

(2008) 09 DEL CK 0165

Delhi High Court

Case No: Regular First Appeal No. 341 of 2007

Inmacs Ltd.

APPELLANT

Vs

Prema Sinha and Others

RESPONDENT

Date of Decision: Sept. 26, 2008**Acts Referred:**

- Transfer of Property Act, 1882 - Section 105, 106, 106(1), 106(3), 107

Citation: (2009) 2 ILR Delhi 331**Hon'ble Judges:** Pradeep Nandrajog, J; J.R. Midha, J**Bench:** Division Bench**Advocate:** Vijay K. Jain, for the Appellant; Sachin Datta, for the Respondent**Final Decision:** Dismissed

Judgement

Pradeep Nandrajog, J.

Vide a registered deed of lease dated 8.11.2001, Ex.PW-1/4, flat No. 503, 43 Nehru Place, New Delhi in the building popularly known as Chiranjiv Tower was let out to the appellant by late Mr. K.K. Sinha and his wife Smt. Prema Sinha. On death of Mr. K.K. Sinha his children i.e. a daughter and two sons, along with their mother stepped into his shoes. The tenancy was for a period of 3 years with a covenant [Clause III(1)] that if the lessee is desirous of having the lease renewed for a further term of 3 years, the lessee shall give at least 3 months" notice in writing before the expiration of the term of the lease intimating his intention to have the lease extended but the same would be at the increased rent by 10% of the existing rent which was fixed at Rs. 14,476/-.

2. The lease being for a period of 3 years came to an end on 7.11.2004. Admittedly, no notice in writing as per the requirement of Clause III(1) was given by the appellant in writing and admittedly no fresh lease deed was executed between the parties, much less registered. But, the appellant continued to tender Rs. 14,476/- per month even after 7.11.2004 and the lessors continued to accept the same. 5 letters

under which the last agreed rent i.e. Rs. 14,476/- was tendered are Ex.PW-1/D-1 to Ex.PW-1/D-5 written in the month of January, February, March, April and May 2006. It is also the admitted position between the parties that even for the prior months the last paid rent was tendered in sum of Rs. 14,476/- and accepted by the lessors.

3. On 27.9.2005, vide Ex.PW-1/9, a legal notice was issued by the lessors to the appellant stating as under:

Under the instructions from and on behalf of my clientess Smt. Prema Sinha, W/o Shri K.K. Sinha, R/o N-91, Greater Kailash, Part-I, New Delhi-110048, I hereby serve you with the following notice:

That vide Lease Deed dated 08.11.2001, my clientess let out the premises as described below, for an initial period of three years which expired on 7th November 2004.

That as per the terms of the lease deed dated 08.11.2001 you failed to give three month"s notice of your intention to renew the lease deed for further period of three years with the increase in the rent @ 10%; but you continued to pay the use and occupation charges @ Rs. 14476/- per month, hence you have become an unauthorized occupant and liable to pay damages at the prevalent market rent i.e. @ Rs. 50,000/- per month.

Further you are also advised to clear all other dues, if any to Municipal Authorities and for maintenance to M/s Star Estates Management Pvt. Ltd. and restore the demised premises to their original condition as per the lease agreement.

By virtue of this notice I hereby call upon you to deliver the vacant possession of the premises described below to my clientess within one month from the date of receipt of this notice and also pay the damages @ Rs. 50,000/- per month from 08.11.2004 till you hand over the vacant and peaceful possession of the premises in question to my clientess.

In case you fail to comply with this notice, my client shall be constrained to initiate legal proceedings against you in the court of law for your prosecution in accordance with law at your cost and risks that too without any further reference;

Description of Property:

Flat No. 503, Fifth Floor, Containing one hall & toilet

Measuring 517 SQ. FT.

Chiranjiv Tower,

43, Nehru Place,

New Delhi.

A copy of this notice is being retained in records for necessary steps, in case of non-compliance with this legal notice.

