

(2008) 05 DEL CK 0111

In the Delhi High Court

Case No : Regular First Appeal No. 107 of 2005

John Tinson Co. Pvt. Ltd.

APPELLANT

Vs

Bank of India and Another

RESPONDENT

Date of Decision : 30-05-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 27
Delhi Rent Control Act, 1958 — Section 81

Citation : (2008) 105 DRJ 358 : (2009) 5 RCR(Civil) 140 : (2008) 2 RCR(Rent) 487

Hon'ble Judges : Aruna Suresh, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Rajeev Sawhney and Vineet Jhanji, for the Appellant; Adarsh B. Dial
Rajeev Nanda and Manish Chauhan, for the Respondent

Judgement

A.K. Sikri, J.—The appellant, which is a private limited company, is the owner and landlord of property bearing No. 54, Janpath, New Delhi (hereinafter referred to as the "suit property"). The respondent herein, namely, Bank of India, was inducted as a tenant initially on 21.4.1962 in respect of the basement and ground floor of the suit property. Further portions of the property were also let out to the respondent in stages. Particulars of all the leases and the portions let out thereby are as under:

S. No. Particulars Terms of Lease Portions let out of Lease

1. Lease deed 25 years with effect 3100 sq.ft on the ground dated 21.4.62 from 12.5.1961 with a floor and 3100 sq.ft in clause for renewal the basement @ Rs.3,833/- p.m.
2. Lease deed 10 years with effect 1200 sq.ft. on the back portion dated 9.5.68 from 18.4.1966 of the first floor @ Rs.2,700/- p.m.
3. Oral Lease W.e.f. 20.2.1970 Front portion of the first floor @ Rs.2,700/- p.m.

4. Oral Lease - 500 sq.ft. on the first floor @ Rs.1,125/- p.m.

5. Oral Lease - Terrace @ Rs.500/- p.m.

2. After the expiry of 25 years from the first lease deed, there was an agreement between the appellant and the respondent bank whereby the rent of the suit property was increased with effect from August 1987, in the following manner:

1. Basement area being 3100 sq feet Rs. 0.62 to Rs. 4.00 per sq.foot w.e.f. 1.8.87.

2. Rs. 4.00 per sq. feet from 0.62 w.e.f. 1.8.87 for the ground floor, are being 3100 sq feet @ 0.62 to 1.4.81 to 31.7.87.

3. For the first floor area being 2,900/- sq. feet @ 6/- per sq. feet w.e.f. 1.4.81 to 31.7.87 to Rs. 8/- per sq. feet w.e.f. 1.8.87 for terrace being Rs. 500/- lump sum per month and water charges @ 150/- per monthly.

3. In this manner, the respondent bank started paying a consolidated sum of Rs. 48,650/- p.m. Vide letter dated 3.10.1987, the appellant demanded increase in the rent, which request was not acceded to by the respondent. In these circumstances, vide legal notice dated 15.10.1994, the appellant terminated the tenancy of the respondent with effect from 30.11.1994 with regard to the entire premises. The respondent bank replied vide communication dated 17.12.1994 refusing to vacate the premises and claimed protection under the Delhi Rent Control Act, 1958. The appellant, in these circumstances, filed suit for ejectment and mesne profits before the learned Additional District Judge (ADJ), Delhi, which was registered as Suit No. 442/2003. The respondent bank contested the suit by filing the written statement. Following issues were framed by the learned trial court:

1. Whether the suit is maintainable in its present form? OPP

2. Whether the suit has been instituted and plaint has been verified and filed by a duly authorized person? OPD

3. Whether the suit is bad for mis-joinder of the parties? OPD

4. Whether the suit is bad for mis-joinder of cause of action? OPD

5. Whether there is any cause of action to file the present suit? OPD

6. Whether the tenancy of the defendant is validly and legally terminated? OPD

7. Whether plaintiff has waived the notice of termination? OPD

8. Whether the plaintiff is entitled to a decree for recovery of possession of the suit premises? OPP

4. Evidence was led by both the parties and thereafter arguments were heard. The said suit culminated into judgment dated 2.12.2004 whereby the suit of the appellant herein has been dismissed. We may note at this stage itself that all the

issues, except issue No. 2, have been decided in favor of the appellant. The learned trial court has also arrived at a finding that the appellant/plaintiff is entitled to recover possession. However, in view of his findings on issue No. 2 to the effect that the appellant failed to prove that Shri R.D. Bhagat, who instituted the suit on behalf of the appellant company, was competent to file the suit, the suit has been dismissed.

5. We may note that though different portions of the suit premises were let out to the respondent at different times, the case of the appellant in the plaint was that in the year 1987 there was an agreement between the appellant and the respondent bank revising the rental for all the leased areas and a consolidated rent of Rs. 48,650/- for the entire premises under its occupation was agreed to. Therefore, new oral agreement was arrived at between the parties in the year 1987 with respect to the lease of the entire premises and consolidated rent for the entire premises was paid by the respondent to the appellant, since August 1987. Specific averment in this respect was made in para 5 of the plaint, which was admitted by the respondent in the written statement. Therefore, it was one agreement for entire premises from that date and as the rent was much more than Rs. 3,500/- p.m., no protection of the Delhi Rent Control Act, 1958 was available to the respondent bank. This plea has been accepted by the learned trial court as well while deciding various issues in favor of the appellant, except issue No. 2, as noted above. Therefore, insofar as appeal of the appellant is concerned, his focus has to be on issue No. 2, findings whereof are assailed. However, the respondent bank has also filed cross objections under Order 41 Rule 22 of the CPC challenging the findings of the learned trial court on other issues decided in favor of the appellant. It is because of the said cross objections, the entire judgment is under challenge by the appellant or the respondent and, Therefore, we are to deal with the validity of findings rendered by the learned trial court in respect of every issue. However, since issue No. 2 is decided against the appellant, it would be appropriate to first deal with this issue.

6. Issue No. 2

As already pointed out above, issue No. 2 is: "Whether the suit has been instituted and plaint has been verified and filed by a duly authorized person?" Shri R.D. Bhagat, who had signed and verified the pleadings and instituted the suit, was stated to be the Chairman and Managing Director of the appellant company. He had filed his affidavit in evidence. An application was moved for recording evidence by appointing a Court Commissioner on the plea that he had sustained fracture of dorsal spine and ribs because of which he was admitted in Ashok Hospital and was unable to move. A Local Commissioner was appointed for recording his statement. Examination-in-chief was partly recorded on two dates and further examination-in-chief was deferred. However, Shri R.D. Bhagat died on 9.1.2002. No further evidence was led by the appellant. The respondent bank examined Shri R.K. Kardam as DW-1.

7. According to the appellant, Shri R.D. Bhagat, being the Chairman and

Managing Director of the appellant, was competent to take actions on behalf of the appellant company. It was additionally pleaded that resolution was also passed by the Board of Directors on 12.1.1995, as per which he was authorized to file the said suit. This resolution was filed as Ex.PW-1/1 and original Minute Book had also been produced on record. On the other hand, the respondent bank had argued that since the respondent bank could not cross-examine Shri R.D. Bhagat because of his demise, part evidence by Shri Bhagat could not have been relied and/or acted upon and, Therefore, the alleged resolution Ex.PW-1/1 or the Minute Book could not be relied upon by the appellant to prove its case. Insofar as position of Shri R.D.Bhagat as Chairman and Managing Director is concerned, case of the respondent bank was that the High Court of Himachal Pradesh vide its common judgment dated 14.11.1996 passed in RFA Nos. 230/1985 and 231/1985 had directed Shri R.D. Bhagat to handover the share scripts and to rectify the shareholder register and, thus, deprived him of his status as CMD of the appellant company. It was also pleaded that though Shri Bhagat had filed appeal against that order in the Supreme Court, the Apex Court had dismissed the appeal vide orders dated 3.2.1997. The respondent bank had filed the judgment of the Himachal Pradesh High Court as DW-1/1 and decree as DW-1/2. However, it was noted that though in the affidavit the order of the Supreme Court dismissing the appeal is mentioned as 3.2.1997 and it is also averred that the same is filed as DW-1/3, the said document was not filed on record. Taking note of the aforesaid submissions of the documents, the learned ADJ, while deciding the issue in favor of the respondent bank and holding that Shri Bhagat was not competent to file the suit, made the following observations:

13. As already pointed out, there is a confusing state of affairs as regards status of decree of Hon''ble High Court of Himachal Pradesh passed against Shri R.D. Bhagat. Even there is also confusing state of affairs as regards whether Hon''ble Supreme Court had stayed operation of order in appeal allegedly filed by Sh R.D. Bhagat, Therefore, on the basis of Ex. DW1/1 to DW1/3 (DW1/3 not filed on record), it cannot be said that matter is still sub judice as regards status of Sh R.D. Bhagat that he was not competent to file the present suit as Chairman and Managing Director of plaintiff company. However, as already pointed out Sh R.D. Bhagat had filed the suit on the basis of resolution passed by Board of Directors. As already pointed out since Sh R.D. Bhagat was examined in chief and he died before he could be cross-examined, Therefore, his bare examination in chief is no evidence in the eyes of law, hence, Ex PW 1/1 resolution authorizing him to file the present suit does not stand proved. Therefore, it cannot be said that he was competent to file the suit. This issue is accordingly decided in favor of defendants and against the plaintiff.

8. The main reason, Therefore, for deciding this issue against the appellant is that the suit was filed on the basis of resolution passed by the Board of Directors and the said resolution was not properly proved as Shri R.D. Bhagat died before he could be cross-examined. Admittedly, no other evidence was led by the plaintiff/appellant. However, we may note that the appellant had filed application

under Order XLI Rule 27 of the CPC along with this appeal for adducing additional evidence in respect of issue No. 2. This application was allowed vide order dated 8.9.2006. SLP was preferred by the respondent bank against the aforesaid order and the same was dismissed on 15.1.2007. In the meantime, in terms of order dated 8.9.2006, the appellant and the respondent adduced their additional evidence, which was concluded on 6.1.2007. Therefore, in order to determine this issue we have to now look into the said additional evidence.

9. The appellant, by way of evidence, filed affidavit dated 27.10.2006 of Mr. Shashank Bhagat, who is its present Chairman. Along with affidavit, original Minute Book containing the resolution dated 21.3.1995 has been filed as Ex.PW-2/1A. Certain letters marked as Ex.PW-2/2 to PW-2/8 are also filed. This witness has also mentioned that further resolution dated 25.9.2006 was passed by the Board of Directors rectifying the actions of Mr. Bhagat, including his signing and filing the plaint. The said resolution is filed as Ex.PW-2/9. On the basis of this evidence, submission of learned Counsel for the appellant was that since the evidence now led by Mr. Shashank Bhagat has not been challenged in the cross-examination, authority of Shri R.D. Bhagat to sign and file the plaint had been established. Reliance was also placed on the judgment of the Supreme Court in United Bank of India Vs. Naresh Kumar and others, .

