(1988) 10 DEL CK 0033

Delhi High Court

Case No: Second Appeal No''s. 378 and 379 of 1987

Rajeshwarhwa		APPELLANT
	Vs	
Sushma Govil		RESPONDENT

Date of Decision: Oct. 27, 1988

Citation: AIR 1989 Delhi 144 : (1989) 37 DLT 88

Hon'ble Judges: P.K. Bahri, J

Bench: Single Bench

Advocate: V.N. Kaura, Girdhar Govind, Arun Kumar and Vijayesh Roy, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This judgment shall dispose of both the appeals brought u/s 39 of the Delhi Rent Control Act. Two eviction petitions were brought by the respondent against the appellant on the ground of non-payment of rent. The complete ground floor of house No. E-36, Kalindi Colony, New Delhi, was stated to have been let out to the appellant at the rental of Rs. 2400 per mouth. Initially the letting took place vide lease agreement dated July Ii, 1980, and the same was renewed vide agreement dated July 1, 1982. The arrears of rent was stated to be due with effect from January 1, 1984. which were allegedly not paid by the appellant in spite of service of notice of demand dated March 12, 1985. In the second eviction petition, it was pleaded that the complete basement of the same money stood let out to the appellant a the rental of Rs. 1,000 per month vide lease deed dated October 1. 1982, with a stipulation that the rent was to be increased to Rs. 1,200 per month with effect from January 1, 1983, and it was pleaded that arrears of rent were due with effect from January 1, 1984, which were neither paid nor tendered in spite of service of notice of demand dated March 12, 1985. The ground of misuse covered by clause (c) of proviso to sub-section (1) of Section 14 of the Delhi Rent Control Act was also pleaded but that ground was negatived and no longer survives for decision in these appeals.

(2) In the first case, the appellant pleaded that he, in fact, was not the tenant on the ground floor of the s.:id building and the premises were actually let out to M/s. Wadbrow India (P) Limped and thus, the eviction petition against him was not maintainable. On merits, the plea taken was that the rate of rent was Rs. 2,000 per month and there were no arrears payable as alleged in the petition. The receipt of the notice of demand was also denied. Similarly, in the second petition, the appellant took the plea that in fact, M/s. Spectra India is the tenant and he took the plea that the rate of rent is Rs. 1,000 per month and no arrears of rent, as claimed in the petition, were due. In replications, the respondent controverter the pleas of the appellant and reiterated her own pleas and in the other case she pleaded that M/s. Spectra India is not a legal entity as the appellant is the proprietor of the said firm. It was controverter in respect of the first petition that M/s. Wadbrow India (P) Ltd. is the tenant. In both the cases separate orders u/s 15(1) of the Delhi Rent Control Act were made on October 18, 1986. The appellant filed appeals against those orders but ultimately he withdrew those appeals which came to be dismissed as withdrawn vide orders of the Rent Control Tribunal dated November 24, 1986. However, the Tribunal granted time till December 31, 1986, for complying with the order made u/s 15(1). The appellant did not deposit any rent whatsoever in compliance with the said orders made u/s 15(7). Applications u/s 15(1) of the Delhi Rent Control Act were moved for striking out the defense of the appellant in both the cases. In spite of the fact that adjournments were sought for filing the reply to the said applications but no reply was filed. On January 5, 1987, no one appeared on behalf of the appellant and defense of the appellant in both the cases was struck out as the appellant had not deposited even single paisa in compliance with the. orders made u/s 15(1). After recording the statement of M. S. Chaturvedi, father of the respondent who also claimed to be attorney of the respondent the eviction orders were passed against the appellant which were challenged by filing the appeals before the Tribunal. The Tribunal while admitting the appeals granted stay of dispossession of the appellant in both the case subject to the appellant depositing the entire arrears of rent and month to month rent. The appellant, in order to save himself from being dispossessed, admittedly deposited the arrears of rent and month to month rent in both the cases. Ultimately the Tribunal came to dismiss both the appeals vide judgment dated October 13, 1987.

(3) Counsel for the appellant has, at first, contended that interim order u/s 15(1) should not have been made inasmuch as the appellant had disputed the existence of relationship of landlord and tenant between him and the respondent in both the cases and if both the orders are set aside then the eviction orders also have to fail because no final order had been made u/s 15(1) requiring the appellant to deposit the arrears of lent within one month. It is now settled law that an order u/s 15(1) in an eviction petition brought on the ground of non-payment of rent can be made on the prima facie view of the disputed facts pleaded before the Controller. In the first case, the respondent had placed on record the agreement of lease duly signed by

the appellant and by respondent''s father on behalf of the respondent which clearly shows that the appellant is the tenant. He has been described in the lease deed as Managing Director of M/s. Wadbrow India (P) Ltd. but the whole of the lease-deed makes it evident that it is the appellant who is the tenant in the premises and not the company. It was contended by the learned counsel for the appellant that the lease-deed being not executed on a proper stamp paper and being not registered could not have been looked into for any purpose. The lease-deed was impounded and the duty and the penalty have been paid. So, it could be taken into consideration. The only point to be seen is whether the unregistered lease-deed could be taken into consideration or not in order to see the nature of possession, meaning thereby whether a particular person is in possession as a tenant or not? u/s 49 of the Registration Act, an unregistered lease-deed, which in law is required to be registered compulsorily, could be seen for collateral purposes i.e. to see the nature and character of the possession.

