MEC India Pvt. Ltd. Vs Lt. Col. Inder Maira and Others

Court: Delhi High Court

Date of Decision: May 28, 1999

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 9
Transfer of Property Act, 1882 â€" Section 106, 107, 108, 113, 116

Citation: (1999) 80 DLT 679

Hon'ble Judges: C.K. Mahajan, J

Bench: Single Bench

Advocate: Sarvesh Bisaria, for the Appellant; Ketaki Goswami, Pramod Dubey and Sidharth Aggarwal, for the Respondent

Final Decision: Dismissed

Judgement

C.K. Mahajan, J.
This Civil Revision raises an interesting question of law with regard to landlord-tenant relationship in the post Rent Act

era.

2. Premises No. L-3 Kanchanjunga, 18 Barakhamba Road, New Delhi, being aloft (upper ground floor) premises measuring 783 square feet and

owned by the respondents Lt. Col Inder Maira and Others, were leased out on 1.4.1982 for a fixed term of three years to M/s. M.E.C. (India)

Private Ltd., the petitioner-tenant at a monthly rent of Rs. 4,500/ - Lease Deed dated 1.4.1982 was executed but the same was not registered. In

May, 1985 the rent was increased by 10% from Rs. 4,500/- to Rs. 4,950/-. It is common case of the parties that the purpose of the lease was

commercial, the premises are also situated in what is a commercial multi-storeyed building on Barakhamba Road, New Delhi, and that there is no

registered instrument of lease either for the original grant of 1982 for three years, for any later or renewed term.

3. Till 30.11.1988, the tenancy of the petitioner was protected under the Delhi Rent Control Act. That protection, ceased to be available to the

tenant with effect from 1.12.1998. This was because Section 3(c) was inserted in the Delhi Rent Control Act, and the Rent Act was no longer

applicable. The relationship between the parties came to be governed solely by the Transfer of Property Act, 1882. It is also common case of the

parties that notice to quit dated 16.8.1991 was served by the landlord upon the tenant where after on 12.7.1991, Suit No. 306 of 1991 for

ejectment of the tenant (petitioner herein) was filed. Summons in the suit were served and after the defendant-tenant had entered appearance, that

suit for ejectment was dismissed for default of plaintiff''s appearance on 23.9.1993 by the Court of Ms. Mamta Singla, Sub-Judge, 1st Class,

Delhi.

4. Instead of applying for restoration under Order 9, Rule 9, CPC, the plaintiff-landlords opted to take another route. They served a fresh notice

to quit dated 6.8.1996 and another dated 15.10.1996 upon the tenant. Thereafter on 18.11.1996 a fresh suit for ejectment was filed and was

registered as Suit No. 373 of 1996. In this suit, the defendant-tenant (petitioner before me) filed an application under Order 7, Rule 11, CPC

dated 14.5.1997 asking for rejection of the plaint inter alias on the ground that this suit being a second suit on the same cause of action, was barred

under Rule 9 of Order 9, CPC.

5. By order dated 27.11.1998 Mr. B.S. Chaudhary, ADJ dismissed the application. The learned Additional District Judge held :

I have considered the arguments advanced on behalf of both the parties. Admittedly, the earlier suit filed by the plaintiffs before the Civil Judge

had been dismissed in default and not on the merits of the case. Thereafter on service of subsequent notice of termination u/s 106, T.P. Act, the

instant suit before this Court has been filed. Fresh cause of action thus accrued to the plaintiff after service of subsequent notice u/s 106, T.P. Act

and thus there was no bar for filing the fresh suit for possession.

The other submissions made on behalf of the defendant regarding creation of some oral agreement to the effect that the defendant-company

continued as month-to-month (sic) tenant and that the tenancy had to be extended for a period of 60 years from 1.4.1986 onwards which fact has

been denied by the plaintiff in toto, relate to the matter to be adjudicated upon the merits of the case after both the parties put their respective

pleadings and not at this stage merely on the averments of the parties. I thus dismiss the application under disposal.

6. In this Civil Revision No. 102 of 1999 filed by the defendant-tenant on 21.1.1999, this is the order that is assailed. The petitioner submits that a

substantial question of law arises for consideration in this Civil Revision, which he formulates in the following words :

Whether a fresh suit is maintainable between the same parties for the same cause of action for the same property when an earlier suit has been

dismissed by the competent Court between the same parties for the same cause of action and in relation to the same property.

7. Apart from the proposition formulated by the petitioner, the submission of the Counsel is in these words :

It is submitted that the lease was renewed after the expiry of the period on mutual oral terms that the lease shall be for 60 years with effect from

1.4.1985 and shall be yearly lease and lease money shall be paid in 12 equal installments in one year. Based on the aforesaid submission and the

admitted facts as narrated earlier, the learned Counsel for the petitioner contends that the proposition of law formulated by him and quoted above

should be decided and answered in the negative.

8. As the respondent had filed a caveat, both the parties were heard at length in this Revision Petition and both of them have also filed written

submissions. However, in view of the fact that no stay of proceedings in the Court below was granted, the suit for ejectment was proceeded with,

and I am told that by judgment dated 11.3.1999 an application under Order 12, Rule 6 dated 24.2.1998 was allowed and the suit for ejectment

was decreed, against which FAO 172 of 1999 is pending admission before this Court.

9. I have, however, in this Revision Petition to consider only the legality of the order dated 27.11.1998 by which the learned ADJ dismissed the

application under Order 7, Rule 11, CPC and held that the suit was not barred under Rule 9 of Order 9, CPC.

10. Coming first to the submission of the petitioner that the lease was orally renewed for 60 years with effect from 1.4.1985 and also became a

yearly lease, this submission does not seem to be tenable, because it is settled law that in the absence of a registered instrument what comes into

effect is a lease from month-to-month. The law in this regard is discussed later.

11. Coming next to the proposition of law as formulated by the petitioner, I am afraid that the proposition as framed only begs the question. It is

not what arises for decision in this case. The proposition that arises for consideration is :

If a suit by the landlord for ejectment of a tenant is dismissed for default of appearance under Rule 8 of Order 9, CPC, what is the precise legal

status that enures for the tenant thereafter ? Can the landlord not serve a fresh notice to quit and after waiting for the expiry of the period thereof

bring a suit for ejectment ? If such a suit is brought, would that suit be barred under Rule 9 of Order 9, CPC?

