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

Judgment Reserved on: July 21, 2014

Judgment Pronounced on: August 29, 2014

+ **RFA (OS) No. 93/2010**

KRISHAN KUMAR AGGARWAL & ORS. Appellants

Through: Mr. Vijay Kumar Gupta, Advocate

versus

LIFE INSURANCE CORPORATION Respondents

Through: Mr. Kamal Mehta, Advocate

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**

GITA MITTAL, J.

1) The short question raised for consideration in the present appeal is whether mere writing of letters by a tenant to the landlord calling upon him to take the possession of the tenanted premises would tantamount to surrender /termination of the lease. If the answer to this question is in the affirmative, the further question which requires to be answered is whether merely writing such communications absolve the tenant of the liability to pay rent for the period till such time the premises were actually handed over to the landlord?

2) The factual narration giving rise to the instant appeal is within a narrow compass and to the extent necessary, is set out hereinafter.

3) The appellants claimed to be seized, possessed of and entitled to the land and building situated at CGF-1,2,3 & 4 Ground Floor, C-Block,

Dilkhush Industrial Estate, G.T. Karnal Road, Delhi. In such capacity the appellants negotiated with the Life Insurance Corporation (respondent herein) and entered into a Lease Agreement which was executed by the appellants as lessor and the respondent as lessee on 9th May, 2008 and registered on the same date. The material terms of this lease read as follows:-

'And whereas the Lessors have agreed to let to the Corporation and the Corporation has agreed to take on lease from the Lessors Mr. Krishan Kumar, Ground Floor, of the said building bearing No. CGF -1,2,3,4, Ground Floor, C Block, Dilkhush Industrial Estate, G.T. Karnal Road, Delhi. Ground floor aggregating in all to 3750 sq. ft. more particularly described in the schedule hereunder written for the consideration and at the rent and upon the terms and conditions hereinafter contained.

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Hereinafter referred to as the 'demised premises' to hold the demised premises unto the Corporation and from 1.5.2008 for the term of three years yielding and paying therefore during the said terms and the monthly rent Rs.3,18,750/- (Rs. Three lacs eighteen thousand seven hundred fifty) + service tax as applicable, only inclusive of providing fully AC arrangement shall be paid on or before the 5th of next month of each month and the subsequent rent on or before 5th of the next month and the subsequent rent on or before the 5th of each succeeding month. Further the lessee will have the option to terminate the lease by giving one month's advance notice.

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After expiry of three years the Lessee shall have the option to renew the lease with 15% increase in rent for another 3 years and a fresh lease deed shall be executed at that time. Total lease period will be 12 years w.e.f. 1.5.2008. Thereafter it may be renewed at mutually agreed terms and conditions. Total lease period will be 12 years w.e.f. 1.5.2008.

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1. (d) *At the expiration or sooner determination of this lease to and renewed lease as agreed upon to peacefully and quietly yield up the demised lease, as agreed upon to peacefully and quietly yield up the demised premises and the lessor's fixtures and fitting therein (except the Lessee's Fixtures and fittings) in good condition reasonable wear and tear excepted and but the lessor is vacant possession thereof.*

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(g) *The lease can be terminated by the lessee by giving one month advance notice before the expiry of the lease period hereby reserved.'*

3. *THE LESSOR DOTH AND EACH OF THEM DOTH HEREBY CONVENANT WITH THE CORPORATION AS FOLLOWS*

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3 (m). *That the letter has categorically assured the Corporation that the aforesaid premises conform to the Municipal bye-laws and that he has a clear and marketable title thereto free from all encumbrances.'*

(Emphasis by us)

4) Admittedly, the above Lease Deed was duly acted upon and the respondent-lessee was put into possession of the premises detailed above w.e.f. 1st May, 2008. On 13th June, 2008 the respondent also paid the amount of ₹2,92,485/- towards rent for the month of May, 2008 after deducting the tax at source (TDS).

5) The respondent has also taken the plea that after being put in possession, it spent an amount of ₹8,00,000/- on installing its infrastructure and making the premises suitable for its use.

6) At this stage, the respondent submits that its use and occupation of the subject premises was obstructed by one Smt. Arvinder Kaur Sethi. The respondent has claimed that on 21st June, 2008, it received copy of a plaint in Suit No. 436/2008 filed by Smt. Arvinder Kaur Sethi claiming to be the owner of the tenanted premises against the appellant Krishan Kumar Aggarwal (impleaded as defendant No.1 in Suit No.436/2008) as well as respondent- LIC (as defendant No.2 therein). It was pleaded by Smt. Arvinder Kaur Sethi that the present appellant was her licensee in the subject premises. This suit rested on her claims detailed in paragraphs No. 5 & 6 of her plaint (Suit No. 436/2008) which may be usefully extracted and read as follows:-

“5. That the defendant No.1 is going to create third party interest in the property in question by letting out to the defendant No.2 because from the display of the Board at the office of the defendant No.2. It is apparent that its office is to be transferred on 23-6-2008 to the Ground Floor 1,2,3 4, Dilkhush Estate, G.T.Karnal Road, Azadpur, Delhi.

6. That on 27-9-2007 while personnel of the plaintiff were discharging their duties at the gate, they were obstructed by other occupants of the premises with the help of some unsocial elements threatened them that they would not allow them to stand there as security personnel and the plaintiff being a law abiding lady rang up on 100 number and the PCR arrived on the spot headed by the SHO, P.S. Model Town, Delhi but situation was controlled for some time and it was aggravated later on and they started to obstruct in the discharge of the duties of the personnel of the plaintiff and hence the plaintiff filed a suit bearing suit no. 600/2007 and the order of status quo was passed by Shri Siddharth Sharma, CJ, Delhi vide order dated 3-10-2007 and the said order is in force till today and next date of hearing is on 9-7-2008 and the plaintiff reserves his right to file suit for possession and mesne profit against the defendant as his license has become null and void because he has violated the terms and conditions of License Deed.’

7) Smt. Arvinder Kaur Sethi had thus premised the suit on the claim that she had learnt on 16th June, 2008 that the present appellant was going to let out the tenanted premises to the present respondent despite a *status quo* order in CS(OS) No.600/2007. On this assertion Smt. Arvinder Kaur Sethi had prayed for decree of perpetual injunction restraining the present appellant from creating third party interest in respect of the tenanted premises in favour of the present respondent by letting them out or otherwise.

