

(2012) 01 AHC CK 0609

In the Allahabad High Court

Case No : Civil Revision No"s. 376 and 371 of 2008

Dinesh Enameled Wire Industries Private Ltd.

APPELLANT

Vs

M/s. Swastik Udyog and Others

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5, Order 15 Rule 5(2)
Registration Act, 1908 — Section 17(1A)
Transfer of Property Act, 1882 — Section 53A
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30

Citation : (2012) 3 ADJ 298

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Prakash Krishna, J.—Both these revisions were heard together and are being disposed of by a common judgment as common questions of law and facts are involved. Civil Revision No. 376 of 2008 was treated by the learned counsel for the parties as lead case and the arguments were advanced with reference to the facts of that case and was understood that the same will hold good also in the connected civil revision.

2. Both these revisions are directed against the orders dated 13th of August, 2008 passed separately in two SCC Suit Nos. 11 of 2006 and 12 of 2006.

3. The revision No. 376 of 2008 arises out of original suit No. 12 of 2006.

4. The aforesaid two suits have been instituted by the applicants herein against the defendant opposite parties for recovery of arrears of rent and ejectment. The plaintiff is owner and landlord of factory on plot No. B-27, Sector-3 NOIDA measuring 788.54 Sq. Meters. On 1st of June, 2000 it was given on rent to M/s. Swastik Udyog and to its sister concern namely M/s. Dharam Pal Satya Pal and Ridhi Sidhi Logistic. It was agreed upon that M/s. Dharam Pal

Satyapal will pay Rs. 39,000/- per month as rent while Swastik Udyog will pay Rs. 1,500/- per month and Ridhi Sidhi will pay Rs. 2,500/- per month.

5. The suits giving rise to the present revisions have been instituted on the allegations that the defendant tenant has not paid the rent after 31st of March, 2003 and they are defaulters since 1st of April, 2003. The tenancy has been determined by giving a notice dated 24th of March, 2006.

6. In reply, the defendant tenant came out with the case that on 6th of December, 2002, an agreement of sale was entered into between the parties for the sale of the tenanted property for a total consideration of Rs. 60 Lakhs, out of which a sum of Rs. 10 Lakhs was given as advance money. The execution of the sale-deed was stipulated to take place up to 31st of December, 2003 or earlier. The sale-deed has not been executed by the plaintiff in pursuance of the aforesaid agreement, the relationship of landlord and tenant between the parties ceased to exist after the execution of the aforesaid agreement of sale.

7. It is not necessary for the purposes of present revisions to notice the other pleas set out in the written statement. Suffice it to say that besides the allegation that the claim of the plaintiff for recovery of rent is hopelessly barred by time.

8. The aforesaid two suits are still pending adjudication before the trial Court.

9. The applications to strike off the defence giving rise to the present revisions, under Order 15 Rule 5 CPC as amended in the State of Uttar Pradesh, were filed by the plaintiff on the allegations that in suit No. 12 of 2006 the defendant is tenant on a monthly rent of Rs. 1,500/- and has not paid it since 1st of June, 2003. It has also not deposited any rent and damages either on the first date of hearing or thereafter during the pendency of the suit. The said applications were opposed on identical pleas that there is no relationship of landlord and tenant between the parties and as such the question of deposit of rent does not arise. Further in paragraph 3 it was asserted that a sale agreement dated 6th of December, 2002 is there in favour of M/s. Dharam Pal Satya Pal Limited and after execution of the sale agreement the relationship of landlord and tenant between the parties has come to an end and M/s. Dharam Pal Satya Pal has become the landlord of the defendant.

10. The trial Court by the order under revision took the view that in view of the sale agreement dated 6th of December, 2002 between the parties, it is not appropriate to decide the applications in question at this stage. It would be appropriate to consider the said applications after the evidence of parties.