12. Though framed as separate short questions, they are really part of the central question as to what is the ""cause of action"" in a suit for ejectment

and if the landlord (whose suit for ejectment has been dismissed for default) after serving a fresh notice to quit and waiting for the expiry of the

period thereof, brings a fresh suit for ejectment, would such a suit be barred under Rule 9 of Order 9, CPC? The petitioner-defendant contends

that the suit is barred while the plaintiff-respondent contends that it is not.

13. The last 60 years have seen lessor-lessee relationship being covered more by Rent Control Acts rather than by the Transfer of Property Act,

1882 with the result that case law on the subject is scanty. So long as the Rent Control Acts were holding the field, such like questions did not

arise, but after the withdrawal of that protection for premises where the rent exceeds Rs. 3,500/- this question may arise more frequently. I have

Therefore thought it fit to go into this matter at some length.

14. Inasmuch as the Delhi Rent Control Act, 1958 does not apply by reason of amendment to Section 3(c), the provisions of that Act need not be

gone into and we have to fall back upon the position as emerges under the Transfer of Property Act, 1882, hereinafter referred to as the Act.

Chapter V (Sections 105 to 117) thereof deals with leases. Section 105 defines a lease while Section 106 provides for duration thereof and more

importantly with regard to its termination by a notice which is commonly understood as service of quit notice. Section 107 gives indication how

leases are to be made while Section 108 gives the rights and liabilities of the Lesser and lessee. Section 109 deals with the rights of lessor"s

transferee. Section 110 "deals with exclusion of day on which term commences, duration of lease for a year and option to determine lease; while

Section 111 deals with determination of lease. Section 112 deals with waiver of forfeiture while Section 113 deals with waiver of notice to quit.

Section 114 deals with relief against forfeiture for non-payment of rent while Section 114-A deals with relief against forfeiture in certain other

cases. Section 115 deals with effect of surrender and forfeiture on under leases while Section 116 deals with effect of holding over. Section 117

deals with exemption of leases for agricultural purposes.

15. To decide the question whether a dismissal of a previous suit for ejectment would bar a later suit based on a fresh notice to quit, it is necessary

to go into certain fundamentals of lessor-lessee or landlord-tenant relationship. This is so because the legal status of the tenant and the rights that

flow there from vary with the kind of tenancy. It is one, during the continuance of a lease, a different one on its expiry and a third one in case there

is waiver or assent to continuation. Moreover, in an event where a lease has not been registered, different considerations apply. The exact nature

of the holding and at the particular point of time needs to be understood so that the question of what is the cause of action for a suit for ejectment

can be adjudicated upon.

16. One question that often arises is with regard to the registration of the lease. By virtue of Section 107, a lease of immovable property from year-

to-year or for any term exceeding one year can be made only by a registered instrument. It has long been settled that in absence of a registered

lease what comes into force, is a tenancy from month-to-month or a year-to-year depending on the purpose thereof. It does so by reason of

delivery of possession, the oral agreement, and the inductee''s possession as a tenant being assented to by the lessor. Such a tenancy is terminable

by a notice to quit u/s 106 of the Act. A conjoint reading of Sections 106 & 107 makes that clear.

17. The following decisions by the Supreme Court may be referred to : Bhawanji Lakhamshi and Others Vs. Himatlal Jamnadas Dani and Others, :

The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the

determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in

possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at

sufferance in English Law and the later a tenant holding over or a tenant at will. In view of the concluding words of Section 116 of the Transfer of

Property Act a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the

determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new

lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a

definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise.

Maneksha Ardeshir Irani and Another Vs. Manekji Edulji Mistry and Others, :

If a lessee remains in possession after determination of the term, he is under the common law a tenant on sufferance. The expression ""holding

over"" is used in the sense of retaining possession. If a tenant after the termination of the lease is in possession without the consent of the landlord,

he is a tenant by sufferance. It is only where a tenant will continue in possession with the consent of the landlord that he can be called a tenant

holding over or a tenant at will.

Satish Chand Makhan v. Govardhan Das Eyas :

We have no doubt in our mind that the defendants were tenants holding over u/s 116 of the Transfer of Property Act and Therefore it was

necessary for the plaintiffs to serve a notice u/s 106 of the Act. Where a person holds over under an unregistered lease and continues in possession

by paying the monthly rent, the holding over must be held as a tenancy from month-to-month: Mulla''s Transfer of Property Act, 5th Edn., p. 762.

It was definitely wrong on the part of the High Court to have proceeded on the-assumption that the lease stood determined by efflux of time u/s

111(a) of the Transfer of Property Act, and that the defendants were tenants at sufferance and no quit notice was required. It is no doubt true that

where the lease is for a definite term, it stands determined by efflux of time u/s 111(a) of the Transfer of Property Act, and the erstwhile tenant

becomes a tenant at sufferance, but that is not the case here. The legal position is not contested and it was fairly conceded that the defendants were

holding over u/s 116 of the Transfer of Property Act as tenants from month-to-month, and further that no notice as required by Section 106 was

served on them. That being so, the plaintiff''s suit for ejectment as framed was not maintainable. The decree for mesne profits shall be treated as a

decree for arrears of rent, if any.

18. The Supreme Court''s decision that authoritatively lays down the law with regard to the status of a lessee whose term has expired is reported

as Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and Others, . In this case, a lease

deed was executed on 16.1.1958 for a period of ten years which expired on 15.1.1968. The following question was formulated by the High

Court:

In the absence of any registered instrument executed by both the parties i.e. the Lesser and the lessee after the period stipulated in Ex. 4 i.e. the

period of ten years, Can it be said that the lease was extended automatically for a period of five years in terms of Ex. 4 or further whether the

lessee was holding the suit property as tenancy from month- to-month.

