstances filed by the petitioner under Order XII Rule 6 CPC ought to have been allowed. The order passed by the learned Trial Court is legally incorrect in view of material available on record and law applicable in the matter.

28. Mr. Arun Khosla, learned counsel appearing on behalf of respondents has made various submissions. The relevant submissions are outlined as under:

i) The first and foremost submission made by Mr.Khosla is that the application filed by the petitioner under Order XII Rule 6 CPC was not maintainable and it has been rightly held by the learned Trial Court while dismissing the application that there is no dispute as to whether the rent of the suit property is Rs.3000/- or Rs.3630/- per month and whether there was any service of notice which is

denied by the respondents. He further argued that the petitioner has concealed the order dated 24th December, 2003 passed by the District Judge passed on the application filed by the respondent No.2 under Order VII Rule 11 while dismissing the application by observing the plea taken by the respondent No.2 for rejection of plaint cannot be accepted without recording of evidence. His submission is that once such observation was made in the order, the petitioner is debarred to seek prayer made in the application under Order XII Rule 6 CPC as such prayer is barred under the principle of resjudicata.

ii) His second submission is that the monthly rent cannot be enhanced under Section 6A by Rent Controller in the absence of valid service of notice for enhancement which has not happened in the present case. The rent in the present case is below Rs.3500/-. The suit for ejectment was not maintainable. In order to satisfy the court he referred the statement made by Mrs. Ranjit Charles Singh in her eviction petition dated 25th September, 2002 where it was mentioned that the monthly rent is Rs.3000/-. Even in her affidavit filed as evidence on 21st November, 2006 the similar statement was made. In the sale deed executed by her in favour of the petitioner, it was disclosed on 26th July, 2007 that the monthly rent is Rs.3000/-.

iii) It is argued that the provisions of Order XII Rule 6 can be invoked only if the admissions relied upon are unambiguous and unequivocal. Reference to the following decisions is made:

(a) ***M/s. Jeewan Diesels and Electricals Ltd. vs. M/s.Jasbir***

Singh Chadha (HUF) & Anr., JT 2010 (4) SC 574.

(b) ***Parivar Seva Sansthan vs. Dr.(Mrs.) Veena Kalra & Ors.***, 86 (2000) DLT 817.

iv) It is submitted by Mr. Khosla that the learned Trial Court disposing of the petitioner's application under Order XII Rule 6 CPC has adverted to the above order and reiterated that the question of the prevailing rent can be determined only by trial and therefore the very maintainability of the suit is in doubt; judgment on admission therefore on the basis of the jural relationship and service of notice of termination being admitted does not arise.

v) It is argued by Mr. Khosla that there is also no force in the submission of the petitioner by doubting maintainability of the suit filed by the respondents No.1 and 2 for specific performance on the basis of an oral agreement of lease having been entered into with the previous owner, the deceased Mrs.Ranjit Charles Singh. The arguments addressed by the petitioner are irrelevant and the respondents' suit for the specific performance of the oral agreement of lease is maintainable and pending trial.

vi) It is urged by Mr. Khosla that the question before this Court at present is as to whether in view of the law laid down by a line of authorities with regard to the non-requirement of a notice under Section 106 of the Transfer of Property Act and when the rent is below than Rs.3500/-, application filed by the petitioner under Order XII Rule 1 and 6 was maintainable. Even otherwise in addition, Mrs.Ranjit Charles Singh has not acted upon the purported notices of enhancement of rent and has continued to

receive rent aggregating a sum of Rs.3000/- per month covering the two portions of the suit property, namely the residential and the commercial, which were agreed to on 25th May, 2007 to be let out at the rate of Rs.1500/- per month each as per the respondent company's audited records reflecting the payment of Rs.1500/- per month each towards rental on behalf of the respondent company and its Managing Director, N.J. Kanwar, respectively.

29. Having heard the learned counsel appearing on behalf of both parties and have gone through the pleadings and documents, let me now discuss the case in hand. As already mentioned, the said application was dismissed by the impugned order dated 1st February, 2012, mainly, on the reason that there is dispute as to whether the rent of Rs.3000/- or Rs.3630/- and whether there was any service of notice as alleged by the petitioner and denied by the respondents. The learned Trial Court was of the opinion that the suit of the petitioner/plaintiff cannot be decreed under Order XII Rule 6 CPC. This Court is conscious about the law and its jurisdiction. It can have jurisdiction to interfere if it is of the opinion that there has been a gross illegality or material irregularity which has been committed by the learned Trial Court who failed to consider the relevant law and the impugned order resulted in gross injustice to the effective party and the impugned order has led to miscarriage of justice and lacks valid reason. Let me examine the present case under these guiding factors in the light of facts in the matter and to consider whether the impugned order has been passed in accordance with law.