4. Another legal notice dated 29.3.2006, Ex.PW-1/16, was issued by the lessors to the appellant which reads as under:

Dear Sir,

Under the instructions from and on behalf of my client's viz (1) Smt. Prema Sinha, W/o Lat Sh. K.K. Sinha, and (2) P. Pallav Sinha S/o Late Shri K.K. Sinha, & (3) Padmanabh Sinha S/o Lat Sh. K.K. Sinha, all residents of N-91, Greater Kailash-I, New Delhi-110048 and (4) Neelanjana Singh W/o Dr. Dinesh Singh and D/o Late Sh. K.K. Sinha, R/o 33, Deshbandhu Apartments, Kalkaji, New Delhi, I hereby serve you with the following notice:

That vide registered Lease Deed dated 08.11.2001 property Flat No. 503, Fifth Floor, Chiranjiv Tower, 43, Nehru Place, New Delhi was let out for an initial period of three years, by its joint owners Mr. K.K. Sinha and his wife Smt. Prema Sinha which expired on 07.11.2004.

That after the death of Mr. K.K. Sinha, his legal heirs namely his wife Smt. Prema Sinha and his sons viz. P. Pallav Sinha and Padmanabh Sinha and his daughter Neelanjana Singh were attorned by you (Lessee) sharing the rent of the abovesaid property of Late Shri K.K. Sinha's share in equal proportion.

That as per the terms of the lease deed dated 08.11.2001 you failed to give three month's notice of your intention to renew the lease deed for further period of three years with the increase in the rent @ 10%; but you continued to pay the use and occupation charges @ Rs. 14476/- per month, hence you have become an unauthorized occupant and liable to pay damages at the prevalent market rent i.e. @ Rs. 50,000/- per month.

Further you are also advised to clear all other dues, if any to Municipal Authorities and for maintenance to M/s Star Estates Management Pvt. Ltd. and restore the demised premises to their original condition as per the lease agreement.

That earlier also a Legal Notice dated 27.09.2005 was sent to you, but you abundant caution this legal notice is again addressed to you.

By virtue of this notice I hereby call upon you to deliver the vacant possession of the premises described below to my clientess within one month from the date of receipt of this notice and also pay the damages @ Rs. 50,000/- per month from 08.11.2004 till you hand over the vacant and peaceful possession of the premises in question to my clientess.

In case you fail to comply with this notice, my client shall be constrained to initiate legal proceedings against you in the court of law for your prosecution in accordance with law at your cost and risks that too without any further reference;

Description of Property:

Flat No. 503, Fifth Floor,

Containing one hall & toilet

Measuring 517 SQ. FT.

Chiranjiv Tower,

43, Nehru Place,

New Delhi.

A copy of this notice is being retained in records for necessary steps, in case of non-compliance with this legal notice.

5. On 30.5.2006, the lessors filed a suit seeking ejectment of the appellant and mesne profits @ Rs. 50,000/- per month with effect from 8.11.2004. It was asserted in the plaint that the tenancy expired by efflux of time on the midnight of 7.11.2004 and hence the possession of the appellant in respect of the tenanted premises became unauthorized from 8.11.2004. Reference was made, in para 8 of the plaint, to Ex.PW-1/9 and Ex.PW-1/16.

6. In the written statement, appellant stated that after the expiry of the lease period, it approached the lessors and requested that the appellant may be permitted to continue to occupy the tenanted premises as a monthly tenant at the old rate of rent which was agreed to by the lessors since the actual rent had come down. It was pleaded that the appellant became a tenant from month to month as per the said oral agreement. Receipt of Ex.PW-1/9 and Ex.PW-1/16 was denied. Qua the said documents an alternative plea was taken that even otherwise the 2 notices are not valid as they do not determine the tenancy.