The answer given by the High Court was assailed before the Supreme Court. Here it was held :

5. In view of the paragraph 1 of Section 107 of the Act, since the lease was for a period exceeding one year, it could only have been extended by

a registered instrument executed by both the Lesser and the lessee. In the absence of registered instrument, the lease shall be deemed to be ""lease

from month-to-month"". It is clear from the very language of Section 107 of the Act which postulates that a lease of immovable property from year-

to-year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. In the absence of registered

instrument, it must be a monthly lease. The lessee and the sub-lessee in the facts of this case continued to remain in possession of the property on

payment of rent as a tenant from month-to-month. The High Court so found. We are of the opinion that the High Court was right.

7. It was submitted before the High Court that this was not a case of continuing of old tenancy for a period of five years but in view of the clear

provisions of Section 107 which we have noted hereinbefore and in the absence of a registered instrument, it must be held that it was holding over

and not continuation of old tenancy for a further period of five years. That would be the harmonious construction of Section 107 read with Section

116 in the facts of this case. We are of the opinion that the High Court was right that the tenancy was automatically determined on the expiry of ten

years which was stipulated in Ex. 4. Thereafter the lessee continued to hold the property and the Lesser accepted the rent. The lease was,

Therefore, renewed from month-to-month because it was not the case of any party that it was for agricultural purposes.

Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, .

Undoubtedly by issuance of notice to quit automatically the right created thereunder, namely, cessation of the lease, does not become effective till

the period prescribed in the notice or in the statute i.e. Section 106 expires. On expiry thereof the lease becomes inoperative and the Lesser

acquires right to have the tenant ejected. When he fails to deliver vacant possession, the Lesser would be entitled to have the tenant ejected and

take possession in due process of law.

There is also the Supreme Court''s decision in R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, . Here the Apex Court said :

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 tenant doing so with the landlord''s consent. The former is called a tenant by

sufferance in the language of the 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 Lesser 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.

19. This being the law laid down, I now proceed to examine its application. Taking first the case of a lease for a fixed period. Section 111

provides for the various contingencies which determine a lease. Of relevance here, are Clauses (a) and (h). These read as under:

(a) by efflux of the time limited thereby;

(b) to (g).....

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

20. So long as the lease subsists, the tenant is entitled to the estate and all rights that flow there from. The point under consideration is the position

thereafter.

21. A lessee who continues in possession beyond the expiry of the term by the efflux of time, could either be there merely at sufferance or he could

be holding over. Section 116 of the Act 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 Lesser 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. (a) A lets a house to B for five years. B underlets the house to C at a

monthly rent of Rs. 100. The five years expire, but c continues in possession of the house and pays the rent to A. C''s lease is renewed from

month-to-month, (b) A lets a farm to B for the life of C. C dies, but B continues to possession with A''s assent. B''s lease is renewed from year-to-

year.

22. Thus, holding over by the tenant, if assented to by the landlord, creates a tenancy that is renewed from month-to-month, or from year-to-year

according to the purpose for which the property was leased. In other words, by reason of an ''assent'' of the landlord within the meaning of Section

116, renewal, not for the original term, but from month-to-month (or year to year) takes place. In that event, termination by a valid quit notice

becomes necessary before ejectment can be ordered. If there is no assent within the meaning of Section 116 of the Act, the tenant continues as

one at sufferance and no Notice to quit is necessary before ah order for ejectment can be made. See Badrilal Vs. Municipal Corporation of

Indore, , and other decisions cited earlier.

23. Taking next, the case of a tenancy from month-to-month, it is to be first considered what precisely is the nature of a lease from month-to-

month, in the absence of a contract or local usage, Section 106, deems a lease to immovable property for non-agricultural or non-manufacturing

purposes, to be a lease from month-to-month, terminable on the part of either the Lesser or the lessee, by a fifteen days'' notice expiring with the

end of a month of tenancy. Insofar as the Union Territory of Delhi is concerned, there appears to be no local law or usage to the contrary. A

contract to the contrary would require a registered deed except in a rare instance of it not exceeding one year and reserving less than a yearly rent.

As the words ''from month-to-month'' themselves, indicate, it is a new or a separate lease which commences every month and expires at the end of

the particular month, only to be renewed, if not terminated, for yet another month.

24. Section 116 of the T.P. Act says :

... ... renewed from year-to-year, or from month-to-month, according to the purpose for which the property is leased.

25. Plain meaning of the words ''from month-to-month'' apart, the use of the word ''renewed'' in the statute, further leads to an irresistible

conclusion that for every month it is a separate tenancy vis-a-vis that which was operating in the preceding month, otherwise instead of ''renewed'',

the Legislature would have used the word ''extended''.

26. In DDA v. Durga Chand AIR 1973 2609, the Supreme Court said :

A renewal of lease is really the grant of a fresh lease. It is called a ""renewal"" simply because it postulates the existence of a prior lease which

generally provides for renewals as of right. In all other respects, it is really a fresh lease.

And in Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, :

14. ... the distinction between ''extension'' and ''renewal'' is chiefly in the case of ''renewal'' a new lease is required while in the case of ''extension''

the same lease continues in force during the additional period by the performance of the stipulated act. In other words, the word ''extension'' when

used in its proper and usual sense in connection with the lease means prolongation of the lease.

27. A lease from month-to-month which comes into effect in any one of the contingencies as pointed out earlier, unless terminated by a requisite

notice, the lessee gets an automatic renewal of the lease for the ensuing month and so on till the process is terminated by a notice u/s 106.

28. Once a notice to quit has been served on the expiration thereof, the automatic renewal for the ensuing month does not take place, and the

position of the lessee ceases to be that of a tenant from month-to-month. It does not become that of a trespasser in that sense of the term, but

assumes the character of a tenant at sufferance as discussed earlier. The position is similar to that of a tenant whose lease has expired by efflux of

time. Section 111 provides various contingencies which determine a lease and if Clauses (a) and (h) are examined, the aforesaid conclusion would

be borne out.

29. A notice to quit can be waived u/s 113. The two illustrations to that section may be examined. In such an event, the tenant who by the service

of the earlier quit notice had, upon expiry of the tenancy month, became a tenant at sufferance, is relegated back to the position of a tenant from

month-to-month. The status so acquired is neither one in perpetuity nor for a fixed term, but one from month-to-month and terminable by a fresh

notice to quit expiring with any subsequent tenancy month. As already pointed out, in the absence of a registered instrument, what comes to

operate is only a tenancy from month-to-month, unless the purpose of the lease is either agricultural or manufacturing, in which case, it will be from

year-to-year. The legal position consequent to such waiver is no different than in the case of a lessee who upon efflux of time limited by the lease

had become a tenant at sufferance, but his holding over was assented to by the landlord and which act of the landlord and the effect of upgrading

the tenant''s legal status from one at sufferance, to one, from month-to-month.