3(a). Counsel for the appellant has cited AIR 1949 218 (Nagpur) in support of his contention that an unregistered lease-deed cannot be seen whether the possession of the appellant is that of tenant or not? It is true that in this judgment it has been observed that the question as to who is the tenant and on what terms he has been created a tenant are not collateral facts and they are important terms of the contract of tenancy which cannot be proved by admission of an unregistered lease-deed into evidence. However it is no possible to countenance to the view expressed in this judgment as it has been laid down repeatedly by the Supreme Court that the nature arid character of the possession of the premises is a collateral purpose. In Padma Vithoba Chakkayya v. Mohd. Multani & Another Air 1963 Sc 70, it was observed as fellows : "Proof as to the nature or character of a person''s possession is really a proof of a transaction showing in what character a person has come upon the land. Such a transaction is really a collateral one which by itself does not require to be effected by a registered deed. An unregistered document is, Therefore, held to be admissible as evidence of the nature or character of a person''s possession."

Seine view has been reiterated in Satish Chand Makhan & Others v. Govardhan Das Byas & Others, . In Mangal Singh Vs. Tek Ram and Others, , a similar question arose and Avadh Behari, J., after making reference to the aforesaid judgment of the Supreme Court and two judgments of this Court in J.N. Banerjee Vs. Sohan Lal Bhargava, , Shalimar Tar Products India Ltd. Vs. H.C. Sharma and Others, and to an unreported decision of the Supreme Court in Rana Vidya Bhushan Singh v. Rati Ram, 1969 U.T (SC) S6 (7), clearly held ''that in cider to see whether a person has come into possession as a tenant ,an unregistered document can be seen under proviso to Section 49 of the Registration Act. In the cited case, a panchayatnama had been executed which purported to create a permanent lease. The question which arose was whether a person who came into possession of the immovable property on the basis of the said panchayatnama was a tenant or not? This Court held as follows:

The Panchayatnama in the present case, Therefore, is not admissible in evidence for the purpose of proving the permanent lease which it seeks to create. That is an interest in immovable property. The document being unregistered is inadmissible. But for the nature of possession reference can certainly be made to the document. It can be read in evidence. A reading of the document shows that the defendant''s possession is permissive. They admitted that the land on which they had built the mud huts belongs to the plaintiffs. They agreed to become tenants under the plaintiffs. Therefore, in order to explain the present possession of the defendants and its nature and character the document can be admitted in evidence. This will be a collateral purpose."

(4) In the courts below, two judgments have been referred to in coming to the conclusion that the unregistered lease-deed can be looked into to see as to who has been inducted as a tenant but those judgments appear to be somewhat distinguishable. In Biswabani Private Limited v. Santosh Kumar Dutta & Others, 1980 (1) Rcr 263, the ratio laid down by the Supreme Court was that even though an unregistered lease-deed which is required to be compulsorily registered is inadmissible in evidence, still the relationship of landlord-tenant can be proved by subsequent conduct of the parties showing the payment of month to month rent which would bring about a lease from month to month. In Rawal Singh v. Kwality Stores & Another 1986(2) Rcr 499. the question which arose for decision was as to whether unregistered lease-deed could be looked into or not to see whether the roof was part of the demised premises. It was held that the lease-deed could be looked into for this purpose because the same was collateral purpose. In Lachhmi Devi v. Satya Wati, 1985(1) Rcr 189 the Punjab & Haryana High Court also held that an unregistered lease-deed, which is required to be registered compulsorily, can be looked into to determine the nature and character of possession of the tenant in view of proviso to Section 49 of the Registration Act as the same is a collateral purpose. In Kesa v. Ganesh & Others, 1981(2) Rcr 276 the same proposition of law has been laid down by Rajasthan High Court. I entirely agree with the law laid down by this Court in Mangal Singh (supra) and held that the unregistered lease-deed in the present case could be looked into to see as to who ha&#xfffd; been inducted as a tenant. I, hence, repel the first contention of the learned counsel. So, there is no merit in this contention that the Rent Controller was not legally right in making an interim order u/s 15(1) of the Delhi Rent Control Act. In the second case, it is, indeed. not in dispute that the appellant is the sole proprietor of the firm M/s. Spectra India and thus, for all intents and purposes the appellant admittedly is the tenant in view of the fact that a sole proprietary firm is not a legal entity.

