* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **RFA No.610/2002, RFA No.665/2002, RFA No.666/2002 & RFA No.667/2002**

% **17th November, 2011**

1. RFA No.610/2002

VIJAYA BANK ..... Appellant
Through: Mr. Rajesh Rattan, Adv.

VERSUS

SH. RISHI RAJ JAIN ..... Respondent
Through: Mr. Ashwani Kumar, Adv.

2. RFA No.665/2002

VIJAYA BANK ..... Appellant
Through: Mr. Rajesh Rattan, Adv.

VERSUS

MR.GAUTAM GUPTA ..... Respondent
Through: Mr. Ashwani Kumar, Adv.

3. RFA No.666/2002

VIJAYA BANK ..... Appellant
Through: Mr. Rajesh Rattan, Adv.

VERSUS

MRS. SMITA JAIN ..... Respondent
Through: Mr. Ashwani Kumar, Adv.

4. RFA No.667/2002

VIJAYA BANK ..... Appellant
Through: Mr. Rajesh Rattan, Adv.

VERSUS

MRS. NEERA GUPTA ..... Respondent

Through: Mr. Ashwani Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. These four connected appeals are being disposed of by this common judgment as they raise similar questions of law and fact. For the sake of convenience, reference is being made to the facts of RFA No.610/2002.

2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 challenges the impugned judgment and decree dated 16.4.2002 of the Trial Court which decreed the suit of the respondent/plaintiff/landlord for arrears of rent from 1.12.1996 to 3.6.1998.

3. The facts of the case are that the appellant/defendant/bank took on lease the subject premises situated at First floor of M-53 , Shopping Centre, Greater Kailash-II, New Delhi-48 vide a registered lease deed dated 12.11.1996. The monthly rent was Rs.30,625/-. The Municipal Corporation of Delhi (MCD) had issued a show-cause notice dated 28.11.1996 with respect to deviations from the sanctioned plan in the shape of excess coverage. The appellant/bank stated that because of this

notice, they were not able to utilize the leased premises and therefore they were not liable to pay the rent from 1.12.1996. The appellant/bank did not pay the rent from 1.12.1996 to the respondent/plaintiff/landlord. The subject suit therefore came to be filed by the respondent/landlord claiming arrears of rent from 1.12.1996 to 3.6.1998, the latter being the date on which admittedly keys of the premises were handed over by the appellant/bank to the respondent/landlord.

4. There are two issues which are required for determination in this appeal. The first issue is that whether the liability to pay rent by the appellant to the respondent came to an end on receipt of the notice dated 28.11.1996 of the MCD. The second issue is that if the liability did not come to an end, from when does the liability to pay the rent come to an end in the facts of the present case.

5. It is an undisputed fact that the notice of the MCD dated 28.11.1996 was received during the period for which there was a registered lease deed with respect to the suit premises. The parties had entered into a registered lease deed dated 12.11.1996 for the period from 1.11.1995 to 30.10.1998. Thus, the notice of the MCD dated 28.11.1996 claiming excess coverage was received by the appellant during the period of the lease of the premises leased out under the registered lease deed dated 12.11.1996. A lease for a fixed period can only be terminated in terms of the clause in the same and therefore it is necessary, at this stage, to refer to para 10

of the lease deed and the same reads as under:-

> "10) Notwithstanding anything contained herein or in any other document, the LESSEE shall be free to vacate the premises by giving a notice to the LESSOR one month prior to the date of the vacation."

6. Once, there is a registered lease deed for a fixed period with respect to the leased premises, the lease can only be terminated in terms of the clause of the lease deed. In such cases, there is no scope for treating the tenancy as a monthly tenancy terminable by notice under Section 106 of the Transfer of Property Act, 1996. However, in the present case, the effect is still same because the appellant/bank could have without any reason terminated the tenancy by giving a one month's notice. Thus, it has to be seen when did the appellant/bank gave this notice to terminate the tenancy by giving a notice of one month.

7. The first document which is relied upon on behalf of the appellant is a letter dated 4.4.1997 written by the Advocates of the appellant to the respondent/landlord. Para 8 of this notice is relied upon and the same reads as under:

> "8. That as our client are unable to use the said premises freely and are under constant threat of legal action because of Show Cause Notice by the MCD, our Client has already suffered heavy business losses which are still continuing only because of your false assurances and misrepresentation. Therefore, in pursuance to the Agreement to Lease, you are liable to indemnify our Client for all the losses and damages suffered due to not using the premise to the extent of ₹20 Lacs (Rupees Twenty Lacs only)."

In my opinion, nothing in this para can in any manner be said to be a notice terminating the tenancy after 30 days and as

was the contractual obligation of the appellant/bank in terms of afore-quoted para 10 of the lease deed. Merely stating that the respondent had given a wrong assurance and would be liable for damages cannot mean that the letter dated 4.4.1997 can be treated as a notice terminating the tenancy. Para 8 of the notice, in fact, is relatable to para 8 of the lease deed and which required the bank to be indemnified with respect to its occupation of the leased premises on account of any action by a local body or public authority.