Before us, the respondent has contended that Suit No. 436/2008 was contested by the appellant who filed a written statement.

8) So far as Suit No. 436/2008 is concerned, our attention is drawn to an alleged agreement dated 21st June, 2008 set up by Smt. Arvinder Kaur Sethi on the one hand and the present appellant No.1 on the other and to certain other proceedings. Smt. Arvinder Kaur Sethi sought to rely upon a photocopy of an agreement before the trial court on 29th July, 2008 and also sought to move an application under Order 23 Rule 3 of the CPC for passing a compromise decree on such agreement. This application was neither signed by nor was it accompanied by an affidavit of Sh. Krishan Kumar Aggarwal – appellant No.1 herein. In these circumstances, no order was passed on this application.

9) On the next date of hearing i.e. on 4th September, 2008, a submission was made in Suit No.436/2008 on behalf of Sh. Krishan Kumar Aggarwal, the present appellant No.1 to the effect that that the suit had become infructuous in view of the fact that he had already given the possession to the LIC defendant No.2 vide registered Lease Deed dated 9th May, 2008 i.e. prior to the filing of this suit. It was pointed out that no

relief was claimed against the LIC. It is noteworthy that the present appellant No.1 had also filed a counter claim therein against Smt. Arvinder Kaur Sethi.

10) In the above circumstances on 11th September, 2008, Smt. Arvinder Kaur Sethi moved an application for withdrawal of the suit for the reason that the defendant had already created third party interest in the suit property before its filing and the suit was therefore infructuous. The suit was disposed of as withdrawn with liberty to file the same afresh.

11) At this stage, the present respondent addressed a letter dated 22nd July, 2008 to the appellant No.1 stating that Harvinder Kaur had filed a suit regarding the tenanted premises against appellant No.1 as well as LIC. It was informed that:-

“We have taken the above mentioned premises on lease for our branch office 12T w.e.f. 01.05.2008. And you are aware that Smt. Harvinder Kuar has filed a suit regarding the same premises against you and LIC. Due to litigation we are not interested to shift into this premises.

Please refer our various Telephonic conversation requesting to take the possession back of the abovementioned premises. But you have not responded in this regard so far.”

The appellant did not respond to this communication.

12) The above letter was followed by a letter dated 23rd August, 2008 from the respondent which was identical to the previous letter. In fact, it appears to be a ‘cut and paste’ of the above two sub-paras of the letter dated 22nd July, 2008. It is submitted by Mr. Kamal Mehta, learned counsel for respondent that even this communication did not motivate any response from the side of the landlord.

13) The appellants however have claimed to have replied vide a letter

also dated 23rd August, 2008 reiterating ownership and informing LIC in the following terms:-

'This is to inform you that we are the lawful owner of the four commercial flats bearing No. CGF1,2,3 & 4, Dilkhush Industrial Estate, G.T.Karnal Road, Azadpur, Delhi, and have lawfully leased out the said four flats to you vide aforesaid lease deed. The lease has already come into existence and already commenced w.e.f. 01.05.2008. We are further acknowledged having received a sum of Rs.2,92,485/- vide cheque no.593632 dated 13.06.2008 towards monthly rental for the month of May, 2008 after deducting tax at source. You are required to send certificate to tax deduction at source for income tax purposes.

One Smt. Arvinder Kaur alleging herself to be the owner of the entire complex has filed a frivolous suit being suit No.436/08, which is presently pending adjudication before the court. The peaceful legal possession has already been delivered to you in terms of the said registered lease deed, as such the said suit has become infructuous being filed only on 23/06.2008 i.e. much after the commencement of your lease. It is pertinent to mention that there is no declaration of title sought by Smt. Arvinder Kaur in the said suit. Thus the suit as a whole has become infructuous and is liable to be dismissed.

As regards the fabricated documents created by Smt. Arvinder Kaur along with her husband Mr. J.S.Sethi, a counter claim has been made to declare the said agreement to be null and void being fraudulently obtained by them under the false pretext of a maintenance agreement. They represented to be running maintenance agency in the said complex and as such we had agreed that in case they were authorized to render maintenance, they could charge maintenance charges etc. without knowing or having any idea about their underlying intention. The fact remains there was no such agreement ever intended to be entered into by us nor such fabricated and forged document has any legal tenability. In any case counter claim has been filed in the court and a copy of the same would be forwarded to you shortly. In the prevailing facts and circumstances, you have no privity of contract with any other

person except the lessors in terms of the said lease deed and you are within your rights to enjoy the said four flats by running your office. We assure that we would protect and safeguard your interest under the said lease deed and would take adequate legal measures in the court of law to raise your comfort level. Necessary directions in this regard would be obtained from the court so that no prejudice is likely to be caused to you for the use and enjoyment of the leased flats as above. We hope that you would cooperate with us to take the matter to a logical end."

(Underlining by us)

14) As the respondent failed to comply with the demands for rent etc., the appellants followed up with a legal notice dated 8th November, 2008 which was in the following terms:-

"This is to inform you that in terms of the lease deed you are in peaceful and legal possession of the leased premises as mentioned above. The suit filed by one Smt. Arvinder Kaur being civil suit No.436/2008 has since been dismissed. There is no interim order operating in respect of the said property. In a fresh suit filed by Smt. Arvinder Kaur before Hon'ble High Court being CS (OS) No.2104/08, no injunction has been granted in her favor. It is important to bring to your kind notice that the aforesaid matter came up for consideration before Hon'ble High Court on 04.11.2008, on which date the Ld. Judge was pleased to summon the records of the Civil Court for perusal and passing appropriate orders and it was indicated that the parties would not create trouble and after perusing the record of the Civil Judge, appropriate orders would be passed.

The suit before the Civil Judge has been dismissed on 11.09.2008. A copy of which is being annexed herewith and no injunction has been granted by Hon'ble High Court in the pending suit. In this manner there is no impediment for you to use and enjoy the said leased premises.

It was your own decision to keep the premises locked under your control. We have no controlling powers upon you for the user of the said premises. We have been regularly writing letters to you including letter dated 12.08.2008 and you

are called upon to pay the agreed monthly rental in terms of the lease deed.