30. Order XII Rule 6 CPC reads as under:

> "Judgment on admissions – (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
>
> Whenever a judgment is pronounced under Sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

31. A bare perusal of Order XII Rule 6 CPC reproduced above makes it clear that the emphasis is on admission of relevant facts. If the relevant facts have been admitted, the mere fact that the respondents have tried to put their own interpretation to those facts with a view to defeat the claim of the petitioner would not be a sufficient ground to decline relief under Order XII Rule 6 CPC. The entire scheme of Order XII Rule 6 CPC is to give a party right to speedy judgment. Order XII Rule 6 stipulates that in an appropriate case a party on the admission of the other party can ask for judgment as a matter of legal right. If a dishonest litigant is trying to delay judgment on the flimsy grounds including that he had not received the notice, the Courts cannot close their eyes and should not await the long period of trial. If the Courts feel that in case all necessary requirement of the said provision are fulfilled, then the courts have a power to grant prayer under the said provision.

32. The following requirements from the facts and pleadings are necessary in order to exercise the discretion under this provision:-

(1) There exists relationship of land lord and tenant between the parties;

(2) Notice of termination under Section 106 of the Transfer of Property Act has been duly served;

(3) The rate of rent exceeded Rs.3500/- per month when the notice under Section 106 of Transfer of Property Act was served.

33. The following cases are relevant in this regard :

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

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

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

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

c) This Court in the case of ***Zulfiquar Ali Khan (dead) through LRs and Ors. vs. Straw Products Limited & Ors.*** 2000 (56) DRJ 590 in para 10 observed as under :

> "10. This is a notorious fact that to drag the case, a person so interested often takes all sorts of false or legally untenable pleas. Legal process should not be allowed to be misused by such persons. Only such defense as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or untenable pleas to delay the suit. The issues will be framed in a suit only when pleadings raise material proposition of law and/or fact which need investigation and so could be decided after trial giving parties opportunities to adduce such relevant evidence as they may think necessary and proper. Material proposition of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved. If a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable court time."

34. Admittedly, on 1st April, 1989, Mrs. Ranjit Charles Singh leased out the entire suit property to Panchshila Rubber Ltd. (after the change in name now known as respondent No.1 Panchshila Hospitality Ventures Ltd.) at a monthly rent of Rs.3000/- for a period of three years. Lease Deed was unregistered document. It was provided in clause 9 that the lessee would use the suit property for residence of respondent No.2 who is now the controlling person of respondent No.1. The respondent No.3 Kavita Kanwar is his wife and respondent No.4 Abhayjeet Singh is his son.

35. On 18th September, 2002, Mrs. Ranjit Charles Singh issued a notice under Section 6A and 8 of the Act for increase of rent from Rs.3,000/- p.m.

to Rs.3,300/- p.m. The said notice was replied by respondents No.1 and 2 on 20th September, 2002 whereby, it was agreed on behalf of said respondents No.1 and 2 for increase in rent by 10% w.e.f. 1st October, 2002. Mrs.Ranjit Charles Singh, the previous owner, admittedly on 23rd September, 2002 filed eviction petition bearing No.E-125/2002 (later re-numbered as E-212/07/02) against Panchshila Hospitality Ventures Ltd. on the ground of bonafide requirement. Upon service, two separate leave to defend applications, one by respondent No.1 and second by respondent No.2 were filed on 3rd March, 2003 before the Addl. Rent Controller. Respondent No.2 also sought impleadment in the eviction petition as a tenant in his individual capacity.

35.1 Even, during the pendency of the eviction petition, both respondents No.1 & 2 tried to deposit the rent with the Controller from April, 2002 to September, 2002 @ Rs.1500/- per month and for October, 2002 and November, 2002 @ Rs.1650/- per month in order to take the plea that there are two separate tenancies for half divided portion of the suit property in favour of respondents No.1 & 2.

35.2 Both the applications for deposit of rent were dismissed by the Addl. Rent Controller vide order dated 18th July, 2003 by holding the tenancy to be one and further that respondent No.2 was not a tenant.

35.3 Against the said order, both respondents No.1 & 2 filed the appeals before the Rent Appellate Tribunal and the same were dismissed by order dated 1st September, 2003.

35.4 Against the said order, they filed the petitions under Article 227 of the Constitution of India before this Court, being CM(M) Nos.811/2003 & 783/2003 respectively and both the petitions were dismissed by this Court on 20th July, 2004.

35.5 Leave to contest was granted to respondent No.1, however, respondent No.2's application for leave to contest was dismissed. The said order was also challenged by respondent No.2 before this Court in CM(M) No.853/2004. The same was also dismissed on 13th March, 2006.

