

**(2012) 05 DEL CK 0702**

**Delhi High Court**

**Case No:** Regular First Appeal 217 of 2012

Sudeep Singh Sabharwal

APPELLANT

Vs

Shahnaz Arfi

RESPONDENT

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**Date of Decision:** May 11, 2012

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6, 96
- Registration Act, 1908 - Section 17(1)

**Hon'ble Judges:** Valmiki J Mehta, J

**Bench:** Single Bench

**Advocate:** Ashish Upadhaya, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

Valmiki J Mehta, J.

The challenge by means of this Regular First Appeal filed u/s 96 of the Code of Civil Procedure, 1908 (CPC), is to the impugned judgment of the trial Court dated 11.4.2012 decreeing the suit of the respondent/plaintiff/landlord filed for possession and mesne profits for the relief of possession on an application under Order 12 Rule 6 CPC. Before the trial Court and before this Court, the following is the undisputed position:

(i) there is a relationship of landlord and tenant;

(ii) the rate of monthly rent is `7000/- i.e. more than ` 3,500/- taking the premises out of the protection of Delhi Rent Control Act, 1958 and

(iii) the registered lease deed dated 15.9.2008 which was executed for the suit premises for a period of two years expired on 15.9.2010.

2. Though no notice is required to be served where the lease period expires by efflux of time, yet, as a matter of abundant caution, the respondent/plaintiff served a notice of termination dated 23.9.2010. I have also held in the judgment reported

as M/s. Jeevan Diesels & Electricals Ltd. v. M/s. Jasbir Singh Chadha (HUF) & Anr. 2011 (183) DLT 712, that even service of summons of the suit can be treated as notice u/s 106 of the Transfer of Property Act. An SLP against the said judgment being SLP No. 15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

3. The aforesaid aspects are more than enough to decree the suit qua the relief of possession.

4. The only argument which was urged on behalf of the appellant/defendant was that the appellant/defendant paid a sum of ` 1,00,000/- (Rupees one lac only) on 18.8.2010, and therefore, it is prayed that a fresh lease came into existence on payment of such amount. In law, any lease for a period in excess of 12 months has necessarily to be by means of a registered instrument vide Section 107 of the Transfer of Property Act, 1882 read with Section 17(1)(b) and (d) of the Registration Act, 1908. I have repeatedly considered this aspect, and two of the judgments dealing with the issue that the tenancy of a tenanted premises is only a monthly tenancy unless there is a registered lease deed for a fresh period, are the judgments in the cases of [Assocham Vs. Y.N. Bhargava](#), and [M.C. Agrawal Huf Vs. Sahara India and Others](#), I have for arriving at this conclusion relied upon the judgment of the Supreme Court in [Hardesh Ores Pvt. Ltd. Vs. Hede and Company](#),

5. I have recently in a judgment in RFA No. 74/2012 in Punjab National Bank Vs. Sh. Virendra Prakash & Anr. observed that civil Courts in Delhi are unnecessarily clogged with litigations on account of false defences being raised by tenants. The appeal of the tenant in that case (and which was a Bank) was dismissed by me at the stage of admission itself by imposing costs of `2 lacs so that a message is sent to the recalcitrant tenants who do not vacate the suit premises even after the lease comes to an end or after their monthly tenancies are terminated. I made the following observations in the said RFA 74/2012 decided on 8.2.2012.

1. I must begin this judgment with a preface. 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 u/s 106 of Transfer of Property Act, 1882. All such tenants, including the present appellant-bank, feel that they ought to vacate the tenanted premises only when the Courts pass a decree for possession against them. Considering the facts of the case, it is high time that a strict message is sent to those tenants who illegally continue to occupy the tenanted premises by raising frivolous defences only and only to continue in possession of the tenanted premises. Such incorrigible tenants should be appropriately burdened with penal costs, and which aspect of costs, I will deal with later noting the recent judgment of the Supreme Court reported as [Rameshwari Devi and Others Vs. Nirmala Devi and Others](#), in which it has been held that it is high time that actual and realistic costs be imposed in order to pre-empt and prevent dishonesty in litigation. ...

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

43. We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In [Swaran Singh Vs. State of Punjab](#), this Court was constrained to observe that perjury has become a way of life in our courts.

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

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

purity and sanctity of judicial proceedings. ....

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

Dishonest and unnecessary litigations are a huge strain on the judicial system which is asked to spend unnecessary time for such litigation.

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

7. The Hon"ble Supreme Court has been pleased to dismiss the SLP filed against the aforesaid judgment dated 8.2.2012 in RFA 74/2012 by making the following order:-

On hearing Mr. Dhruv Mehta, senior advocate appearing for the petitioner, and on going through the judgment of the High Court, we find ourselves in complete agreement with the view taken by the High Court. We are also satisfied that the High Court was quite justified in imposing the heavy cost against the petitioner bank.

The SLP is, accordingly dismissed.

8. In the present case I did put to the counsel for the appellant as to whether the appellant wanted some time to vacate the premises, but, counsel for the appellant states that he has instructions to argue the appeal on merits.

9. In view of the above, the present appeal is dismissed with costs of `25,000/-, and which costs shall be paid in the account of Registrar General of this Court maintained in UCO Bank, Delhi High Court Branch for being utilized towards juvenile justice. Costs shall be paid within a period of six weeks from today. List before the Registrar for compliance of the order of deposit of costs on 9th July, 2012.