30. The difference between a tenancy for a fixed term and a tenancy from month-to-month can be illustrated by likening the former to a long steel

rod where the length of the same represents the duration of the lease, while the latter can be likened to a chain with each link representing a

tenancy month. It moves from link-to-link (renewed from month-to-month), until the process is interrupted by a notice to quit, in which case the

next link does not take hold, and for the period thereafter the tenancy partakes the character of one at sufferance. If there is waiver of the notice to

quit or an assent to continuation, the tenancy is relegated to from month-to-month character, the process is resumed, and the next link takes hold

and after it the next and so on. Once again the process is capable of being put an end to by service of a fresh notice to quit expiring with the next

tenancy month.

31. Similarly, a tenant holding over with assent of the landlord after the efflux of time does so from month-to-month. To illustrate, what in the past

was one long rod of specified length, is now a chain of many links moving from one link to another, and requiring only a notice to quit to put an end

to the process. If, instead, for a renewed period, a lease is granted and registered, the effect can then be linked to a rod of a specified length

replacing a chain of many links. The lessee now gets a security of tenure, and the cross-over from one link to the other is longer dependent on the

landlord''s not sending a notice to quit.

32. A few words on, what is the process of termination may also be stated. If it is lease for a term or till the happening of a contingency, it

continues as one lease for that term or till the happening of that contingency. On any of the grounds permitted by law there can be a forfeiture. The

contract may itself permit sooner determination. It however, remains one long lease and determines itself as provided by the terms of the grant or

the contract.

33. However, where the lease and for whatever reasons, operates as one from month-to-month, each month forms a separate lease in itself and

what comes to operate for the next or the ensuing month and for the still next month and so on, are really new and separate leases. If a Lesser

serves upon the lessee a notice as provided by Section 106, when the tenancy for that particular month expires, the ''renewal'' for the ensuing

month does not take place. This is the very reason, why the law provides that expiration of such a notice should not (sic end) with the expiry of the

tenancy month or year.

34. The notice to quit operates not to cause a break of the lease at any time during the duration of the month, but only so as to prevent its

automatic renewal at the expiry of the tenancy month. Till the expiry of the month the tenancy which was having the character of one ''from month-

to-month'', upon expiry of the tenancy month in which the notice as prescribed by Section 106 is served, is not renewed for the ensuing month, and

thenceforth partakes the character of one at sufferance.

35. A notice u/s 106 of the Act is called a notice to quit, though it is sometimes also described as a termination notice. ""Termination"" is the resultant

effect of a valid notice to quit. A notice to quit, is only one of the several modes or factors which cause a lease to determine. See Section 111.

36. Determination, whether by efflux of time, by a notice to quit, or by any other mode as provided by Section 111 having taken place, the next

question arises is about the precise legal status of the occupant, called in legal parlance a tenant at sufferance.

37. The legal status in India of a tenant remaining in possession of the property after determination of the lease, was also explained by Bhagwati, J.

(as his Lordship then was), in Nanalal Girdharlal and Another Vs. Gulamnabi Jamalbhai Motorwala and Others, . Speaking for the Full Bench, he

said ::

But we do not think that a tenant in possession of the property after determination of the lease can be equated to a trespasser. The law in India on

this is different from that in England..... When a tenant remains in possession of the property-after determination of the lease in India, he

undoubtedly becomes a tenant at sufferance but if the landlord accepts rent from him or otherwise assents to his continuing in possession, the

tenancy is, in the absence of an agreement to the contrary, renewed from year-to-year or month-to-month according the purpose for which the

property is leased vide Section 116 of the Transfer of Property Act. Even if the landlord does not assent to the tenant continuing in possession of

the property and the tenancy is not renewed as provided in Section 116 of the Transfer of Property Act, the tenant does not become a trespasser.

The tenant has juridical possession of the property and no one can deprive him of such juridical possession except in due course of law. The tenant

can as pointed out by Mr. Justice Batchelor in Rudrappa v. Narsingrao (1905) 29 Bom.LR 213 ""recover as against a third party who unlawfully

dispossesses him."" Even the landlord cannot suo motu dispossess a tenant without his consent and if he does so, the tenant would be entitled to

recover possession from him by resorting to the remedy provided u/s 9 of the Specific Relief Act. The possession of an erstwhile tenant remaining

in possession of the property after determination of the lease is thus fundamentally different from that of a trespasser. Whereas a trespasser is never

in juridical possession of the property, and he can always be thrown out if the landlord can do so peaceably, the possession of an erstwhile tenant

is juridical and he is a protected from dispossession otherwise than in due course of law. Therefore, as far as the Indian Law is concerned, a tenant

remaining in possession of the property after determination of the lease can never become a trespasser. This view is supported by at least two

decisions of the Bombay High Court. One is the decision of Jenkins, C.J. and Batchelor J. in ILR (1905) Bom. 213 (supra) and the other is the

decision of Chagla C.J. and Dixit J. in K.K. Verma and Another Vs. Union of India and Another, .

38. In M.R.S. Ramakrishnan Vs. The Assistant Director of Ex-Servicemen Welfare (District Soldiers, Sailors and Airmen Board), Tiruchirapalli

and Others, :

The law in India and English Law in this respect are different. The landlord in India, even if the lease had expired, will not be entitled to dispossess

his tenant except by due process of law, and the principles of English Law that a tenant whose term of the lease had expired, could not complain

against his landlord''s entry of his property, so long as it has been peaceably made is not applicable to India, and under Indian Laws a person

continuing in possession of the property after the expiry of his tenancy, is not regarded as a trespasser, for his entry was lawful.

The Supreme Court''s decision in R.V. Bhupal Prasad v. State of A.P., has been quoted earlier.