36. From the said facts and circumstances, and the finding arrived in the eviction petition filed by the previous owner it is evident that respondent No.2 was not the tenant in the suit property. There is not an iota of admission whatsoever on the part of the previous owner that he was a tenant or the tenancy was ever split into half between respondents No.1 & 2 or she ever intended to sell the suit property to respondent Nos.1 and 2 or had received any part payment. From time to time, the previous owner had filed affidavit in the suit for ejectment as well as in the eviction petition that she never entered into any agreement to sell with regard to the suit property with respondent No.1 or respondent No.2. She had also denied having received any amount towards the sale of the suit property. She never admitted that respondent No.2 was the tenant, as she always mentioned that he was residing there as Managing Director of Panchshila Rubber Ltd. against unregistered lease deed which was executed between the previous owner and M/s Panchshila Rubber Ltd. on 1st April, 1989 for three years. Her affidavit was that subsequent to that date, the occupancy of the respondents was unauthorized. Therefore, it is apparent that respondent No.2 was not the tenant in the suit property and in case he has deposited any amount in the account of the previous owner, that was totally unauthorised.

37. During the pendency of the eviction petition, on 6th March, 2006 yet another notice was issued by the previous owner for statutory increase in rent from Rs.3,300/- per month to Rs.3,630/- per month to respondents No.1 and 2 after the expiry of 30 days. Copy of notice and registered AD receipts

No.4886 & 4889, A.D. Cards, UPC and Courier Receipts are placed on record.

38. By sale deed dated 26th July, 2007, the petitioner purchased the suit property. Although the rent stood enhanced by service of notice dated 6th March, 2006 as alleged but by way of abundant precaution and without prejudice to the earlier said notice in any way, a fresh notice dated 15th November, 2007 was issued by the petitioner i.e. Smt. Praneeta Soni to respondent No.1. Copy of notice was also sent to respondent No.2 N.J. Kanwar, respondent No.3 Kavita Kanwar, respondent No.4 Abhayjeet Kanwar and Sh.Arun Khosla, Advocate who was appearing for respondent No.1. The said notices were sent by speed post, registered post, being receipt No.7422 to 7427 from Lodhi Road Post Office. Respondent No.1 was served with notice sent by speed post A.D. (SP-PQDED 372194318IN) and registered post A.D. at 340 Udyog Vihar, Phase II, Gurgaon, Haryana-122016. Copy of registered A.D. receipt, speed post receipts and A.D. cards are filed. Copy of notice dated 15th November, 2007 sent to respondent No.1 company and respondent No.2 to 4 by registered AD at S-45, Panchshila Park, New Delhi-110017 were returned unserved with the endorsement "Person not found Returned". Service report of the notice dated 15th November, 2007 is filed.

39. Thus, nothing is available on record to show that there was any 'roll-back' of the enhancement. The enhancement is by operation of law upon service of notice and so long as the notice is served, it does not and cannot get affected in any way.

40. Mr.Khosla during the course of the hearing has referred to the statement of Mrs.Ranjit Charles Singh, previous owner, in her eviction petition dated 25th September, 2002 where it was mentioned that the monthly

rent is Rs.3,000/-. He has also referred to her affidavit filed as evidence on 21st November, 2006 in which the similar statement was made as well as reference to the sale deed dated 26th July, 2007 executed between the previous owner and the petitioner where it was disclosed that the monthly rent is Rs.3,000/-. The said submission of Mr.Khosla is without any force for the reason that admittedly, the first notice of enhancement was served by her under Sections 6A and 8 of the Act for increasing the rent from Rs.3,000/- per month to Rs.3300/- per month. In reply, respondents No.1 & 2 accepted the demand of the previous owner Mrs.Ranjit Charles Singh for the enhancement of the rent. It is also a matter of fact that during the pendency of the eviction petition a statutory notice after expiry of three years for increase of rent from Rs.3300/- to Rs.3630/- per month was issued. The said submission of the petitioner is supported by the postal receipts available on record. It is settled law that once the proper and valid notice is served upon the tenant, the rent stood enhanced after the service of notice and expiry of 30 days. It is immaterial that if the tenant does not agree to enhance the rent in view of Section 6A of the Act. The said section mandates and gives an option to the landlord and if the option is exercised by the landlord, the enhancement is automatic. The tenant after the expiry of 30 days cannot dispute 10% increase of rent after three years.

No advantage can be derived by respondent No.1 of any statement made in the eviction petition if the enhancement by the operation of law upon the service of notice is made. It cannot get defective in anyway even if subsequently any reference is relied upon by the tenant in the pleading.

41. With regard to the second submission that there is admission made by the previous owner in her eviction petition which mentioned that the rent is Rs.3000/-. The said submission also has no force as the eviction petition

was filed at the time which was before expiry of 30 days from the date of service of notice of enhancement. The escalation had not taken effect on that day.

