

**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**SUBJECT : SUIT FOR POSSESSION**

Date of Judgment: 18.04.2011

RSA No.66/2011 & CM No.7447/2011

SHRI NARESH KUMAR PINGOLIA .....Appellant  
Through: Mr.Tarun Diwan, Advocate.

Versus

MAHINDER KUMAR JOSHI .....Respondent.  
Through: Nemo.

CORAM:  
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)  
CM No.7448/2011 (for exemption)  
Allowed subject to just exceptions.  
RSA No.66/2011 & CM No.7447/2011

1. This appeal has impugned the judgment and decree dated 30.3.2011 which has endorsed the finding of the trial judge dated 07.5.2010 whereby the suit filed by the plaintiff seeking possession of the suit property i.e. the property bearing No.16/561/C, Ground Floor, Amrit Kaur Puri, Tank Road, Karol Bagh, Delhi had been decreed in favour of the plaintiff on his application under Order XII Rule 6 of the Code of Civil Procedure (hereinafter referred to as 'the CPC').

2. The plaintiff had filed the aforementioned suit for recovery of possession of the aforementioned suit property. Defendant had been inducted as a tenant in December 2004; it was in terms of the agreement dated 25.02.2008 which

was for a limited period of 11 months. Monthly rent was `4500/- excluding electricity and water charges. Tenancy had come to an end by efflux of time. Legal notice dated 16.6.2009 served upon the defendant terminating his tenancy.

3. In the written statement, the service of the legal notice dated 16.6.2009 was denied. It was not in dispute that the parties were sharing a landlord-tenant relationship. Rate of rent was not disputed; however, the receipt of the legal notice was disputed.

4. Trial judge had noted that in an earlier suit filed by the defendant/tenant seeking injunction from dispossession qua the suit property; the same legal notice dated 16.6.2009 had been relied upon by the defendant/tenant. He had filed this notice dated 16.6.2009 along with his plaint. That suit had been dismissed as withdrawn on the statement made by the landlord that he would not dispossess his tenant without due process of law.

5. Both the courts below had noted these aforementioned facts to draw a conclusion that a decree under Order XII Rule 6 of the Code had necessarily to follow in these circumstances. The relationship of landlord and tenant had been proved; rate of rent was more than `3500/-; it was admittedly `4500/-; although receipt of legal notice dated 16.6.2009 had been decreed in the present suit, yet in the earlier suit filed by the defendant he had relied upon the same legal notice dated 16.6.2009 for seeking an injunction against his landlord from dispossessing him without due process of law. In these circumstances, the impugned judgment had rightly noted that the receipt of this legal notice cannot be disputed; the defendant cannot be allowed to blow hot and cold at the same time.

6. This is a second appeal. The substantial questions of law have been formulated on page 7 of the body of the appeal. Admissions made by the plaintiff are clear and categorical. The admissions can be made in the "pleadings or otherwise". Today before this Court the receipt of the legal notice has not been disputed but it is pointed out that the legal notice does not fulfill the criteria of a valid legal notice. Attention has been drawn to the said legal notice dated 16.6.2009. This notice clearly calls upon the tenant to vacate the suit property and to handover possession of the same to the plaintiff within 15 days of receipt of this notice along with damages. Submission of the learned counsel for the appellant that this notice has not

made a reference to termination of the tenancy is clearly a misinterpretation of the document. Document had to be read as a whole. The intention of the landlord is clearly decipherable. It had clearly noted and categorically stated that the defendant is in unauthorized use and occupation and he must vacate the suit property within 15 days of the receipt of the notice.

7. Notice under Section 106 of the Transfer of Property Act has to be construed liberally; object of the notice is to inform other party about the intention of the person issuing a notice; i.e. he wants the premises back. As long as the notice can be reasonably understood by a person of ordinary prudence that his tenancy has been determined and he is to vacate the premises, the notice is fine. This has been reiterated by a Division Bench of this Court in FRA No.341/2007 Inmacs Ltd. Vs. Prema Sinha & Ors.

8. No substantial question of law has arisen. No interference is called for in the impugned judgment. Appeal as also pending application is dismissed in limine.

Sd/-  
INDERMEET KAUR, J.

APRIL 18, 2011