39. Section 108(q) provides that on the determination of the lease it shall be the duty of the lessee to restore possession to the lessor. In Surajmal

v. Rampearaylal AIR 1968 Pat 8, it was said :

..... But Clause (q) of Section 108 lays down that on the determination, the lessee is bound to put the Lesser in vacant possession of the

property. Having regard to these two provisions, it is abundantly clear that when the term of a lease has expired, the lessee can determine the lease

by fulfilling his obligation of putting the Lesser into possession of the property. But if the lessee does not put the Lesser into possession of the

property, and on the contrary, remains in possession thereof, then he does not become a trespasser in relation to the property, but his status is that

of a tenant on sufferance.

40. Section 108(q) thus ensures that a lessee continues to be liable to the Lesser till possession has been actually restored to the Lesser and a

semblance of relationship subsists till that contingency takes place. His continuing in possession is expressive of his continuing stand that the

tenancy, in whatever form, continues. It is said that he does not hold it adversely to the landlord only till he has unequivocally renounced his status

as a tenant and asserted hostile title, but even that appears to be doubtful, for in law his possession remains permissive till it has been actually

restored to the landlord.

41. In law there is presumption in favor of the continuity of the tenancy and against the possession of the tenant becoming adverse. Furthermore,

the doctrine of tenant estoppel, which continues to operate even after the termination of the tenancy, debars a tenant who had been let into

possession by a landlord, from disputing the latter''s title or pleading adverse possession, without first openly and actually surrendering possession

of the tenanted premises and restoring them to the landlord.

42. A tenant who upon determination of the tenancy does not deliver up possession to the landlord as required by Section 108(q), cannot be

heard to say that he is not a tenant -- be he one at sufferance or be he one from month-to-month. Therefore, unless the landlord is actually put into

possession, the premises remain tinder a tenancy, which unless assented to by the landlord, has the character of one at sufferance.

43. Thus, a tenant at sufferance is one who wrongfully continues in possession after the extinction of a lawful title and that a tenancy at sufferance is

merely a legal fiction or device to avoid continuance in possession from operating as a trespass. A tenant remaining in possession of the property

after determination of the lease does not become a trespasser, but continues as a tenant at sufferance till possession is restored to the landlord. The

possession of an erstwhile tenant is juridical and he is a protected from dispossession otherwise than in due course of law. Although, he is a tenant,

but being one at sufferance as aforesaid, no rent can be paid since, if rent is accepted by the landlord he will be deemed to have consented and a

tenancy from month-to-month will come into existence. Instead of rent, the tenant at sufferance and by his mere continuance in possession is

deemed to acknowledge both the landlord''s title and his (tenant''s) liability to pay mesne profits for the use and occupation of the property.

44. To sum up the legal position or status of a lessee whose lease has expired and whose continuance is not assented to by the landlord, is that of a

tenant at sufferance. If, however, the holding over has been assented to in any manner, then it becomes that of a tenant from month-to-month.

Similar, i.e. from month-to-month, is the status of a lessee who comes into possession under a lease for a period exceeding one year but

unregistered. He holds it not as a lessee for a fixed term, but as one from month-to-month or year-to-year depending on the purpose of the lease.

If upon a tenant from month-to-month (or year-to-year) and in either of the aforesaid two contingencies, a notice to quit is served, then on the

expiry of the period, his status becomes of a tenant at sufferance. Waiver of that notice, or assent in any form to continuation restores to him his

status as a tenant from month-to-month, but capable, of once again being terminated with the expiry of any ensuing tenancy month.

45. These being the settled legal propositions with regard to lessor-lessee relationships and their termination, the point to be considered next, is the

scope of a suit for ejectment. When upon determination of the lease, the lessee or the tenant fails in his duty to restore possession of the tenancy

premises to the Lesser or the landlord, the suit by the landlord for recovery thereof has been called a Suit for Ejectment. This is the very type of a

suit which the Rent Control Acts prohibited and instead provided their own machinery for eviction of the tenant. However by reason of Section

3(c) as inserted in the Delhi Act in 1988, premises where the rent exceeds Rs. 3,500/- per month have been taken outside the purview of Rent

Control Act and Therefore in respect of such premises, suits for ejectment are once again maintainable.

46. The cause of action in a suit for ejectment is the factum or otherwise of the expiry of tenancy either by efflux of time or by service of a notice to

quit expiring with the end of a particular tenancy month and there being no assent to continuation or waiver of the quit notice. Once that is

established, the right of the landlord to take possession of the premises from the tenant whose status is of one at sufferance, follows.

47. A suit for ejectment is different from a Title Suit for Possession against a trespasser. The former postulates no dispute about the Lesser - lessee

relationship. The dispute here is generally only on two counts. One, about assent to continuation in the case of lease for a fixed term which had

expired by efflux of time, or in the case of a tenancy from month-to-month, about the valid termination thereof. In case the lessee claims a right of

renewal under a clause therefore, he must bring a separate suit for specific performance of the renewal clause within the limitation prescribed for

such a suit. The scope of an ejectment suit is very narrow. Even the Court Fees Act recognises the difference, and fixes a much lower Court fee

for an ejectment suit as compared to that for a title suit for possession.

48. In the Law of Pleading by P.C. Mogha 14th Ed., Form No. 66 at page 504, is a sample of a plaint in a suit for ejectment, while Form No. 237

at page 722 is a sample of a plaint for a title suit for possession. The cause of action in the two is different. In a suit for possession it is the factum

of ownership and the cause of action is a trespass on a particular day by dispossession of the owner. In a suit for ejectment, ordinarily there is no

question of title. The tenant is estopped from denying the landlord''s title and the cause of action is basically the termination on a particular day of

the tenancy and the question is only about the form of the tenancy beyond that date -- one at sufferance or one from month-to-month.

49. To put it differently, in the former case there is no dispute either about title or about the permissive nature of occupation whereas in the latter

case the dispute is about title and there is no question of the possession being permissive. Here it is hostile. Even otherwise, a plea or a defense as

a tenant is a pleading of a permissive title. It carries with it an admission that someone else, be it the plaintiff or be it another, is the one carrying a

superior title and in whom vests the reversionary rights known in common parlance as ownership. On the other hand a plea asserting a hostile title,

is one in direct contradiction.