7. The plea of the appellant pertaining to the oral monthly tenancy is as pleaded in para 6 of the written statement, relevant portion whereof reads as under:

6. ...It is submitted that after the expiry of the lease period, the defendant approached the plaintiff and requested that the possession of the premises in dispute under the tenancy of the defendant may be taken as period of lease expired. At that time the rent in the locality had gone down and the premises in dispute could not have fetched the rent on which it was let out to the defendant. The plaintiff asked the defendant to continue as a monthly tenant in the premises in dispute at the old rent, therefore monthly tenancy was arrived at between the plaintiff and the defendant and on the request of the plaintiff, the defendant continued to be a monthly tenant after the expiry of 8.11.2004 as per the understanding and contract between the plaintiff and the defendant after 8.11.2004.

8. Needless to state on the rival versions of the parties the only issue which arose for determination was whether the tenancy of the appellant stood determined and if so,

its effect. It would be relevant to note that the relationship of the landlord and tenant was not in dispute and it was also not in dispute that when let out, the agreed rent was Rs. 14,476/- per month and hence the provisions of the Delhi Rent Control Act 1958 did not apply to the premises let out.

9. Holding that under the registered lease deed Ex.PW-1/4 the tenancy expired on the mid-night of 7.11.2004 and since the appellant did not prove having intimated by serving a notice in writing to the lessors that it would like to continue with the tenancy for a period of another 3 years and admittedly no fresh rent deed was executed, much less registered, it has been held that the status of the appellant after 8.11.2004 was that of an unauthorized occupant. It has been held that the defence that Ex.PW-1/9 and Ex.PW-1/16 were not served upon the appellant was false for the reason Ex.PW-1/10 and Ex.PW-1/11 evidence that the notice Ex.PW-1/9 was sent by Regd. A.D. Post at the tenanted premises and also at the registered office of the appellant at Darya Ganj. The A.D. Cards, Ex.PW-1/14 and Ex.PW-1/15 establish the receipt thereof by the appellant. Similarly, it has been held that the notice dated 29.3.2006, Ex.PW-1/16 was sent to the appellant at its registered office as also at the tenanted premises under postal receipts Ex.PW-1/17 and Ex.PW-1/18 and that the A.D. Cards Ex.PW-1/21 and Ex.PW-1/22 evidence receipt thereof by the appellant at both addresses. So holding, a decree for ejectment has been passed against the appellant directing that possession of the tenanted flat be handed over to the lessors. Holding that the lessors are entitled to mesne profits after 8.11.2004, but noting that no evidence was led by the lessors of rents increasing in the locality the agreed rent i.e. Rs. 14,476/- per month has been awarded as mesne profits.

10. At the hearing held on 18.9.2008, Sh. Vijay K. Jain, Learned Counsel for the appellant urged that Ex.PW-1/D-1 to Ex.PW-1/D-5 show that the appellant tendered Rs. 14,476/- per month as rent and each month the same was accepted as rent. Thus, Counsel urged that the plea of the appellant of being a tenant from month to month stands established from said document. Counsel further urged that the recital to Ex.PW-1/4, the lease deed dated 8.11.2001, uses the expression that the lease is "for the initial term of three years". It was urged that this shows that the lease was intended to be continued. Lastly, Counsel urged that Ex.PW-1/9 and Ex.PW-1/16 do not validly terminate the tenancy as it has not been so stated in the said documents. We may note that Learned Counsel for the appellant did not dispute that his client had received Ex.PW-1/9 and Ex.PW-1/16.

11. From the narration of facts aforementioned it is apparent that the facts are not in dispute and the questions being, one which arise very often - rather are raised very often - whether the status of the appellant was that of a tenant holding over from month to month.

12. Section 105 of the Transfer of Property Act, 1882 defines a lease of an immovable property as a transfer of a right to enjoy immovable property for a certain time, or in perpetuity, in consideration of a price paid or promised, or of

money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee who accepts the transfer on such terms. The transferor is called the lessor and the transferee is called the lessee. The price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

13. Section 106 of the Transfer of Property Act 1882 deals with the duration of leases and states that in the absence of a contract, or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six month's notice and a lease of immovable property for any other purpose shall be deemed to be lease from month to month, terminable, on the part of either lessor or lessee by 15 days' notice. Section 107 of the Transfer of Property Act, 1882 stipulates that a lease of immovable property from year to year, or for any term exceeding 1 year can be made only by and under a registered instrument. Law is clear. If a lease is evidence by a contract, as in the instant case, the duration of the lease would be as per the contract and at the expiry of the lease period as per contract the lease expires by efflux of time. Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and since the lease expires under the contract by efflux of time, no notice of determination of the lease is required.