10. Learned Counsel for the respondent on the other hand, submitted that this Court vide its order dated 8.9.2006 had allowed the appellant to prove only resolution dated 12.1.1995 and no other resolution. Therefore, the appellant could not produce second resolution dated 25.9.2006. Insofar as resolution dated 12.1.1995 is concerned, learned Counsel for the respondent argued that that resolution still did not give any authority to Shri R.D. Bhagat to institute the suit inasmuch as the said resolution was passed by the Board of Directors consisting of Shri R.D. Bhagat and his wife Mrs. Sulochana Bhagat on the strength of alleged shareholding in the company which was non-existent at that time in view of the judgment of the High Court of Himachal Pradesh. Learned Counsel also pointed out that the Himachal Pradesh High Court in its judgment and decree dated 14.11.1986 decreed the suits of the Malhans, the original owners of shares from whom Bhagats had purportedly purchased the shares of the company. The High Court held that the Bhagats had got the shares transferred in their favor fraudulently and they did not have any beneficial ownership in the same. They were directed by a decree of mandatory injunction to handover the share scripts to the Malhans and the company was directed to rectify the register of shareholders by substituting the names of the Malhans in place of Bhagats. The Civil Appeal Nos. 737-738/1997 by the Bhagats was dismissed by the Supreme Court on 3.2.1997, which has not been denied by the appellant. It is, thus, submitted that at the relevant time on 12.1.1995, the Bhagats had no authority whatsoever to pass the alleged resolution and file the suit on the basis of the same. Further, none of the averments made in the plaint were proved as Shri Bhagat expired before he could complete his evidence. After the death of Shri Bhagat, no evidence was led by the plaintiff. In effect, no evidence was produced

by the plaintiff at all. Thus, from the time the suit was instituted till the disposal of the suit, the order and decree of the High Court of Himachal Pradesh prevailed by virtue of which Malhans were owners of the shareholding in the company and Bhagats had no right whatsoever to represent the company in any manner. It is submitted that this Court did not allow any other additional evidence. Therefore, the judgment of the trial court on issue No. 2 requires to be upheld and appeal dismissed on this ground alone.

11. Learned Counsel for the appellant conceded that if one keeps in view the nature and scope of order dated 8.9.2006 whereby limited additional evidence was permitted to be led, the resolution dated 25.9.2006 is not to be looked into and considered. He, Therefore, confined his submissions to resolution dated 21.3.1995 only. No doubt, the appellant has been able to prove this resolution. However, we have to examine its validity in the light of the judgment of the Himachal Pradesh High Court inasmuch as attack on its permissibility is launched by the respondent on the basis of judgment and decree dated 14.11.1986, as already pointed out above.

12. It is not in dispute that the Himachal Pradesh High Court vide the said judgment and decree dated 14.11.1986 decreed the suit of the Malhans, the original owners of shares from whom Bhagats had purportedly purchased the shares of the company. It was held that Bhagats got those shares transferred in their favor fraudulently and they did not have any beneficial ownership in the same. Learned Counsel for the appellant did not dispute this position. We may note that after the dismissal of appeal against the aforesaid judgment of the Himachal Pradesh High Court, there was a settlement between the parties and Bhagats purchased all the shares. It is only regarded as a matter of fact as that would not be a relevant factor in determining the issue at hand. Submission of learned Counsel for the appellant, however, was that even if it was held that the Bhagats did not have any beneficial ownership in the said shares, insofar as their continuation as Directors is concerned, there was no order to this effect against them and, thus, Shri R.D. Bhagat continued to act as Director. The resolution passed by the Board of Directors, who were in fact the Directors at that time and were not restrained from acting as such, was Therefore valid.

13. There is force in this submission of learned Counsel for the appellant. After all, a company has to act through its Board of Directors. The Board of Directors passed the resolution in question at the time when they were in the saddle. Technically, shareholding and directorship are two distinct aspects. Furthermore, one has not to lose sight of the fact that the Bhagats continued to remain in charge of the affairs of the company and purchased the shares from Malhans by paying the consideration. Things would have been different had it been a litigation between two warring groups. We are of the opinion that the respondent bank, which is a third party to the said dispute, should not be allowed to take advantage of the said dispute and defeat the otherwise just cause of the appellant company herein.