It is surprising that instead of adhering to your contractual obligation, you are insisting for the refund of the amount paid by you in terms of the lease deed. We may make the position very clear that you are a lessee in terms of the lease deed as aforementioned and you are liable to pay a monthly rent of Rs.3,18,750/- together with service tax etc. and other charges payable on 5th of each English calendar month in advance in terms of the duly registered lease deed dated 09.05.2008. You are under a contractual obligation to honour your commitment in terms of the said lease deed. So far you have only paid rent for one month after deducting TDS vide Pay Order No.593632 dated 13.06.2008 drawn on Corporation Bank on deducting applicable TDS and service tax. As such you have been in default in making payment of leased rental w.e.f. June – July, 2008 onwards till date. You are requested to pay leased rental in terms of lease agreement including arrears of rent accrued as on date and you are further called upon to pay rent every month.

It is further made clear to you that it is your own decision to keep premises locked and in no manner you can escape liability of payment of rent. A copy of this notice is being forwarded to the Chairman for needful action in the matter so that our client is not illegally deprived of his legal rights.”

(Emphasis by us)

15) After waiting for a reasonable time, on 6th January, 2009, the plaintiff filed CS(OS) No. 57/2009 seeking the following decree:-

“a. a decree of recovery of money amounting to ₹19,02,500/- towards arrears of rent w.e.f. 01.06.2008 till 01.12.2008 against the defendant and in favour of plaintiffs may kindly be passed.

b. defendant be further directed to pay agreed rent @ ₹3,18,750/- per month w.e.f. 01.12.2008 till the continuation of the tenancy.

c. a decree for arrears of maintenance and power back up/ generator charged amount to ₹1,83,484/- as on the date of filing of the suit may kindly be passed against the defendant and in favour of plaintiffs.

d. Pendente lite and future maintenance charges and power back up/ generator charges @ ₹6.90p. together per sq. ft. be also awarded in favour of plaintiffs and against the defendant till continuation of possession of defendant in the suit premises as per lease deed.

e. accrued interest @18% per month on the arrears of rent as well as on maintenance and power back up/ generator charges amounting to ₹50,000/- as on the date of filing of the suit may kindly be granted against the defendant and in favour of plaintiffs.

f. pendente lite and future interest @ 18% per annum may also be awarded till the realization of the suit amount/ decreetal amount in full.”

16) The above prayers of the appellant rested on the following pleadings in the plaint:-

“11. That there is no injunction operating against the defendant in respect of use and enjoyment of the suit premises under and in terms of the lease deed dated 09.05.2008.

12. That defendant corporation has been free to use and enjoy the suit premises under the said lease and there is no impediment or hindrance of any nature from the plaintiffs which could impede the use and enjoyment of the defendant corporation.

13. That the plaintiffs have been time and again requesting defendant and updating the defendant about the developments in the said suit proceedings. In spite of written letters dated

23.08.2008 as well as legal notice dated 08.11.2008, defendant has not been making payment of rent w.e.f.01.06.2008. It is submitted that defendant corporation paid rent only for the initial month of May, 2008.

14. It is it important to mention that defendant corporation while its communication dated 20.09.2008 has indicated to the plaintiff to take back the possession of the suit premises as they were not interested to run the office from the suit premises due to litigation.

15. That plaintiffs had couple of meetings with the defendant corporation to assure that the suit in all probabilities and possibilities would be dismissed in the Hon'ble High Court of Delhi and pendency of a frivolous suit is inconsequential n law.

16. That defendant corporation has been continuing its possession in respect of the suit premises w.e.f. 01.05.2008 till date. Except making payment for the initial month of May, 2008, no further rental has been paid by defendant corporation to the plaintiffs. Thus defendant corporation has been in arrears of rent w.e.f. 01.06.2008 @ Rs.3,18,750/- per month together with payment of maintenance and service charges @ 90 paisa per sq. ft. and Rs.6/- per sq. ft. for power back up arrangement. In this manner the defendant corporation has been in arrears of rent amounting to Rs.19,02,500/- as on 01.12.2008 and a total sum of Rs.1,83,484/- towards maintenance and power back up/ Generator charges.

17. That vide notice dated 08.11.2008 sent on behalf of the plaintiffs, the defendant corporation was called upon to pay the arrears of rent and discharge its contractual obligation under the registered lease deed. It seems that some of the officer of defendant corporation have colluded and connived with said Smt. Arvinder Kaur, who has initiated a suit bearing CS (OS) Nos.436/08 & 2104/08 with an intention to grab the property of the plaintiffs and deprive the plaintiffs of their legal right about the ownership of the suit property.

18. That inspite of letter dated 23.08.2008 and notice dated 08.11.2008, there has been no response received from the defendant corporation and defendant corporation has been continuing in the suit premises without discharging their

contractual obligation in the said lease deed. The defendant corporation has been maintaining incoherent approach in as much as on the one hand defendant corporation continues to hold possession and on the other hand the rental dues are not paid as agreed by them under the lease deed. On account of this, it is apparent that defendant corporation is acting illegitimately for and on behalf of the aforesaid litigant and to make the property disputed in a frivolous and false manner. Be that as it may, the said suit filed by litigant in the Hon'ble High Court is likely to be dismissed shortly. Moreover, a tenant cannot take shelter of dispute of ownership nor could raise the dispute of ownership of the lessor. It is submitted that defendant corporation continues to be the tenant of the plaintiff in the suit premises. ”

(Emphasis by us)

17) The defendant was served with the summons of the suit and entered appearance on 16th March, 2009. No written statement was filed in accordance with the law. Instead on 11th May, 2009, a request was made for the complete set of the paper book before the Joint Registrar. As time to file written statement had already expired, the matter was placed before this Court by the Joint Registrar for further orders.

No written statement was filed even then.

18) On 28th July, 2009, counsel for defendant sought time to file an application under Order VIII Rule 1 of CPC for permission to place on record the written statement. Such application was listed before this Court for the first time on 7th September, 2009 when notice to the other side was ordered. It would appear that this application was never pressed by the defendant. There is no order allowing this application or permitting the written statement to be taken on record.

19) The defence of the respondent would therefore be of no legal

consequence or effect.