14. Once a lease expires, the mandate of Clause 8 of Section 108 of the Transfer of Property Act 1882 makes it the bounden duty of the lessee to put the lessor into possession of the leased premises.

15. To the extent aforementioned there is no problem in law, but as in the present case, more often than not, rent is tendered post expiry of the lease period by efflux of time and accepted by the landlord. What happens?

16. Section 116 of the Transfer of Property Act 1882 reads as under:

116. Effect of holding over - If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.

17. On the strength of having paid the last agreed rent the tenant is naturally expected to claim that his status is that of a tenant holding over and till tenancy is determined by a notice u/s 106 of the Transfer of Property Act 1882 the status continues.

18. As noted above, mandate of Clause q of Section 108 of the Transfer of Property Act 1882 is that on the expiry of the lease the lessee is bound to hand over possession of the leased premises to the lessor and therefore the lessor would be entitled to maintain an action to compel the lessees to abide by the mandate of Clause q of Section 108 of the Transfer of Property Act 1882.

19. A person who enters upon the property of another without authority of law is a trespasser. It could be argued that the very next moment after the period of lease stands expired the act of entering upon property by the tenant is an act of trespass. But law says No. A lessee who continues in possession after expiry of the lease, without the consent of the lessor or without any agreement between the parties or in disagreement with the lessor, is treated in law as a tenant by sufferance. But where the lessor consents to the continued possession of lessee on the same terms and conditions as per the original lease a tenancy by holding over comes into operation.

20. The words "accepts rent or otherwise assents to his continuing in possession" in Section 116 of the Transfer of Property Act contemplates that from the side of the lessee there should be an offer to take a new lease and on the side of the lessor there must be a definite consent to the continuation of possession. In other words there must be a bilateral contract.

21. Such a bilateral contract could be express or implied. Thus mere continuance of possession after the expiry or determination of the lease is not enough to entitle the tenant to establish tenancy by holding over.

22. More often than not, the only evidence which surfaces is the tender of rent and its acceptance by the landlord. As observed in the decision reported as [Karnani Industrial Bank Limited Vs. The Province of Bengal and Others](#), the acceptance of rent is only one form of the assent of the lessor to the lessee remaining in possession of the property. But, as observed in the decision reported as AIR 1949 124 (Federal Court) , the acceptance must be of rent as such.

23. Since law requires a bilateral agreement between the parties for the tenant continuing to holding over, offer and acceptance of rent is at best an evidence raising a presumption of assent but would not amount to a conclusive proof of such assent. It could be rebutted by other evidence.

24. In order that the acceptance of rent may amount to assent of the lessor it has to be shown that the offer of rent was made on the express ground that the lessee intended to continue the lease and that the acceptance was with the full knowledge of the nature of the offer. This is a question of fact which has to be determined from the circumstances of each case. Greater is the period of continued possession coupled with receipt of rent, stronger would be the presumption in favour of the lessee.

25. Where a tenant fails to establish a case of holding over, his status would be, as noted above, that of a tenant at sufferance. The difference in the status of a tenant holding over and a tenant at sufferance was explained by the Supreme Court in the decision reported as [R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others](#), wherein their Lordships said:

8. Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's, Transfer of Property Act (7th Edn.) at page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus: The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.

13. In view of the settled possession of law, the possession of the appellant is as tenant at sufferance and is liable to ejectment in due course of law. But his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litigious possession. The appellant may remain in possession until he is ejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled possession. He is akin to a trespasser, though initially he had lawful entry.