11. Sri H.N. Singh, the learned counsel appearing on behalf of the plaintiff landlord submitted that the application under Order 15 Rule 5 C.P.C. should have been decided at the initial stage and postponing the decision till the disposal of the suit or recording of evidence would frustrate the very aim and object of Order 15 Rule 5 CPC. Elaborating the argument, he submitted that it is not in

dispute between the parties that the defendant tenant entered into the premises in question as a tenant and paid the rent as tenant. The agreement of sale dated 6th of December, 2002 being an unregistered document as also insufficiently stamped is a worthless document and cannot be looked upon. The submission is that the phrase "entire amount admitted by him to be due" used in Order 15 Rule 5 C.P.C. has been explained in Explanation -II to the Section and if the said phrase is interpreted as all "arrears of rent admitted by the tenant to be due may defeat the very object of enacting the aforesaid provision. It will make the said provision nugatory or otiose.

12. In reply, the learned counsel for the opposite parties/tenant submitted that the relationship of landlord and tenant between the parties as existed earlier has come to an end on execution of the sale agreement dated 6th of December, 2002. Elaborating the argument it was submitted that in none of the paragraphs of the written statement, the defendant has admitted the existence of the relationship of landlord and tenant between the parties and as such there is no question of any rent due from him payable to the plaintiff landlord. Further, it was submitted that the said agreement of sale has not been honoured by the plaintiff landlord as they were required to take permission from various authorities as a condition to sell the property in dispute which they failed to take. A sum of Rs. 10 Lakhs has been given as advance amount under the aforesaid agreement and the plaintiff landlord kept quiet for a considerable period of time and woke up after about three years by filing the present suits.

13. Considered the respective submissions of the learned counsel for the parties and perused the record.

14. Before proceeding further it is apt to notice the admitted facts. It is not in dispute that the premises in question was taken by the defendant on rent from the plaintiff. It is also not in dispute that any amount has not been deposited or paid by the tenant either on the first date of hearing fixed in the suit or during its continuance.

15. The case of the defendant in nutshell is that the relationship of landlord and tenant has come to an end between the parties in view of the sale agreement dated 6th of December, 2002. It was not disputed before me that the said agreement is unregistered one. In the State of Uttar Pradesh an agreement to sell necessarily requires registration. It was also argued that the agreement is on insufficient stamp paper but it is not necessary to consider that part of the argument in the present revisions. It is also admitted between the parties that the said agreement contains an arbitration clause and in pursuance thereof, the matter was referred to an arbitrator appointed by the High Court and the arbitrator has given the award against the defendant holding that since the agreement in question is unregistered one it cannot be enforced.

16. The learned counsel for the defendant submitted that against the award given by the arbitrator the proceedings are pending under the Arbitration Act at

his instance. The fact remains that till date there is no decree or award in favour of the defendant requiring the landlord to execute the sale-deed in pursuance of the said agreement dated 6th of December, 2002.

17. Order 15 Rule 5 CPC for the sake of convenience is reproduced below :

5. Striking off defence for failure to deposit admitted rent, etc.--(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent, per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of sub-rule (2), strike off his defence.

Explanation 1.--The expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.--The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him] and the amount, if any, deposited in any Court u/s 30 of the U.P. Urban Buildings (Regulation of letting, Rent and Eviction) Act, 1972.

Explanation 3.--(1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in subsection (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited:

Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to

furnish the security for such sum before he is allowed to withdraw the same,"-- U.P. Act (57 of 1976) (1.1.1977) and (w.e.f. 3.10.1981).

18. Order 15 Rule 5 C.P.C. was added in the State of U.P. by way of U.P. Civil Laws (Amendment) Act, 1972 and has been amended from time to time. It provides that unless the defendant deposits the admitted rent of compensation on or before the first date of hearing of the suit and also continue to deposit the monthly rent regularly, his defence is liable to be struck off.

19. Now, the question is whether the word "admitted" used in Order 15 Rule 5 C.P.C. should be interpreted literally or principle of purposive or functional rule of interpretation should be applied for. The well known exception to the rule of Literal Interpretation of Statute and giving preference to purposive or functional rule of interpretation is that the Court should always make the provision workable and practicable instead of making otiose or nugatory.

20. The Apex Court in the case of Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another, , has observed as follows :

The mechanical approach to construction is altogether out of step with the modern positive approach. The modern approach is to have a purposeful construction that is to effectuate the object and purpose of the Act."