4(a). Counsel for the appellant has vehemently argued that both the eviction petitions were not proved to have been instituted by any duly authorised person on behalf of the respondent and thus, the eviction petitions should have been dismissed on that score alone. He has pointed out that both the eviction petitions have been signed by the respondent''s father as General Attorney while no valid

power of attorney has been proved in his favor. Hence, he had no authority to sign the eviction petitions and institute the same. Before I deal with this contention of the learned counsel for the appellant, I may refer to the facts as they have been proved on the record. In both the cases the lease-deeds have been signed by the appellant as lessee and the respondent''s father as attorney of the respondent. So, it is evident that it is respondent''s father, who had inducted the appellant as tenant in the premises in both the cases. In these cases, the respondent had acted through her father in letting out the premises. After the appellant who had been inducted in the premises in question by respondent''s father on the basis of the lease-deeds executed by respondent''s father on behalf of the respondent he cannot, in my opinion, in law take the plea that the respondent''s father had no power of attorney in his favor to file the eviction petitions. Accepting the respondent''s father as attorney of the respondent-landlady the appellant took the advantage of having the premises on lease and the appellant should be deemed to be estopped from taking the plea that the respondent''s father is not the duly constituted attorney of the respondent.

(5) During the proceedings before the Additional Rent Controller, a photo copy of the power of attorney marked A1 was proved. The original power of attorney was also brought in Court. It appears that the original power of attorney dated September 3, 1985, as signed by Notary Public of New Jersey and a seal of the said Notary Public stood also affixed on it. It was not mentioned in the said power of attorney as to whether the same had been authenticated and attested by the said Notary. During the pendency of the appeals before the Rent Control Tribunal, another power of attorney dated August 31, 1987, was produced which had the due authentication and attestation by the same Notary Public of New Jersey and seal of the said Notary Public also stood affixed on the said power of attorney. The contention raised by the learned counsel for the appellant is that both the power of attorneys are not admissible in evidence inasmuch as there has been issued no notification by the Central Government as required by Section 14 of the Notary Act, 1952 (for short ''the Act'') for recognising the material acts of the notaries of the United States of America in India. He has argued that unless and until a notification under the Act is issued, the power of attorneys attested and authenticated by a Notary of the U.S.A. cannot be taken cognisance of in India by any courts and the presumptions which are available under Sections 57 & 85 of the Indian Evidence Act would not at all be applicable lo the powers of attorneys in question. He has argued that the Act being a special Act would apply and in view of Section 11 of the Act any reference to a Notary Public in any other law has to be construed as a reference to a Notary entitled to practice under the Act and thus, reference to Notary Public under Sections 57 & 85 would bo construed to mean reference to Notaries entitled to practice under the Act. It has been further argued by the learned counsel for the appellant that even if it is to be held that a power of attorney attested by a Notary Public of the U.S.A. is admissible in evidence, and necessary presumptions can be

drawn in respect of such a document under Sections 57 & 85 of the Evidence Act, even then such presumptions are not available to the first power of attorney produced in the proceedings inasmuch as that power of attorney is not authenticated and attested so as to draw the necessary presumptions under the Evidence Act. So, he has argued that if the power of attorney is held to be not admissible in evidence the eviction petitions filed by respondent''s father are nut maintainable as they have not been instituted by any duly authorised person. He has further argued that even though it is held that these power of attorneys are admissible in evidence even then unless and until it. is proved that the person who purported to sign as Notary Public is proved to be Notary Public, the necessary presumption under Sections 57 & 85 of the Evidence Act cannot be raised. He has also argued that the second power of attorney even if it is held to be admissible in evidence and presumptions under Sections 57 & 85 of the Evidence Act are liable to be drawn even then the said power of attorney would not have the effect of validating the illegal institution of the two eviction petitions.

(6) Counsel for the respondent on the other hand, has vehemently argued that there has been reciprocity in practice that the material acts of the Notaries Public of India and of U.S.A. are recognised respectively in each other''s country and thus even though no notification had been issued by the Central Government u/s 14 of the Act even then the material acts of the Notary Public of U.S.A. are recognisable in India on account of previous practice and procedure and so, the provisions of Sections 57 & 85 of the Evidence Act are applicable. He has argued that even though the first power of attorney is not properly attested and authenticated by the Notary Public, yet once it is shown that the second power of attorney has been duly authenticated and attested by a Notary Public, the same would have the effect of validating the acts of the respondent''s father in instituting the eviction petitions on her behalf inasmuch as the second power of attorney clearly mention that the respondent validates the acts of her father taken on her behalf in instituting the said eviction petitions. The first point, hence, which is required to be decided in this context is whether the material acts of the Notary Publics of the U.S.A. arc recognisable in India or not and whether before such acts are given legal recognition by the courts and authorities in India, is it mandatory that the Central Government must issue a notification u/s 14 of the Act in this regard. Before coming into force of the Notaries Act, 1952. there was no statutory law laid down for appointment of Notaries Public in India except for the purposes of Negotiable Instruments Act, 1980-81 but u/s 138 of the Negotiable Instrument Act. 1980-81 the Government could appoint Notaries Public in India only for the limited purposes of performing functions under that Act. However. by virtue of an ancient English statute, the Master of Faculties in England used to appoint Notaries Public in India for performing all recognised material functions and even after India became independent, such Notaries Public appointed under the English statute continued to function in India, the object of the bill was to employer the Central and State Governments to appoint Notaries generally for all