26. Dealing with the issue whether accepting rent after serving upon the tenant a notice to quote amounts to a waiver u/s 113 of the Transfer of Property Act, in the decision reported as [Sarup Singh Gupta Vs. S. Jagdish Singh and Others](#), their Lordships of Supreme Court held:

6. ...A mere perusal of Section 113 leaves no room for doubt that in a given case, a notice given u/s 111, Clause (h), may be treated as having been waived, but the necessary condition is that there must be some act on the part of the person giving the notice evincing an intention to treat the lease as subsisting. Of course, the express or implied consent of the person to whom such notice is given must also be established. The question as to whether the person giving the notice has by his act shown an intention to treat the lease as subsisting is essentially a question of fact. In reaching a conclusion on this aspect of the matter, the Court must consider all relevant facts and circumstances, and the mere fact that rent has been tendered and accepted, cannot be determinative.

7. A somewhat similar situation arose in the case reported in [Shanti Prasad Devi and Another Vs. Shankar Mahto and Others](#). That was a case where the landlord accepted rent even on expiry of the period of lease. A submission was urged on behalf of the tenant in that case that Section 116, Transfer of Property Act was attracted and there was a deemed renewal, of the lease. Negating the contention, this Court observed that mere acceptance of rent for the subsequent months in which the lessee continued to occupy the premise even, after the expiry of the period of the lease, cannot be said to be a conduct signifying his assent to the continuing of the lease even after the expiry of the lease period. Their Lordships noticed the conditions incorporated in the agreement itself, which provided for renewal of the lease and held that those conditions having not been fulfilled, the mere acceptance of rent after expiry of period of lease did not signify assent to the continuance of the lease.

8. In the instant case, as we have noticed earlier, two notices to quit were given on 10th February, 1979 and 17th March, 1979. The suit was filed on 2-6-1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitute an act on the part of the landlord showing an intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constituted an act of the nature envisaged by Section 113, Transfer of Property Act showing an intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination

of lease the practice followed by courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.

27. In the report published as [C. Albert Morris Vs. K. Chandrasekaran and Others](#), it was observed as under:

26. ... Much argument was advanced on the receipt of the rent by the landlord after the cancellation of the lease. The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession....

32. ... We are, therefore, of the opinion that mere acceptance of rent by the landlord, the first respondent herein, 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. We answer this issue accordingly.

28. Similar view has been expressed in the decisions reported as [Shanti Prasad Devi and Another Vs. Shankar Mahto and Others](#), [Central Bank of India Vs. Shri Lalit Kumar Bhargava \(HUF\)](#), [Yashbir Sharma and Sudesh Sharma Vs. Mrs. Sulakshna Lal and Others](#), 104 (2003) DLT 158 Delhi Jal Board v. Surendra P. Malik, 2002 (5) AD (Delhi) 7 FCI v. Kuljinder Pal Singh Dhillon and [Shri Prithvi Raj Bhalla Vs. Industrial Cables \(India\) Ltd.](#).

29. It would be interesting to note that in the decision reported as [Badrilal Vs. Municipal Corporation of Indore](#), the tenant continued in possession for nearly 5 years after expiry of the lease and yet was held to be not holding over. Status held was of a tenant by sufferance. Meaning thereby that mere time duration of occupation post tenancy coming to an end by efflux of time is not a very determinative factor.

30. Since the respondents have neither filed a cross appeal nor have they filed cross objections and since the so-called mesne profits have been awarded at the agreed rent, the issue whether the possession of the appellant became unauthorized with effect from 8.11.2004 when tenancy came to an end by efflux of time on the mid-night of 7.11.2004 need not bother us if we find that the tenancy was validly determined under either the notice dated 27.9.2005, Ex.PW-1/9 or the notice dated 29.3.2006, Ex.PW-1/16.

31. But before that we may deal with the submissions urged by Learned Counsel for the appellant as noted in para 10 above.