42. Third contention of Mr.Khosla also has no force about the statement made by previous owner in her affidavit as the enhancement of rent is by operation of law upon the service of the notice. There is no question of roll back of enhancement as enhancement of rent was not in issue in the earlier proceedings. Even the affidavit does not contain the statement that the enhancement of notice dated 18th September, 2002 and 6th March, 2006 has been waived, though the first notice is not denied by respondents No.1 & 2 and second notice was also served by the petitioner as a matter of caution after purchase of suit property on 26th July, 2007.

43. With regard to the contention of Mr.Khosla about the admission made in the sale deed dated 26th July, 2007 by referring clause 3 of the sale deed where the following statement was made:-

> "That the property hereby sold was rented to Panchshila Rubber Ltd. on a monthly rent of Rs.3,000/- for a period of three years vide lease deed dated 1st April, 1989 but is under the occupation of Panchshila Hospitality Services (P) Ltd."

The said argument also has no force as it is evident from clause 3 that the reference was made to the year 1989 when the rent was Rs.3000/- per month. The reference of two enhancement notices dated 18th September, 2002 and 6th March, 2006 issued by the previous owner were not mentioned in the sale deed. Therefore, the arguments of Mr.Khosla on all the three issues are without any force.

44. Similarly, notice to quit dated 4th February, 2008 was sent by registered post and by courier to all the parties which were received back with endorsement. In order to avoid any dispute about the service, copy of notice to quit in an inland letter card form was also sent on 7th February, 2008 by registered A.D. post to respondent No.1 to 4 and Company Secretary of respondent No.1.

44.1 It appears from the records that the respondent No.1 refused to receive the notice at 340 Udyog Vihar, Phase II, Gurgaon, Haryana. The notices sent to S-45 Panchshila Park, New Delhi i.e. at the address of suit property were returned with the endorsement 'Person not found'.

44.2 In order to avoid controversy in future about service, a copy of notice to quit dated 4th February, 2008 was again sent in an inland letter card on 11th February, 2008 to respondent Nos.1 and 2. The respondent No.1 refused to receive the notices dispatched on 9th February, 2008 and 11th February, 2008 at Gurgaon address and notices sent to respondents No.1 and 2 at the address of the suit property were returned with the endorsement 'person not found'.

45. No reply to the notice to quit was received by the petitioner. The specified period mentioned in the notice to quit expired on 29th February, 2008. As per petitioner the tenancy stood determined on 29th February, 2008. The tenant did not vacate the suit property. The status of respondent No.1 w.e.f. 1st March, 2008 is that of a tenant at sufferance/unauthorized. The petitioner was left with no option but to file the suit for ejectment and recovery of mesne profits on 26th May, 2008.

46. i) In ***Green View Radio Service vs. Laxmibai***, AIR 1990 SC 2156, the Supreme Court observed as under:

> "There is a legal presumption that the communication sent by post properly addressed to the addressee is received by him in due course of business and that the acknowledgment was received back from the post office duly signed with the recipient's signature and that acknowledgment is on record. The notice was sent by the respondent-landlord's advocate and the acknowledgment was received at his office. The court further held that Amarjeet Singh, the proprietor of the premises was in the habit of changing his signature from time to time and had signed different documents in different styles. The appellant further did not lead sufficient evidence to rebut the presumption of service. It was admitted by Amarjeet Singh that either he himself or his brother or his employee would always be present in the suit premises. Although he came out with an alibi that he was not present in the premises on the date on which the postal acknowledgment is signed, he has not stated that nobody else was present in the shop on that day and hence nobody could have received the said notice on behalf of the appellant. The courts, therefore, held that the service of the notice on the appellant was proved. Since the rent was admittedly not paid within thirty days of the receipt of the said notice, according to the mandatory provisions of the Act, the appellant was liable to be evicted."

ii) In the case of ***Harihar Banerji v. Ramshashi Roy***, AIR 1918 PC 102 wherein it was observed by Lord Atkinson:

> "A letter sent under Registered post was held to be giving rise to a stronger presumption especially when a receipt for the letter is produced, even when signed on behalf of addressee by some person other than the addressee himself."

iii) Similarly, in ***Atma Ram Property Ltd. vs. Pal Property Pvt. Ltd.***, 91 (2001) DLT 438, this Court has observed:

> "13. Coming to the service of the notice, the plaintiff has placed on record the copy of the notice sent to the defendants under Section 106 of the Transfer of Property Act. The plaintiff has also placed on record the postal receipt in original by which notice was sent by registered post to the defendants. The plaintiff has also produced on record the original acknowledgement received back which is addressed to Pal Properties India Pvt. Ltd. Address is rightly mentioned as H-72, Connaught Circus, New Delhi. It bears stamp and is signed by some person acknowledging the receipt of the letter.
>
> 14. In view of these documents on record it cannot be said that the defendants did not receive the notice. Bare denial would not serve any purpose. [Ref.: Shimla Development Authority and Ors. v. Smt. Santosh Sharma and Anr. JT 1996(11) SC 254; Madan and Co. v. Wazir Jaivir Chand AIR 1989 SC 630."