21. And, it rejected the literal interpretation given by the High Court to the provision involved therein.

22. In Director of Enforcement v. Deepak Mahajan, 1994 (31) ACC 260, the Supreme Court has held that the mechanical interpretation of the words and application of legislative intent devoid of concept of purpose and object will render the legislation insane. To the same effect is Organo Chemical Industries v. Union of India, 1970 (4) SCC 573, wherein it was held that a bare mechanical interpretation of phrase "devoid of concept of purpose and object" will reduce the most legislation to nullity.

23. An interesting question arose before the Apex Court in the case of U.P. Bhoodan Yagna Samiti, U.P. Vs. Braj Kishore and Others, . Under the aforesaid Act the words "landless persons" were required to be interpreted. The contention was that the persons who admittedly have no land in the village in which the land to be allotted situated would be covered by the expression "landless persons", inspite of the fact that they may be traders and paying income tax and may have properties in the city. After noticing the scheme of Bhoodan Yajna, the movement which Acharya Vinoba Bhave and later Jai Prakash Narain carried out, and the purpose of movement, it came to the conclusion that "landless persons" means only those landless persons whose main source of livelihood was agriculture and who were agriculturist residing in the village where the land situated and who had no land in their name at the time. It never meant that all those rich persons who are residing in the cities and have properties in their possession but who are taken landless persons as they did not have any

agricultural land in their name in the Tehsil or the village where the land was situate or acquired by the Bhoodan Samiti that could allotted in their favour. It quoted one Shloka (verse) and rejected the plain ordinary dictionary meaning given to the words "landless persons" and also held that the scheme of Bhoodan Yajna has to be looked into.

24. The Apex Court in the case of Gujrat High Court v. G.K.M. Panchayat, AIR 2003 SC 1201, has dealt with in great detail the principle of purposive interpretation and has observed that a Statute as is well known must be interpreted having regard to the purport and the object which it seeks to achieve. It has been further held that the Court, while interpreting the provision of a Statute, although is not entitled to rewrite the Statute itself, is not debarred from "ironing out of creases." "The Court should always make an attempt to hold rule and interpret same in such a manner which would make it workable."

25. It is said that "while interpreting the legal provision, the Court of law cannot be unmindful of hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than precedential" vide Ajit Kumar Nag v. General Manager (P.J) Indian Oil Corporation Ltd. Haldia and others, JT 2005 SC (8) 425.

26. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the law so made and can also declare its meaning, but it can be done only by making another law or statute after undertaking the whole process of law making (See J.P. Bansal Vs. State of Rajasthan and Another,).

27. Purpose and object of enactment of Order 15 Rule 5 C.P.C. would be defeated if a literal interpretation to word "admitted", as suggested by the learned counsel for the tenant is given. An unscrupulous tenant, with a view to avoid the mischief of Order 15 Rule 5 C.P.C. may take a plea that the rate of rent was not as pleaded by the plaintiff but was a nominal amount. The idea of enactment of Order 15 Rule 5 C.P.C. is to compel the tenant to pay the rent at least at the rate he was paying earlier to the landlord notwithstanding the pendency of the litigation. Order 15 Rule 5 C.P.C. was enacted with a view that the landlord may not have to wait till the final decision of the case to recover his rent. He should at least get the rent at the rate he was getting before the start of litigation and a tenant may not enjoy the tenanted property without paying rent. The purport and object of Order 15 Rule 5 C.P.C. is to see that a tenant does not get undue

advantage by withholding the payment of rent or pay it at a lesser rate than the one at which he was paying earlier on some lame excuse. Looking to the object which Order 15 Rule 5 C.P.C. seeks to achieve, a literal interpretation to the word "admitted" would not serve the purpose and this Court is of the view that a purposive approach of interpretation should be resorted to.