recognised material purposes and to regulate the profession of such Notaries. Section 2(d) of the Act defines ''Notaries'' to Mean a person appointed as such under the Act. Section 3 empowers the Central and State Governments to appoint the Notaries. Section 4 requires the respective Governments to maintain such register of the Notaries. Section 8 enumerates the functions to be performed by a Notary. Section 9 places a bar of any person to practice as Notary unless he is duly appointed. Section 10 deals with the procedure for removing the Notaries so appointed. Section 11 reads as follows:

Ally reference to a Notary Public in any other law shall be construed as a reference to a Notary entitled to practice under this Act."

(7) Counsel for the appellant has argued that the Notary Public mentioned in Sections 57 & 85 of the Evidence Act should mean to make reference to a Notary entitled to practice under this Act. There is a fallacy in this argument. Supposing a notification had been issued u/s 14 of the Act by the Central Government to the affect that material acts of Notaries of a particular foreign country shall be recognised within India, in that situation how it could be drought into cognisance the said Notaries Public of said foreign countries in line with the provisions of Section 11. Obviously the Notaries appointed in foreign country are not entitled to practice under the provisions of the Notaries Act, 1952. Section 11 obviously makes reference to Notaries Public of India. If any statute makes reference to a Notary Public practicing in India, obviously Section 11 would come into play and such Notary Public would be construed to have a reference to a Notary entitled to practice under this Act. Section 14 is the enabling provision. No provision in this statute lays down that previous practice and procedure of material acts being recognised in India in respect of the Notaries of foreign countries are not to be recognised henceforth after the enforcement of the Notaries Act, 1952. A number of rulings have been cited on both sides'' in support of their respective contentions to which I shall now presently refer.

(8) Counsel for the appellant has cited Haji Abdul Gaffar v. Madan L. Khandelwal (1066) 2 Cal 35. In this case, a power of attorney attested and authenticated by a notary of Pakistan was sought to be relied upon. After referring to the provisions of Section 14 of the Notaries Act, the court gave a finding that unless and until a noti''fication is issued by the Central Government the said power of attorney attested and authenticated by Notary Public of Pakistan cannot be taken cognisance of and no presumption can be raised in respect of such power of attorney u/s 85 of the Evidence Act. The reason given for coming to this ratio is that there is no reciprocal arrangement between India and Pakistan regarding the power of attorneys of respective countries being recognised in each other''s country. Then reference is made to Interads Advertising, Private Limited v. Bentrex & Company & Other.,, (1983) 53 Delhi 646 wherein a power of attorney notarised '' by a Notary Public of Singapore was produced and the said power of attorney had not been

authenticated by Indian High Commission at Singapore. An objection was raised that the courts in India cannot take judicial notice of the power of attorney authenticated by a Notary Public abroad. An argument was raised that till a Notary Public of a foreign country is recognised in India such a power of attorney is not admissible in evidence. On the other hand, it was contended that Section 85 of the Evidence Act would be applicable to a power of attorney endorsed by a Notary Public of a foreign country and presumption u/s 85 should be raised. Reliance was placed in support of this contention on National and Grindlays Bank Ltd. Vs. World Science News and Others, . After analysing the judgment given in National & Grindlays Bank which was based on a ratio given by the Supreme Court in Jugraj Singh and Another Vs. Jaswant Singh and Others, the court noticed the provisions of Sections 11 & 14 of the Notaries Act. The. court also noticed that certain notifications have been issued u/s 14 by the Central Government in respect of certain other countries and then placing reliance on the case of Abdul Gaffar (Supra) and opining that the impact of Section 14 of the Notary Act having been not noticed in the case of National & Grindlays Bank (supra) the court did not give any opinion mentioning that as full dress arguments have not been advanced he would not go into the matter. So. this judgment does not lay down any ratio contrary to what has been laid down by Yogeshwar Dayal J. in the case of National & Grindlays Bank (supra). It is true that the impact of Section 14 of the Act was not specifically considered in the said judgment and even in the judgment given by the Supreme Court. referred to above, the provisions of Section 14 of the Act were not referred to or discussed.