20) On 10th December, 2009 the learned Single Judge ordered listing of the matter on 29th January, 2010 and directed the presence of the authorized representative of the LIC to remain present in the Court for recording of statement in terms of Order X Rule 2 of the CPC. The order recorded on the next date i.e. on 29th January, 2010 does not show compliance of these directions.

21) We may set out the order recorded by the Court on 19th February, 2010 in extenso, when for the first time, a statement was made on behalf of the defendant that it wished to hand over the vacant possession of the premises. The Court appointed a Local Commissioner for the purpose. The order which was recorded reads as under:-

*“Mr. Kamal Mehta, learned counsel submits, on instructions, from the defendant that **vacant possession of the premises would be handed over and requests for some time to do so. He also submits** that in view of the pendency of the other suit – CS(OS) 2104/2008 where the plaintiff (in that case) has sought for injunction against the present plaintiff; there is the apprehension of obstruction, the Court should **make an appropriate order for deposit of the keys** and also ensure that any apprehension of obstruction should be dealt with suitably.*

*In the circumstances, Mr. M.Dutta, Advocate (Mobile No.9810062932) who is present in Court is **appointed** as **Local Commissioner to be present at the suit premises** i.e. C.G.F. 1, 2, 3 & 4, Ground Floor, Block-C, Dilkhush Industrial Estate, G.T.Karnal Road, Delhi, on **27.02.2010**. **The LIC shall hand over the keys, after ensuring that the premises are vacated, to the Local Commissioner, who shall lock the premises and seal it suitably. The keys shall be deposited in the Court.** It is open to the Local Commissioner to seek police assistance, if required, and the local police authorities shall render all assistance in the*

*execution of the commission. **The commissioner shall also inventorize items in the suit premises.** It is also open for the commissioner to take photographs and enclose them in his report. He shall file his report within two weeks from today.”*

(Emphasis by us)

22) The order recorded by the Court on 13th July, 2010 is material and reads as follows:-

*“The report of the Local Commissioner indicates that **the defendant vacated the premises and handed over the keys in April, 2010. The keys are in the custody of this Court. Learned counsel for the parties had agreed, during the course of the proceedings, that in view of these developments, the only surviving question or issue left for decision was as to the liability, if any, of the defendant towards payment of rents or damages. The plaintiff had submitted that the decree sought would be in respect of the agreed amount of Rs.3,18,750/- per month. Learned counsel for the parties agreed that submissions would be made on the existing documents and that the Court should take into consideration all the documents on the record.**”*

(Emphasis by us)

23) The learned Single Judge thereafter heard arguments on the sole issue formulated that is as to whether the LIC was liable to pay agreed rental amount till the date it vacated the suit premises and proceeded to judgment which was pronounced on 19th July, 2010. This judgment has been assailed before us in the present appeal. Learned counsel for appellants has taken us through the record of this case and points out that the learned Single Judge has arrived at the following conclusion which have been challenged by the appellants:-

- (i) that the appellants had been unable to establish its claim
- (ii) that LIC had not occupied the premises
- (iii) that LIC wanted the appellants to take back vacant

possession

- (iv) that there was dispute regarding ownership of the premises leading to LIC's decision to hand over back the possession which was a reasonable concern
- (v) that there was no further duty upon respondent No.1 other than intimating the plaintiff to hand over the possession and that it was not required to approach the court or take other steps
- (vi) that the appellants as a reasonable lessor ought to have taken back the premises without prejudice to his rights to recover the amounts or such part of as was recoverable
- (vii) the evasion in this regard casts a doubt upon the real intention of the appellants

24) Our attention is also drawn by Mr. Vijay Gupta, learned counsel for the appellants to the fact that despite the opportunity granted by the Court on 19th February, 2010, nothing was filed by either of the parties on record of the learned Single Judge. The written statement of the defendant has not been taken on record and its defence could not have been looked in the proceedings before the learned Single Judge.

The challenge by the appellants has to be tested against this background.

Whether the lease between the parties stood validly determined?

25) It has been argued on behalf of the respondents that the lease between the parties stood terminated by the letters dated 22nd July, 2008; 23rd August, 2008 or 20th September, 2008. Mr. Kamal Mehta, learned counsel for respondent has placed reliance in judgment of the Supreme Court reported at ***Bhagbandas Agarwalla Vs. Bhagwandas Kanu & ors.***

AIR 1977 SC 1120 to support the submission that a notice to quit has to be liberally construed. In this judgment it was held thus:-

“ It is indisputable that under Section 106 of the Transfer of Property Act the notice to quit must expire with the end of the month of the tenancy, or in other words, it must terminate the tenancy with effect from the expiration of the month of the tenancy. If it terminates the tenancy with effect from an earlier date, it would be clearly invalid. Now, here the notice to quit required the respondents to vacate the premises “within the month of October 1962” and intimated to them that otherwise they would be “treated as trespassers from November 1” in respect of the premises. The question is: what is the meaning and effect of the words “within the month of October, 1962” in the context in which they are used in the notice to quit? Do these words mean that the tenancy of the respondents was sought to be terminated at a date earlier than the expiration of the month of October 1962 and they were required to vacate the premises before such expiration? We do not think so. When the notice to quit required the respondents to vacate “within the month of October 1962”, what it meant was that the respondents could vacate at any time within the month of October 1962 but not later than the expiration of that month. The last moment up to which the respondents could, according to the notice to quit, lawfully continue to remain in possession of the premises was the midnight of October 31, 1962.”

26) In the above case, the Supreme Court was called upon to construe the meaning of the words ‘month of October, 1962’ and as to whether they meant that the tenancy of the respondent was sought to be terminated at a date earlier than the expiration of month of October, 1962 and the tenant was required to vacate the premises before such expiration. It was held that the expression meant that the respondents could vacate at any time within the month of October, 1962 and not later than expiration of that month. The last moment up to which the respondents, according to

the 'notice to quit', lawfully continue to remain in possession of the premises was the mid night of 31st October, 1962 and therefore, the first requirement of Section 106 of the Transfer to Property Act stood satisfied.

27) Mr. Kamal Mehta, learned counsel for respondent-LIC, pointed out that this principle stands statutorily recognized in the amendment effected to the Transfer of Property Act in the year 2002 when Section 106 (3) of the aforesaid Act was amended, which reads as follows:

'106 (3). A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.'