We would like to quote the following observation of the Supreme Court in the case of Naresh Kumar (*supra*) in this behalf:

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

No doubt, the appellant herein is not a public corporation. However, the observations contained above to the effect that a just cause be not allowed to be defeated on such technicalities or procedural irregularities would apply here as well.

14. We are, Therefore, of the opinion that the resolution dated 21.3.1995 is a valid resolution on the basis of which the suit could properly be instituted. Issue No. 2 is accordingly decided in favor of the appellant/plaintiff and against the respondent/defendant.

15. With this, we now proceed to discuss the cross-objections filed by the respondent herein, inasmuch as, all other issues have been decided by the learned ADJ in favor of the appellant and it is the respondent who is challenging the findings on certain issues. We take up these objections issue wise.

16. Issue Nos. 1 & 3

The defense of the appellant qua these issues is based on one common factor/plea, namely, different portions of the suit property were let out to the respondent bank at different times which constitute distinct tenancies of different portions at different times and with different rents and tenancy months. Therefore, the suit, as framed, was not maintainable and suffered on account of misguide of causes of action. It was further argued that the learned trial court failed to take notice of the fact that even the tenancy months of different portions were different. In these circumstances, when there were different tenancy months, the appellant had no right to terminate all tenancies by one single notice and it should have issued separate notices to quit regarding each tenancy, more so when even the tenancy months were different. It was also argued that the learned trial court overlooked the fact that vide indenture dated 21.4.1962, the premises were let out for a term of 25 years and the respondent was entitled to renewal of lease for two further periods of 25 years each on the expiration of the term originally granted. The lease was extended by the appellant and the lease stood extended for further duration of 25 years on the expiration of the original term with yet another option available to the respondent to extend lease for further period of 25 years, after the expiry of the current extended/renewal period. Thus, the suit filed by the appellant herein, prior to the expiry of the lease, ought to have been dismissed.

Learned Counsel for the respondent further submitted that the learned trial court failed to take notice of the fact that the appellant was accepting the rent continuously after the exercise of renewal option by the respondent. In such circumstances, the appellant was stopped from terminating the tenancy of the respondent on the ground as contained in the impugned notice.

We may, however, note that at the time of arguments findings of the trial court on Issue Nos. 1 & 3 were questioned and accepted by the respondent. To this effect statement is made even in the written submissions filed.

17. Issue Nos. 4 & 6

Mr. Dayal, learned senior counsel appearing for the respondent bank, pointed out that the trial court decided these issues against the respondent on the premise that even though the tenancies were separate tenancies created at separate times, the rent paid by the respondent was in a consolidated manner and further that the lease deeds dated 21.4.1962 (DW-1/4) and 9.5.1968 (DW-1/5) were not renewed by registered leases and, Therefore, became month to month leases and were duly terminated by a single notice sent by the appellant. His submission was that on both counts the learned trial court erred. According to him, as admittedly there were separate and distinct tenancies of different portions started at different times and for different periods with different rents and tenancy months, mere payment of rent in consolidated manner was a matter of convenience only. Two tenancies were under registered documents and the payment in a consolidated manner could not supersede the terms of the registered document. The rights of renewal granted under the terms of the first two lease deeds could not be taken away by mere payment of rent at the same time. It was also submitted that the finding of the learned trial court that there was merger of tenancies was clearly wrong in the absence of any reliable evidence. The appellant did not lead any evidence. On the other hand, the respondent led specific evidence that there were separate tenancies. He also referred to the judgment of the Calcutta High Court in *Ranjit Kumar Dutta Vs. Tapan Kumar Shaw and another*, .

18. It was further argued that even if no registered document was executed for the extended period of 25 years under the first lease, the respondent would still be protected by the doctrine of "part performance" as held by the Apex Court in *Sheth Maneklal Mansukhbhai Vs. Hormusji Jamshedji Ginwalla and Sons*, and *Ravinder Madan v. Bank of India* (2001) 1 AD (Delhi) 149.