(9) Counsel for the appellant has vehemently argued that the decision of the Supreme Court has been given on different point and the point now being raised by him in these appeals being not raised and considered by the Supreme Court, this, judgment of the Supreme Court is of no help in showing that in absence of any notification u/s 14 of the Act ''he powers of attorneys endorsed by Notary Publics of a foreign country would be admissible in evidence. The question which arose for consideration before the Supreme Corn was as to whether in case a particular power of attorney has been endorsed by a Notary Public, a presumption could be raised or not that it has been duly executed. In the cited case, one Version Seth executed a power of attorney in California in favor of Sardar Kartar Singh authorising him to sell his property in India. This power of attorney was witnessed by one Daniel. Kartar Singh executed a sale deed and presented it for registration and the sale deed was registered. The property was subject to mortgage. The vendees brought a suit for redemption of mortgage. A plea was taken that the sale deed was invalid as it has been executed by a person who was not legally authorised attorney of the vendor. During the pendency of the suit another power of attorney executed by the vendor in favor of Kartar Singh was produced which validated the acts of Kartar Singh in executing and registering the sale deed on behalf of the vendor. That power of attorney had a certificate in accordance with laws of California appended to it showing that it had been subscribed and sworn in

presence of the Notary Public of the State of California. A contention was raised that the Notary Public before attesting the power attorney should have satisfied himself that the person signing the power of attorney is the real person and he had signed the power of attorney in his presence. It was argued that as the first power of attorney did not on the face of it, show that it had been so authenticated by the Notary Public, hence, it was invalid and it was contended that the second power of attorney though duly authenticated would not validate the sale deed executed by the attorney on the basis of invalid power of attorney. The Supreme Court held that the first power of attorney did not comply with the requirement of law, so it would not have the effect of living the power to the attorn to execute the sale deed and present it for registration as the said power of attorney was not authenticated in accordance with law. u/s 33 of the Indian Registration Act, it was incumbent that an Indian residing abroad should get the document authenticated by a Notary .Public. The first power of attorney did not even show that the person who signed as a witness was a Notary Public even and there was no endorsement of authentication by the Notary Public. As regards second power of attorney, the Supreme Court held that it was executed before a Notary Public who complied with the laws of California and authenticated the document a? required by that law. It was held that although the Notary Public did not say in his endorsement that the executant had been identified to his satisfaction, still the same inference would flow from the fact that the Notary had endorsed on the document that it had been subscribed and sworn before him and the court held that the said power of attorney is valid and effective both u/s 85 of the Evidence Act and Section 33 of the Indian Registration Act. It was also held that it would have also the effect of validating the act of the agent of executing the sale-deed and setting it registered on behalf of the vendor as the principal could always ratify such an act of his agent.

(10) It is clear that the point whether there exists any reciprocity between the U.S.A. and India for recognising respective acts of Notaries of respective countries was not urged and decided. It was also not urged as to what could be the impact of Section 14 of the Notaries Act. So, it cannot be held that any binding ratio of law has been laid down by the Supreme Court by this aspect of the matter which has been urged by the learned counsel for the appellant in the present appeals.

(11) Counsel for the respondent has, however, argued that the ratio of law laid down by the Supreme Court in the aforesaid case is binding under Article 14 of the Constitution of India en this Court. He has argued that even though a particular argument has not been raised on a point before the Supreme Court, still it should be inferred that the said argument must have been in the mind of the Supreme Court when deciding a particular point and oil such a ground the judgment of the Supreme Court cannot be ignored. He has cited T. Govindaraja Mudaliar v. The State of Tamil Nadu & Others, (16) in which it was laid down that even if certain aspects of a question were not brought to toe notice of the court, the court would decline to enter upon reexamination of the question since the decision had been followed in

other cases. The Supreme Court had referred to the legal position existing when some previous judgments had been given by the Supreme Court while referring to well-known case of Rustom Cavasjee Cooper Vs. Union of India (UOI), It was mentioned that before that cane it was not possible to challenge- chapter IV-A of the Motor Vehicles Act as being vocative of Article 19(l)(f) owing to the decision of the Supreme Court that Article 19(l)(f) could not be invoked when a case fell within Article 31 and that was the reason why the Supreme Court in all the previous decisions relating to the validity of Chapter IV-A proceeded on an examination of the argument whether there was infringement of Article 19(1)(g) and clause (f) of that Article could not possibly be invoked. Then, Court referred to Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others, and held that after the said case no doubt was left that the authority of law seeking to deprive a person of his property otherwise than by way of acquisition or requisition was open to challenge on the ground that it constituted infringement of the fundamental rights guaranteed by Article 19(1)(r). The question which was being considered by the Supreme Court was whether the previous judgment given between the parties was res judicata? The question was sought to be re-opened on the ground that ill view of the previous interpretation given by the Supreme Court, a challenge could not be made to Chapter IV-A on the ground that it infringed Article 19(1)(f). The Supreme Court repelled this argument and held that such a challenge was available when the previous case was decided in view of the ratio laid down in Kochuni''s case (supra) and in that connection the Supreme Court held that even if certain aspects of a question were not brought to the notice of the Court, the Court would decline to enter upon re-examination of the question since the decision had been followed in other cases. It held that the binding effect of a decision does not depend upon whether a particular argument was considered therein or not provided that the point with reference to which an argument was subsequently advanced was actually decided. In the present case the point which is being raised in the present appeals as to the impact of Section 14 of the Notaries Act was never raised before the Supreme Court. So, it cannot be held that the Supreme Court has given any ratio on that particular point. It may be that if a particular point is decided by the Supreme Court then the said decision is binding even though some arguments which could have been raised and considered had not been raised or considered. There is no dispute abut the principle of law as laid down in Ballabhadas Mathurdas Lakhani and Others Vs. Municipal Committee, Malkapur, that a decision of the Supreme Court on a particular point is binding on the High Court and it cannot be ignored on the ground that the relevant provision was not brought to the notice of the Supreme Court. A question which fell for decision was whether a suit for refund of tax paid to the Municipality is maintainable, or if the suit is maintainable, whether the levy of the tax by the municipality was valid in law? The first question stood concluded by the judgment of the Supreme Court in Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon, By that judgment the Court held levy of tax in excess of the amount prescribed by Article 276 of the Constitution by the Municipal