8. Not only, the letter dated 4.4.1997 of the appellant/bank to the respondent cannot be treated as a notice under Clause 10 of the lease deed, but also, a simplicitor request made on behalf of the appellant/bank to the respondent to take over the possession of the premises without the notice period of 30 days cannot be treated as a compliance of Clause 10 of the lease deed.

9. The judgment in the case of ***Onida Finance Limited vs. Malini Khanna, 2002 (3) AD (Delhi) 231*** as relied upon by counsel for the appellant will not apply to the facts of the present case because in the present case there is a registered lease deed and clauses whereof will bind the parties whereas in the facts of ***Onida Finance Limited vs. Malini Khanna (supra)***, the tenancy was a month-to-month tenancy and therefore it was observed by the Court that a landlord has to take possession when the tenant offers to hand back the possession. As already stated above, in the present case, lease cannot be terminated by merely seeking to hand

over the keys because as per Clause 10 of the registered lease deed, the tenancy has to be terminated specifically by means of a one month's notice.

10. The next letter which is relied upon on behalf of the appellant is the letter of its Advocate dated 13.9.1997 in which it is mentioned that the respondent has not taken the keys in spite of appellant/bank asking the said keys to be taken. Once again, in my opinion, asking for taking of keys, cannot be said to be compliance of Clause 10 of the lease deed inasmuch as once there is a registered lease deed for a fixed period for the leased premises, the parties are bound by the same and they had to act in accordance with the same. I may note that the notice of the MCD dated 28.11.1996 was never followed up in any manner either by a further notice or either by passing of a sealing order or by serving of a sealing order either on the appellant or on the respondent. Therefore, merely because the MCD had sent a notice, cannot mean that the appellant/bank would have been *ipso facto* prevented from using the premises. The actual stopping of user of premises or the real threat for stoppage of the use of the premises could only have come into existence if there was a sealing order of the MCD, and admittedly there was no sealing order passed by the MCD. Therefore, mere notice of the MCD dated 28.11.1996 cannot entitle the appellant to stop making payment of the rent.

11. Reliance is next placed on behalf of the appellant on its letter dated 1.3.1998 and in which the appellant has asked the

respondent to collect the keys not later than 31.3.1998. Though, this letter does not specifically state that the lease is terminated 30 days after this letter however, one can give a practical/reasonable interpretation to this letter inasmuch as effectively by asking for taking the keys after 30 days, would be, in substance, compliance of Clause 10 of the lease deed. It is therefore necessary to refer to para 3 of this letter dated 1.3.1998 which was sent on behalf of the appellant/bank to the respondent:

> "3. Our Client therefore reiterates that the earliest communication dt.4.4.1997 itself was the notice of termination of tenancy. But instead of taking the keys of the premises, you have been harping on untenable contentions for unjust enrichment. However, without prejudice to any of the legal rights or our client you are hereby called upon to collect the keys of the premises from our client on any working day between 11 AM and 4 PM not later than 31.3.1998 failing which our client shall take such steps as may be advised holding you liable for all the costs and consequences arising therefrom."

In view of the aforesaid para 3 of this letter dated 1.3.1998 which mentions requirement of the respondent to take over the keys and which is a notice of 30 days, I would seek to interpret this notice as a notice to terminate the tenancy, though, there is no specific language that the tenancy will stand determined. As I have already stated above request to take the keys after 30 days, i.e. not later than 31.3.1998 by this letter dated 1.3.1998 can be interpreted as terminating the tenancy with effect from 31.3.1998 by a notice of 30 days as required by Clause 10 of the lease deed.

12. Admittedly, in the present case, physical possession of the premises was handed over by the appellant/bank to the respondent on 3.6.1998 and therefore the Trial Court has decreed the suit for arrears of rent from 1.12.1996 to 3.6.1998. In view of the fact that I have accepted the argument on behalf of the appellant that para 3 of the notice dated 1.3.1998 can be said to be termination of tenancy by giving a notice of 30 days in terms of para 10 of the lease deed, the present appeal is partly allowed and disposed of by modifying the impugned judgment and decree by granting rent to the respondent not from 1.12.1996 to 3.6.1998 but only from 1.12.1996 to 31.3.1998. Decree sheet be accordingly prepared. Parties are left to bear their own costs.

13. The appellant has deposited a sum of ₹1,00,000/- in each of the appeals. The impugned judgments and decrees in the four appeals are for different amounts much in excess of ₹1,00,000/. Therefore, the respondent will be entitled to withdraw the amount deposited in this Court, along with accrued interest, if any, in part satisfaction of the impugned judgment and decree as modified by this Court. Appeal is disposed of accordingly. Trial Court record be sent back.

VALMIKI J. MEHTA,J

NOVEMBER 17, 2011
ak