28) There can be no dispute with the legal principles laid down in ***Bhagbandas Agarwalla (Supra)*** which have to be considered and applied in the facts of the present case.

29) In this regard we may also advert to Section 111 (h) of the Transfer of Property Act. As per this statutory provision, intention to quit the premises has to be treated as a determination of the lease. This position is not disputed by Mr. Vijay Gupta, learned counsel for appellants. The learned Single Judge has therefore rightly held that the said communication for the LIC would be treated as notices terminating the lease on the part of the tenant.

However the matters do not end here as would be evident from the following discussion.

Third party litigation – impact

30) The respondent has asserted litigation i.e. the filing of the cases by Smt. Arvinder Kaur Sethi and its implication in the litigation as the sole ground for losing interest in the leased premises. The above reproduction would show that the ruse advanced by the respondent-tenant was actually without any factual basis. Civil Suit No.436/2008 stood dismissed on 11th June, 2008. There was never interim order against the appellant No.1 prohibiting letting of the tenanted premises.

31) Reference was made to a third suit being CS (OS) No.2104/2008 filed by Smt. Arvinder Kaur Sethi before the Delhi High Court. *It* appears that on 22nd September, 2008, Smt. Arvinder Kaur Sethi filed CS (OS) No.2104/2008 against the appellant as defendant No.1 and the LIC as defendant No.2 for the first time seeking a declaration of the title of tenanted premises. Smt. Arvinder Kaur Sethi had also prayed for cancellation of the Lease Deed dated 9th May, 2008 and mesne profits from the date of the institution of the suit till the passing of the decree. However, no injunction had been granted in her favour and against either the present appellant or the respondent.

32) Learned counsel for the respondent has urged that at the time of the execution of the lease, a Civil Suit No.600/2007 was pending against the present appellant in which an order of *status quo* had been passed. Mr. Vijay Gupta, learned counsel for the appellants drew our attention to the plaint of this case. A perusal of the plaint would show that this suit was not filed against the present appellant. This suit also did not relate to the tenanted premises and the order of *status quo* was neither applicable to the tenanted premises nor did it relate to the appellant.

33) There was, therefore, no impediment in the nature of pending litigation or a court order prohibiting the appellants from executing the lease deed in respect of the subject premises or putting the respondent in possession thereof. In any case, a lease deed was executed between the parties which was duly registered in accordance with the law. By virtue of Section 116 of the Evidence Act, a tenant of immovable property, during the continuance of the tenancy, is estopped from contending that the landlord of such tenant had, at the beginning of the tenancy, no title to such immovable property. Section 116 also precludes a person who came upon any immovable property by the licence of the person in possession thereof from denying that such person had a title to such possession at the time when such license was given. It was not open to the respondent to challenge or make an objection to the title of the property.

34) The reasons propounded by the respondent for termination of the lease were therefore inconsequential for the purposes of enjoyment of the leased premises. They, in any event, did not impact user of the premises by the respondent in any manner. Of course the mere fact that LIC got embroiled in the litigation by a third party has been considered as a valid reason for not wanting to continue with the lease.

Could the mere termination of the lease, without handing over the possession to the landlord, absolve LIC from payment of the rent?

35) Mr. Vijay Gupta, learned counsel has urged with some vehemence that the action of the respondent in merely sending the three letters and continuing in possession of the leased premises was insufficient and that liability to pay rent would continue till such time it actually hands over the premises to the appellants.

36) A further grievance is made by learned counsel for appellants that in the appellants' suit for recovery of money, he has in fact been dispossessed from the tenanted premises. It is submitted that the direction to the respondent to deposit the keys in the Court could not have been made. The appellants contend that in fact the keys having not been received by it till date, it should be held that the respondent has not handed over the possession in terms of the Lease Deed or in accordance with provisions of Section 108 (q) of the Transfer of Property Act and therefore, liability to pay the rent to the appellants will continue till such time the keys of the premises are actually handed over to appellants.

37) Let us first examine the obligations of the parties under the registered Lease Deed dated 9th May, 2008. Clause 1 (g) of the lease deed postulates termination of the lease prior to its expiry at the instance of the lessee by giving one month's advance before expiry of the lease period. Clause -1 (d) of the Lease Deed, noted by us hereinabove, imposes the responsibility on the respondent-lessee to put the appellant –lessor in the 'vacant possession' on the expiry or 'sooner determination' of the lease. Therefore, in terms of the Lease Deed, upon its determination, there was a responsibility on the lessee to put the lessor in vacant possession thereof.

38) Vacant possession of the leased premises could be handed over to the lessor only after removal of its belongings by the lessee. Let us now examine what is the effect of three letters dated 22nd July, 2008; 23rd August, 2008 or 20th September, 2008 written by the lessee to the lessor. None of these communications specifically state that the lease would stand terminated. The letters also do not state that the appellant had

removed its installations and vacated the premises and therefore, the lessor should visit the spot on any particular specified date or month to take over the vacant possession in accordance with the law in terms of Clause- 1 (d) of the said Lease. These letters thus do not contain a clear demand upon the lessor to take back the possession at a particular date and time.

39) So far as liability of a lessee to hand over possession is concerned, our attention has also been drawn to the provisions of Section 108 (q) of the Transfer of Property Act, which reads as follows:

'108 (q). on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

40) If the written statement could be taken into consideration, the LIC has claimed therein that after being put into possession, the infrastructure created by the LIC in the premises included embedded fixtures and fittings in the nature of cash counters, Branch Manager chamber, Development Officer chamber, I.T. room, electric fittings and other necessary infrastructure required for the functioning of the office.

41) We may also note the proceedings recorded by the Local Commissioner pursuant to the order dated 19th February, 2010. The report of the Local Commissioner dated 19th February, 2010 and 15th April, 2010 show that the Local Commissioner informed the parties of his proposed visit to the tenanted premises on 6th March, 2010 at 11:00 a.m. After taking police assistance, the Local Commissioner reached the subject premises on 6th March, 2010 when the suit premises were opened by the LIC. The Local Commissioner took photographs of the subject premises and prepared the following inventory of the articles of the

respondent-defendant lying installed in the leased premises:-

'On the right side of the Entrance, there is 1 Aluminium and Glass partitions;

"On the left side of the Entrance, there is 1 Aluminium & Glass partition;

At the Centre of the Hall, there are 3 cash counter cabins; and

On the Right of the Rear side, there is 1 Aluminium & Glass Partition with one fixed table;

That apart, there are-

- a) 1- I.T. Cable Box/ Hub + EPABX Box*
- b) 2- Power switch Panesl – (1 Bigh + 1 Small)' the Electric panel has its boxes;*
- c) 20- A.C. Box points;*
- d) 27- Switch Boxes;*
- e) 11- UPS Points*
- f) 4- Distribution Boxes;*
- g) 12- Wooden Cup Boards;*
- h) 4- Wooden/ Sunmica tables;*
- i) 19- Tube Lights*
- j) 9- Fans;*

The premises have electric cables, Data cables and point wiring through the entire premises, which too belongs to LIC."