Committee as invalid as the municipality has no authority to levy the tax in excess of the rate permitted by the Constitution and the suit for refund of tax in excess of the amount permitted by Article 276 was maintainable. The High Court did not follow that judgment as it thought that the relevant provisions were not brought to the notice of the Supreme Court. It was held that once the Supreme Court gives a decision on a particular point that decision on that the said decision had been given. without considering a particular argument or particular provision of law. Reference was made to Ambika Prasad Mishra v. State of U.P. & Others, : [1980]3SCR1159 where it was held that every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. That is correct. But where a particular point was never raised and argued, it cannot be inferred that a decision has been given on that particular point. As already mentioned above, that if in deciding a particular point, some argument has not been advanced or some provision has not been brought to the notice of the Supreme Court, still decision on that point would be binding. The Supreme Court has clarified the position in Municipal Corporation of Delhi Vs. Gurnam Kaur, In this judgment it has been held that a decision is per incuriam if given in ignorance of a statute or rule having a force of statute. It was observed that the precedent ab silentio and without argument are of no moment. It was further observed that the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened, and weight accorded to dicta varies with the type of dicta. If where the decision is given on a totally different point, then the same cannot be considered binding if another point arises for decision which was never urged before the Supreme Court. So, this Court has to independently consider whether in absence of any notification u/s 14 of the Notaries Act the power of attorneys endorsed by Notaries Public of Usa are admissible in evidence or not Counsel for the respondent has cited In Re: K.K. Ray (Private) Ltd., In the cited case. an affidavit attested by Notary of New York (U.S.A.) was sought to be relied upon. The Court referred to the practice of recognition of material acts of foreign countries based on history and tradition and observed as follows:

The Notary Public is an institution of very ancient origin. It is an institution of great utility and the Notary Public is an officer recognised by the whole commercial world and a certificate by a Notary Public, competent to administer an oath to persons making declarations or affidavits, is sufficient evidence of the execution of the instrument to which it refers. The Court further observed as follows : "It is common knowledge that the office of a Notary Public had its original in the civil institutions of ancient Rome. Subsequently, the Notaries found their way in England and were regarded as originally officers of the civil and the canon law, and acted by imperial and Papal authority. The records of Edward the Confessor mention deeds attested by a Notary. In a deed by King John dated A.D. 1199 it was supposed to be written and attested by one Master. Philip, a notary, who was described as a Notary of the Pope. Many of the Notaries at that time were created by the counts palatine, who

not only made the appointments themselves but also delegated their powers to English churchmen. Matters of a commercial nature gradually came to dominate the work of the Notary Public, and there grew up a separation from their ecclesiastical origin. It is also common knowledge that the functions of an English Notary are not defined by any statutory provision or rule. Generally speaking no person in England is entitled to practice as a Notary Public or do any material acts unless he has been duly sworn, admitted and enrolled in the Court of Faculties belonging to the Arch Bishop of Canterbury. A part of Indian legal history is that it was these persons before the year 1952 who practiced as Notary Public in India. In the year 1952 the Indian Notaries Act came into operation to which I shall make a reference presently. Brooke''s Treatise on the Office and Practice of a Notary of England, 8th Ed. p. 19, points out : "From a remote period English notaries have exercised the right to administer oaths and take affidavits. These affidavits are, for the most part, intended for use in the British dominions abroad and in foreign countries where material acts are recognised. They may also act as commissioners for oaths under commissions granted by colonial and foreign authorities : English Courts, when required by statute or statutory rule, take judicial notice of the seal and signature of a Notary Public, for instance, under the English Commissioners for Oaths Act, 1889 or old Rules of the Supreme Court, England Order 38, Rule 6. ".....In Brooke''s Treatise which is an authority on this subject and which I have just quoted, this point is discussed at pp. 52-53. It is said there : "Where, Therefore, an affidavit affirmation, declaration, etc. is sworn or taken before any of the persons mentioned in this rule no verification of the seal or signature is necessary; but where it is sworn or taken in a country not under the dominion of His Majesty, before a foreign notary, or before a person authorised by foreign law, the authority and the signatures of the notary or other person must be verified. The verification required is a certificate annexed to the affidavit, or other document, certifying that the person before whom it was sworn or taken was duly authorised to administer oaths in the country in which it was sworn or taken, and such certificate must be signed by a British consul or vice-consul, or verified by the seal of the High Court or of a Local Court of Record of the said country." Indeed, the learned Editor of Brooke''s Treatise, 8th Edition, at p. 182 goes on to observe further and more clearly on this point in the following terms : "Powers of attorney executed by foreign companies should, in addition to an affidavit verifying execution, have attached to them an affidavit, made preferably by a notary public before a British consular Official, proving (1) that the company is duly constituted and registered in accordance with the local law of the foreign country; (2) that A, B and , the signatories, are respectively directors and Secretary as the case may be, of the said company and (3) that the company is bound and engaged by the signatures of A, B and C, in accordance with the statutes or articles of association of the said company and the local law." Now all these formalities have been fully satisfied in the present case. Indeed, in that authority just quoted above again at pp. 52-53 certain decisions are noted. Out of those decisions, I shall select some as appropriate and relevant for the point under decision before this Court."