(iv) Under Section 6A, it is permissible that the rent agreed upon between the landlord and the tenant may be increased by ten percent every three years. As regard with issue of enhancement of rent is concerned, it appears from the record that the respondent Nos.1 and 2 have received proper notice from the previous owner and from the petitioner after purchase the suit property.

The Division Bench of this Court in the case of ***Rohini Varshnei vs. R.B.Singh***, reported in 155 (2008) DLT 440 (DB) in paras 17 to 21 observed as under:-

> "17. On examination of the rival contentions of learned counsel for the parties, we find no merit in the plea of the appellant. Our decision is predicated on the important aspect of the respondent having sought increase of 10 per cent of the rent in terms of Section 6A of the said Act and the appellant's failure to increase the rent. This is a statutory entitlement of the respondent and on the failure of the appellant to increase the rent, it would amount to non payment of the appropriate

rent. Once the earlier rent of Rs.3,500/- is at least not in dispute, the 10 per cent increase would take the rent to Rs.3850/- and thus take the dispute outside the protection of the said Act. This is naturally the consequence of the notice dated 09.05.2002.

18. Before filing of the suit, the appellant had issued a notice determining the month to month lease and seeking possession on 20.08.2002, receipt of which is not disputed and the notice has been replied to. At the stage when such possession was sought, the correct undisputed rent would have been Rs.3850/- assuming that the original rent was only Rs.3,500/- per month and not Rs.3,550/- per month. Thus these three ingredients required for passing a decree for possession also stands satisfied. We may also notice that the aforesaid approach would amount to adopting a different reasoning than the Trial Court while passing a judgment on admission under Order 12 Rule 6 of the said Code but that itself would not make any difference since the judgment is predicated on the legal pleas advanced by the parties and factual matrix available on the record.

19. It may also be observed that in Para 6 of his plaint the respondent categorically stated that on issuance of legal notice dated 09.05.2002 the appellant was called upon to increase the rent by 10% w.e.f. 21.06.2002 and therefore rents stood increased from 3,500 to 3,850 w.e.f. 21.06.2002. It has also been stated that the said notice was duly received and acknowledged by the appellant who also sent a reply dated 23.05.2002 through her counsel. In the aforesaid reply the appellant simply denied the right of the respondent to increase the rent which is untenable in view of the right available to the respondent to increase the rent under Section 6A of the DRC Act.

20. In these circumstances, the appellant having accepted the receipt of the notice became liable to pay the rent at the enhanced rate, that is, by adding 10% which would make the rent to 3,850 even if the rent is taken as 3,500 as on 09.05.2002. The suit has been filed only thereafter i.e. on 20.10.2004, at which time, the enhanced rate had become payable.

21. A reference can also be made to the judgment of this Court in ***Nischint Bagga Vs. Goliath Detectives Pvt. Ltd. & Anr.***, 78 (1999) DLT 432 where following observations have been made:

> "7. Therefore, after receipt of the notice under Sections 6A and 8 of the Act, the rent became more than Rs. 3,500 per month and consequently the tenant lost the protection of the Delhi Rent Control Act. Section 6A and Section 8 reads as under:
>
> '6-A. *Revision of rent*—Notwithstanding anything contained in this Act, the standard rent, or where no standard rent is fixed under the provisions of this Act in respect of any premises, the rent agreed upon between the landlord and the tenant, may be increased by ten per cent every three years.'
>
> '8. *Notice of increase of rent*—(1) Where a landlord wishes to increase the rent of any premises, he shall give the tenant notice of his intention to make the increase and insofar as such increase is lawful under this Act, it shall be due and recoverable only in respect of the period of tenancy after the expiry of thirty days from the date on which the notice is given.
>
> (2) Every notice under Sub-section (1) shall be in writing signed by or on behalf of the landlord and given in the manner provided in Section 106 of the Transfer of Property Act, 1882 (4 of 1882).'
>
> 8. The receipt of notice dated 7.4.1994 calling upon defendant No. 1 to increase the rent at the rate of 10% per annum in terms of Sections 6A and 8 of the Delhi Rent Control Act, 1958 is admitted. The increase of 10% in the last paid rent makes it Rs.3,850 per month which excludes applicability of the Delhi Rent Control Act, 1958 to the suit premises. In other words, the defendants cannot claim any protection of the Delhi Rent Control Act when the rent is beyond Rs. 3,500 per month."