28. It is relevant to note few authorities of this Court on the above subject. This Court in the case of *Indra Narain Saxena v. Ivth A.D.J.*, 1977 ALJ 876, has considered somewhat a similar controversy. In this judgment the Court noticed the contention of the defendant tenant that there was no admitted rent due and hence the tenant was within right not to deposit any amount under Order 15 Rule 5 C.P.C. In support of the aforesaid contention reliance was placed upon an earlier judgment of this Court in the case of *Janaki Prasad Saxena v. Tara Krishna Chaturvedy*, 1975(1) ALR 354, wherein it was held that what is material for the purposes of attracting Order 15 Rule 5 C.P.C. is that the rent must have been admitted by the defendant tenant, to be due, only then it becomes payable to the person entitled to get it. Power to strike off defence has a serious consequence on the rights of defendant to offer defence, the same has to be resorted to only when the requirement of the said provision has been strictly proved. To the same proposition another case *Ladly Prasad v. Ram Shah Billa*, AIR 1976 All 261, was also pressed into service. The aforesaid two judgments were distinguished on the ground that tenant's plea of non-admission of rent was evasive. It was further held that it would depend upon the facts of each case as to whether there is any amount admitted by the tenant to be due or not.

29. Reliance was placed on *Kunwar Baldevji v. 11th Additional District Judge, Bulandshahar and others*, 2003 (1) ARC 637 (DB), wherein it was held that the Order 15 Rule 5 C.P.C does not contemplate that when the Court decides a question of liability of payment of rent in future, the same should be treated as admitted rent due within the meaning of expression contained under Order 15 Rule 5 CPC.

30. This is the star precedent so far as defendant tenant is concerned. Therefore, it needs a little more elaboration. In this case relationship of landlord and tenant was denied in the written statement so no amount as due was admitted. The following question of law was referred for decision to the Division Bench:

Whether the defence can be struck off under Order XV Rule 5 CPC for non-deposit of rent which is not admitted to be due despite the express words to the contrary in that statutory provisions."

31. The aforestated question was answered in negative. The relevant paragraphs are 12 and 13 which are reproduced below:

12. Having considered the aforesaid decisions we find that the language of Order XV, Rule 5 CPC is unambiguous, clear and there is no scope of doing violence with it and stretch it to mean that expression "rent admitted by the tenant to be due" should mean rent found by the Court to be due-----." Question of

interpretation-of a statutory provision arises only when it is ambiguous or admits two interpretation or it is required to save the provision from being declared void. No such contingency exist in the present case.

13. If amount of rent is admitted then it is not required to be adjudicated by the Court. In case, tenant denies any rent to be due, Court shall be required to decide the same. It is obvious that in such contingency Court will have to adjudicate and its finding will come subsequent to the "first date of hearing" contemplated under Order XV, Rule 5 Code of Civil Procedure. It is, therefore, evident that by the time the Court will render its finding, "first date of hearing" which is cut of date for deposition of rent, shall be over. It also requires no comment that such an issue is first to be framed and thereafter adjudicated after parties have lead evidence in accordance with law."

32. The above quoted paragraphs would show that the Court proceeded to answer the question on the footing that the language of Order XV Rule 5 CPC is unambiguous clear, and there is no scope of invoking the principles of interpretation of statute. It proceeded on the footing that denial of relationship of landlord and tenant and non-admission of any rent to be due by the tenant are sufficient, for not making the deposit under Order XV Rule 5 CPC. To put it differently, the Division Bench took the literal meaning of words "rent admitted by the tenant to be due". In that fact situation the interpretation placed by the Division Bench is correct. The said decision is distinguishable on facts and has little application to the facts situation as exists in the case in hand. The ratio of the Division Bench will not apply to a case where the inference of admission of rent due may be drawn on the undisputed facts available on record. The attention of the Division Bench was also not invited towards the aims and objects for the enactment of Order XV Rule 5 CPC. This being so, the law laid down by the Division Bench is not of universal application and it will not cover other cases where an inference of admission of rent due on the admitted facts could be drawn. It is not necessary for me to dilate on this point any further in view of authoritative pronouncements of the Apex Court in the case of Manik Lal Majumdar and Others Vs. Gouranga Chandra Dey and Others, .