19. No doubt, the respondent bank took different portions of the same property on rent at different times with different rents for respective portions. It is also not in dispute that two leases were created by registered documents and the other three tenancies were on the basis of oral agreement. In respect of tenancies created under oral agreement, obviously there is no specific period for which tenancies were created nor tenancies for a period of more than 11 months could be created without a written registered lease deed. In respect of two lease

deeds which were for specific period, admittedly the initial period, as provided in the lease deed, had expired. Again, admittedly, there is no further lease deed executed by any written document. Therefore, it would be necessary to first understand the effect of non-execution of the fresh lease deed on the expiry of first lease period.

20. In the first lease of 21.4.1962, a right had been reserved in favor of the tenant under Clause 5 to seek the renewal subject to - a) the tenant bank giving a three months notice prior to the expiration of the lease; and b) fresh lease documents being executed. It is not the case of the respondent bank that it issued any notice in terms of Clause 5 of the lease deed, nor did the bank file a suit for specific performance. No fresh lease was executed. Hence, the lease expired by efflux of time on 11.5.1986. Similarly, the second registered lease dated 9.5.1968 expired by efflux of time on 17.4.1976. This factual position is again not in dispute. The inevitable legal consequence would be that after the expiry of the lease period by efflux of time, the tenancy in respect of these portions also became month to month. The respondent bank cannot claim that the tenancy of the registered lease deed dated 21.4.1962 stood renewed by an additional period of 25 years merely because an option to extend the same was provided in the lease deed. This could not have happened without executing fresh registered lease deed. In this background, the new arrangement arrived at between the parties in August 1987 assumes significance. The rentals of various portions of the properties were increased and the bank started paying consolidated rent of Rs. 48,650/- for the entire premises. Thus, it can be inferred that in view of this arrangement between the parties with effect from August 1987, single tenancy for the entire premises at a monthly rent of Rs. 48,650/- came into existence, albeit oral tenancy, as no document was executed. Law on this aspect stands formally established by catena of judgments of the Apex Court as well as this Court.

21. Our purpose will be served by quoting following passage from the judgment of a Division Bench of this Court in Aggarwal and Modi Enterprises (Cinema Project) Pvt. Ltd. and Another Vs. New Delhi Municipal Council, :

43...In the case of Delhi Development Authority Vs. Durga Chand Kaushish, , the Supreme Court held:

...A renewal of lease is really the grant of a fresh lease. It is called a "renewal" simply because it postulates the existence of a prior lease which generally provides for renewals as of right. In all other respects, it is really a fresh lease....

44. In Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another, , the Supreme Court held:

...the distinction between "extension" and "renewal" is chiefly in the case of "renewal" a new lease is required while in the case of "extension" the same lease continues in force during the additional period by the performance of the stipulated act. In other words, the word "extension" when used in its proper and

usual sense in connection with the lease means prolongation of the lease.

45. In *Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc.*, , the Supreme Court held:

This may be angulated from yet another legal perspective, namely, consequence that would flow from the meaning of the word "renewal" of a permit u/s 81 of the Act. Black's Law Dictionary defines the word "renewal" at page 1296 thus:

The act of renewing or reviving. A revival or rehabilitation of an expiring subject; that which is made anew or re-established. The substitution of a new right or obligation for another of the same nature. A change of something old to something new. To grant or obtain extension of;

In *P. Ramanatha Aiyar's "Law of Lexicon"* (Reprint Edn. 1987), the word "renewal" is defined at page 1107 to mean "a change of something old for something new". The renewal of a "licence" means "a new license granted by way of renewal". The renewal of a negotiable bill or note is regarded simply as a prolongation of the original contract. The office of a "renewal", as it is termed, of a life policy, is to prevent discontinuance or forfeiture.