(12) The Court also noticed the provisions of Section 14 of the Notaries Act and satisfied itself at first whether there is reciprocity of material acts of Notaries of India being recognised in U.S.A. and vice versa and it held that such a material act of Notary of U.S.A. is recognisable in India and thus, the said document is admissible in India. The Court also advised that it is high time that the Central Government should issue necessary notifications also u/s 14 of the Notaries Act. It is the contention of the learned counsel for the respondent that Notaries Act had not made illegal and well-established previous practice of recognising the material acts of Notaries of U.S.A. or England by the Indian Courts when such acts of Notaries of India are recognised by the said countries as well. Yogeshwar Dayal, J., in the case of National & Grindlays Bank (supra) has held such a power of attorney to be admissible in evidence and presumptions under Sections 57 & 85 of the Evidence Act were held to be available to such a document although he relied upon the case of Jugraj Singh (supra) for giving that finding. Sultan Singh, J., in Suit No. 671/77, Bank of India v. Ajaib Singh, decided on April 20:. 1979, (24) followed the above case for giving the same opinion. However, independently of these two decisions of two Judges of this Court, I hold that the provisions of Section 14 of the Notaries Act do not place any bar in recognising the material acts of such countries wherein the material acts of Notaries of India are recognised. Even in Abdul Jabbar and Others Vs. 2nd Additional District Judge, Orai and Others, it was held that Section 85 of the Evidence Act applies equally to documents authenticated by Notaries Public of other countries and there is no reason to import the provisions of Notaries Act for interpreting the provisions of Section 85 of the Evidence Act. I agree with these observations. Hence, I repel this contention of the learned counsel for the appellant that the said power of attorneys endorsed by Notary Public of U.S.A. by themselves arc not admissible in evidence.

(13) Counsel for the appellant has, then, contended that till It is proved that the person who signed the said power of attorney was the duly appointed attorney, the court cannot draw any presumption under Sections 57 & 85 of the Evidence Act. I am afraid that the very purpose of drawing presumption under Sections 57 & 85 of the Evidence Act would be nullified if proof is to be had from the foreign country whether a particular person who had attested the document as a Notary Public of that country is in fact a duly appointed Notary or not. When a seal of the Notary is put on the document, Section 57 of the Evidence Act comes into play and a presumption can be raised regarding the genuineness of the seal of the said Notary, meaning thereby that the said document is presumed to have been attested by a competent Notary of that country.

(14) It is true that the first power of attorney was not duly authenticated by the Notary, hence, the same was not valid to give any authority to the attorney to act on behalf of the respondent. However, the second power of attorney produced at the stage of first appeals clearly was a valid document and the contents of the said document show that the act of the agent in instituting the eviction petitions was

duly ratified in the second power of attorney. Such ratification can be done is obvious from the law laid down by the Supreme Court in the case of Jugraj Singh (supra). Counsel for the appellant tried to distinguish that judgment by arguing that the ratio laid down in that judgment could not apply to institution of the eviction petitions or suits. I do not see any reason as to why the said ratio should not be given full effect. After all, what has been laid down by the Supreme Court is that an act of the agent, although shown to be unauthorised when the act was committed, still the Principal can subsequently execute a document ratifying the said act.