(v) In the case of ***West Coast Paper Mills Ltd. vs. Smt. Asha Kapoor,*** 2007 (97) DRJ 548 it was held as under :

> "24. Last attempt of the counsel for the appellant was to challenge the validity of notice dated 24th May, 1995. It was submitted that 30 days' notice as per the requirement of Section 8 of the Delhi Rent Control Act, was not given and, Therefore, notice was not valid in law. To appreciate this contention, we may take note of Section 8of the Act. From the plain reading of this Section, it is manifest that there is no requirement to given 30 days' notice. Section 8 only requires that landlord has to give a notice to the tenant of his intention to make the increase. Period of notice is not mentioned. What is stipulated is that when such notice is given, the rent at increased rate becomes payable after the expiry of 30 days from the date of which the notice is given. Therefore, notice need not contain any specific period."

47. In view of the facts and circumstances mentioned above, it is evident that the petitioner and the previous owner have validly served the notice to the respondent No.1 for enhancement of rent. Under the operation of law, the rent in the suit property stood enhanced to Rs.3630/-. The suit was not barred under Section 50 of the Act and was maintainable.

48. As far as the service of notice for termination of tenancy by way of notice under Section 106 of the Transfer of Property Act is concerned, the following are the decisions which are necessary to be referred in the matter in order to understand the legal position:-

i) In the case of ***Sky Land International Pvt. Ltd. vs. Kavita P Lalwani,*** 2013 (2) RCR (Rent) 260 this court has dealt with the issue involved in the present case in great details in para 25, the same read as under :

"25. Summary of the principles of law

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

25.1 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.

25.2 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.

25.3 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.

25.4 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 tenants 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.

25.5 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 landlords 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.

25.6 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.

25.7 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.

25.8 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 Rule6 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.

25.9 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.

25.10 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.

25.11 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.

25.12 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.

25.13 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.

25.14 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.

25.15 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.

25.16 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.

25.17 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.

25.18 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.

25.19 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.

25.20 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.

25.21 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.

25.22 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.

25.23 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."

49. Next submission of Mr. Khosla is not legally correct when the learned District Judge while dismissing respondents' application under Order VII Rule 11 CPC observed that the plea raised by respondent No.2 in his application cannot be disposed of without recording of evidence. It was merely an observation made in the routine manner in view of the application filed by the respondent No.2 for rejection of plaint as no cause of action in the suit remained in view of selling of the suit property by the previous owner to the present petitioner. No observation on record on merit was made. Thus, the question of resjudicata does not arise.

50. In view of the record placed by the petitioner and in the light of the facts that the notice was dispatched to the respondents' correct address through registered post and the AD card was also received back from the respondent, the denial in respect of the said notice by the respondents has no value. The rebuttal in this case, does not go beyond a bald and interested denial of service of the notice by the respondent, which does not displace the onus to rebut the presumption of service. I am unable to accept the arguments advanced by the respondents 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 and in fact, second notice to enhance the rent and notice to quit have not been served as per law.

51. Thus, this Court is of the opinion from the material placed on record as well as the facts and circumstances of the present case that the notice dated 6th March, 2006 for escalation of rent from Rs.3,300/- to Rs.3,600/- by the previous owner and followed by another notice dated 15th November

2007 by the petitioner (abundant precaution) and notice dated 4th February 2008, notice of suit by the petitioner have been validly served upon the respondent.

52. Respondent No.2 has alleged that there was a settlement/compromise arrived at by him with the previous owner at their alleged meeting in Mumbai held on 25th May, 2007. It is the admitted fact that on 24th May, 2007, he has admitted in court that there was a single tenancy at the single unit house in reply to interrogatory No.20. The previous owner has totally denied that she ever signed or agreed for any settlement with respondents No.1 and 2 or has received any amount from them.

Oral Settlement and Splitting of tenancy and consequence of pending suits filed by respondents No.1 & 2 for specific performance

53. The orders of the Rent Controller dated 18th October, 2007; 5th November, 2007 and 23rd November, 2007 may be examined also to see whether it can be termed to be a compromise within the meaning of law.

54. For the convenience, the said orders passed in eviction petition on 18th October, 2007, 5th November, 2007 and 23rd November, 2007 are excerpted below:

> **Order 18.10.2007**
>
> Matter as stated is compromised between the parties and an application is moved on behalf of the respondent in this respect for disposal of the matter as such but the application is only moved on behalf of respondent and the same is not a joint application and learned counsel for respondent submits that learned counsel for petitioner has refused to receive the notice of the previous applications and as reported on the summons he has been discharged from the instant case whereas petitioner is infirm and is unable to come to court therefore, a joint

application with respect to the compromise could not be moved. Learned counsel for respondent submits that the matter be disposed off as such by recording their statement. Application which is moved on record for disposal of case as compromise is also supported by an affidavit but unless statement of petitioner is recorded with respect to compromise the matter cannot be disposed off as such. Accordingly court notice of this application be issued to petitioner for 5th November, 2007.

Order 05.11.2007

An application for adjournment is on record. Court notice has also been issued. Ahlmad to explain for non issuance of court notice which be issued F.P. on 23.11.2007.