50. In a suit for ejectment, all that the Court is required to examine is whether on a calendar date representing the expiration of a particular tenancy

month, the defendant-tenant''s status became one of a ''tenant at sufferance'' or it continued as one ''from month-to-month.'' There is really nothing

else to be tried in such a suit. A suit of this variety could in most cases be decided at the first hearing itself either on the pleadings and documents as

was done by a Division Bench of this Court in Surjit Sachdev Vs. Kazakhstan Investment Services Pvt. Ltd. and Others, , or, if need be, by

examining the parties under Order X of the Code. The observations of the Supreme Court in T. Arivandandam Vs. T.V. Satyapal and Another, :

And, if clear drafting has created the illusion of a cause of action, nip in the bud at the first hearing by examining the party searchingly under Order

X, CPC. An activist Judge is the answer to irresponsible law suits. The Trial Courts would insist imperatively on examining the party at the first

hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI),

could be called in aid, be it the pleading by a plaintiff or that by a defendant.

51. In the present case, the facts of the case as noted at the outset itself are that a notice to quit dated 16.8.1991 was served and consequent

thereupon, as provided in law, the status of the lessee stood converted to a tenant from month-to-month to a tenant at sufferance. Suit 306/91 for

ejectment was filed which was dismissed in default, where after a fresh notice to quit dated 15.10.1996 was served and based thereon a second

suit for ejectment has been filed.

52. The question before me is if a suit for ejectment is dismissed in default, what, keeping in view Rule 9 of Order 9, is the net result? That rule

reads as follows :

(1) Where a suit is wholly or partly dismissed under Rule 8 the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of

action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance

when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it

thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

I may add that the principle underlying Rule 9 of Order 9, CPC is founded on public policy, but it is not the same as the rule of res judicata

contained in Section 11 of the Code.

53. Let the proposition be tested on first principles. First and foremost, consequent to such dismissal, what happens to the property?

(i) Is it to become absolute ownership in freehold of the former tenant or he continues in possession and remains a tenant?

(ii) If he is to remain as a tenant, is he to remain a tenant from month-to-month (which he was prior to service of quit notice) or is he to become

one for a fixed term, or one in perpetuity?

54. On a plain appreciation, the contention of the petitioner-tenant is without merit. He does not become an owner in freehold, nor does he

become a tenant in perpetuity. He remains a tenant, no longer one at sufferance, but upgraded or restored to one from month-to-month.

55. To further test the argument on principle, let us assume a suit for ejectment is dismissed on merits. Since it is not a Title Suit for Possession, but

only a suit for ejectment, the dismissal could only be on a ground that either the lease has not expired by efflux of time, or a tenancy from month-

to-month has not been terminated by a valid notice to quit, or the notice served has by a subsequent act of the landlord been waived, and

Therefore the lease subsists till a point of time subsequent to the date of judgment with the result that the plaintiff Lesser has no right of ejectment.

Any other finding would render the suit "not maintainable" and the plaint would have to be rejected. In the former event the lessor-lessee

relationship subsists, and the Lesser after either waiting for the lease to expire by efflux of time or after terminating the tenancy as provided by

Section 106 as the case may be, can always bring a fresh suit for ejectment. If the defendant in such a suit pleads hostile title or establishes absence

of lessor-lessee relationship, a suit for ejectment must fail, as one not maintainable and not as one proceeding to declare the defendant to be the

owner. In such an event the plaintiff can, within limitation commencing from the assertion of the hostile title, always bring a Title Suit for Possession,

and the dismissal of a former suit would not operate as a bar.

56. If such is the position at law for an ejectment suit, a defendant against whom an ejectment suit has been dismissed for default cannot be placed

at a higher pedestal than one against whom such a suit has been dismissed on merits.

57. The dismissal of a Suit for Ejectment does not, and can by no stretch of imagination, extinguish the reversionary rights (ownership) of the

Lesser and confer the same upon the lessee so as to make him an absolute owner. Similarly, it cannot convert a month-to-month lease into one in

perpetuity. At the very best it operates as "waiver" u/s 113 or an "assent" of the Lesser within the meaning of Section 116 of the T.P. Act, and is

Therefore renewed from year-to-year, or from month-to-month, according to the purpose for which the property is leased. The lessee remains a

lessee. He continues to be liable for the rent that accrues. He does not become the owner. His rights consequent to the dismissal would thenceforth

be that not of a tenant at sufferance but of one from month-to-month and terminable at any future date as provided by Section 106.

58. This is how a suit for ejectment differs from a Title Suit for Possession. The ''cause of action'' for such a suit is the termination of the tenancy

with the expiry of a particular tenancy month. The termination for any subsequent month would be a separate and a distinct cause of action. The

elapsing of each tenancy month, and service of a fresh quit notice gives a fresh cause of action. It is somewhat akin to a partition suit, where each

demand for partition operates a fresh cause of action.

59. Since the subject matter of the suit was termination of tenancy by service of a notice to quit and thereby preventing of an automatic renewal at

the end of the month, the dismissal of the suit cannot put it any better and ensure that the renewal for the month ensuing did take place. It operates,

at best, as a waiver of the notice to quit, or assent to holding over, but no more. The subject matter of the suit, or the cause of action, is the

expiration of the tenancy at he expiry of a particular tenancy month.

60. Consequent to the dismissal of the suit all that happens is that the notice to quit which had converted the status of the tenant from month-to-

month to a tenant at sufferance, stands restored to a month-to-month tenant. The position would be equivalent to the landlord granting an assent to

the continuance of the tenancy, in which event unless there is a registered document executed, it takes effect as one from month-to-month.

61. In my opinion the words ""or otherwise assents to his continuing in possession"" in Section 116 are sufficiently wide so as to include the allowing

of a suit to be dismissed for default or abandoning a suit for ejectment under Rule 1 of Order 23 and Therefore will have the effect as provided by

the section itself that is to say the lease will be 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. Any other construction will be not only contrary to the statute but shall be against the very

fundamentals of landlord-tenant relationship.

62. Even otherwise, a tenant at sufferance is also a tenant. His rights may be enlarged or upgraded from a ''tenant at sufferance'' to a ''tenant from

month-to-month'', but by no stretch of imagination, can these be converted into an absolute ownership or a tenancy in perpetuity. The occupation

remains permissive. A fresh notice to quit, is a must. The earlier notice stands waived. As already pointed out and, a dismissal for default does no

more than operate as a lessor''s assent for the lessee to continue without the meaning of Section 116, this bringing into force a tenancy from month-

to-month.