(Underlying by us)

42) The Local Commissioner was informed by Shri Sudeep Singh, learned counsel for LIC that it would not be possible for them to remove all the articles within 'today' since the partitions and electrical fittings were 'embedded to the premises'. He further stated that about 4-5 days

would be required by them to remove them from the subject premises. In view of this request, the Local Commissioner recorded that the sealing direction by the court would be complied after removal of the belongings by the LIC and for this purpose 4-5 days time was required; they were agreeable that time would be taken for completion of sealing on intimation from learned counsel for LIC that the belongings had been removed and the premises be sealed.

It is also recorded in the Local Commissioner's report dated 6th March, 2010 that keys of the premises were retained by the LIC to enable them to remove their belongings expeditiously.

43) The record of the learned Single Judge does not disclose as to when the LIC informed the Local Commissioner that it had removed its belongings so that the premises could be sealed in compliance with the directions made on 19th February, 2010. None appeared on behalf of respondent before the Court on 10th May, 2010 when the case was adjourned to 26th May, 2010.

44) As per notings of the Registry, keys were deposited in the court by the lessee only on 15th April, 2010.

45) Thus, the embedded installations of the LIC thus had not been removed prior to or even after sending the letter dated 22nd July, 2008. They were still in place almost two years thereafter on the 6th of March, 2010, when the Local Commissioner visited the leased premises and the LIC sought time from the Local Commissioner for vacating the premises.

46) The letter dated 22nd July, 2008 of the respondent also merely stated that LIC was 'not interested to shift into the premises'. The letter refers to telephonic conversations to take the possession back. However,

the respondent took no steps for vacation. The above narration also shows that the premises was not vacated by the lessee pursuant to its letters written by the lessee on 22nd July, 2008; 23rd August, 2008 or 20th September, 2008.

47) It is also evident that neither the filing of CS (OS) No. 2104/2008 by Smt. Arvinder Kaur nor CS (OS) No. 67/2009 motivated the respondent-lessee to vacate the premises.

48) The above facts have been set out in some detail in order to illustrate the conduct of the respondent which despite the said three letters continued to occupy the leased suit premises. Even after the appellants filed the suit for recovery of rent and other charges, the LIC made no offer for handing over vacant possession of the suit premises, despite service of the summons for a period of one year and continued in peaceful possession of the suit premises.

49) Even on 19th February, 2010 the respondent the respondent did not offer to hand over possession to the lessor but sought to deposit the keys in the court.

50) By its letter dated 20th August, 2008 & legal notice the appellant-lessor had reiterated the fact that the respondent was in possession of the subject premises under the registered Lease Deed dated 9th May, 2008 which governed the respective rights and liabilities of the parties. We have noted above that the appellants, in fact specifically notified the lessee that it was wrongfully alleging a dispute as to its title whereas it was not open for it to do so; that the demand for refund of the rent did not absolve it from its liability to pay rent so long it continued in occupation of the premises. The respondent-LIC had not repudiated these categoric

assertions by the appellant-plaintiff. Receipt of the notice from the appellants-landlord is admitted by respondent –tenant, however no dispute was made with regard to its contents. There is no dispute to the appellants' charge that the officials of the respondent-LIC were colluding with Smt. Arvinder Kaur Sethi who had commenced the unwarranted litigation against the appellants.

51) In view of the above discussion we are unable to agree with the learned Single Judge that other than intimating the appellants to hand over the possession there was no further duty upon respondent and that it was not required to approach the court or take other steps to hand over the premises. Given the clear stipulation in the lease deed as well as the requirement under the Transfer of Property Act, it was the responsibility of the tenant to invite the landlord on a date and time as to when it was going to hand over the vacant possession of the property. The tenant made no efforts to remove its fittings and fixtures and was not in a position to hand over the vacant and physical possession even on the visit of Local Commissioner on 6th March, 2010. As such the landlord is within his rights to seek recovery of rent. Therefore, it has to be held that the three letters written by the lessee though terminated the lease, therefore, did not express intention to hand over vacant and peaceful possession of the premises. These communications therefore do not absolve LIC from its liability to pay rent.

52) We accordingly held that the respondent's letter dated 22nd July, 2008 could be deemed to be notice of termination of the lease but it certainly does not invite the plaintiff as to when the vacant possession should be taken in terms of Clause-1(d) of the Lease Deed dated 9th May,

2008. The other two letters are of identical tenor and effect. In the instant case, the lessee was bound by virtue of Clause-1 (d) of the Lease Deed dated 9th May, 2008 to put the landlord in vacant possession of tenanted premises and the provisions of Section 108 (q) of Transfer of Property Act. The finding of the learned Single Judge that the LIC wanted to hand over the vacant possession and the appellants have not been able to take it back, are therefore, set aside.

Direction to deposit the keys in court

53) Mr. Vijay Gupta, learned counsel for the appellants has also contended that the direction to require the tenant to deposit the keys in the Court was unwarranted. By the direction to deposit the keys in court, the appellants have been therefore deprived of use and occupation of is subject premises.

54) It is to be noted that CS (OS) No. 2104/2008 was not before the Court when orders were passed. There was no prayer on behalf of the plaintiff in CS (OS) No. 2104/2008 for deposit of the keys. LIC which was a defendant in that suit, also did not file any application to hand over keys.

55) In the present case, it was the lessor who filed a suit CS (OS) No. 67/2009 for recovery of arrears of rent. In fact the direction to deposit the keys in the Court would tantamount to dispossession of the plaintiff without adjudication of plaintiff's rights. We find substance in the submission of the appellants that the direction to deposit keys in court was unwarranted.