Order 23.11.2007

Though the matter as stated by learned counsel for respondent has been compromised and the application is in this respect is also placed on record but the petitioner is not coming forward to confirm this compromise, therefore, order cannot be passed for disposal of the petition as compromised and for non appearance of petitioner. It seems that she is not interested in pursuing the petition any further may be for reason of compromise. However, petition is dismissed in default for want of prosecution.

55. It is evident from the said orders that on 18th October, 2007, 5th November, 2007 and 23rd November, 2007 before the learned Addl. Rent Controller, Mrs. Ranjit Charles Singh was never present. Any statement unilaterally given by the respondent No.1 and 2 in this regard does not bind either Mrs. Ranjit Charles Singh or the petitioner who had purchased the suit property from the erstwhile owner (Mrs.Ranjit Charles Singh) on 26th July, 2007.

56. In view of the law laid down by the Supreme Court and by this Court, the plea of oral settlement, splitting of tenancies, no receipt of the notices

dated 6th March, 2006 and 15th November, 2007 for enhancement of rent and non-receipt of the notice to quit dated 4th February, 2008, are no pleas in the eyes of law in case there is material available on record contrary to the pleas raised by the tenant. Even in the past, in the year 2002, one oral agreement to sell the suit property at Rs.50 lacs with Rs.200/- as earnest money and Rs.95,000/- paid in cash without receipt was raised. But the said alleged oral agreement to sell after refusal in reply notice dated 9th September, 2002 was not pursued by a suit for specific performance. Even similar issue of splitting of two tenancies was raised by the respondent No.1 and 2 in the eviction petition filed by the previous owner. The same was rejected by the Additional Rent Controller's order on 18th July 2003 and in appeal by the Rent Controller Tribunal on 1st September, 2003 and by this Court on 20th July, 2004 on a writ petition being filed by respondent No. 1 and 2. Even the claim of becoming tenant by respondent No. 2 was rejected which was ultimately upheld by this Court on 13th March, 2006 rejecting the claim.

57. It is settled law that when the original lease comes to an end by efflux of time, the plea of renewal of lease through oral agreement is vexatious. It is held by the Division Bench of this Court in the case of ***Om Wati vs. Panchi Devi*** in RFA(OS) 93/2001decided on 14th December, 2011 that if these kinds of defences are to be permitted to be set up, it would create havoc in the society. The defence to retain possession is a moonshine defence that has to be ignored.

58. I agree with Mr. Sethi, learned senior counsel that if there was a real compromise or splitting of two tenancies between them, the same would have been reduced to writing. If the party who knows the truth in such plea, claim and defence, knowingly and deliberately makes false claims and

defences, such false claims and defences have no place in the Court. It is a serious matter which has to be dealt with strongly otherwise there would be no end to litigation in Courts.

59. It is apparent from the record that the eviction petition was dismissed for non prosecution. There was no compromise recorded by the Rent Controller. The record is clear in this regard. Thus the plea of purported compromise is one sided on behalf of the respondents No.1 and 2 only. There is no iota of material placed on record by the respondents No.1 and 2 to show that Mrs.Ranjit Charles Singh, previous owner, admitted that she entered into an oral agreement either to sell the property to the respondents No.1 and 2 or any settlement in which she orally agreed to grant two separate tenancies of Rs.1500/- per month each in favour of respondents No.1 and 2, rather she from the very beginning from her letter dated 9th September, 2002 and later on by filing of various affidavits in the pending litigation refuted the plea of respondents Nos.1 and 2 in this regard.

60. It is apparent that the respondents No.1 and 2 have not paid anything to the previous owner. No documents were written till notice for enhancement by the petitioner was served. It cannot be disputed by the respondents No.1 and 2 that they have filed the suits for specific performance on 4th August, 2008 after the suit property was purchased by the petitioner and the petitioner filed the suit for ejectment and written statement was filed by them. The said suits are still pending and would be decided as per their own merit without being influenced by this judgment. However, in view of pendency of the said suits, the respondents No.1 and 2 cannot derive any benefit of the present litigation in view of settled law. In the following decisions no benefit was given to the tenant on the basis of

written agreement in order to save the possession, though in the present case, the respondents No.1 and 2 pleaded oral agreement:

(i) ***Sunil Kapoor vs. Himmat Singh and Ors.,*** 167 (2010) DLT 806, wherein was observed as under:

> "11. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in Jiwan Das v. Narain Das AIR 1981 Delhi 291 has held that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour."
>
> "12. Section 53A of the Transfer of Property Act codifies the doctrine of part performance. A purchaser of immovable property, who in pursuance to an agreement to sell in writing has been put into possession of the property, is entitled to so remain in possession. However, in the present case, there is no agreement to sell in writing"
>
> "15. What follows is that even if the petitioner/defendant were to succeed in his suit for specific performance of agreement to sell, till the execution of a conveyance deed in pursuance to the decree, if any, in favour of the petitioner, the petitioner has no ground in law to save his possession of the premises. The status of the petitioner would continue to be as before i.e. of a tenant whose tenancy has been determined.
>
> 16. Once that is found to be the position in law, the defence of the agreement to sell is not a legal defence available to the petitioner in the suit for ejectment. If that be so, there is no common question involved in the previously instituted suit for

specific performance and the subsequently instituted suit for ejectment.