63. In the absence of a registered instrument, such a tenancy can only be one from month-to-month, as held by the Supreme Court in the decisions

cited earlier and also by this Court in many recent decisions. [See Ram Pistons and Rings Ltd. Vs. Dr. Banwari Lal, ; Theeta Industrial Heating

Equipments (P) Ltd. Vs. Harvinder Singh, ; Shukla Malhotra and Ors Vs. M/s.Vyasa Bank Limited, ; K.Kishore and Construction (HUF) Vs.

Allahabad Bank, ; and Lakshmikant Shreekant (Huf) Jhunjhunwala Vs. M.N. Dastur and Company Pvt. Ltd.,].

64. In Biswabani Pvt. Ltd. Vs. Santosh Kumar Dutta and Others, , a compromise decree was passed by the Court by which the lease was to be

for a period of five years without any renewal. The Supreme Court held that for want of registration no operative lease came into existence and

what came to operate was only a tenancy from month-to-month.

65. Inasmuch as by virtue of Section 107 a lease of immovable property from year-to-year or for any term exceeding one year can be made only

by a registered instrument. A decree in an ejectment suit cannot make it. Even a decree for specific performance of a renewal clause in a lease

deed requires the execution of a lease on a non-judicial stamp paper of appropriate value and its registration. It is only once that has been done

that the plaintiff decree-holder becomes a tenant for a fixed term in contra-distinction to one from month-to-month. If such is the requirement of

law, a dismissal of an ejectment suit, and more so one for default, cannot operate as a registered instrument conveying interest in immovable

property, either as an owner or as a tenant in perpetuity.

66. In any case, if the case is one where the origin of the possession does not lie in a tenancy but in a trespass and questions of title are involved, a

suit for mere ejectment would not be maintainable and what would be required is a title suit for possession after payment of full Court fees.

67. In Manohar Lal Vs. Narain Dass and Another, , ''31 G.C. Jain, J. held :

29 Sub-rule (4) of Rule 1 of Order 23, CPC -

Provides that where the plaintiff withdraws from a suit without the permission of the Court under Sub-rule (3) he would be barred from bringing a

fresh suit in respect of same subject matter. The term ''subject matter'' means plaintiff''s cause of action for a suit.

30 To claim eviction under Clause (k), as observed earlier, the landlord, inter alia, was required to prove that the tenant had not stopped the

breach of the condition even after the service of the notice on him by the landlord. In other words, one of the essential facts required to be proved

in such a case is the service to the notice on the tenant requiring him to stop the breach of the condition imposed on the landlord by the authority

concerned. Even such notice furnished a new cause of action. The present petition was based on the notice dated May 7, 1977 which was issued

long after the decision of the first case. Therefore, it cannot be said that the subject-matter in this present application was the same. This view finds

support from a decision of this Court in Rajeshwar Dayal Saxena v. Nanak Chand (1982) 1 RCJ 375.

68. A decision on all fours with the question before me, is one by Sulaiman J. reported as Kumari and Others Vs. Adit Misir, . The learned Judge

held :

... The right to sue ejectment accrues from year-to-year, and the present suit is not brought on the same cause of action.

69. In Chenchuram Naidu v. Muhamed Bahavuddin Sahib AIR 1993 Mad 3, Ate suit against a tenant was withdrawn and when a fresh one was

filed, an objection was raised that the same was barred under Order 23, Rule 1 (4), CPC, which is in similar terms as Order 9, Rule 9 of the

Code. Relying on Rukma Bai v. Mahadeo Narayan, AIR 1917 Bombay 10, the Bench rejected the objection, and held the second suit for

ejectment as not barred.

70. Although a tenancy which, prior to the termination, was operating as one from month-to-month, constitutes after expiry of every month a

separate cause of action, but even in a case of redemption where there is no from month to month accrual'' the Federal Court in Thota China

Subha Rao v. Mattapalli Raju AIR 1950 FC 1, took the view that right to redemption is not extinguished by the procedural provisions contained in

the Civil Procedure Code.

71. A few of the judgments which were cited at the bar need to be new noticed. In Shakir Hussain Vs. Siraj Beg, , a learned Single Judge of that

Court held that a second suit for ejectment was barred but it was so held because a fresh notice to quit u/s 106 of the Transfer of Property Act

had not been served. Apart from certain provisions of the U.P. Rent Act with which we are not concerned, the following observations of the

learned Judge require mention :

3..... The other material fact Constituting a cause of action is that the tenancy has been terminated by a notice served u/s 106 of the Transfer of

Property Act.

4....But the tenancy was not freshly terminated u/s 106 of the Transfer of Property Act so as to give him a new cause of action to file the second

suit. Obviously the previous notice would not and could not give him a fresh cause of action for the second suit after the previous suit filed on the

basis of that notice had been dismissed. It is not possible to accept the contention of the learned Counsel for the plaintiff-respondent that since the

relationship of landlord and tenant had been put an end to by means of a notice, dated 24.8.1964, the same cannot be restored even after the

previous suit was dismissed by this Court on 6.3.1970. After the dismissal of that suit the defendant was very much a tenant of this house in spite

of the unsuccessful attempt made by the plaintiff to put an end to this relationship of landlord and tenant by means of his notice dated 24.8.1964. A

fresh notice u/s 106 of the Transfer of Property act was clearly required before the second suit for ejectment could succeed. That was not

admittedly served on the defendant. Hence the present suit was also liable to fail.

72. In Makhan Lal Vs. Mst. Chandravati and Others, , another learned Single Judge of the Allahabad High Court relying upon the aforesaid

decision in Shakir Hussain case (supra), observed :

9..... If the earlier notice against Behari Lal had ceased to have any effect after the dismissal of the earlier suit, he was restored to the position

of a contractual tenant and liable to ejectment only after termination of his tenancy by a fresh notice.