32. We fail to understand the argument that the recital in the lease deed dated 8.11.2001 uses the expression that the lease is "for the initial term of three years" and hence on the expiry of the lease period the appellant was entitled to continue to occupy the tenanted premises as a tenant. It has to be noted that vide Clause III(1) of the lease deed Ex.PW-1/4 parties had agreed that at the option of the appellant it could continue to occupy the tenanted premises for a period of further three years but on the condition that the appellant evidenced such intention by serving a notice in writing upon the lessor at least 3 months before the expiry of the term of the lease. Learned Counsel for the appellant could not identify any such notice ever being served. The reference in the recital that the tenancy was initially for a period of 3 years is clearly relatable to Clause III(1) of the lease deed which envisaged a further lease for a period of 3 years but subject to the conditions enumerated in said clause being satisfied.

33. Even otherwise said submission is not available to the appellant inasmuch as, as noted in para 7 above, the case pleaded by the appellant in the written statement was that post 8.11.2004, by and under an oral agreement, the appellant was allowed to continue to occupy the tenanted premises as a tenant from month to month.

34. The submission of the Learned Counsel for the appellant with respect to rent being tendered vide Ex.PW-1/D-1 to Ex.PW-1/D-5 for the months of January 2006 till the month of May 2006 and its acceptance by the lessors would have a meaning if there was evidence to show that the lessors accepted the money offered as rent.

35. Be that as it may, we need not go into this issue for the reason we find that vide Ex.PW-1/9 as also vide Ex.PW-1/16 the tenancy was validly determined. Assuming that having received the rent post service of Ex.PW-1/9 we note that post service of the notice Ex.PW-1/16 on 29.3.2006 the suit for ejectment was filed soon thereafter on 30.5.2006. Thus, the lessors would succeed if Ex.PW-1/16 is held to be a valid notice determining the tenancy.

36. We have noted hereinabove in para 4 the contents of Ex.PW-1/16. After referring to the fact that the appellant did not exercise the option to have the lease extended and no fresh lease deed being executed between the parties the appellant has been clearly called upon to deliver the vacant possession of the tenanted premises within 1 month from the date of the receipt of the notice.

37. Section 106 of the Transfer of Property Act 1882 as originally enacted required the determination of the tenancy with reference to the tenancy month by giving a notice of a time duration specified in Sub-section 1 thereof depending upon the purpose of the lease. Pertaining to a lease other than for agricultural and manufacturing purposes the notice determining the lease had to be served at least 15 days prior to the expiry of the tenancy month and had to state the tenancy

month. The language of Section 106 as originally enacted was a source of fertile litigation and the legislature amended said Section vide Act No. 3 of 2003. Vide Sub-section 3 of the Section 106 of the Transfer of Property Act 1882 as amended, a notice under Sub-section 1 shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

38. In the instant case, the notice dated 29.3.2006, Ex.PW-1/16 was received by the appellant as per A.D. Cards Ex.PW-1/21 and Ex.PW-1/22 around 2nd April 2006 and the suit in question, as noted above was filed on 30.5.2006.

39. The submission of Learned Counsel for the appellant that there is no expressed use of the expression in the notice that the tenancy stood determined is neither here nor there for the reason as held in the decisions reported as [Capital Boot House and Others Vs. Intercraft Limited](#), and [Union Bank of India Vs. Sushila Goela and Others](#), the object of a notice is to inform the other party the intention of the person issuing the notice i.e. that he wants the premises back. The object of the notice is to give sufficient time to the tenant to vacate the tenanted premises. A notice u/s 106 of the Transfer of Property Act has always been liberally construed.

40. We may only add that there is no statutorily prescribed proforma of a notice envisaged by Section 106 of the Transfer of Property Act 1882. As long as the notice can be reasonably understood by a person of ordinary prudence that his tenancy has been determined and he is required to vacate the tenanted premises at the end of the tenancy month, the notice is fine.

41. Since we have held that the monthly tenancy claimed by the appellant stood validly determined vide notice dated 29.3.2006 Ex.PW-1/16 the obvious conclusion has to be that the impugned judgment and decree ordering the ejectment of the appellant is legal and valid.