17. I also find that beside the judgments relied by the counsel for the respondents/plaintiffs, another Single Judge of the Andhra Pradesh High Court in Gollu Bhavani Sankar v. Bhogavalli Rajeswara Rao and the Madhya Pradesh High Court in Prakash ChandSoni v. Anita Jain have also refused to stay the eviction proceedings due to pendency of suits for specific performance of agreement to sell."

(ii) ***K. Mani vs. M.D. Jayavel and Ors.,*** 2012 (1) RCR (Rent) 111, wherein it was observed that "12. Admittedly, the said agreement to sell is not a registered one and in such a case, the question of invoking Section 53A of the Transfer of Property Act would not arise at all and the contentions of the Appellants based on Section 53A, have to be rejected in limini."

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

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

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

(ii) The lease deed between the parties dated 10.7.1995 is an un-registered lease deed. Section 49 of the Indian Registration Act, 1908 bars this Court from looking into the terms and conditions of an un-registered lease deed. Once the lease deed is un-registered, the tenancy in law would be a monthly tenancy. Once the lease deed is not registered, the period stated therein viz the lease being of 27 years plus 7 years will also not come into operation and the tenancy would be a month-to-month tenancy under Section 107 of the Transfer of Property Act, 1882. As per Section 106 of the Transfer of Property Act, 1882, unless there is a contract to the contrary, a lease (except a lease for manufacturing or agricultural purposes) is a month-to-month lease. The language of Section 106(1) of the Transfer of Property Act, 1882 being "in the absence of a contract... to the contrary..." indicates that there can be a contract to the contrary, however such a contract would have to be a legal contract, i.e. if a contractual period contained in the lease deed is of the period of more than a year, then, the lease deed can only be looked into if the same is registered since the registration is mandatory in terms of Section 17(1)(b), 17(1)(d) of the Indian Registration Act, 1908 and Section 107 of the Transfer of Property Act, 1882.

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

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

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

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

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

1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in Immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an

important clause would not be using it as a collateral purpose."

61. Thus, the said plea of respondents No.1 and 2 on the basis of oral agreement and filing of two suits for specific performance of agreement to lease does not help them in the present case to save the possession if other requisite conditions are fulfilled by the landlord. In any case, two suits filed by the respondent Nos.1 and 2 are pending for specific performance of agreement to lease and they have to be decided as per their own merit without being influenced by this judgment.

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

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

63. All the three conditions in the present case are satisfied, the finding of the Trial Court in the application filed by the petitioners are totally contrary to law and cannot be sustained as the learned Trial Court has not considered the facts, material placed on record and law in this regard. The rate of rent is more than Rs.3500/-. The relationship of landlord tenant cannot be disputed by the conduct of the parties and notice of termination is validly served to the tenant. It is settled law when these are satisfied, the Court has jurisdiction to pass a decree for ejectment against the unlawful tenant without leading any evidence in this regard.

64. For the reasons as aforesaid, facts and settled law in this regard, I am of the view that the trial in the matter is not required as the parties are not at

issue on any question of law or of act to be determined further. The provisions of Order XII Rule 6 CPC are therefore applicable. The present petition is accordingly allowed.

65. In view of the settled provisions of law on this aspect, I am of the view that the petitioner is entitled for the decree of possession in respect of the suit property in their favour against the respondent. The Trial Court has wrongly given its finding despite of the settled law on this aspect. In fact, the application under Order XII Rule 6 CPC to the extent of prayer for grant of decree of possession ought to have been allowed. The impugned order is accordingly set aside. The application filed by the petitioner under Order XII, Rule 6 CPC is accordingly allowed. Thus, a decree for possession is passed in favour of the petitioner and against the respondents, in respect of the suit property i.e., entire premises S-45, Panchshila Park, New Delhi-110017. The respondents shall hand over the vacant and peaceful possession of the suit property to the petitioner latest by 31st August, 2014. During this period, the respondents shall not create any third party interest in the suit property. The petitioner for this period would be entitled to recover the market rent when the inquiry under Order 20 CPC would be conducted.

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

67. Accordingly, parties are directed to appear before learned Trial Court on 30th April, 2014.

68. No costs.

(MANMOHAN SINGH)
JUDGE

APRIL 04, 2014