Whether the respondent stood obstructed from user of the leased premises?

56) We have extracted the inventory prepared by the local commissioner for a purpose. The nature and extent of the installations by LIC indicates the time that would have been taken by LIC to install them. The LIC was in peaceful possession of the premises during this time. No obstruction or objection at any time is complained of as per record.

57) In the arguments before us, an oral suggestion was made by Mr. Kamal Mehta, learned counsel for the respondent to the effect that security personnel deployed by Smt. Arvinder Kaur Sethi did not let the LIC staff to enter into the tenanted premises. This assertion however is not supported by any material details in any pleading or document setting out the date or time of the alleged incident.

58) We may note that in none of the communications addressed by the LIC has there been any suggestion or complaint that the LIC was being obstructed from the use and occupation of the premises. The sole ground for termination of the lease was the fact that a third party had raised an ownership claim in respect of the property and filed litigation which the appellant-landlord was contesting. The respondent-tenant also made no allegations against either the appellant or any other person that its entry was obstructed or that it could not commence its business on account of any interference by them. There is nothing to support the oral assertion made before us that LIC was obstructed from user of the subject premises. No such statement is found in the three letters written by the respondent to the appellant. There is no record at all of date or time of any such obstruction on record. No name or particulars of the persons, who caused the obstruction, are mentioned. It is noteworthy that the respondent does not attribute a single incident to the lessor when he had

obstructed or prevented it to use the tenanted premises. Thus, the oral submission of obstruction before us is not supported by any correspondence which emanated from the present respondent, either to the appellants or by a document in the nature of a complaint to the police or any other authority.

59) We find that in the legal notice the appellant had explained to the respondent the nature of its agreement with Smt. Arvinder Kaur Sethi and her husband which was for the purpose of maintenance and the alleged fraud on their part. The respondent rightly did not dispute the appellants' claim of ownership of the property; execution of the lease deed; as well as peaceful possession of the premises having been delivered to it pursuant to the registered Lease Deed. The respondent in fact did not dispute that it was within its rights to enjoy the leased property by its letters dated 23rd July or 23rd August, 2008. We find that the oral submissions with regard to obstruction from user are therefore completely without basis and untenable.

Liability to pay rent

60) Let us now examine what relief of payment of rent to the appellant-plaintiff be entitled to. The learned Single Judge has held that the lessee or the respondent expressed the intention to terminate the Lease, which meant a notice. It has also been held by the learned Single Judge that there is no rule or legal authority which obliges a lessee, who terminates a Lease and expresses a desire to hand over the possession, to pay the rent to such lessor who refuses to take back the premises.

61) The proceedings before the Local Commissioner establish beyond any doubt that during the entire period from 22nd July, 2008 when the

respondent-lessee addressed the first letter to the appellant, till Local Commissioner's proceedings on 6th March, 2010, the lessee- LIC had not vacated the premises. It was not in a position to hand over the vacant possession thereof to the landlord. Even after the local commissioner's visit, the LIC continued to occupy the leased premises for over a month till keys were deposited in court on the 15th of April, 2010.

62) It would appear that after paying the rent from May, 2008 to the landlord, the respondent had stopped paying any rent or charges in respect of the said premises even though it maintained its possession and hold over them. No legal steps were initiated pursuant to the demand made by it to the landlord to take back the possession. It is also an admitted position that the respondent- tenant did not move an inch towards removal of its fittings or fixtures or vacation of its occupation of the tenanted premises.

63) By the communication dated 23rd August, 2008 and legal notice dated 8th November, 2008, respondent was duly notified that CS(OS) 430/2008 stood dismissed on 11th December, 2008 and that even in the fresh suit CS(OS) No. 2104/2008, no injunction had been granted by learned Single Judge after perusing record of the civil court. The appellants notified the respondent that it had taken unilateral decision to keep the premises locked over which appellants had no control; that it was in breach of the contractual terms and despite being called upon to pay the monthly rental of ₹3,18,750/- with service tax, which was payable in advance by 5th of each English calendar month; that no rent had been paid w.e.f. June, 2008 onwards and that such unilateral decision of the LIC to get the premises locked, would not absolve it from the liability of

payment of rent.

64) So far as the reference in the legal notice dated 8th November, 2008 to letter dated 12th August, 2008 (*wrongfully typed as 12th September, 2008*) is concerned, the same appears to be a typing mistake inasmuch as the defendant does not dispute receipt of the letter dated 23rd August, 2008 from the plaintiff.

65) No explanation has been rendered by the respondent as to why letter dated 23rd August, 2008 and the legal notice sent by the appellant were not repudiated or even replied. Despite due receipt, the respondent did not bother to even send any response to the letter dated 23rd August, 2008 or the legal notice, the contents whereof would be deemed to have been admitted. In the judicial precedents reported in ***Rakesh Kumar Vs. Hindustan Everest Tool Ltd.*** (1988) 2 SCC 165 & ***Hiralal Kapur Vs. Prabhu Chaudhary*** (1988) 2 SCC 172 it was held by the Supreme Court that a categorical assertion by the landlord in a legal notice if not replied to and controverted, can be treated as an admission by a tenant.

66) In a Division Bench proceedings of this court reported in ***Metropolis Travels & Resorts Vs. Sumit Kalra*** 98 (2002) DLT 573 (DB), no adverse inference was drawn against the respondent for failure to reply the legal notice on consideration of the facts and circumstances of the case. Reference was made to proceedings reported in ***Kalu Ram Vs. Sita Ram*** 1980 RLR (note) 44 wherein it had been observed that service of notice being admitted without reservation and that having not been replied, in that eventuality adverse inference should be drawn.

67) There is also no dispute either to the execution of the Lease Deed dated 9th May, 2010 or to the effect that the keys of the premises were

deposited in court. The first steps of consequence taken by the respondent-tenant of handing over the possession to anybody was the submission made by counsel on 19th December, 2010 before the Court. Even till the visit of Local Commissioner on 6th March, 2010, the respondent had not removed the fixed fixtures and had not vacated its premises and so was not in a position to hand over the vacant possession.