In *Provash Chandra Dalui and Another Vs. Biswanath Banerjee and Another*, , this Court drew the distinction between the meaning of the words extension and renewal. It was held that:

...a distinction between extension and renewal is chiefly that in the case of renewal, a new lease is required while in the case of extension the same lease continues in force during additional period by the performance of stipulated act. In other words, the word "extension" when used in its proper and usual sense in connection with a lease, means prolongation of the lease.

46. Thus grant of renewal is treated as a fresh grant though it breathes life into the operation of the previous lease or license granted as per existing appropriate provisions of a particular enactment. In the instant case, the two renewals, namely, for third block and thereafter from 2000 to 2003 were unilateral grants by the NDMC, that too to legitimize the possession of the appellants to enable it to consider their proposal.

{Also see - *Commissioner, Jalandhar Division and Others Vs. Mohan Krishan Abrol and Another*, , ; *Modern Food Industries (India) Limited Vs. I.K. Malik and Others*, ; *Singer India Ltd. Vs. Amita Gupta*, ; *G.M. Enterprises Pvt. Ltd. Vs. Sem Tian Exports and Hotels Pvt. Ltd.*, ; *State of U.P. and Others Vs. Lalji Tandon (Dead)*, ; and *Caltex (India) Ltd. Vs. Bhagwan Devi Marodia*, .

22. In *Atro Devi Vs. Dittu Ram*, , this Court held that payment of consolidated rent would imply that a single tenancy exists, as is clear from the following observations therein:

2. The tenant contested the petition mainly on one ground. His defense was that this room was a part and parcel of a single tenancy consisting of one shop of 2

rooms. It is not in dispute between the parties that the tenant is carrying on a druggist shop in the two rooms Constituting the shop from the very inception of the tenancy in 1958. This room appears to have been taken by the tenant sometimes later on. It is the landlady's own case that it was being used by the servants of the tenant. On the evidence adduced by the parties the Rent Controller came to the conclusion that the two rooms of the shop and one room in dispute constituted one single tenancy and the purpose of letting was a commercial purpose. In this view of the matter she dismissed the eviction petition.

3. The evidence on the record shows that the landlady was issuing a consolidated receipt for the shop as well as this room. The plan of the property also shows that the shop as well as the room interconnected and form one single unit. The shop opens on the main road. The room opens at the back on the gali side. There is no intervening wall between the shop and the room. The structural character of the premises established that they constitute a single tenancy.

To the same effect is another judgment of the Delhi High Court in Chander Parkash Chawta Vs. K.K. Kapoor, .

23. We, Therefore, do not find any infirmity in the judgment of the learned trial court so far as findings on these issues are concerned.

24. We may also point out at this stage that findings on other issues are not touched. Issue No. 5 relates to cause of action, which objection obviously was raised in view of issue Nos. 4 & 6. Issue No. 7 is about waiver of notice of termination. Though findings are not pressed on this issue, even otherwise we do not find any snag in the judgment of the learned trial court on this issue. The respondent bank had contended that by subsequent notice dated 4.9.1995 the appellant had waived earlier notice of termination dated 15.10.1994. Admittedly, notice dated 15.10.1994 was properly served upon the respondent and it had even replied to the said notice vide communication dated 17.12.1994. Suit was filed in January 1995, after the demand contained in quit notice was not acceded to by the respondent bank. Notice dated 4.9.1995 came to be issued after the filing of the suit. As mentioned above, by issuing the earlier notice of termination dated 15.10.1994 tenancy was terminated, on the basis of which the suit was filed. In the second notice, only a claim for damages was made on account of alleged illegal use and occupation of the property by the respondent bank after the termination of the tenancy. In no manner it would amount to waiver of the first notice dated 15.10.1994.

25. In view of our findings on Issue Nos. 1 to 7 above, the appellant/ plaintiff is entitled to relief and, Therefore, decree for recovery of possession of suit premises, namely, 54, Janpath, New Delhi is hereby passed against the respondents/defendants and in favor of the plaintiff.

26. Decree be drawn accordingly. Costs shall follow the event.