42. That the learned Trial Judge has held the possession of the appellant as unlawful with effect from 8.11.2004 is a non-issue for the reason no consequences have flown from said finding inasmuch as the so-called mesne profits awarded by the learned Trial Judge against the appellant and in favour of the lessors is the agreed rent i.e. Rs. 14,476/- per month.

43. A last residual issue needs to be decided.

44. Since appellant had prayed that pending decision of the appeal the operation of the impugned judgment and decree dated 29.1.2007 be stayed, vide order dated 24.1.2008 a condition was imposed that the appellant would pay use charges @ Rs. 28,000/- per month from 7.11.2004 till 31.1.2008 and thereafter with effect from the month of February 2008 @ Rs. 40,000/- per month.

45. Vide order dated 7.2.2008 a local commissioner was appointed to conduct and inquiry and submit a report as to what would be the fair market rental of the flat. Vide report dated 26.3.2001 the learned local commissioner has opined that the flat would fetch a rental of Rs. 75,960/- per month.

46. The order dated 24.1.2008 is an interim order and hence cannot be treated as a final expression of this Court as to what would be the fair market rental as on date of the order. But, prima facie the direction in the order that with effect from 7.1.2004 the appellant shall pay use and occupation charges @ Rs. 28,000/- per month cannot be sustained for the period 7.11.2004 till 29.1.2007 for the reason vide impugned judgment and decree dated 29.1.2007 the mesne profits determined till possession is delivered has been determined at Rs. 14,476/- per month. It has to be noted that the respondents i.e. the lessors have not filed any cross appeal or cross objections challenging the impugned decree in so far it has determined mesne profits @ Rs. 14,476/- per month.

47. At best, a term requiring appellant to pay use charges in harmony with the current rentals could be imposed upon the appellant as a condition of stay, post the date of judgment and decree i.e. 29.1.2007.

48. We note that in the decision reported as [Atma Ram Properties \(P\) Ltd. Vs. Federal Motors Pvt. Ltd.](#), ratio whereof was followed in the decisions reported as 2005 (6) SCC 489 Anderson Wright v. Amarnath and the decision reported as 2005 (11) SCC 547 Crompton Grieves v. State of Maharashtra it was held that since the power to grant a stay is equitable in nature, an applicant seeking stay may, in equity, be put to suitable terms which would include a direction that the stay is conditional upon paying a fair market rental.

49. Determination of fair market rentals in Delhi till the year 2000 A.D. was not much of a problem because reported decisions show that with effect from the year 1980 the rentals rose between 10% to 15% each year depending upon the locality in which a property was situated. But, post 2000 A.D. the market started showing a sign of depression for about 2 years with the rentals falling very steeply till about the year 2005 and thereafter increasing in different proportion in different localities. The instant case has an intrinsic evidence of our observation hereinbefore recorded in the present para. The tenancy at hand came to an end on 7.11.2004 and the suit was filed on 30.5.2006. The lessors led evidence on 9.10.2006 but could not bring any evidence on record that fair rentals of similar flats at Nehru Place Commercial Complex had increased. Thus, there is intrinsic that probably till 9.10.2006 there was hardly any increase in the rentals in the area. The report of the local commissioner is based on information available on the website of M/s. Magicbricks. com and M/s. 99acres.com. Not much reliance can be placed on the information downloaded from the website for the reason the websites contain an invitation to offer and obviously a lessor would like to receive the highest rent possible. It is settled law that evidence of fair market rental has to be cogent and clear with reference to actual lettings of

similar situated properties.

50. We are of the opinion that under the circumstances it would be advisable to leave the issue open as to what would be the fair rental value of the flat post 29.1.2007, i.e. the date of the impugned judgment and decree for the reason we grant liberty to the lessors to sue for damages for the period post date of impugned judgment and decree till possession of the flat is handed over for the reason said cause of action would in any case be available to the landlords and they are still entitled to file a suit for damages for the period beyond 29.1.2007 till date when possession of the flat is handed over.

51. We find no merit in the appeal.

52. The appeal is dismissed with cost against the appellant and in favour of the respondents.