68) In the judgment reported as ***Pandit Kishan Lal Vs. Ganpat Ram Khosla & ors. 1961 (2) S.C.R. 17***, the appellant *M/S Singer Sewing Machine Company* was the tenant of the appellant. It had merely informed the appellant-landlord that it was closing its business from the tenanted premises and that Mr. Khosla, who was earlier its Manager, would be carrying on business of sewing machines in tenanted premises in his personal capacity. *M/S Singer Sewing Machine Company* further informed that rent would be paid in future by Mr. Khosla. The appellant notified *M/S Singer Sewing Machine Company* that the possession of the premises in any case should not be handed over to a third person. The appellant had informed the company that unless vacant possession was delivered to him, the tenancy could not be validly determined and the company shall be held responsible till such delivery with liability to pay the rent.

69) The circumstances noted by us shows that other than writing three letters, no steps at all taken by the lessee to vacate the premises. No date or time was fixed calling upon the lessor to take back the possession. No legal steps whatsoever were taken for seeking directions to the lessor to take possession. Even after filing of the suit CS(OS) No. 57/2009 by the appellant on 6th January, 2009, the respondent-lessee did not file any

application informing the court that it had vacated the premises and seeking directions to the appellant to take over possession of the same or permitting it to deposit the keys of the premises in court. No offer to hand over possession or prayer for appointment of the Local Commissioner was made for over an year till such submission was made on 19th December, 2010. Then too the respondent sought permission to deposit the keys in court, not to give them to the lessor.

There is no written statement challenging the averments in the suit on record.

70) Mr. Vijay Gupta, learned counsel for appellant has placed reliance on a Division Bench decision of Punjab & Haryana High Court in ***Jatinder Kumar Vs. Harmohinder Singh & ors.*** AIR 1994 Punjab & Haryana 60 which, relying upon the judicial precedent in ***‘Balasubramania Iyer Vs. Subbiah Thevar’*** AIR 1965 Mad 417 has reiterated the proposition similar to that advanced by the appellant before us in the following terms:-

*‘8. The contention of the appellants, as noticed above, is devoid of merit. S. 111 of the Transfer of Property Act provides various modes for determination of lease and it is sub-clauses (e) and (f) of S. 111, under which it is sought to be made out that lease in favour of appellants stood determined. Whereas sub-clause (e) talks of determination of lease by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them, sub-clause (f) puts lease to an end by implied surrender. **The express or implied surrender, in the very nature of things, can be only to the lessor and not to any one else.** Mere fact that the appellants handed over the possession of the premises under the name and style of Adam and Eve being run by them as proprietors to Goverdhan Lal Kapur, would not be surrender of lease which, as stated above, **could only be by***

handing over possession of the premises to the plaintiffs. It is too well settled by now that when a suit is filed by a landlord to recover arrears of rent due from a tenant, the burden is upon the lessee to plead and prove that during the; period of lease for which rent has been claimed, he had delivered possession of the property back to the lessor. Madras High Court in "Balasubramania Iyer v. Subbiah Thevar" AIR 1965 Mad 417 held that when a suit is filed by a landlord to recover arrears of rent due from a tenant who was inducted into possession in pursuance of the lease, the burden is clearly upon the lessee to allege and prove that during the currency of the lease and for the period for which rent was claimed, he had delivered possession of the property back to the lessor. Unless such redelivery of possession of the property to the lessor is established, the tenant will clearly be liable for arrears of rent."

(Emphasis supplied)

71) Section 111 (e) of the *Transfer of Property Act* requires surrendering of lease to the buyers to be express and unequivocal declaration of the lessee. The respondent- Life Insurance Corporation is a public sector undertaking and judicial notice can be taken note of the fact that it is guided and advised by elaborate legal machinery. It would have been aware that it was necessary for it to say that it was surrendering the lease and that the lessor should take back the possession appointing a particular date and time for the purpose.

In this background, the liability of respondent to pay rent would continue till such date vacant possession is handed over to the landlord.

72) On 19th February, 2010, the learned Single Judge directed that the keys of the premises be handed over to the Local Commissioner who should deposit them in this Court and keys should be retained in the record of CS(OS) No. 2104/2010. We have held that this direction in the

plaintiff's suit for recovery of rent was not legally permissible as it would certainly not tantamount to legal requirement of handing over the possession of premises to the lessor under Section 106 of the Transfer of Property Act.

73) The LIC at no point of time repudiated any of the assertions by the landlord in his letters. It did not dispute that the lease deed was in subsistence or the liability of the LIC to pay the rent with service tax, etc. in advance; or that the decision to keep the premises locked under the control of the LIC was unilateral. The LIC did not dispute that it had a contractual obligation to make the payment in terms of the lease-deed. The respondent never stated that LIC did not have liability for payment of the rent.

74) The first call to hand over vacant possession on Court record was made in court on 19th February, 2010, i.e. more than one year after the LIC had entered appearance in this suit. No application or oral submission was made in this regard prior thereto. Therefore, it is to be held that the LIC is liable to pay the rent till 15th April, 2010 with keys of the premises, which were actually deposited in the Court more than after one month after the Local Commissioner's proceedings on 6th March, 2010.

75) In these fact can it be said that the lessee was not required to do anything in the matter? What if the lessor had taken no legal steps and not filed the suit, could the LIC have simply continued with its installations and belongings in the subject premises and said that it stood absolved of the liability to pay rent, merely because it had written the afore-noticed letters to the landlord? The answer has to be clearly in the

negative.

76) Consequently, it is held that the respondent has wrongfully deprived the appellants of rent for the period 1st June, 2008 till 15th April, 2010 (when the keys were deposited in court). We note that in the impugned judgment, the learned Single Judge has held that the appellants would be entitled to arrears of rent up to the end of August, 2008.

Result

77) Accordingly, we hereby set aside the judgment and decree dated 19th July, 2010 passed in CS (OS) No. 57/2009. The suit filed by the appellants-plaintiffs is decreed against the respondent-defendant directing it to pay the appellants/ plaintiffs rent @ ₹3,18,750/- per month w.e.f. 1st June, 2008 till 15th April, 2010 together with costs all throughout. Lawyer's fee in the suit and appeal are quantified at ₹1,00,000/-. Simple interest on the amount decreed is awarded @10% p.a. w.e.f. 15th April, 2010 till realization.

This appeal is allowed in above terms.

GITA MITTAL, J

SUNIL GAUR, J

AUGUST 29, 2014

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