33. Section 20(1) (b) of Tripura Buildings (Lease and Rent Control) Act, 1995 was up for consideration in the case of Manik Lal Majumdar and Others Vs. Gouranga Chandra Dey and Others, . The phrase "admitted by tenant to be due" to enable him to prefer an appeal has been interpreted and explained therein. The Apex Court preferred to interpret the word "admitted" by giving it to a purposive meaning than the literal one. The relevant portion is extracted below :

The object of sub-section (1) of Section 13 of the Act is to avoid litigation for realization of arrears of rent which is likely to accumulate during the course of litigation, which may be a long period and also to deter the tenant from resorting to an unfair practice to use and occupy the tenanted premises without payment of any rent so long as the litigation continues. The High Court was of the opinion that the reasonable meaning of the words "admitted by the tenant to be due" is

the inference of admission from the material on record. If the material on record prima facie discloses the admission of relationship of landlord and tenant and the rate of monthly rent payable, the tenant would be required to pay or deposit arrears of rent and continue payment of current rent during the pendency of the litigation, as enjoined u/s 13 of the Act. Dharmadhikari, J. has expressed his concurrence with the aforesaid view taken by the Division Bench of the Gauhati High Court in the case of Binapani Roy. We are also of the opinion that the view taken by the Division Bench of the High Court on this point is perfectly sound as giving a literal meaning to the expression "all arrears of rent admitted by the tenant to be due" may defeat the very object of enacting Section 13 of the Act and an unscrupulous tenant may continue to enjoy the premises without payment of any rent to the landlord by protracting the litigation and the landlord may have to wait till the final decision of the case to recovery his dues by taking execution proceedings."

34. The above pronouncement of law by the Apex Court in the case of Manik Lal Majumdar and others (supra) makes it crystal clear that while interpreting the word "admitted", in the present statutory setup, literal meaning if assigned to word "admitted", it would make the provision otiose, and unscrupulous tenant may continue to enjoy the premises at a lower rate or without payment of any rent to the landlord.

35. There is another reason for not following the ratio of the aforestated relied upon decision of Division Bench. It is an acknowledged legal position that the Court should not place reliance on a decision without discussing as to how the fact situation of the case before it fits in that fact situation of the decision on which reliance is placed. As demonstrated herein above, the decision of the Division Bench in the case of Kunwar Baldevji is distinguishable on facts.

36. On a true and proper construction of written statement alongwith the other materials on record if Court draws a reasonable inference that the dispute of "admitted rent" raised by a tenant is only for the name's sake and there is no real dispute about the "admitted rent", in such situation it is open to it to insist upon the defendant tenant to deposit the "rent" at the rate pleaded in the plaint, under Order 15 Rule 5 CPC.

37. Coming to the facts of the present case, it is not in dispute that the premises in question was let out by the plaintiff to the defendant. It is also not in dispute that no amount of rent has been paid for the period subsequent to 31st of March, 2003. Applying the ratio of the Apex Court in the case of Manik Lal Majumdar and others (supra), it is quite evident that it is a case of admission of arrears of rent by the defendant as contemplated under Order 15 Rule 5 C.P.C.. At this stage, it is apt to notice another limb of the argument of the tenant's counsel.

38. Pointedly, a query was put to the learned counsel for the tenant as to in what capacity the defendant is in possession of the property in question. The reply was that the defendant's possession is referable to section 53-A of the Transfer of

Property Act. Elaborating the argument it was submitted that the defendant has always been ready and is still ready to perform his part of contract by paying the remaining 50 Lakhs of rupees but it is plaintiff landlord who is not performing his part of the contract.

39. Reliance was placed on the following decisions in support of his contention that the said agreement of sale even though unregistered can be looked upon :

1. ARC Overseas Pvt. Ltd. v. Bougainvillea Multiplex and Entertainment Centre Pvt. Ltd., 2008(2) ADJ 713 (DB);
2. Hari Lal Vs. Amrik Singh and Another, ;
3. Mangal Singh v. Tek Ram, AIR 1975 Del 267;
4. Rameshwar Lal Sharma Vs. Sardar Amrik Singh, ;
5. Ganpat Rao Shiveram v. Anant Ramchand, AIR 1954 MB 26;
6. Gundu Pralhad Patil v. Balu Shahu Vajantri, 1996 (3) KLJ 574;
7. Ram Kissan Agarwalla and others v. Muktinath Sarma and others, 1956 Assam 154;
8. Anchuru Veerapa Naidu Vs. Gurijala Venkaiah Chowdari, ;
9. Hari Waman Rao and Others Vs. Pappula Narsimulu, ;
10. Dadi Reddy Sivanarayana Reddy Vs. Kasi Reddy Chinnamma, ; and
11. Mangilal and Others Vs. Dambarlal and Another, .