73. In Mohan Lal Goela and Ors. v. Siri Krishan and Ors. AIR 1978 Delhi 2, which was relied upon before me a learned Single Judge of this

Court (A.B. Rohatgi, J.) considered the aforesaid two judgments and voiced a note of dissent. His Lordship was of the view :

28. I respectfully dissent from this view. Once a valid notice is served it is never exhausted. No law says that a notice is exhausted if the

proceedings end in failure. The tenancy once determined is determined for ever. The landlord and the tenant may come together again and may by

agreement, express or implied continue the relationship of landlord and tenant. That is another thing but the doctrine that a notice is exhausted is in

my opinion unknown to the law of India as laid down in the T.P. Act.

74. The point in the present case, however, is not reliance upon the notice to quit that was served previously, because it is common case that a

fresh notice to quit dated 15.10.1996 was actually served, and it is only thereafter that the second suit for ejectment was filed. Therefore this

decision is not one in point. The point here is whether upon service of a fresh notice to quit a second suit can be maintained and in that event does

the dismissal of the previous suit which was based on an earlier notice, operate as a bar under Rule 9 of Order 9, CPC, which question did not

arise and Therefore was neither considered nor decided in Mohan Lal Goela"s case.

75.1 may add that so long as the tenants enjoyed immunity from eviction under the Rent Acts, the Courts had adopted a slightly different approach

to what would have been the situation had the relationship been purely one under the Transfer of Property Act. In other words, and inasmuch as

Section 14 of the Delhi Rent Control Act gave protection to the tenant and prohibited a suit for ejectment in the Civil Court, the provisions of

previously prevailing law, both substantive and procedural, had to be construed in a harmonious manner Along with the provisions of the Rent Act

so as to ensure that while granting protection to the tenant, the side-by-side operation of these two (viz : T.P. Act and the Rent Act) and other

statutes, did not cause results which the Legislature could not have intended, or were otherwise leading to absurdities and injustice.

76. For instance, u/s 116 of the T.P. Act acceptance of rent after determination of the lease, had the effect of bringing in force a tenancy from

month-to-month, but not so where the Rent Act gave protection to the tenant from eviction. See Bhawanji Lakhamshi and Others Vs. Himatlal

Jamnadas Dani and Others, . Agreements for periodic rent-revision or escalation were also unenforceable. Acts of assignment, subletting or

otherwise parting with possession, was another sphere, where operation of Rent Acts caused a stricter construction to be adopted. Similarly the

concept of ''waiver'' in landlord-tenant relationship was greatly narrowed down. Operation of Clause (q) of Section 108 of the T.P. Act, is another

such instance. In Banarsi Dass Vs. Faqir Chand and Others, :

Counsel has then referred to Section 108(q) of the Transfer of Property Act which enjoins on the tenant a duty to hand over possession of the

leased premises to the landlord on the expiry of the period to the lease. The provisions of the Transfer of Property Act are subject to the rent

control imposed by the 1949 Act. The liability to hand over vacant possession of the premises on the expiry of the stipulated period of lease in

respect of the premises covered by the 1949 Act stands abrogated by the Act so long as it remains in force.

77. Perhaps the fiercest controversy that arose in this context was with regard to the need for a notice to quit before filing on eviction petition. This

was settled by the Supreme Court in V. Dhanapal Chettiar Vs. Yesodai Ammal, .

78. Thus, operation of Rent Control laws which prohibit a Civil Court from proceeding with a suit for ejectment and give protection to the tenants

from eviction added a new dimension to the landlords-tenant law, both substantive and procedural. However in the case before me, that protection

is no longer available to the tenant. Therefore, the law regarding landlord-tenant relationship will have to be construed and applied as it stands

without in any way being influenced by the operation of the Rent Acts or the Court decisions rendered in that context.

79. Cited before me was another Allahabad decision in Ram Shanker v. District Judge, 1985-2 Rent Control Reporter 226, in which there are

certain observations to the effect that a suit based on a second notice of termination would constitute a fresh cause of action. It is however not

clear from the report whether it is merely the noticing of an argument, or it is the finding of the Court and Therefore I do not propose to place

reliance upon it. One thing is certain that it makes no observation to the contrary.

80. The Supreme Court judgment in Suraj Ratan Thirani and Others Vs. The Azamabad Tea Co. and Others, was also cited. In para 26, Their

Lordships noticed the argument under Order 9, Rule 9, CPC, and then in para 28 proceeded to consider the facts Constituting cause of action in

the two suits. After defining the cause of action in para 29, in para 31 they came to a conclusion that the cause of action for the second suit was

identical to that in the earlier suit and approving the finding of the High Court, held that the suit was substantially barred under Order 9, Rule 9,

CPC. These observations will not apply here at all because the suit before the Supreme Court was not one by a landlord against a tenant. It was a

title suit for possession where the allegations on which the second suit was based were identical to those in the previous suit. It was not a case of

landlord-tenant relationship and more so of one where the lease stands renewed from month-to-month wherefore every month''s renewal

consequent to absence of termination constitutes a fresh cause of action.

81. Keeping in view the fundamentals of the landlord-tenant relationship and the position as emerges after termination and the fact that termination

can be waived by an act of the landlord, it is clear that abandoning of suit for ejectment or allowing such suit to be dismissed in default tantamounts

to waiver within the meaning of which the abandoning or allowing of a suit to be dismissed in default tantamount to ''waiver'' within the meaning of

Section 113 of the Transfer of Property Act or assigned within the meaning of Section 116, thus restoring to the tenant a status of ""from month-to-

month"" instead of one at sufferance. In any case, the cause of action is termination at the expiry of a particular tenancy month and if the second suit

is not for that particular month, but for a subsequent month, it is not the same cause of action.

82. Although the matter is clear on principle, the strain of authority that runs through the decisions quoted above, only fortifies the conclusion that I

have come to. Not a single decision, which might have held that a dismissal for default of a suit for ejectment debars under Rule 9 of Order 9,

CPC a subsequent suit for ejectment based on a fresh notice to quit, was cited before me. The contention of the petitioner is not only unsupported

by precedent, but is wrong on principle.

83. Accordingly, the order of the learned ADJ is upheld. The Civil Revision is dismissed. There will be no orders as to costs.

84. Before closing I make it clear that except for the fact that the second suit is not barred under Order 9, Rule 9, CPC, the other observations

made herein will not affect the right of the petitioner to assail the decree for ejectment passed on 11.3.1999 in the appeal filed there against.