(15) Counsel for the respondent also cited a number of judgments to show that even though initial institution of suits is bad, still the same could be remedied by subsequent act of the principal. In Allah Bakhsh and Another v. Municipal Committee of Rohtak Air 1926 Lah 223 it was laid down that the person, on whose behalf an appeal is filed, has accepted or ratified the action of the person who filed the appeal on his behalf, the person filing the appeal would be considered to have the authority to file the appeal. In Danish Mercantile Co. Ltd. & Others Beaumont & Another (1951) 1 Ch.68U 27 same principal was enunciated wherein it was laid down that it is open at any time to the purported plaintiff to ratify the act of the solicitor who started the action without authority and also to adopt the proceedings which had already taken place. It was observed that when that has been done, then, in accordance with the ordinary law of principal and agent, and in accordance with the ordinary doctrine of ratification, the defect in the proceedings as originally constituted is cured, and it is no longer open to the defendant to object that the proceedings then ratified and adopted were in the first instance brought without proper authority. In Subbiah Pillai alias S.S.M. Subramania Pillai Vs. Sankarapandiam Pillai and Others, a plaint, which was filed without signatures of'' the plaintiff, was held to be validly filed when the defect was cured by permitting the plaintiff to sign the plaint later on. This defect was removed at the stage of appeal. In Dahyabhai Girdhardas Vs. Bobaji Dahyaji Kotwal and Others, a son of the plaintiff had signed the plaint who had no authority to do so initially but the defect was allowed to be cured by allowing the plaintiff to sign the plaint and it was held that the plaint would be deemed to be instituted validly from the very beginning. Similarly, Nadella Satyanarayana v. Yamanoori Venkata Subbiah, Air 1957 Andhra Pradesh 172, (30) a Full Bench of the said High Court held that even if an execution application has been filed by a pleader who is not duly appointed, still the act of the pleader could be ratified by the litigant subsequently. Same ratio has been laid down in All India Reporter Ltd. and Another Vs. Ramchandra Dhondo Datar, In Ashoke Kumar Daw and Another Vs. Gobinda Chandra Dev and Others, where the proceedings have been initiated without There being a power of attorney in favor of the counsel concerned find subsequently the power of attorney was given. It was held that the effect of filing of the power of attorney subsequently v. could be that the appellants had ratified or are ratifying all acts done or actions and steps taken by the said counsel. Counsel foe the appellant has cited Secretary, Notified Area Committee,

Okara v. Kidar Nath & Others. Air 1932 Lah 388(33), which appears to be contrary to the view laid down by so many cases above. So, the same cannot be considered to be a good law. He has also referred to Punjab Zamindars Bank Ltd. v. Madan Mohan Singh & Others, Air 1936 Lahore 321, (34) where it was held that the ratification done by the principal after the expiry of limitation is of no effect. Such is not the case in the present appeals. There was no question of limitation in the cases in hand.

(16) So, in view of the above discussion, I hold that the valid power of attorney produced in the appeals, the contents of which clearly show that the respondent had ratified and validated the act of her father in instituting the eviction cases against the appellant, cures the initial defect, if any, and it must be held that the eviction petitions were instituted by a duly authorised person. So, I find no force in this contention of the learned counsel. for the appellant.

(17) Lastly, it has been contended by the learned counsel for the appellant that the defense of the appellant should not to have been struck out u/s 15(7) of the Delhi Rent Control Act and he has contended that at least at the time when during the pendency of the appeals before the Rent Control Tribunal the. appellant had admittedly deposited the entire arrears of rent and up-to-date rent and also continued to deposit month to month rent, the Rent Control Tribunal should have set aside the order of the Additional Rent Controller by which the defense of the appellant was struck out. He has urged that there is a discretion vested in the lower courts for not striking. out the defense if some good cause is shown for non-deposit of rent in. compliance with the order made u/s 15(1) earlier. It is true that the courts have discretion in the matter but that discretion has to be exercised is a judicial manner. In the present case, the appellant has been guilty of contumacious act. He had the opportunity of depositing the rent a number of times. At first, an order was made u/s 15(1) by the Rent Controller giving him necessary time for depositing the rent, the appellant did not deposit the rent. The matter was taken to the Rent Control Tribunal against the interlocutory order made u/s 15(1). The appeals were withdrawn and further time was obtained from the Rent Control Tribunal for depositing the rent, yet no rent was deposited. Moreover, after an application u/s 15(7) was moved, again the appellant got the opportunity at least to file some reply to that application and before filing any such rep]y the appellant could still deposit the rent but the appellant neither deposited the rent nor filed any reply to the application u/s 15(7). No reason whatsoever as such was furnished to the Controller for this willful contumacious defaults being committed by the appellant in not at all complying with the order made u/s 15(1). In such a case, it is too much to say that the discretion ought to have been exercised in favor of the appellant. It is to be remembered that when the eviction orders had been made by the Controller, the appellant filed the appeals against the said eviction orders and obtained a conditional order of stay and then, for complying with the condition he deposited the rent. The appellant is guilty of contumacious conduct and has willfully not complied with the order made u/s 15(1) and thus, there could be no occasion for the

Rent Control Tribunal to have set aside the order of the Controller striking out the defense of the appellant in both the eviction cases.

(18) No other point has been urged. The orders of eviction are well based because on merits it is not disputed that the notices of demand were duly served on the appellant. The appellant failed to either deposit or tender the arrears of rent within two months of the service of notices of demand. No reply was sent to the notices of demand. The ground of non-payment of rent was well made out and the appellant did not care to enjoy the benefit of Section 14(2) of the Delhi Rent Control Act by complying with the order made u/s 15(1) of the said Act.

(19) I, hence, dismiss both the appeals with costs. Counsel''s fee Rs. 500.00 in each appeal.