40. The learned counsel for the plaintiff landlord rightly invited the attention of the Court towards the section 17 (1A) of the Registration Act, 1908 as inserted by the Act No. 48 of 2001 w.e.f. 24 of September, 2001. For the sake of convenience the said sub section is reproduced below:

(1A). The documents containing contract to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1982 (4 of 1982) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of said section 53A.

41. To my mind the aforesaid amended provision is complete answer to the submission of the learned counsel for the tenant.

42. Viewed as above, the agreement of sale which is indisputably unregistered document will not be of any help to the tenant to invoke the benefit of section 53A of the Transfer of Property Act.

43. Even otherwise also, it is interesting to note that the said agreement is

prefaced by the following:

AND WHEREAS the above mentioned properties is at present rented out to M/s. Dharam Pal Satya Pal Ltd., Swastik Udyog and Ridhi Sidhi Logistics and free from all kinds of encumbrances, charges, lines, mortgages; sale agreements etc. and the FIRST PARTY as full power, good title and absolute authority to dispose of the same and till the registry of the documents the present Rent Agreement of M/s. D. S. Ltd. Swastik Udyog and Ridhi Sidhi Logistics, shall continue.

44. The above quoted para from the said agreement leaves no room for doubt of any kind that the relationship of landlord and tenant between the parties continued and continues till the registration of sale-deed which has not yet taken place. A person may be in occupation of the immovable property either as a owner or a mortgagee or a lessee or a licensee or trespasser. Thus, the plea of the defendant that he is in occupation of the property in dispute in pursuance of the part of performance u/s 53A of the Transfer of Property Act is liable to be rejected. There is no change of status in view of the clear stipulation under the agreement dated 6th of December, 2002, the irresistible conclusion is that the relationship of landlord and tenant between the parties which existed earlier did not cease and it continues.

45. More or less similar controversy came up for consideration in Ayub Ali v. Tahir Ahmed Khan and others, 2008 (70) ALR 1, before this Court. It has been held that the relationship of landlord and tenant did not come to an end from the date of execution of the agreement until the registration of the sale-deed.

46. Having said so as above, it is held that the defence of the defendant tenant is liable to be struck off under Order 15 Rule 5 C.P.C and the Court below was not justified in postponing the matter till the final decision of the suit. At this place, it is apt to notice a Division Bench decision of this Court in the case of Bal Krishna v. Ramanand Dixit and another, 1996 (2) ARC 285 wherein a decision of this Court in the case of Mahboob alias Challa v. Mohammad Hussain and others, 1983 (1) ARC 651, has been noticed. The said decision has laid down that the Court should decide the question of striking off defence as a preliminary issue before allowing the parties to adduce the evidence on merits of the case. Not deciding such question as preliminary issue is not justified.

47. The trial Court, thus, committed illegality in not deciding the matter under Order 15 Rule 5 C.P.C finally and by postponing it till the recording of the evidence.

48. Having held as above, this Court is of the opinion that the defendant tenant deserves some indulgence. All the time the defendant was banking upon the unregistered agreement of sale. Under the said agreement a sum of Rs. 10 Lakhs has been given as advance money also. Taking into consideration that striking off defence has a serious consequence on the right of the defendant and keeping in mind avowed object of Order 15 Rule 5 C.P.C the interest of justice would be served by providing a last opportunity to the defendant to make the necessary

deposit within a period of one month from today before the trial Court for the period (with effect from the date the rent has not been actually paid up to January, 2012) and it will also file an undertaking that it will make the future deposits as and when they fall due in terms of Order 15 Rule 5 CPC.

49. It is made clear that in case of default in compliance of the conditions stipulated above within the stipulated time, the defendant tenant would not be entitled for any further indulgence and its defence would stand struck off. With the aforesaid observations, both the revisions succeed and are allowed. The impugned orders dated 13th of August, 2008 in both the suits are hereby set aside with cost of Rs. 5,000/ (Rupees Five Thousand) in each case. The trial Court will do good by deciding the suit preferably within a period of one year.